



Delaware Wetland Advisory Committee
Final Report
November 2014



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Executive Summary

The Delaware Wetland Advisory Committee (Committee) formed as a result of [Senate Bill 78](#) (SB78) which was signed into effect on July 31, 2013. The purpose of SB78 is to promote public health and safety through the conservation and restoration of non-tidal wetlands (*non-tidal* and *freshwater* are used interchangeably in this report). The General Assembly requests the DNREC Secretary develop wetland protection priorities through consultation with a Wetland Advisory Committee and recommend for consideration a comprehensive approach for non-tidal wetland conservation, restoration, and education. The Committee is directed to consider options that would reduce duplication, improve permitting efficiency, and allow for cumulative losses to be tracked. Also, SB78 amended Chapters 66 and 72 to give the DNREC Secretary authority to issue an after-the-fact permit, letter of authorization or waiver when activities have occurred before permission has been granted, and to impose civil penalties versus criminal penalties against violators.

As specified in SB78, the Committee is comprised of 28 members representing the following stakeholder groups:

Delaware Farm Bureau (1)	Delaware Forestry Association (1)
Delaware State Bar Association (1)	County government planning agencies (3 total)
Delaware Association of Realtor (1)	Delaware Chapter of the American Council of Engineering Companies (1)
U.S. Army Corps of Engineers (1)	Delaware Department of Natural Resources and Environmental Control (2)
Delaware Home Builders Association (1)	Delaware Senate (2)
Delaware League of Local Governments from each county (3 total)	Delaware House of Representatives (2)
Committee of 100 (1)	U.S. Department of Agriculture Farm Service Agency (1)
Delaware environmental organizations (2)	U.S. Department of Agriculture Natural Resources Conservation Service (1)
Delaware outdoor recreation and wildlife conservation organizations (2)	
Delaware Department of Transportation (1)	
Delaware Department of Agriculture (1)	

*A more specific list can be found in the Introduction section of this report.

The Committee established a voting procedure whereby a 2/3 majority vote was necessary for an action item to pass. Three federal employee committee members (U.S. Army Corps of Engineers, NRCS, and Farm Services Agency) removed themselves from voting on recommendations out of conflict of interest. Thus, out of the 28 Committee members any action required 19 votes to pass which represents a supermajority.

The Committee met 11 times from September 2013 to September 2014. Topics brought before and by the Committee for presentation and discussion included informing members about wetland ecology and detailing Delaware's wetland resources, understanding past wetland legislative efforts, reviewing current state and federal permitting procedures, accounting for gaps in wetland tracking, understanding perspectives from the permitted community, pursuing opportunities to reinvigorate existing programs, and considering various incentive-and regulatory-based programs for adoption.

Eleven recommendations were brought to a Committee vote. Three recommendations are characterized as regulatory. The three regulatory votes did not pass. Eight recommendations are characterized as incentive-based. All eight of the incentive-based votes passed.

Regulatory-based Votes (none passed)

- Recommending DNREC authority for a regulatory program for Category 1 wetlands regulated by the Corps
- Recommending DNREC authority for a regulatory program for Category 1 wetlands not regulated by the Corps
- Recommending DNREC authority for a regulatory program for all wetlands regulated by the Corps

Incentive-based Votes (all passed)

- Recommending a consistent source of funding for the Forestlands Preservation Program
- Recommending the Land and Historic Resources Protection Incentives Act be amended and expanded to create greater incentives to private landowners to protect and preserve wetlands
- Recommending that the General Assembly make yearly allocation of \$200,000 for the Forestlands Preservation Program
- Recommending changes to the Conservation Tax Credit Program to include Category 1 wetlands as conservation value, adjusting the individual maximum credit, and allowing transfer of tax credits to third parties
- Recommending that DNREC map all Category 1 wetlands and conduct outreach of incentive programs to landowners with Category 1 wetlands
- Recommending semi-annual meetings be held between the Ag Preservation Foundation, Open Space Council, Conservation NGO's and pertinent federal agencies to identify land conservation opportunities
- Recommending amending the Real Estate Transfer Tax to divert funds directly to the Ag Preservation Foundation and increase state funding from \$10 million to \$15 million per year
- Recommending the Open Space Program have similar dedicated funding of \$10 million dollars per year

NOTE: Electronic links throughout this document are to presentations given to the Committee and to relevant subject matter documents.

Previous Consideration of Freshwater Wetland Action

There have been several previous efforts to support better conservation and protection of freshwater wetlands in Delaware. In 1988, Governor Castle signed Executive Order 56 which required all state agencies to minimize adverse impacts to freshwater wetlands, to conserve and enhance wetland functions, avoid undertaking or providing financial assistance for construction located in freshwater wetlands or that result in adverse impacts, and to seek all practicable alternatives to projects that have potential impacts. Executive Order 56 also established a Freshwater Wetlands Roundtable to develop workable definitions for freshwater wetlands, and to recommend methods of using conservation programs to protect freshwater wetlands on private lands including financial ramifications to the state's budget. The Freshwater Wetlands Roundtable, which included a few members of the current Committee, delivered a [report](#) to Governor Castle in 1989 with comprehensive recommendations.

Past Legislative initiatives include:

Two Senate efforts to pass a ***Freshwater Wetlands Act*** during the respective 136th and 137th General Assembly (1992 and 1993) – **Referenced as Sokola SB No 248 (1993)**

One effort by the House to pass a bill to amend *Chapter 66, Title 7 of the Delaware Code Relating to the Protection of Wetlands* by the 141st General Assembly (2002) – **Referenced as Cathcart HB No 340 (2002)**

Circa 2005, one bill drafted by Dr. Jerry Kauffman, Water Resources Agency, Titled *Freshwater Wetlands Act* based on NJ's wetland law known as the Ogden Act.

None of these Legislative initiatives progressed to completion. The Sen. Sokola SB248 advanced the furthest passing in the Senate but not being introduced for vote in the House in 1993. To date, there has not been a systematic side-by-side evaluation of these efforts.

Introduction

Evolution of Senate Bill 78

In reaction to increased DNREC involvement in flooding complaints, and information on prolonged wetland degradation, DNREC Secretary Collin O'Mara agreed with legislators to engage a broad group of stakeholders using a committee approach supported through legislative action. The Secretary initiated conversation with legislators to build on the success of Senate Bill 64 of the 146th General Assembly for floodplain and drainage standards, with a similar effort for freshwater wetland conservation and restoration. The purpose of [Senate Bill 78](#) of the 147th General Assembly is to promote public health, safety and welfare through conservation and restoration of non-tidal wetlands which provide significant public value and critical ecological functions through the mitigation and prevention of flood damage, provision of wildlife habitat, removal of pollutants from water resources, and reduction in costs for governments, residents, and businesses that result when wetlands are degraded. SB78 authorizes the formation of the Delaware Wetland Advisory Committee.

Tasks Outlined within Senate Bill 78

The General Assembly requests the DNREC Secretary develop wetland protection priorities through consultation with the Wetland Advisory Committee and recommend for consideration a comprehensive approach for non-tidal wetland conservation, restoration, and education. The Committee is directed to consider options that would reduce duplication, improve permitting efficiency, and allow for cumulative losses to be tracked. Also, SB78 amended Chapters 66 and 72 to give the DNREC Secretary authority to issue an after-the-fact permit, letter of authorization or waiver when activities have occurred before permission has been granted, and to impose civil penalties versus criminal penalties against violators.

DNREC shall compile the results of the Committee recommendations, develop a draft report and reconvene the Committee to review the draft report and solicit feedback before finalizing the report of recommendations. The Secretary shall deliver an interim report (see Appendix A) summarizing the work of the Committee to the General Assembly no later than May 1, 2014, and deliver the final report of recommendations no later than December 31, 2014.

Committee Membership

Committee membership is described in SB78 and is designated by the General Assembly to create a committee of stakeholders. Specific committee members and their affiliation are listed below:

Agency	Committee Members
Center for the Inland Bays	Chris Bason
U.S. Army Corps of Engineers	Edward Bonner
DNREC – Coastal Programs	Sarah Cooksey
Dept. of Agriculture	Mark Davis
Town of Middletown – League of Local Govts.	Tim Deschepper
Sussex County Planning	Hal Godwin
Delaware Nature Society	Brenna Goggin
Division of Planning – Kent County	Mary Ellen Gray
New Castle County Planning	George Haggerty
Delaware House of Representatives	Rep. Debra Heffernan, House District 6
Delaware Senate	Sen. Gerald Hocker, Senate District 20
Town Hall (Smyrna) – League of Local Govts.	David Hugg
Natural Resource Conservation Service	Sally Kepfer
City of Seaford – League of Local Govts.	Josh Littleton
Land Conservationist	Andy Manus
DelDOT	Robert McCleary
Home Builders Association of Delaware	Jim McCulley
Delaware Association of Realtors	Phil McGinnis
Delaware Forestry Association	Brian Michalski
Committee of 100	Paul Morrill
Delaware Bar Association	Michael Parkowski (Co-Chair)
DNREC – Watershed Stewardship	Frank Piorko
Delaware Farm Bureau	Marty Ross
Council of Engineering Companies	Alex Schmidt
The Conservation Fund/Open Space Council	Porter Schutt (Co-Chair)
Delaware Senate	Sen. Robert Venables, Senate District 21
Farm Services Agency	Bob Walls
Delaware House of Representatives	Rep. Dave Wilson, House District 35

Voting Procedures

Voting procedures and alternate procedures were sent to Committee members and discussed at the November 2013 meeting. In their absence, each committee member can identify and alternate with voting capabilities. The procedures recommended a two-thirds majority vote from committee members, and committee chair(s) are able to vote.

In discussing voting procedures, one committee member expressed concern about committee members from State and federal agencies being able to vote, remarking that it could be a conflict of interest. After further discussion and clarification, the U.S. Army Corps of Engineers stated their role on the committee is more advisory and voting is a conflict of interest as the Corps administers a regulatory program for non-tidal wetlands in Delaware. After further inquiry with their administration the other two federal agency members (NRCS and Farm Services) also removed themselves as voting members resulting in three federal non-voting Committee members. Voting procedures state that passing a recommendation requires a 2/3 vote from all committee members (28), not 2/3 of only voting members. A passing recommendation required a supermajority (19) vote from 25 voting committee members.

Committee members who did not agree with a recommendation were given ample opportunity to draft and submit a dissenting opinion on the recommendation. The dissenting opinion was recorded and included in any documentation referencing the recommendation. [Letter of dissenting opinion are found in Appendix C.](#)

To clarify the subject of wetlands for the purposes of discussion only by the Committee, Chair Parkowski proposes that the Committee use the three parameters used by the Corps of Engineers to determine a wetland in the 1987 delineation manual and regional supplements (wet soils, hydrology, wetland plants). A motion is made and seconded, and the Committee votes (21 in favor) to use this federal classification of wetlands rather than a biological classification during meeting conversations. This establishes a definition of wetlands for discussion purposes only by the Committee.

Recommendation Summary

Eleven recommendations were brought to a committee vote. Three relate to creating a state freshwater regulatory program. Two are specific to Category 1 wetlands and one for all freshwater wetlands. *All three of these recommendations failed to pass Committee vote.* Eight recommendations relate to voluntary landowner incentive actions. Two recommend consistent funding be provided to the Forestland Preservation Program, one of which specified \$200,000 annually. Two relate to updating the Conservation Tax Credit Program, one recommends that the availability and limits of tax credits be amended and expanded, the other amending the program to include Category 1 wetlands as conservation value, adjusting the individual maximum credit, and allowing transfer of tax credits to third parties. Another recommendation directs privately owned Category 1 wetlands be mapped by DNREC with landowner outreach to increase participation in the Tax Credit Program and other landowner incentive programs. The Committee recommends semi-annual meetings between the Ag Preservation Foundation, Open Space Council, Conservation NGO's and pertinent federal agencies to identify land conservation opportunities. The final two recommendations involve amending the Real Estate Transfer Tax to divert funds directly to the Ag Preservation Foundation and increase state funding from \$10 million to \$15 million per year, and recommending the Open Space Program have similar dedicated funding of \$10 million dollars per year. *All eight of these recommendations passed Committee vote.*

Regulation-based Proposals

For the edification of the Committee DNREC presents findings from the [2011 Wetlands Status and Changes report](#), summarizes how the current [tidal wetland program](#) operates and how a state [freshwater wetland program](#) could operate, and details the extent of wetland resources available for protection, in particular unique and rare wetlands ([Category 1](#)). The Committee hears perspectives from the regulated community as well as from the

current non-tidal wetlands regulating body, the U.S. Army Corps of Engineers. The Committee considers several concepts for giving DNREC the authority to regulate freshwater wetlands, particularly focusing on Category 1 (unique and rare wetland types). Three recommendations are brought to a Committee vote:

Recommendation #1- Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category 1 wetlands that are currently regulated by the Corps assuming federal nationwide permit authority is delegated to DNREC? This recommendation fails to pass vote. (15 yes, 10 no, 3 not voting)

Recommendation #2 - Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category 1 wetlands that are not currently regulated by the Corps? This recommendation fails to pass vote. (15 yes, 10 no, 3 not voting)

Recommendation #3 - Does the Committee recommend that DNREC be given authority to adopt a freshwater wetlands program to protect all federally regulated wetlands which are subject to federal nationwide permit authority assuming federal nationwide permit authority is delegated to DNREC? This recommendation fails to pass vote. (14 yes, 11 no, 3 not voting)

Documentation of the voting results can be found in Appendix B.

Incentive-based Proposals

A subcommittee forms focusing on landowner incentives to prioritize, develop, and present to the Committee concepts for voluntary freshwater wetland conservation and restoration. The subcommittee investigates incentive opportunities that focus on forested habitats that contain wetland complexes, especially those owned privately. The subcommittee presents and discusses three concepts to the Committee that leads to recommendations and votes:

Recommendation #4 - Does the Committee recommend that a consistent source of funding be provided for the purchase of forestland preservation easements in the [Forestland Preservation Program](#) established under Subchapter V, Chapter 9, Title 3, of Delaware Code? This recommendation passes vote. (23 yes, 2 no, 3 not voting)

Recommendation #5 – Does the Committee recommend that the availability and limits of tax credits covered under the Delaware Land and Historic Resources Protection Incentives Act of 1999 (subchapter 1, Chapter 18, Title 30 DelCode) be amended and expanded to create greater incentives to private landowners to protect and preserve freshwater wetland and adjacent natural resource areas? This recommendation passes vote. (21 yes, 4 no, 3 not voting)

Recommendation #6 -- The above recommendation is later amended to specify a yearly allocation of \$200,000 to the Forestland Preservation Program through separate allocation. This recommendation passes vote. (21 yes, 2 absent, 2 abstaining, 3 not voting) Senators Hocker and Venables abstain from voting due to conflict of interest due to their positions on the Bond Bill Committee.

Recommendation #7 - Does the Committee recommend that the existing Delaware Land and Historic Resources Protection Incentive Act of 1999 be amended and expanded as follows? (Voted on 6/11/14)

1. Category 1 freshwater wetlands and adjacent areas qualify and are identified as a conservation value for the [Conservation Tax Credit Program](#).
2. The Tax Credit Program maintain:
 - A. The existing 40% of Fair Market Value limit;
 - i. Category 1 wetland 100% of Fair Market Value;
 - B. The existing 5-year carry forward period; and
 - C. The existing statewide cap of \$1,000,000 per year.
3. The Tax Credit Program be expanded to include:
 - A. An individual maximum credit from \$50,000 to \$100,000; and
 - B. The allowance of transfer of tax credits to third parties.

This recommendation passes vote. (20 yes, 4 absent, 1 abstaining, 3 not voting) Mr. Manus abstains due to potential conflict of interest.

Recommendation #8 - Category 1 wetlands should be verified with a mapping effort and an onsite visit, estimating one year to update maps on the 4,019 acres of privately owned Category 1 wetlands.

Details:

1. DNREC prepare aerial maps of privately owned Category 1 wetlands that would be eligible for that tax credit.
2. DNREC contact landowners and provide the aerial maps to landowners with information regarding the tax credit program.
3. DNREC allow landowners to seek the opportunity to verify the location on aerial maps based on Category 1 criteria.
4. DNREC verify the eligibility for the tax credit.
5. DNREC promotes the Tax Credit program.

This recommendation passes vote. (21 yes, 4 absent, 3 not voting)

Recommendation #9 - Recommend semi-annual meetings held between the Ag Preservation Foundation, Open Space Council, Conservation NGO's and pertinent federal agencies to identify land conservation opportunities. This recommendation passes vote. (21 yes, 0 no, 3 not voting, 4 absent)

Recommendation #10 – Recommend amending the Real Estate Transfer Tax to divert funds directly to the Ag Preservation Foundation and increase state funding from \$10 million to \$15 million per year. This recommendation passes vote. (21 yes, 1 no, 1 abstain, 3 not voting, 2 absent)

Recommendation #11 - Recommend the Open Space Program have similar dedicated funding of \$10 million dollars per year. This recommendation passes vote. (20 yes, 1 no, 2 abstain, 3 not voting, 2 absent)

In addition, a [natural resource preservation concept](#) is presented by the subcommittee outlining density bonus credits as an incentive for landowners of higher value resources to be exchanged for higher density development. This concept does not come to a Committee vote.

A documentation of the voting results can be found in Appendix B.

At the request of the Committee Chair, other ideas for consideration are sent to Committee members by email on or before July 25, some of which (Center for the Inland Bays, Delaware Farm Bureau) are presented at the August meeting (the DNREC ideas are not presented and tabled) and all can be found in Appendix E. The ideas

submitted by CIB and DNREC are objected to by a few Committee members as recommendations to be considered as they do not need Legislative action and can be moved forward without Committee input.

This Committee process brings forth valuable insight and information for freshwater wetland conservation, protection, and restoration. As required in SB78, Section 6603, the DNREC Secretary shall develop a path forward with consideration to recommendations by the Committee. This path forward will identify areas to explore and consider in determining goals and objectives, outline necessary levels of funding, determine legislative needs, determine staffing needs, and a projected time assessment for moving forward.

APPENDIX A- Interim Report



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

April 30, 2014

To Members of the 147th Delaware General Assembly:

Governor Jack Markell signed [Senate Bill 78](#) into law in July 2013. This legislation establishes a Wetlands Advisory Committee (Committee) to develop comprehensive recommendations for conserving and restoring non-tidal wetlands in Delaware. As part of the legislative charge of SB 78, an interim report of the activities of this Committee is to be delivered to the General Assembly by May 1, 2014. Enclosed is a short summary to date of the work of this 28 member Committee.

The Committee has met seven times since September 2013, and has developed several recommendations regarding regulatory and permitting activities as well as possible landowner incentive programs. This group representing a broad cross section of Delaware agricultural, business, environmental and municipal interests has been hard working, thoughtful and deliberate in their consideration of a myriad of recommended actions for the long term protection of Delaware's non-tidal wetlands.

The Committee will reconvene in mid-May to discuss additional proposals and research to be developed and brought forth to the Committee before its conclusion at years end. I offer my thanks to the Governor, General Assembly and members of this Committee for the support given to this important environmental issue. I look forward to delivery of a comprehensive final report and recommended plan of action to be delivered to the General Assembly by December 31, 2014.

Best Regards,

A handwritten signature in blue ink, appearing to read "Collin O'Mara".

Collin O'Mara
Secretary

Delaware

Delaware's Good Nature depends on you!

Wetland

Advisory Committee: Interim Report

April 30, 2014

Governor Jack Markell signed Senate Bill 78 into law in July 2013. This legislation establishes a Wetlands Advisory Committee (Committee) to develop comprehensive recommendations for conserving and restoring non-tidal wetlands in Delaware, including evaluating national best practices and standards, incentive-based programs, and reviewing state and federal wetland permitting processes to identify opportunities to improve efficiency and eliminate redundancy.

Prior to the Senate Bill 78, DNREC contracted with the Environmental Law Institute (ELI) to conduct a preliminary report detailing relevant information on Delaware's past and current wetlands program efforts and those in surrounding states. Internal to DNREC, subgroups were formed to address the ELI report's findings in the areas of: Restoration, Conservation and Protection, Regulatory and Permits, Science, Education and Outreach, and Policy. This information was presented to the Committee at the first meeting.

The legislation charges DNREC Secretary Collin P. O'Mara, within 18 months of the effective date of the legislation and through consultation with the Committee established under this section, with developing wetland protection priorities for the State of Delaware and recommending for consideration by the General Assembly a comprehensive approach for improving non-tidal wetland conservation, restoration, and education within the state.

The Committee is asked to consider nationally recognized best practices and standards, as well as actions that surrounding states have implemented in the way of incentive programs, policies, and assumption of regulatory roles. The Committee is also asked to evaluate the permitting process for activities regulated by state and federal agencies with the goals of reducing duplication, providing efficient one-stop permitting, and improving the state's ability to account accurately for cumulative and individual impacts.

The Committee representation is as follows:

Delaware Farm Bureau (1)	Delaware Forestry Association (1)
Delaware State Bar Association (1)	County government planning agencies (3 total)
Delaware Association of Realtor (1)	Delaware Chapter of the American Council of Engineering Companies (1)
U.S. Army Corps of Engineers (1)	Delaware Department of Natural Resources and Environmental Control (2)
Delaware Home Builders Association (1)	Delaware Senate (2)
Delaware League of Local Governments from each county (3 total)	Delaware House of Representatives (2)
Committee of 100 (1)	

Delaware environmental organizations (2)	U.S. Department of Agriculture Farm Service Agency(1)
Delaware outdoor recreation and wildlife conservation organizations (2)	U.S. Department of Agriculture Natural Resources Conservation Service (1)
Delaware Department of Transportation (1)	Delaware Department of Agriculture (1)

The Committee is co-chaired by Michael Parkowski and Porter Schutt. The Committee adopted voting procedures and provided adequate time for discussion, consensus building and consultation with represented groups. Committee members or designated alternates may vote on action items. It was determined an affirmative vote of 2/3 of total Committee membership is required to pass any motion. Dissenting opinions on any recommendation will be recorded. Representatives from all three federal agencies opted to be non-voting members due to conflicts of interest. This action left the Committee with 19 votes required to pass a motion, representing 19 of the 25 voting members of the 28 member Committee.

The Wetland Advisory Committee convened its first meeting on September 25, 2013 and met monthly six additional times through April 2014. Several recommendations have been considered to date on both permitting and incentives for wetland protection. A special subcommittee was formed to develop voluntary options for landowner incentives. The Committee is currently considering implementation measures primarily in the area of these voluntary programs. Permitting program alternatives were also developed and presented to the overall committee for their discussion and consideration. Details on both the permitting options and the incentive recommendations are included below.

Committee members heard formal presentations from DNREC scientists and program managers, regulatory officials from the U.S. Army Corps of Engineers, as well as Committee representatives of the Delaware Farm Bureau, Delaware Nature Society, Delaware Forestry Association, Delaware Forest Service and Homebuilders Association of Delaware. DNREC expert botanist William McAvoy also presented to the Committee on the subject of Category 1 unique non-tidal wetlands.

Incentive Considerations

Chairman Parkowski requested a workgroup be established to investigate an incentive based approach to protecting freshwater wetlands. Andy Manus and Jayme Arthurs were co-leads assisted by Committee members Marty Ross, Brenna Goggin, Jim McCulley, Sarah Cooksey,

Phil McGinnis, Paul Morrill, Mark Davis, Mark Biddle, Mike Valenti, and Tim Deschepper. The subcommittee met several times during the period from January to March and corresponded often by phone and e-mail. Several presentations were made during the February, March and April full Committee meetings, and as time allowed, discussion occurred around the various options. In advance of full Committee meetings, the subcommittee was actively engaged in sharing information, ideas and possible program options with the full Committee.

All of the presentations are available on the Delaware Wetland Advisory Committee web site and Committee discussions are memorialized in the minutes of the meetings.

<http://Uwww.dnrec.delaware.gov/swc/Pages/Wetland-Advisorv-Committee.aspx>

Initial ideas related to voluntary landowner incentives that were more fully developed during the subcommittee process include the following:

1. A Natural Resource Protection Incentive Ordinance
2. Revitalizing the Forestlands Preservation Program
3. A Conservation Credit Exchange

Full Committee votes were taken on two of the three program recommendations above. The first option is still being investigated. Chairman Parkowski asked the Committee if they supported the following proposals. Voting results are as follows:

Does the Committee recommend that a consistent source of funding be provided for the purchase of forestland preservation easements in the forestland preservation program established under Subchapter II, Chapter 9, Title 3, Delaware Code?

Voting Results - 23 Yes/ 2 No/ 3 non-voting

Does the Committee recommend that the availability and limits of tax credits covered under the Delaware Land and Historic Resources Protection Incentives Act of 1999 (subchapter 1, Chapter 18, Title 30 De/Code) be amended and expanded to create greater incentives to private landowners to protect and preserve freshwater wetland and adjacent natural resource areas?

Voting Results - 21 Yes/ 4 No/ 3 non-voting

Permitting Considerations

DNREC staff presented the topic entitled "Potential Framework for a Non-Tidal Wetlands Program in Delaware" at the February 11 meeting. This presentation outlined three primary

program objectives that focused on regulatory protection and streamlined permitting options for consideration. For Category I wetlands, the Committee was asked to consider a program that utilizes "Protection" in the form of new and/or updated regulations and permitting efficiency. For Category II wetlands, the Committee was asked to consider a State program that would implement portions of the existing Federal regulatory program for the purpose of expediting permit processing and establishing DNREC as a single point of contact for all wetland permits. After this meeting, Chairman Parkowski asked DNREC to provide more detailed information specific to the regulation of Category I wetlands.

DNREC staff presented the "Potential Framework for a Category I Wetlands Program in Delaware" at the March 12 meeting. This presentation illustrated the difference between two areas of Category I wetlands which are isolated Category I wetlands that are not currently regulated by the Corps of Engineers (approximately 5,775 acres statewide); and non-isolated Category I wetlands that are regulated by the Corps of Engineers (approximately 12,983 acres statewide). A significant level of effort was generated to compare proposed efficiencies in a state administered program with those currently being managed by the Corps. Additional information provided by DNREC included the fiscal and staff requirements necessary to operate various levels of state programs, a comparison of the existing Federal program and the proposed State program as it relates to improved environmental outcomes and benefits to the regulated community.

At the April 9th meeting, the Committee was asked by Chairman Parkowski to vote on three questions intended to determine if the Committee supports the development of a program within DNREC to develop regulatory and permitting efforts for Category I and Category II wetlands.

It should be noted that prior to voting on these regulatory options, each Committee member was asked to share their thoughts on the importance of the information that was presented and discussed. Only after that level of discussion had taken place was a vote taken.

The questions posed to the Committee and the voting results on Permitting Considerations are as follows:

Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are currently regulated by the Corps assuming federal nationwide permit authority is delegated to DNREC?

Voting Results - 15 Yes/ 10 No/ 3 non-voting

Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are not currently regulated by the Corps?

Voting Results - 15 Yes/ 10 No/ 3 non-voting

Does the Committee recommend that DNREC be given authority to adopt a freshwater wetlands program to protect all federally regulated wetlands which are subject to federal nationwide permit authority assuming federal nationwide permit authority is delegated to DNREC?

Voting Results - 14 Yes/ 11No/ 3 non-voting Final Voting Results

The results of voting on recommendations were that recommendations related to incentives passed the 2/3 voting majority and were accepted. For recommendations related to permitting considerations the voting did not reach a 2/3 voting majority and did not pass, although a simple majority were in favor.

Future Considerations

The Wetland Advisory Committee anticipates several more meetings before completing its review and providing a comprehensive set of formal recommendations to the Secretary of DNREC. The next meeting of the Wetland Advisory Committee is scheduled for Wednesday, May 14 from 9am to 12pm at the Kent County Administration Building in Dover



Department of Planning Services
Division of Planning

SARAH E. KEIFER, AICP
Director of Planning Services
MARY ELLEN GRAY, AICP
Division Head

Phone: 3021744-2471
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April 9, 2014

Frank M. Piorko Division Director
DNREC Division of Watershed Stewardship
89 Kings Highway
Dover, DE 19901

Re: Wetlands Advisory Committee response to April 9, 2014 Poll

Dear Frank:

We offer the following responses to the questions discussed at the February and March 2014 Wetland Advisory Committee meetings and sent via email on 3/27/14:

1. Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are currently regulated by the Corps assuming federal nationwide permit authority is delegated to DNREC?

Yes. It is our understanding that this process is not an assumption of the entire Section 404 program from the US Army Corps of Engineers (Corps) such as New Jersey has done. Rather it is delegation of a component of the Section 404 program which is the delegation of authority for processing Federal Nationwide Wetland Permits. This effort will provide a benefit to Kent County citizens by providing federally delegated services to those citizens seeking assistance on wetland issues and permitting.

2. Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are not currently regulated by the Corps?

Yes. Isolated wetlands are a valuable resource that warrants protection.

KENT COUNTY COMPLEX
555 Bay Road
Dover, DE 19901
(Handicapped Accessible)

3. Does the Committee recommend that DNREC be given authority to adopt a freshwater wetlands program to protect all federally regulated wetlands which are subject to federal nationwide permit authority assuming federal nationwide permit authority is delegated to DNREC?

No. Rather, we support phasing in this effort over time. Phasing in this effort will give the wetlands staff time to focus on the implementation of processing Nationwide Permits for Category I wetlands, and to garner the additional resources needed to take on protecting all Federally regulated wetlands that are subject to Nationwide Permits.

4. Does the Committee recommend that a consistent source of funding be provided for the purchase of forestland preservation easements in the forestland preservation program established under Subchapter V of Chapter 9 of Title 3 of the Delaware Code?

Yes. A consistent source of funding proactively provides non-regulatory protection to wetlands.

5. Does the Committee recommend that the availability and limits of tax credits provided under the Delaware Land and Historic Resources Protection Incentives Act of 1999 (Subchapter I, Chapter 18, Title 30 of the Delaware Code) be amended and expanded to create greater incentives to private landowners to protect and preserve freshwater wetland and adjacent natural resource areas?

Yes. Tax credits proactively provide non-regulatory protection to wetlands.

Please don't hesitate to contact me with any further questions.

Sincerely,

Mary Ellen Gray, AICP

Division Head Planning Services

Andrew T. Manus
Comments on Motion 1-5
DWAC meeting April 9, 2014

1. Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are currently regulated by the Corps assuming federal nationwide permit authority is delegated to DNREC?

Move to amend question and/or clarify that DNREC is directed to seek approval from the Corps for a programmatic general permit (PGP) to replace specific federal nationwide permits. There are currently 52 Corps nationwide permits (NWP). Confirm with Corps that if state is approved for certain PGP that these state issued permits replace the respective NWP.

2. Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are not currently regulated by the Corps?

Clarify that the adoption of a freshwater wetland program will be done through the existing State regulatory process. Recommend that DNREC's draft report (required by SB 78) detail the regulatory and staffing components of any such program. A critical component of such a program should be the adoption of water quality criteria specific to Category I wetlands. Water quality criteria specific to wetlands has been a recommendation contained in two Environmental Law Institute (ELI) reports that address the State's need for a freshwater wetlands program (1999 and 2010).

3. Does the Committee recommend that DNREC be given authority to adopt a freshwater wetlands program to protect all federally regulated wetlands which are subject to federal nationwide permit authority assuming federal nationwide permit authority is delegated to DNREC?

Have DNREC in the draft report required by SB 78 clarify if is looking for full assumption of the Corps 404 Program. If DNREC is it looking to seek approval for PGP authority for a specific number of NWP that are currently administered by the Corps please list the specific nationwide permit numbers. For these NWP that DNREC seeks PGP authority please provide a staffing and capacity assessment for each. A 2012 Congressional Research Service report notes that the average processing time for a Corps NWP is 24 days. What does DNREC estimate its processing time for the various NWPs that it seeks PGP approval? Several of the NWP require compensatory mitigation and/or in lieu fees to offset unavoidable losses of wetlands. DNREC should detail in its draft report how specific compensatory requirements will be determined.

4. Does the Committee recommend that a consistent source of funding be provided for the purchase of forestland preservation easements in the forestland preservation program established under Subchapter V of Chapter 9 of Title 3 of the Delaware Code?

There are a number of appealing reasons to revitalize this program. Foremost among them is the fact that 80-85% of the remaining non-tidal wetlands are embedded in the State's approximately 385,000 acres of forested landscapes and the majorities are privately owned. Additionally this program contains a number of the key attributes of an incentive program that the Carrot Committee identified as important back in January. Briefly several of these attributes include that the incentive proposed be: voluntary for private landowners; be capable of leveraging of funding sources such as ENGO and Federal funds; be transparent in the manner in which implemented and have understandable criteria; target forest and help foster public and private partnerships for conservation.

All of the above said, I am also very mindful of the State's current budgetary situation and the findings in the recent DEFAC report. I would note that by revitalizing the Forestlands Preservation Program we are giving the administration and the General Assembly a viable and fiscally responsible alternative to accomplish its land preservation and non-tidal wetlands program and policy goals. To do conservation in a time of scarcity requires that we rethink the way we do business. For example, under the Open Space program, the State owns the property and has to budget additional funds to maintain and manage it. Under the

Forestlands Preservation Program, the landowner bears the burden of managing and maintaining the property. By revitalizing the Forestlands Preservation Program as a viable option for land preservation this incentive gives the administration and the General Assembly another reasonable and responsible way to accomplish their objectives.

5. Does the Committee recommend that the availability and limits of tax credits provided under the Delaware Land and Historic Resources Protection Incentives Act of 1999 (Subchapter I, Chapter 18, Title 30 of the Delaware Code) be amended and expanded to create greater incentives to private landowners to protect and preserve freshwater wetland and adjacent natural resource areas?

DNREC should include this incentive in its draft report. Several specific examples of how landowners might utilize this incentive should be described.

Wetland Advisory Committee Questions -

Should the State develop a regulatory program for Category 1 Wetlands?

Homebuilders Association of Delaware Position.

- HBADE believes that ALL wetlands in the State of Delaware are currently regulated by the Corps of Engineers and that the proposed Federal rulemaking will further solidify the current policy of the Philadelphia District, Corps of Engineers to regulate all wetlands, including isolated wetlands.
- HBADE acknowledges that Category 1 wetlands are important and should be afforded the highest level of environmental protection.
- HBADE acknowledges that according to DNREC records, two to three acres of these wetlands are lost per year.
- HBADE believes that all of these losses are illegal losses of Federally regulated wetlands and that further regulation by the State would not in itself protect these areas any better.
- HBADE recommends mapping of these resources with wide distribution of the mapping, including county planning offices, municipal planning offices, DelDOT, DEDO, DNREC and other pertinent public and private agencies, so that the locations of these areas are known to those making land use decisions.
- HBADE recommends reaching out to private owners of these resources to alert them of the value of these resources and to educate them about possible incentives available for protection of these resources.
- HBADE recommends that a robust set of incentives that provide real value to property owners be established prior to the communication with private owners of these resources.

- HBADE recommends that the recent losses of Category 1 wetlands be mapped and that property owners be interviewed with regard to the reasons for the loss of these areas in order to better understand the pressures on these resources.
- Additionally, HBADE acknowledges that there are numerous other important resources on private property with great Public Value and that these resources should be part of any incentive program with incentive commensurate with the value of the resource.
- HBADE feels strongly that additional regulation will do nothing to protect these resources and may put additional pressure on owners of these resources to eliminate or reduce them.
- Additionally, HBADE feels that regulations that layer on top of existing regulations tend to hurt the business climate in the State and that we should be streamlining regulatory efforts instead.

Submitted by Delaware Association of Realtors- April 9, 2014

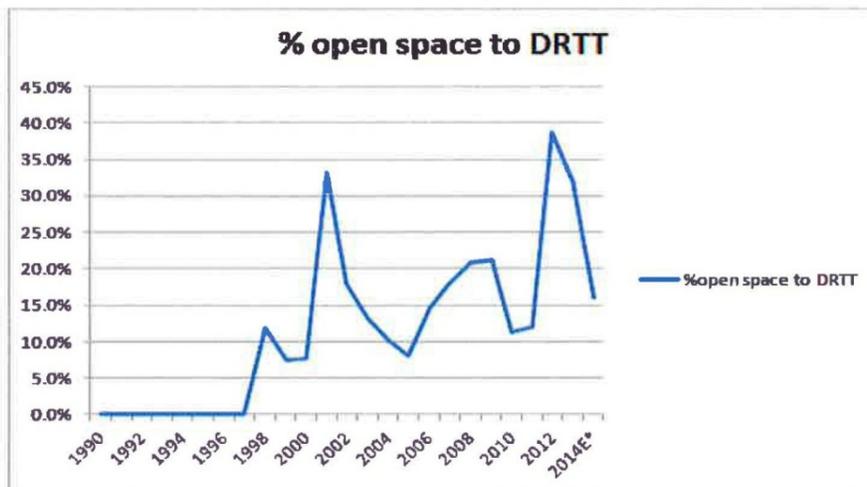
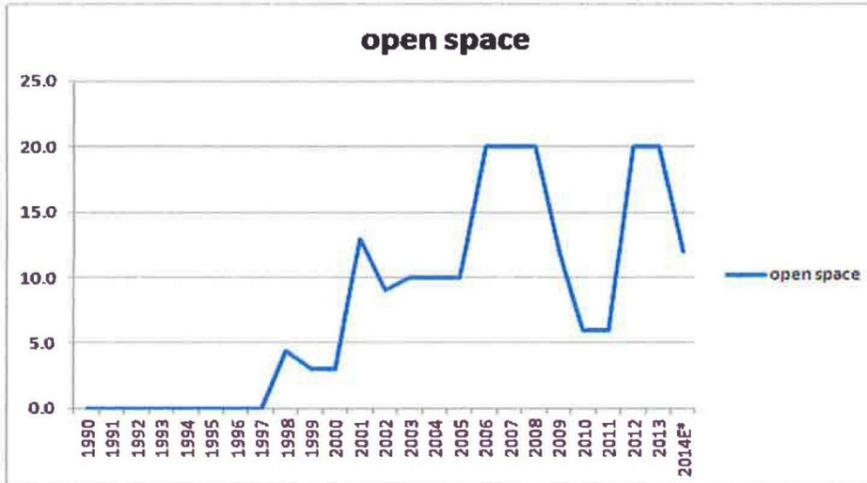
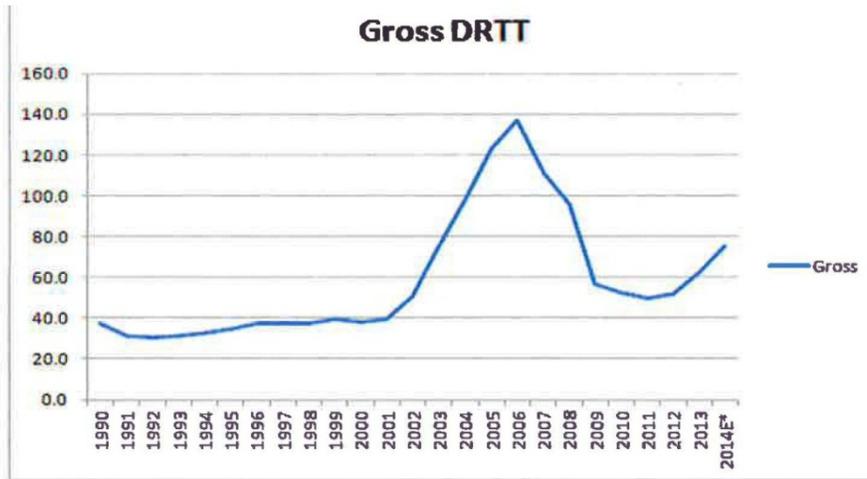
TABLE 2. DELAWARE REALTY TRANSFER TAX REVENUES AND TRANSFERS, 1990 - 2014 ESTIMATED

IN MILLIONS OF DOLLARS						
<u>FY</u>	<u>Gross</u>	<u>open space</u>	<u>farmland</u>	<u>net GF</u>	<u>Gross % Ch RTI</u>	<u>Net % Ch RTI</u>
1990	37.6	0.0	0.0	37.6		
1991	31.5	0.0	0.0	31.5	-16.2%	-16.2%
1992	30.3	0.0	0.0	30.3	-3.8%	-3.8%
1993	31.3	0.0	0.0	31.3	3.3%	3.3%
1994	32.7	0.0	0.0	32.7	4.5%	4.5%
1995	34.8	0.0	0.0	34.8	6.4%	6.4%
1996	37.6	0.0	0.0	37.6	8.0%	8.0%
1997	37.6	0.0	0.0	37.6	0.0%	0.0%
1998	37.6	4.5	0.0	33.1	0.0%	-11.9%
1999	39.7	3.0	0.0	36.7	5.6%	10.7%
2000	38.5	3.0	0.0	35.5	-3.0%	-3.3%
2001	39.2	13.0	0.0	26.2	1.8%	-26.2%
2002	50.2	9.0	0.0	41.2	28.1%	57.3%
2003	76.0	10.0	0.0	66.0	51.4%	60.2%
2004	98.6	10.0	0.0	88.6	29.7%	34.2%
2005	123.6	10.0	0.0	113.6	25.4%	28.2%
2006	136.9	10.0	10.0	116.9	10.8%	2.9%
2007	110.9	10.0	10.0	90.9	-19.0%	-22.2%
2008	96.0	10.0	10.0	76.0	-13.4%	-16.4%
2009	56.6	6.0	6.0	44.6	-41.0%	-41.3%
2010	52.9	3.0	3.0	46.9	-6.5%	5.2%
2011	50.1	3.0	3.0	44.1	-5.4%	-6.1%
2012	51.6	10.0	10.0	31.6	3.1%	-28.3%
2013	62.3	10.0	10.0	42.3	20.7%	33.7%
2014E*	75.0	6.0	6.0	63.0	49.8%	43.0%

SOURCE: DELAWARE DIVISION OF REVENUE, DEL DEPT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

* ESTIMATES BY DELAWARE DIVISION OF REVENUE FOR FY 2014 ENDING JUNE 30, 2014

Submi



Submitted by Delaware Association of Realtors- April 9, 2014

Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are currently regulated by the Corps assuming federal nationwide permit authority is delegated to DNREC?

For Question #1, It is my understanding that the wetlands we are discussing in this particular question are the 12,983 acres of non-isolated Category I wetlands currently regulated by the U S Corps of Engineers. I have reviewed my notes, which contain so many numbers, arrows and question marks that I am not certain, or could even guess, how many acres are already owned by the federal and state governments, and how many acres are privately owned. I question the need to replace the Corps in wetlands regulations no matter which type or however many acres are in play. Michigan and New Jersey are larger states with way more financial resources than we have in Delaware. I question our ability to afford such a program.

Further, Mr. Bonner has conceded, and other evidence was presented, that the Corps never relinquishes its authority, and any decision DNREC would make under any type or degree of Assumption would still be subject to Corps oversight. So I am not sure just how much autonomy DNREC would have.

In my world, local government planning departments have a lot to say about how I can impact wetlands, and for the most part, local government rules and regulations discourage if not prohibit altogether disturbance of wetlands. I call this "Intergovernmental Coordination," because local governments are helping state government conserve and protect natural resources.

To that end, I am alarmed to discover at the last meeting, and not to criticize DeIDOT or anybody associated with DeIDOT, but if our state agencies cannot agree to conserve and protect our natural resources, we are not enjoying Intergovernmental Coordination to the greatest extent possible.

We have heard from Secretary O'Mara, and we have heard from Governor Markell, and it is obvious that the rhetorical priority is wetlands.

To that end, I believe the Governor should task DeIDOT with the mitigation and conservation of wetlands, whether a permit is needed or not. If the Governor is willing to ask private citizens to sacrifice their rights as land owners, then he shouldn't hesitate to ask his own government to do the same.

Secretary O'Mara complained that the Corps slows his projects down, and I quote, "I'm frankly tired of having projects delayed by the Army Corps process." It seems to me that DNREC and the Corps can enter into an MOU on permit and regulatory processes that state and federal governments can impose on themselves without the necessity of an overall regulatory program. I

see efficient Intergovernmental Coordination there. And in any event, as I pointed out before, the Corps is still looking over our shoulder at any decision made.

I participated on the Carrot Committee, and I approve and I support the objectives and goals which resulted from those meetings. I have distributed an analysis of the Delaware Realty Transfer Tax. The transfer tax in Delaware is an onerous tax, and I could go on for hours about how bad it is, but for consideration of the questions before us, we have \$20 million per year divided between DNREC and the Department of Agriculture to purchase easements and fee simple title to properties for open space and resource conservation. If the rhetorical priority is wetlands, then the fiscal priority should likewise be wetlands, and we should dedicate the \$20 million annually spent on open space on wetlands until, by either easement or fee simple title, the state has acquired the highest priority wetlands.

It has been less than a year since Executive Order 36 was released. I was proud to introduce the Governor at his press conference announcing the results of EO 36, which was a review of State regulations. Twelve executive branch agencies reviewed 385 regulations, of which 83 regulations were amended and 61 regulations were deleted, totaling 144, or three - eighths of all regulations. And we are already discussing adding more regulations.

The Delaware Association of REALTORS is a trade association whose primary mission is to protect private property rights. A wetlands regulatory program that does not concentrate on acquiring properties but rather seeks to de-value properties by presenting obstacles and limitations through a regulatory program is distasteful.

I am not saying the wetlands in question are not worth preserving or conserving. I am saying the wetlands in question can be preserved and conserved without a state - managed regulatory program.

I do nonetheless see a distinct need for the development of a definition of what might be described as a "wetland" in the State, and I agree with employing the Corps definition as we agreed earlier in the process, subject to whichever tweaks are necessary for updates in the Manuals employed by the Corps, or exemptions, or other similar issues.

Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are not currently regulated by the Corps?

For Question #2, It is my understanding that the wetlands we are discussing in this particular question are the 5,775 acres of isolated Category 1 wetlands that are not currently regulated by the Corps.

I have a better handle of the acreage allocations in this group, in that approximately 1600 acres, or 28 percent, are already owned by the state, and approximately 100 acres are already in

conservationist's possession, leaving approximately 4000 acres, or 69 percent, in private property.

My notes also reveal that we have lost approximately 28 acres of this category of wetlands between 1992 and 2007. I cannot follow my arrows and question marks through 2013 or whichever is the latest year of count, but, not to bop DelDOT, I am pretty sure I heard that DelDOT disturbs annually the greatest number of these types of wetlands each year.

For the many reasons I stated for the last question, I am much more comfortable with developing an overall incentive program, and an intergovernmental coordination policy, that encourages protection, preservation and conservation of wetlands in the State of Delaware while at the same time protecting private property rights.

Does the Committee recommend that DNREC be given authority to adopt a freshwater wetlands program to protect all federally regulated wetlands which are subject to federal nationwide permit authority assuming federal nationwide permit authority is delegated to DNREC?

For Question #3, I am opposed for all of the reasons as stated earlier.

APPENDIX B- Roll Calls for Votes on Recommendations

Action Item 1- Failed

Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are currently regulated by the Corps assuming federal nationwide permit authority is delegated to DNREC? (Voted on 4/9/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays	Eric Buehl		X		
Edward Bonner*	U.S. Army Corps of Engineers			-	-	-
Sarah Cooksey	DNREC – Coastal Programs	Bob Scarborough		X		
Mark Davis	Dept. of Agriculture	Mike Valenti		X		
Tim Deschepper	Town of Middletown – LLG			X		
Hal Godwin	Sussex County Planning				X	
Brenna Goggin	Delaware Nature Society			X		
Mary Ellen Gray	Kent County Planning	Kris Connelley		X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives	Mark Brainard		X		
Sen. Gerald Hocker	Delaware Senate				X	
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service	Jayne Arthurs		-	-	-
Josh Littleton	City of Seaford – LLG				X	
Andy Manus	Land Conservationist			X		
Robert McCleary	DelDOT			X		
Jim McCulley	Home Builders Association of Delaware				X	
Phil McGinnis	Delaware Association of Realtors				X	
Brian Michalski	Delaware Forestry Association				X	
Paul Morrill	Committee of 100				X	
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau				X	
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council			X		
Sen. Robert Venables	Delaware Senate				X	
Bob Walls*	Farm Services Agency	Robin Talley		-	-	-
Rep. Dave Wilson	Delaware House of Representatives				X	

Voting Results - 15 In Favor/ 10 Opposed/ 0 Abstain/ 3 Non-voting/ 0 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 2- Failed

Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are not currently regulated by the Corps? (Voted on 4/9/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays	Eric Buehl		X		
Edward Bonner*	U.S. Army Corps of Engineers			-	-	-
Sarah Cooksey	DNREC – Coastal Programs	Bob Scarborough		X		
Mark Davis	Dept. of Agriculture	Mike Valenti		X		
Tim Deschepper	Town of Middletown – LLG			X		
Hal Godwin	Sussex County Planning				X	
Brenna Goggin	Delaware Nature Society			X		
Mary Ellen Gray	Kent County Planning	Kris Connelley		X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives	Mark Brainard		X		
Sen. Gerald Hocker	Delaware Senate				X	
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service	Jayme Arthurs		-	-	-
Josh Littleton	City of Seaford – LLG				X	
Andy Manus	Land Conservationist			X		
Robert McCleary	DelDOT			X		
Jim McCulley	Home Builders Association of Delaware				X	
Phil McGinnis	Delaware Association of Realtors				X	
Brian Michalski	Delaware Forestry Association				X	
Paul Morrill	Committee of 100				X	
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau				X	
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council			X		
Sen. Robert Venables	Delaware Senate				X	
Bob Walls*	Farm Services Agency	Robin Talley		-	-	-
Rep. Dave Wilson	Delaware House of Representatives				X	

Voting Results - 15 In Favor/ 10 Opposed/ 0 Abstain/ 3 Non-voting/ 0 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 3- Failed

Does the Committee recommend that DNREC be given authority to adopt a. freshwater wetlands program to protect allfederally regulated wetlands which are subject to federal nationwide permit authority assuming federal nationwide permit authority is delegated to DNREC? (Voted on 4/9/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays	Eric Buehl		X		
Edward Bonner*	U.S. Army Corps of Engineers			-	-	-
Sarah Cooksey	DNREC – Coastal Programs	Bob Scarborough		X		
Mark Davis	Dept. of Agriculture	Mike Valenti		X		
Tim Deschepper	Town of Middletown – LLG			X		
Hal Godwin	Sussex County Planning				X	
Brenna Goggin	Delaware Nature Society			X		
Mary Ellen Gray	Kent County Planning	Kris Connelley			X	
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives	Mark Brainard		X		
Sen. Gerald Hocker	Delaware Senate				X	
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service	Jayme Arthurs		-	-	-
Josh Littleton	City of Seaford – LLG				X	
Andy Manus	Land Conservationist			X		
Robert McCleary	DelDOT			X		
Jim McCulley	Home Builders Association of Delaware				X	
Phil McGinnis	Delaware Association of Realtors				X	
Brian Michalski	Delaware Forestry Association				X	
Paul Morrill	Committee of 100				X	
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau				X	
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council			X		
Sen. Robert Venables	Delaware Senate				X	
Bob Walls*	Farm Services Agency	Robin Talley		-	-	-
Rep. Dave Wilson	Delaware House of Representatives				X	

Voting Results - 14 In Favor/ 11Opposed/ 0 Abstain/ 3 Non-voting/ 0 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 4- Passed

Does the Committee recommend that a consistent source of funding be provided for the purchase of forestland preservation easements in the Forestland Preservation Program established under Subchapter II, Chapter 9, Title 3, Delaware Code? (Voted on 4/9/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays	Eric Buehl		X		
Edward Bonner*	U.S. Army Corps of Engineers			-	-	-
Sarah Cooksey	DNREC – Coastal Programs	Bob Scarborough		X		
Mark Davis	Dept. of Agriculture	Mike Valenti		X		
Tim Deschepper	Town of Middletown – LLG			X		
Hal Godwin	Sussex County Planning				X	
Brenna Goggin	Delaware Nature Society			X		
Mary Ellen Gray	Kent County Planning	Kris Connelley		X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives	Mark Brainard		X		
Sen. Gerald Hocker	Delaware Senate			X		
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service	Jayne Arthurs		-	-	-
Josh Littleton	City of Seaford – LLG				X	
Andy Manus	Land Conservationist			X		
Robert McCleary	DeIDOT			X		
Jim McCulley	Home Builders Association of Delaware			X		
Phil McGinnis	Delaware Association of Realtors			X		
Brian Michalski	Delaware Forestry Association			X		
Paul Morrill	Committee of 100			X		
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau			X		
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council			X		
Sen. Robert Venables	Delaware Senate			X		
Bob Walls*	Farm Services Agency	Robin Talley		-	-	-
Rep. Dave Wilson	Delaware House of Representatives			X		

Voting Results - 23 In Favor/ 2 Opposed/ 0 Abstain/ 3 Non-voting/ 0 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 5- Passed

Does the Committee recommend that the availability and limits of tax credits covered under the Delaware Land and Historic Resources Protection Incentives Act of 1999 (subchapter 1, Chapter 18, Title 30 De/Code) be amended and expanded to create greater incentives to private landowners to protect and preserve freshwater wetland and adjacent natural resource areas? (Voted on 4/9/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays	Eric Buehl		X		
Edward Bonner*	U.S. Army Corps of Engineers			-	-	-
Sarah Cooksey	DNREC – Coastal Programs	Bob Scarborough		X		
Mark Davis	Dept. of Agriculture	Mike Valenti		X		
Tim Deschepper	Town of Middletown – LLG			X		
Hal Godwin	Sussex County Planning				X	
Brenna Goggin	Delaware Nature Society			X		
Mary Ellen Gray	Kent County Planning	Kris Connelley		X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives	Mark Brainard		X		
Sen. Gerald Hocker	Delaware Senate			X		
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service	Jayme Arthurs		-	-	-
Josh Littleton	City of Seaford – LLG				X	
Andy Manus	Land Conservationist			X		
Robert McCleary	DelDOT			X		
Jim McCulley	Home Builders Association of Delaware			X		
Phil McGinnis	Delaware Association of Realtors			X		
Brian Michalski	Delaware Forestry Association				X	
Paul Morrill	Committee of 100			X		
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau				X	
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council			X		
Sen. Robert Venables	Delaware Senate			X		
Bob Walls*	Farm Services Agency	Robin Talley		-	-	-
Rep. Dave Wilson	Delaware House of Representatives			X		

Voting Results – 21 In Favor/4 Opposed/ 0 Abstain/3 Non-voting/ 0 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 6- Passed

Amendment to Action Item 4: Does the committee recommend that \$200,000 per year be allocated to the Forestland Preservation Program? (Voted on 5/14/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays			X		
Edward Bonner*	U.S. Army Corps of Engineers			-	-	-
Sarah Cooksey	DNREC – Coastal Programs			X		
Mark Davis	Dept. of Agriculture	Lauren Torres		X		
Tim Deschepper	Town of Middletown – LLG		X			
Hal Godwin	Sussex County Planning			X		
Brenna Goggin	Delaware Nature Society			X		
Mary Ellen Gray	Kent County Planning			X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives		X			
Sen. Gerald Hocker	Delaware Senate					X
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service			-	-	-
Josh Littleton	City of Seaford – LLG			X		
Andy Manus	Land Conservationist			X		
Robert McCleary	DeIDOT	Terry Fulmer		X		
Jim McCulley	Home Builders Association of Delaware			X		
Phil McGinnis	Delaware Association of Realtors			X		
Brian Michalski	Delaware Forestry Association	Leslie Merrikan		X		
Paul Morrill	Committee of 100			X		
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau			X		
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council			X		
Sen. Robert Venables	Delaware Senate					X
Bob Walls*	Farm Services Agency			-	-	-
Rep. Dave Wilson	Delaware House of Representatives			X		

Voting Results- 21 In Favor/ 0 Opposed/ 2 Abstain/ 3 Non-voting/ 2 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 7- Passed

Amendment to Action Item 5: Does the Committee recommend that the existing Delaware Land and Historic Resources Protection Incentive Act of 1999 be amended and expanded as follows? (Voted on 6/11/14)

1. *Category 1 freshwater wetlands and adjacent areas qualify and are identified as a conservation value for the tax incentive Program.*
2. *The tax credit program maintain:*
 - a. *The existing 40% of Fair Market value limit;*
 - i. *Category 1 100% of Fair Market value;*
 - b. *The existing five year carry forward period; and*
 - c. *The existing statewide cap of \$1,000,000 per year.*
3. *The tax credit program be expanded to include:*
 - a. *An individual maximum credit from \$50,000 to \$100,000; and*
 - b. *The allowance of transfer of tax credits to third parties.*

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays			X		
Edward Bonner*	U.S. Army Corps of Engineers			-	-	-
Sarah Cooksey	DNREC – Coastal Programs			X		
Mark Davis	Dept. of Agriculture	Mike Valenti		X		
Tim Deschepper	Town of Middletown – LLG			X		
Hal Godwin	Sussex County Planning			X		
Brenna Goggin	Delaware Nature Society			X		
Mary Ellen Gray	Kent County Planning	Kris Connelley		X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives		X			
Sen. Gerald Hocker	Delaware Senate			X		
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service	Jayme Arthurs		-	-	-
Josh Littleton	City of Seaford – LLG			X		
Andy Manus	Land Conservationist					X
Robert McCleary	DelDOT	Terry Fulmer		X		
Jim McCulley	Home Builders Association of Delaware			X		
Phil McGinnis	Delaware Association of Realtors			X		
Brian Michalski	Delaware Forestry Association		X			
Paul Morrill	Committee of 100		X			
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau			X		
Alex Schmidt	Council of Engineering Companies		X			
Porter Schutt	The Conservation Fund/Open Space Council			X		
Sen. Robert Venables	Delaware Senate			X		
Bob Walls*	Farm Services Agency			-	-	-
Rep. Dave Wilson	Delaware House of Representatives			X		

Voting Results- 20 In Favor/ 0 Opposed/ 1 Abstain/ 3 Non-voting/ 4 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 8- Passed

Does the Committee recommend the following be actions taken by DNREC to promote the landowner tax credit program for Category 1 wetland protection? (Voted on 6/11/14)

6. *DNREC prepare aerial maps of privately owned Category 1 wetlands that would be eligible for that tax credit.*
7. *DNREC meet with landowners and provide the aerial maps to landowners with information regarding the tax credit program.*
8. *DNREC allow landowners to seek the opportunity to verify the location on aerial maps based on Category 1 criteria.*
9. *DNREC verify the eligibility for the tax credit.*
10. *DNREC promotes the Tax Credit program*

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays			X		
Edward Bonner*	U.S. Army Corps of Engineers			-	-	-
Sarah Cooksey	DNREC – Coastal Programs			X		
Mark Davis	Dept. of Agriculture	Mike Valenti		X		
Tim Deschepper	Town of Middletown – LLG			X		
Hal Godwin	Sussex County Planning			X		
Brenna Goggin	Delaware Nature Society			X		
Mary Ellen Gray	Kent County Planning	Kris Connelley		X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives		X			
Sen. Gerald Hocker	Delaware Senate			X		
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service	Jayne Arthurs		-	-	-
Josh Littleton	City of Seaford – LLG			X		
Andy Manus	Land Conservationist			X		
Robert McCleary	DelDOT	Terry Fulmer		X		
Jim McCulley	Home Builders Association of Delaware			X		
Phil McGinnis	Delaware Association of Realtors			X		
Brian Michalski	Delaware Forestry Association		X			
Paul Morrill	Committee of 100		X			
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau			X		
Alex Schmidt	Council of Engineering Companies		X			
Porter Schutt	The Conservation Fund/Open Space Council			X		
Sen. Robert Venables	Delaware Senate			X		
Bob Walls*	Farm Services Agency			-	-	-
Rep. Dave Wilson	Delaware House of Representatives			X		

Voting Results- 21 In Favor/ 0 Opposed/ 0 Abstain/ 3 Non-voting/ 4 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 9 - Passed

Does the Committee recommend semi-annual meetings held between the Ag Preservation Foundation, Open Space Council, Conservation NGO's and pertinent federal agencies to identify land conservation opportunities? (Voted on 8/13/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays			X		
Edward Bonner*	U.S. Army Corps of Engineers		X	-	-	-
Sarah Cooksey	DNREC – Coastal Programs			X		
Mark Davis	Dept. of Agriculture	Ed Kee		X		
Tim Deschepper	Town of Middletown – LLG		X			
Hal Godwin	Sussex County Planning			X		
Brenna Goggin	Delaware Nature Society	Proxy Vote Chris Bason		X		
Mary Ellen Gray	Kent County Planning			X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives		X			
Sen. Gerald Hocker	Delaware Senate			X		
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service		X	-	-	-
Josh Littleton	City of Seaford – LLG			X		
Andy Manus	Land Conservationist			X		
Robert McCleary	DelDOT	Jim Pappas	X			
Jim McCulley	Home Builders Association of Delaware			X		
Phil McGinnis	Delaware Association of Realtors			X		
Brian Michalski	Delaware Forestry Association	Proxy Vote Ed Kee		X		
Paul Morrill	Committee of 100		X			
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau			X		
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council	Kate Hackett		X		
Sen. Robert Venables	Delaware Senate			X		
Bob Walls*	Farm Services Agency		X	-	-	-
Rep. Dave Wilson	Delaware House of Representatives			X		

Voting Results- 21 In Favor/ 0 Opposed/ 0 Abstain/ 3 Non-voting/ 4 Absent

*Federal members acting in advisory capacity only, non-voting

Action Item 10- Passed

Does the Committee recommend amending the Real Estate Transfer Tax to allocate an additional \$5 million bringing the total to \$15 million, with \$10 million allocated to Agland Preservation and \$5 million to Forestland Preservation? (Voted on 9/25/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays			X		
Edward Bonner*	U.S. Army Corps of Engineers		X	-	-	-
Sarah Cooksey	DNREC – Coastal Programs			X**		
Mark Davis	Dept. of Agriculture	Ed Kee		X		
Tim Deschepper	Town of Middletown – LLG		X			
Hal Godwin	Sussex County Planning			X		
Brenna Goggin	Delaware Nature Society	Proxy Vote Chris Bason		X		
Mary Ellen Gray	Kent County Planning			X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives		X			
Sen. Gerald Hocker	Delaware Senate			X		
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service		X	-	-	-
Josh Littleton	City of Seaford – LLG			X		
Andy Manus	Land Conservationist					X
Robert McCleary	DelDOT	Jim Pappas		X		
Jim McCulley	Home Builders Association of Delaware			X		
Phil McGinnis	Delaware Association of Realtors			X		
Brian Michalski	Delaware Forestry Association	Proxy Vote Ed Kee		X		
Paul Morrill	Committee of 100				X	
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau			X		
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council	Kate Hacket		X**		
Sen. Robert Venables	Delaware Senate			X		
Bob Walls*	Farm Services Agency		X	-	-	-
Rep. Dave Wilson	Delaware House of Representatives			X		

Voting Results- 21 In Favor/ 1 Opposed/ 1 Abstain/ 3 Non-voting/ 2 Absent

*Federal members acting in advisory capacity only, non-voting

** Note: two supporting votes are contingent upon seeking a similar effort for Open Space Program.

The opposing vote felt this recommendation was reaching the fringe of the purpose of the group.

Action Item 11- Passed

Does the Committee recommend amending the Real Estate Transfer Tax to allocate \$10 million annually to the Open Space Program? (Voted on 9/25/14)

Name	Agency	Alternate	Absent	Voting Results		
				Yes	No	Abstain
Chris Bason	Center for the Inland Bays			X		
Edward Bonner*	U.S. Army Corps of Engineers		X	-	-	-
Sarah Cooksey	DNREC – Coastal Programs			X		
Mark Davis	Dept. of Agriculture	Ed Kee		X		
Tim Deschepper	Town of Middletown – LLG		X			
Hal Godwin	Sussex County Planning			X		
Brenna Goggin	Delaware Nature Society	Proxy Vote Chris Bason		X		
Mary Ellen Gray	Kent County Planning			X		
George Haggerty	New Castle County Planning			X		
Rep. Debra Heffernan	Delaware House of Representatives		X			
Sen. Gerald Hocker	Delaware Senate			X		
David Hugg	Town Hall (Smyrna) -- LLG			X		
Sally Kepfer*	Natural Resource Conservation Service		X	-	-	-
Josh Littleton	City of Seaford – LLG			X		
Andy Manus	Land Conservationist					X
Robert McCleary	DelDOT	Jim Pappas		X		
Jim McCulley	Home Builders Association of Delaware			X		
Phil McGinnis	Delaware Association of Realtors			X		
Brian Michalski	Delaware Forestry Association	Proxy Vote Ed Kee				X
Paul Morrill	Committee of 100				X	
Michael Parkowski	Delaware Bar Association			X		
Frank Piorko	DNREC – Watershed Stewardship			X		
Marty Ross	Delaware Farm Bureau			X		
Alex Schmidt	Council of Engineering Companies			X		
Porter Schutt	The Conservation Fund/Open Space Council	Kate Hackett		X		
Sen. Robert Venables	Delaware Senate			X		
Bob Walls*	Farm Services Agency		X	-	-	-
Rep. Dave Wilson	Delaware House of Representatives			X		

Voting Results- 20 In Favor/ 1 Opposed/ 2 Abstain/ 3 Non-voting/ 2 Absent

*Federal members acting in advisory capacity only, non-voting

APPENDIX C- Dissenting Letters of Opinions

Delaware Farm Bureau Comments Wednesday, May 14, 2014

TO

Delaware Wetland Advisory Committee

Marty Ross

On behalf of the Delaware Farm Bureau, I take exception to the Interim Report. The submission of the report with the allowance of only a 48 hour window for written comments by committee members while allowing the Secretary a 96 hour period to review a report written by his staff is disrespectful and not in keeping with the intent SB 78.

The Secretary is required by SB 78 to "reconvene the Committee to review the draft report and solicit feedback before finalizing the report recommendations".

We realize that SB 78 also set a date for the Interim Report of May 1, 2014. However what harm would occur if the report was a couple of weeks late? Would someone get fired or fined? Shoot, DNREC has been found guilty of breaking the Administrative Procedure Act by the State Supreme Court and no one was disciplined. In fact DNREC wasn't even required to pay the legal fees of the successful plaintiff. DNREC is also breaking the Subaqueous Lands law by classifying some tax ditches as Subaqueous Lands even though title 7 Del. C. §7212 expressly prohibits this action. It would seem missing a deadline for submission of an Interim Report is small potatoes.

It is our opinion that this action was intended to and did indeed limit committee input to allow DNREC to spin the facts.

The Interim Report submitted conveniently omits that the voting procedures adopted were recommended by DNREC to the Committee. This recommendation came with the statement that the DNREC recommended voting procedures were the same ones used on the Sea Level Rise Committee where they supposedly worked well.

The Interim Report submitted noted the recusal of the federal agency representatives but conveniently omitted the discussion and vote by the committee regarding member voting eligibility which preceded the adoption of the DNREC recommended voting procedures. During that discussion it was disclosed that one or more members would be recusing themselves yet despite that knowledge all five executive branch representatives on the committee voted in favor of both allowing voting privileges for all members of the committee and for the DNREC recommended voting procedures.

However the Interim Report says "This action left the Committee with 19 votes required to pass a motion; representing 19 of the 25 voting members of the 28 member Committee". A fact

written in a way to mislead a reader into thinking that two thirds voting threshold was arbitrary. Perhaps to buttress the publicly stated sentiment of Secretary O'Mara which belies the actions of the Committee intentionally misleading anyone with interest.

The Interim Report doesn't state whether the voting tabulations resulted in a motion being passed or failing until the next to last paragraph and then is quick to state "a simple majority were in favor" undermining the decision of the Committee. This statement coupled with the previous omissions and deceptive wording lead a reader of the report to believe the negative outcome was merely a technicality.

Actually no majority at all given the fact that five of the favorable votes were from the Executive Branch of State government. Three from those answering directly to DNREC voting on recommendations to "recommend DNREC be given authority ..." hence voting on their own self promotion which combined with the 1599 word personal appeal by Secretary O'Mara during the March committee meeting is a direct conflict of interest and self promoting.

Two by other State Executive Branch agencies that report directly to Governor. The same Governor that emailed a letter dated April 2, 2014 in which he states "I am reaching out today to ask that you support a state wetlands program that includes both strong landowner incentives and a regulatory component by voting yes to the questions before the committee".

I have never participated in a process in the private or public sector which would allow such self serving interference in any decision. Imagine a County government body allowing an applicant to vote on their own application or writing the public record on their own behalf. Malarkey!

All of this notwithstanding the fact that even if the Committee had decided to accept the three agency recusal's and amended the DNREC recommended voting procedures by adopting a voting procedure with a 2/3 of the eligible to vote member requirement; the threshold would have been 17 favorable votes and the failed recommendations would still have failed; even with the pre-ordained five votes cast by the Executive branch.

This blind quest for power is undermining an incredible opportunity and the credibility of this committee. We have so much going for our State in resource preservation.

A landowner base that has demonstrated they are very willing to discount property value to preserve a way of life. A funding source required by law to provide funding that with a few adjustments; perhaps with a nudge from this committee, could significantly impact the outcome. Federal programs that are viable and open to working with our State and private entities to leverage those dollars in enhancing resource conservation.

We continue to encourage all to recognize that punishing landowners via regulation discourages resource protection and encourages resource exploitation. We need to ask ourselves; "Are we truly interested in wetland conservation and preservation or is the goal here to take land use authority over 25% of the State away from local governments"?

The Delaware Farm Bureau stands by its position that we are very interested in and supportive of voluntary programs that work towards any public desire. We are not in support of misleading, disingenuous and self-serving land grabs. We take exception to the Interim Report because it is misleading and undermines the actions taken by this Committee.

My mom preached to me as a child that "A lie is told with the intent to mislead so therefore to mislead is a lie".

APPENDIX D- Related Correspondence



STATE OF DELAWARE
OFFICE OF THE GOVERNOR
TATNALL BUILDING, SECOND FLOOR
WILLIAM PENN STREET, DOVER, DE 19901

PHONE: 302-744-4101
FAX: 302-739-2775

April 2, 2014

Dear Wetland Advisory Committee Members,

First, let me offer my sincere thanks for making time in your busy schedules to help develop the best path forward for freshwater wetland conservation and protection in Delaware. Wetlands are one of Delaware's most important ecological and economic resources, providing clean water, flood protection, important habitat for waterfowl and many other species, and support for a thriving recreational economy.

I remain concerned that we do not have the authority or legal ability to manage our own freshwater wetland resources in Delaware. We are the only state in our region that has not come up with ways to more efficiently protect and administer these valuable resources. With your help, we can both minimize the impacts for those who have to deal with permitting and more effectively protect these valuable resources.

As you know, if a property owner in Delaware wants to conduct an activity that may involve a freshwater wetland, to obtain a determination of jurisdiction or a permit for the work, they must work through the U.S. Army Corps of Engineers. Like so many federal agencies, the Corps is struggling to maintain their workload with the limited resources they are allocated. These resource issues slow the permitting process considerably. In addition, there are concerns about the federal program lacking in predictability from changing definitions of jurisdiction and providing limited opportunities for property owners to challenge wetland permitting decisions.

We can do it better in Delaware.

As committee members, you have the opportunity to recommend a state program that would create an efficient one-stop shop and coordinate the process so that we may improve the turnaround for jurisdictional determinations and permits. This is our chance to develop a program for freshwater wetland management the way that we Delawareans would like to see it managed with more accountability, predictability, and clear appeal rights.

April 2, 2014

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Thanks to improvements within DNREC over the past five years, our tidal wetland permitting program has reduced the time for a permit to be completed to an average of 41 days. This is a significant improvement in efficiency and predictability in a just short amount of time without additional resources. I am confident that the same program improvements DNREC has implemented in the tidal wetlands program will be replicated in an efficient freshwater wetlands program. This effort will be bolstered by close collaboration with the Delaware Department of Agriculture, which will provide expertise in both agriculture and forestry. The benefits of a local program will reduce frustrations, costs, and uncertainties for developers, landowners, and businesses, which will in turn lessen the strain on the economy experienced when projects are delayed due to an unpredictable and confusing federal permitting process.

I am reaching out today to ask that you support a state wetlands program that includes both strong landowner incentives and a regulatory component by voting yes on the questions before the committee. We cannot meet our goals of protecting Delaware's wetlands with incentives alone. A permitting program, combined with incentives, is necessary. Such a program will be designed to maximize efficiencies for predictability and timeliness, while preventing any future regulatory over- reach.

I know that we in Delaware can work together, as we often do across agriculture, business, government and environmental interests, to provide conservation and protection for our wetlands in ways that strengthen our economy, enhance our environment, and respect private property use. I believe that the best way to accomplish our mutual goals for Delaware's wetland conservation and protection is to provide the service at the local, rather than federal level, and to strike a balance with a program that includes both incentives and permitting. I ask that you join us in this effort. Let us be proactive and protect our wetlands today so that future generations will be able to benefit from the natural services wetlands provide and continue to enjoy these resources as part of Delaware's heritage.

Sincerely,



Governor



STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: 302-739-9000
FAX: 302-739-6242

June 12, 2014

State Wetlands Committee Chair,

On behalf of the Markell Administration, I am writing to reiterate support for the three recommendations presented by the Chair for a vote at the April 9th Committee meeting and included in the interim report to the Delaware General Assembly dated May 1, 2014. As Governor Markell stated in his letter to the Committee, wetland protections should be administered at the state level, rather than by the U.S. Army Corps of Engineers that has insufficient resources to run the program well. We can do it better in Delaware with greater efficiency and predictability-and this will become even more important as the U.S. Environmental Protection Agency finalizes the "Waters of the U.S." rule, which will require significantly more local knowledge to implement.

At the April 9th meeting and as reported, the three agencies voted for the three recommendations for consideration by the Committee. These recommendations received majority votes of the full committee but did not receive a super majority.

The recommendations were as follows:

Recommendation #1 -Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category 1 Wetlands that are currently regulated by the Corps assuming federal nationwide permit authority is delegated to DNREC?

Recommendation #2 -Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category 1 wetlands that are not currently regulated by the Corps?

Recommendation #3 -Does the Committee recommend that DNREC be given authority to adopt a freshwater wetlands program to protect all federally regulated wetlands which are subject to federal nationwide permit authority assuming federal nationwide permit authority is delegated to DNREC?

We cannot meet our goals of protecting Delaware's wetlands with incentives alone. An effective wetlands program should include a state permitting component designed to reduce uncertainties

Delaware's Good Nature depends on you!

Letter to State Wetlands Committee Chair

June 12, 2014

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and maximize efficiencies by relying on local staff that are more accessible and familiar with our wetlands and can provide greater capacity than the current Federal system, resulting in timely and predictable decisions.

We continue to advocate for a freshwater wetlands program that will incorporate improvements made to the State tidal wetlands regulatory program along with its long-established policy framework that provides for accountability and clear appeal rights. We equally support efforts toward enhanced and more strategic coordination of funding and incentives for private landowner programs that have been identified through this Committee and that will be a necessary compliment to a fair and balanced, locally run, permitting program.

Thanks to you and your Committee for its hard work and continued commitment toward protection of Delaware's freshwater wetlands resources.

Sincerely,



Collin P. O'Mara
Secretary

Email sent from Mike Parkowski to the WAC 3/3/2014

All --

At the request of Mike Parkowski, I am forwarding the below for the WAC.

Mark

All –

At the Delaware Wetland Advisory Committee held on February 11, 2014 a presentation was made by DNREC showing the unique and sensitive freshwater wetland areas located in Delaware which have been generally designated as Category I wetlands.

The federal government through the U.S. Army Corps of Engineers regulates some of these Category I wetlands while others are considered isolated and potentially outside of federal jurisdiction. A majority of these Category I wetlands are in private ownership.

Although there appears to be a consensus on the Committee that the Category I wetlands should be protected, there are varying views regarding the general manner in which such protection should take place; namely, through the use of non-regulatory incentives, as compared to a permit program administered by DNREC. Some on the Committee have raised a question about the desirability of a State freshwater wetlands permit program that goes beyond the limits of federal jurisdiction. This distinction leads me to believe that our upcoming vote should be undertaken in two (2) parts to take into account the distinction.

At this point DNREC has done a commendable job in providing information about unique and sensitive wetlands to the Committee and before embarking on any detailed Committee discussions on permit issues, it would be helpful for the Committee to make a determination as to whether or not a permit program dealing with these unique and sensitive Category I freshwater wetlands is recommended by the Committee.

At the next Committee meeting currently scheduled for March 12, 2014, after DNREC provides additional requested information regarding Category I wetlands, the Committee will be asked to vote on the following questions:

Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are currently regulated by the Corps assuming federal nationwide permit authority is delegated to DNREC?

Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are not currently regulated by the Corps?

It is important to note that the upcoming vote is limited to the nature of protection of Category I wetlands only. The next step will be for DNREC to present the details of its proposal for a freshwater wetlands permit program that would involve the delegation of federal nationwide permit authority for all freshwater wetlands subject to federal jurisdiction. Other states have adopted similar permit programs involving the delegation of some federal jurisdiction.

It is recognized that in providing the foregoing detailed explanation in an effort to lend context to the proposed upcoming vote there may be questions, objections, qualifications, opinions, expletives, etc. that Members may wish to express. PLEASE SAVE THEM FOR THE MEETING. MY WORK COMMITMENTS WILL NOT ALLOW ME TO ENGAGE IN AN EMAIL DIALOGUE IN ADVANCE OF THE MEETING. No matter how the upcoming vote turns out, any Members of the Committee disappointed with the vote will have the opportunity to submit an opposing position to be incorporated in the Committee's final report.

Mike”

F. Michael Parkowski, Esquire
Parkowski, Guerke & Swayze, P.A.
116 West Water Street
P.O. Box 598
Dover, DE 19903
(302) 678-3262
Fax#: (302) 678-1396

Email sent from Mike Parkowski to the WAC 5/1/2014

Wetland Advisory Committee Members:

Mike Parkowski asked for the below to be sent to the Committee informing them of matters to be considered at the next meeting. An agenda will be drafted and available prior to the meeting.

“RE: WAC – May 14, 2014 Meeting”

All –

At our last meeting our Committee voted to recommend two measures; namely a consistent source of funding for the forestland preservation easement program, and an amendment and expansion of the tax credits program for protection and preservation of wetland and adjacent natural resource areas. The referenced votes involved the concepts but did not address specific means of implementing the concepts to produce effective results. At our next meeting it is anticipated that we will address implementing measures so that the Committee can discuss and vote on endorsement of such measures. In addition, there will be a further presentation on a recommendation to establish a density bonus system regarding development that would serve to protect wetlands and adjacent natural resource areas.

It was indicated at our last meeting that those organization Committee members who voted for measures that did not pass would have an opportunity to present their views for the record. In order to facilitate such opportunity any of the following organization Committee members voting for measures which did not pass wishing to do so should individually or in groups express their

views in writing directed to Frank Piorko at DNREC within thirty (30) days from the date of our May 14, 2014 meeting. All such submissions will be shared with the entire Committee.

Regarding Recommendation #1 that DNREC be given authority to regulate Category I wetlands which are regulated by the Corps under delegated nationwide permit authority, the Recommendation was defeated by a vote of 15 yes and 10 no, and that for passage a two-thirds (2/3) majority vote of the entire 28 member Committee (19 votes) is required. Those organization members on the failing side of Recommendation #1 were:

- Center for the Inland Bays
- Conservation Fund/Open Space Council
- Delaware Nature Society
- Land Conservationist
- Council on Engineering Companies
- DeIDOT
- Department of Agriculture
- DNREC – Coastal Programs
- DNREC – Watershed Stewardship
- Kent County Planning
- New Castle County Planning
- Town of Middletown
- Town of Smyrna
- Representative Debra Heffernan
- Delaware Bar Association

Regarding Recommendation #2 that DNREC be given authority to regulate Category I wetlands which are not regulated by the Corps, the Recommendation was defeated by a vote of 15 yes and 10 no. Those organization members on the failing side of Recommendation #2 were:

- Center for the Inland Bays
- Conservation Fund/Open Space Council
- Delaware Nature Society
- Land Conservationist
- Council on Engineering Companies
- DeIDOT
- Department of Agriculture
- DNREC – Coastal Programs
- DNREC – Watershed Stewardship
- Kent County Planning
- New Castle County Planning
- Town of Middletown
- Town of Smyrna
- Representative Debra Heffernan
- Delaware Bar Association

Regarding Recommendation #3 that DNREC be given authority to regulate all freshwater wetlands which are regulated by the Corps under delegated nationwide permit authority, the Recommendation was defeated by a vote of 14 yes and 11 no. Those voting on the failed side of the Recommendation were:

Center for the Inland Bays
Conservation Fund/Open Space Council
Delaware Nature Society
Land Conservationist
Council on Engineering Companies
DeIDOT
Department of Agriculture
DNREC – Coastal Programs
DNREC – Watershed Stewardship
New Castle County Planning
Town of Middletown
Town of Smyrna
Representative Debra Heffernan
Delaware Bar Association

Regarding Recommendations #4 that a consistent source of funding be provided for the purchase of forestland preservation easements, the Recommendation passed by a vote of 21 yes and 4 no. Those voting on the failed side of the Recommendation were:

Delaware Farm Bureau
Delaware Forestry Association
Sussex County Planning
City of Seaford

Regarding Recommendation #5 that the current tax credit program for protection of freshwater wetlands and adjacent natural resources areas be amended and expanded, the Recommendation passed by a vote of 21 yes and 4 no. Those voting on the failed side of the Recommendation were:

Delaware Farm Bureau
Delaware Forestry Association
Sussex County Planning
City of Seaford

There have been several inquiries regarding the status of the interim report on Committee work which the Secretary of DNREC is required to submit to the General Assembly on or before May 1, 2014. You should have received a copy of the interim report for your review and comment.

At our next meeting an attempt should be made to project a timetable for completing the Committee's work so that the effort to prepare a draft report for Committee review can commence.

Thank all of you for your active participation.

-Mike"

F. Michael Parkowski, Esquire
Parkowski, Guerke & Swayze, P.A.
116 West Water Street
P.O. Box 598

Dover, DE 19903
(302) 678-3262
Fax#: (302) 678-1396

Email sent from Mike Parkowski to the WAC 7/2/2014

Wetland Advisory Committee Members:

Please find below a message from Mike Parkowski on future recommendations. It would be best to send recommendations as a "reply all" to this email string to ensure that everyone receives proposed recommendations.

Thanks.

Mark

All –

During our last meeting there were a number of Committee members who indicated they would like to submit recommendations to the Committee for consideration at the next Committee meeting which will be scheduled in August. It was indicated that any such recommendations should be provided to all Committee members prior to the meeting. After discussion and consideration I would like to proceed to a vote on any recommendations that are presented and in order to do that everyone needs to know in advance what is being proposed. Accordingly I am requesting that all proposed recommendations be provided to all Committee members on or before close of business on Friday, July 25, 2014.

-Mike

F. Michael Parkowski, Esquire
Parkowski, Guerke & Swayze, P.A.
116 West Water Street
P.O. Box 598
Dover, DE 19903
(302) 678-3262
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Handout Given to WAC from Department of Forestry 5/14/14

Title of Program Recommendation: *Revitalizing a Forestlands Preservation Program*

Goal/Purpose: *(Include a synopsis of how the recommendation would be utilized).* There are a number of appealing reasons to revitalize this program. Foremost among them is the fact that 80-85% of the remaining non-tidal wetlands are embedded in the State's approximately 385,000 acres of forested landscapes and the majorities are privately owned. Additionally this program contains a number of the key attributes of an incentive program that the Carrot Committee identified as important back in January 2014. Briefly several of these attributes include that the incentive proposed be: voluntary for private landowners; be capable of leveraging of funding sources such as ENGO and Federal funds; be transparent in the manner in which implemented and have understandable criteria; target forest and help foster public and private partnerships for conservation.

Major Program Components:

If the Forestland Preservation Program were to be revitalized, there already exists statutory language that provides for the implementation and administration of the program through the existing Agricultural Lands Preservation Foundation.

All necessary major implementation and administrative components for this program are referenced and can be found in Subchapter V, Chapter 9, Title 3, Delaware Code.

Action Steps required to implement: *(Important to note here who is responsible for each action step and the approximate time to complete it. Also include here any impediments that may need to be resolved).*

The Governor can make this priority by including the program as a line item in his annual Bond Bill budget.

The Bond Bill Committee can make this a priority by inserting this program in the annual Bond Bill that is considered by the General Assembly.

Performance Measures: *(Suggest ways that the recommendation's performance 3 to 5 years out might be evaluated).*

- In 2009 the State put up \$1,000,000 and TNC put up \$500,000 for Forestland Preservation (Round 14 of the Aglands Preservation Program)
- Nine (9) properties totaling 872.46 forested acres were protected with the purchase of development rights at a cost of \$1,450,803.91
- The average cost per acre was \$1,662.89; the average forest area size was 96.94 acres
- The average discount was 67% or \$2,845,054.66
- Currently, as of April 20, 2014, there are 34 forested properties (parcels) totaling 2,582 acres that have been approved as Forestland Preservation Areas ("in the queue" so to speak)

Fiscal Note: *(Include an annual estimated cost to implement).*

- With a conservative estimate of a discounted price of \$1,750/acre, the Forestland Preservation Program can protect about 57 acres per \$100,000 of funding
- The Delaware Forest Service believes there is a high potential for future projects given a steady stream of funding (even with zero funding we have 34 properties in waiting)
- The potential (exact level is unknown) to bring in additional funding from partners is also very high

Even a mere \$200,000 per year will help DDA acquire about 100 acres with no outside additional funding. A million will protect about 570 acres and so on. The important thing to stress with this is any amount of dedicated funding will help the State incrementally protect forests and over the long run this can add up to a significant number. Aglands has done this and over 18 years (Rounds) the State has protected 116,187 acres of farmland. As farmland is a critical component to all of agri-business in the State so is protecting forest habitat critical to protecting healthy non-tidal wetland complexes that are embedded in them.

Handout Given to WAC from Delaware Nature Society 5/14/14

Title of Program Recommendation: *Expanding Existing Conservation Tax Incentive Program*

Goal/Purpose: *(Include a synopsis of how the recommendation would be utilized).* The **Conservation Tax Credit** is a financial incentive for landowners to help protect the state's natural resources. Landowners who donate fee-title lands or permanent Conservation Easements to a government entity or Qualified Organization may apply for a credit against their state income taxes. Delaware is one of 16 states that has a conservation tax credit law already in place which was supposed to encourage the use of land preservation/conservation without the fiscal impact of direct funding. However, there are a few components of other state's tax credit programs that do not currently exist in Delaware which the state should consider implementing or expanding to make the program more active. These include: a higher limit on both the statewide tax and personal credit amounts, define wetlands expressly as a conservation value, and allow for transferability for landowners who cannot personally utilize the state income tax credit .

Major Program Components:

If the Conservation Tax Credit program were to be revitalized, there already exists statutory language that provides for the implementation and administration of the program through the existing Delaware Land and Historic Resources Protection Incentives Act of 1999.

All necessary major implementation and administrative components for this program are referenced and can be found in Subchapter I, Chapter 18, Title 30, Delaware Code.

Action Steps required to implement: *(Important to note here who is responsible for each action step and the approximate time to complete it. Also include here any impediments that may need to be resolved).*

The General Assembly would need to amend existing Delaware statute to allow for an increase in tax credit amounts, the addition of wetlands as a conservation value, and the allowance of a transferability program.

Performance Measures: *(Suggest ways that the recommendation's performance 3 to 5 years out might be evaluated).*

- Since 2001, Delaware has conserved almost 400 acres; 23 projects protecting 366 acres with a tax credit taken of \$759,386 out of a total value of \$4,521,760.
- North Carolina and Virginia have both amended their intital regulations to allow for an increase in the tax credit cap as well as the addition of an exchange program and experienced significant increases in the number of landowners that enrolled in the program.
 - Virginia- By the end of 2010, \$2,512,000,000 of property value had been donated as easements in Virginia for which tax credit was claimed. The qualifying easements cover over 516,000 acres (2,090 km²) of Virginia landscape. The Virginia program now grants about \$110 million of new tax credit each year. The

credit allowance is 40% of the appraised value of the easement donation, so this equates to \$275 million of property value donated per year for protection of wildlife habitat, farmland and woodland, and scenic open space—in perpetuity.

- North Carolina- North Carolina first enacted Conservation Credits in 1983, making its program the oldest ongoing state Conservation Credit program. The statistics gathered by the state demonstrate how increasing the value of a conservation tax credit can impact both annual donations and annual acres donated. Over the years, the maximum allowed credit was raised from \$5,000 to \$250,000 for individuals and from \$5,000 to \$500,000 for corporations. The average number of **conservation easements donated more than doubled** when the credit cap was raised from \$25,000 to \$100,000 per individual and from \$25,000 to \$250,000 per corporation. The average number of donations more than doubled again when the cap was raised to \$250,000 for an individual and \$500,000 for a corporation. Average annual acres donated also rose significantly from 1983 to 2004, climbing from an average of 397 acres to 11,500 acres.

Fiscal Note: *(Include an annual estimated cost to implement).*

- Due to all of the unknown components and without knowing if there would be additional level of participation, the fiscal impact cannot be determined at this time.

Delaware and Conservation Tax Credits

The **Conservation Tax Credit** is a financial incentive for landowners to help protect the state's natural resources. Landowners who donate fee-title lands or permanent Conservation Easements to a government entity or Qualified Organization may apply for a credit against their state income taxes.

Sixteen states currently offer tax incentives for conservation (according to the Land Trust Alliance) with five allowing transferability:

Colorado*, Florida, Georgia*, New Mexico*, South Carolina*, Virginia*, Arkansas, California, Connecticut, Delaware, Iowa, Maryland, Massachusetts, Mississippi, New York, and North Carolina *Denotes transferability

Delaware House Bill 248 created an income tax credit for permanent gifts of land or interest in land to public agencies and qualified private non-profit charitable organizations. Lands that qualify must meet either:

- The criteria for Open Space
- Consists of Natural Habitat for the protection of DE's unique and rare biological and natural resources
- Must protect conservation values as defined by states
- Must be made to an entity qualified to hold such property:
State of Delaware,
501 (c)(3) land conservation organizations

Delaware's Tax Credits:

40% Fair Market Value,
5-year carry forward period,
\$50,000 max credit per individual, Statewide cap of \$1,000,000/yr.

Maryland's Tax Credits:

100% Fair Market Value,
15 year carry forward period,
\$80,000 max credit,
\$5,000 cap on credit applied to taxes/yr. Unlimited statewide cap.

Virginia's Tax Credits:

40% Fair Market Value,
5 year carry forward period, Unlimited credit allotment,

\$100,000 cap on credit applied to taxes/yr.

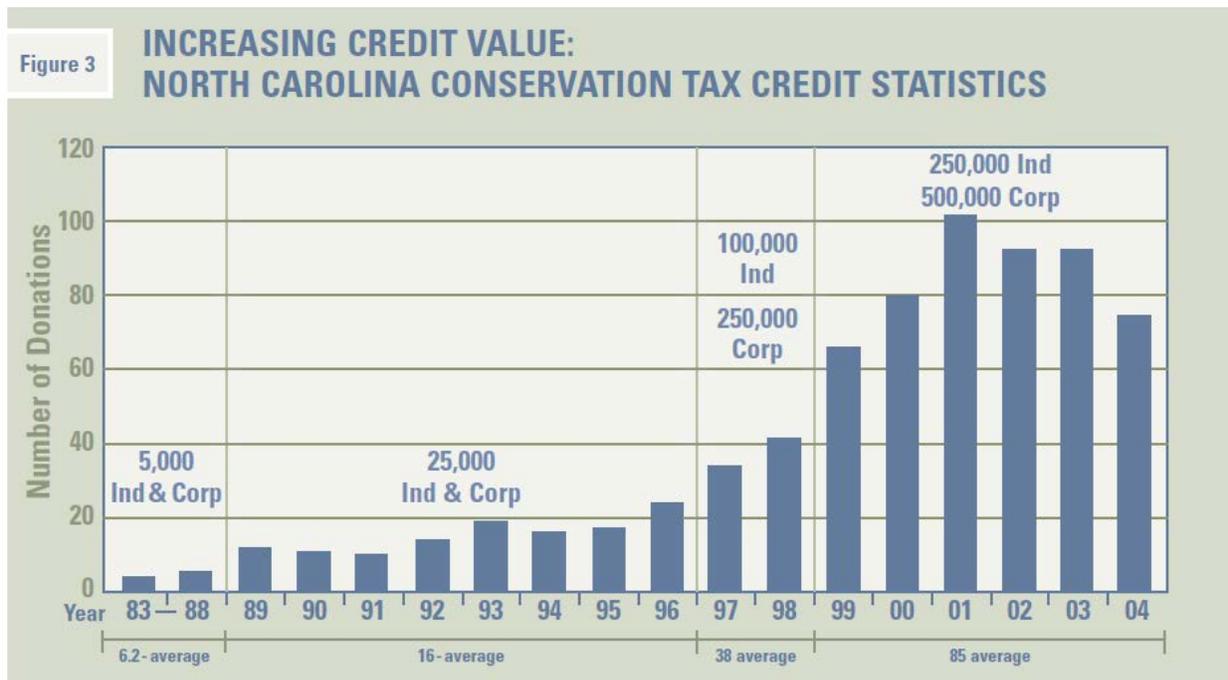
(Note unlimited amount may be transferred and used by 3rd parties.),

Statewide Cap of \$100,000,000/yr..

Justification for raising cap - Example, NC.

North Carolina first enacted Conservation Credits in 1983, making its program the oldest ongoing state Conservation Credit program. The statistics gathered by the state demonstrate how increasing the value of a conservation tax credit can impact both annual donations and annual acres donated. Over the years, the maximum allowed credit was raised from \$5,000 to \$250,000 for individuals and from \$5,000 to \$500,000 for corporations.

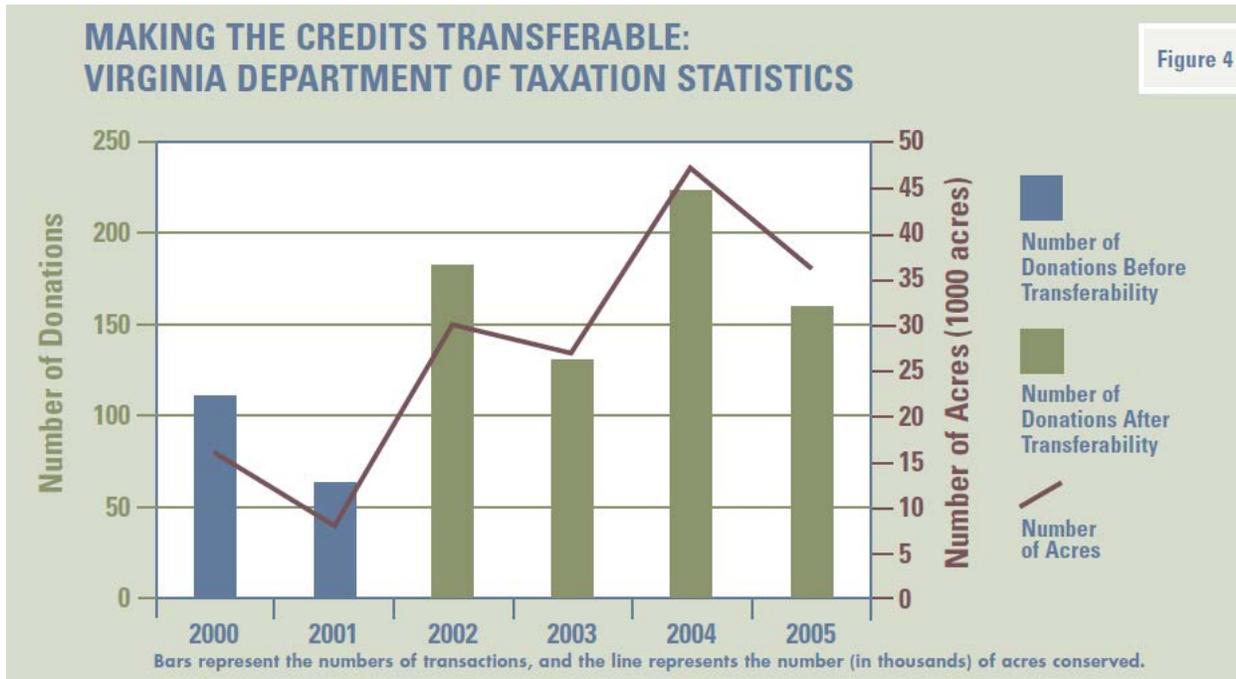
The average number of conservation easements donated more than doubled when the credit cap was raised from \$25,000 to \$100,000 per individual and from \$25,000 to \$250,000 per corporation. The average number of donations more than doubled again when the cap was raised to \$250,000 for an individual and \$500,000 for a corporation. While not shown in Figure 3, average annual acres donated also rose significantly from 1983 to 2004, climbing from an average of 397 acres to 11,500 acres.



Justification for transferability - Example, VA

For landowners with little income subject to state taxation, a tax credit is a hollow reward for reducing the value of real property by donating a conservation easement. To respond to this, Colorado conservationists made their state tax credit transferable in 2000—that is, the donor/landowner can sell her/his credit to other parties; the buyers then use the purchased tax credit to pay their Colorado income tax. This is appealing to buyers because the credit is sold at a discount from face value and yet the landowners would still be profiting instead of having a tax credit they couldn't utilize.

The graph below demonstrates the impact of making credits transferable. It compares donation activity in the first two years of Virginia’s program, when the credit was not transferable, with activity in the next four years of the program, when credits were transferable. The average number of **donations doubled and the acres protected tripled once credits were made transferable**. Since 2002, the average percentage of credits transferred by landowners to third parties has been 75 percent.



The Virginia transferable credit program is far the largest among the States in dollar value of property conserved. By the end of 2010, \$2,512,000,000 of property value had been donated as easements in Virginia for which tax credit was claimed. The qualifying easements cover over 516,000 acres (2,090 km²) of Virginia landscape. The Virginia program now grants about \$110 million of new tax credit each year. The credit allowance is 40% of the appraised value of the easement donation, so this equates to \$275 million of property value donated per year for protection of wildlife habitat, farmland and woodland, and scenic open space—in perpetuity.

In the states where credit for conservation land donations is transferable, **free markets** have arisen. Brokers assist landowners with excess credit to contact buyers, and the brokers often handle payments and paperwork to protect the principals, and to ensure that transfers are fully reported to the state tax authorities.

Delaware Conservation Tax Credit FAQs:

Since 2001, Delaware has conserved almost 400 acres; 23 projects protecting 366 acres with a tax credit taken of \$759,386 out of a total value of \$4,521,760.

The only push for conservation tax credit incentives was during the 2001-2002 fiscal year with brief education of tax accountants on the conservation tax credit.

Delaware has the lowest tax credit cap out of the 16 states.

The original bill has already been amended by HB 138 of the 145th Assembly in order to eliminate sunset dates.

Department of Natural Resources & Environmental Control, in conjunction with Department of State and Division of Historical & Cultural Resources will certify land. There is a \$2,500 price for initial appraisal.

Options for Delaware:

Tighter qualifications for conservation

Transferability - will require some administrative work and discussions with the Delaware Department of Revenue, as Delaware will need to have a system in place to administer an exchange. Should follow VA's example of a transactional screen - an agreement between DNREC and Department of Revenue (system already in place) with an associated fee to pay for review/screen (\$500-\$1000).

Increased state cap from \$1,000,000 to \$5,000,000 in order to spark the system. By just raising the cap, you're not guaranteed to have enrollment that capitalizes on the whole allotment. There is also the guarantee that you could lower the cap again.

Increased individual allotment from 50,000 to 250,000. (GA = 500,000, CO=375,000, VA=Unlimited). 250,000 per individual is the floor of the exchange program. Again, raising the cap doesn't guarantee that each or any land will qualify for the total amount, just providing the opportunity, allowing for more substantial donations.

Hypothetical Transferability Model (1):

As part of the free market, organizations (or private brokers) work as the middle man between buyers and sellers of conservation tax credits. Among the 5 states that offer transferability, there are dozens of organizations that add conservation tax credits to their list of dealings. Including: Rappahannock County Conservation Alliance (VA), South Carolina Conservation Credit Exchange (SC), Full Circle: Virginia Conservation Tax Credit (VA), Conservation Resource Center (CO), Strugar Conservation Services (CO, VA, NM), and many more.

Conservation Tax Credit Transfer of Colorado offers a pretty good picture of the step by step process of transferring tax credits.

With Conservation Credit Transfer, you'd begin the process by having landowners/sellers register with CTCT by completing the CTCT Seller Registration Form.

TAX CREDIT CERTIFICATE APPLICATION & FEE

CTCT will assist you in completing the application and pay your \$305 application fee as part of our service. We will review and track your tax credit application packet until you are issued a tax credit certificate, which is required before you can sell your tax credit. DRE encourages donors working with a tax credit broker to list the broker as either the main or additional contact on the application form in order to expedite the process.

TAX CREDIT CERTIFICATE

Once you have closed on your easement CTCT will work with you, your land trust or governmental agency and other conservation professionals to obtain all of your donation documents and prepare your tax credit application.

REVIEW OF DONATION DOCUMENTS

CTCT will conduct a thorough due diligence review of all of your donation documents to ensure that your donation meets all state and federal laws, regulations and notices. We will help you make any required changes to your documents, if needed.

TRANSFER PROCESS

Once CTCT has accepted your credit for transfer and your tax credit certificate has been issued, we will match you with a qualified credit buyer. Both sellers and buyers execute CTCT's Agreement to Purchase/Sell. Transfers are completed by delivering signed copies of the Agreement and checks from the buyers to the sellers.

TAX FILING PAPERWORK

After your credits are sold, we prepare the required paperwork documenting the completed transaction for both you and the buyers to file with your Colorado state income tax returns. This includes completing Department of Revenue (DR) Form 1305 and help with completing Forms DR 1303 and 1304.

GOING MARKET RATE

You receive a percentage of the face value of your credit based on "the market transfer rate." The limited supply of tax credits under the new cap program will affect the rate.

AS A BUYER OF TAX CREDITS in Colorado with Conservation Tax Credit Transfer, they begin by completing the CTCT Buyer Registration Form.

TRANSFER PROCESS

CTCT conducts a thorough due diligence review of all seller donation documents to ensure that we provide quality tax credits for our buyers.

Once CTCT has accepted a credit for transfer, we match you with a credit seller. Both buyers and sellers execute CTCT's Agreement to Purchase/Sell. Transfers are completed by delivering signed copies of the Agreement to both parties and checks from you to the sellers.

TAX FILING PAPERWORK

After the credits are sold, we prepare the required paperwork documenting the completed transaction for both sellers and you to file with your Colorado state income tax return. This includes completing Department of Revenue (DR) Form 1305.

GOING MARKET RATE

The supply of tax credits under the cap program affects the credit transfer rate. Credit buyers will receive a discount on the face value of the credit purchased based on the "going market rate." Historically, the credit buyer has purchased credit at a fifteen percent (15%) discount. This rate can change over the course of the "transfer year" based on supply and demand. We transfer credits throughout the "transfer year."

- Georgia Conservation Credit Program: <http://www.taxtransferga.com/>
- State Funding for Conservation Tax Credits (LTA): <http://www.landtrustalliance.org/policy/public-funding/state-funding>
- Tax Credit Exchange Program: <http://www.taxcreditexchange.com/index.html>
- Conservation Resource Center, State Conservation Credit Impact and Analysis: <http://www.taxcreditexchange.com/documents/StateConservationTaxCreditsImpactandAnalysis.pdf>
- State and Local Tax Incentives (LTA): <http://www.landtrustalliance.org/policy/tax-matters/campaigns/state-tax-incentives>
- State By State Tax Credit Comparison: <http://www.landtrustalliance.org/policy/documents/nc-tax-credit-comp.pdf>
- Tax code: <http://delcode.delaware.gov/title30/c018/sc01/index.shtml>
- <http://www.taxtransfer.net/sellingtaxcredits.htm>

Natural Resource Protection Incentive Ordinance Framework as Proposed by Homebuilders Association of Delaware

This incentive ordinance builds into the land development process the opportunity for obtaining additional density and transferring development from sending areas to appropriate receiving areas in exchange for the protection of important Natural Resources. For the purposes of this ordinance, Natural Resources are defined as Wetlands, Rare Species Habitats, Forest Resources and other Natural Features determined to be important by the regulating agencies.

Key Elements:

Because Natural Resources are important to the State of Delaware and its citizens and because there are economic pressures for property owners to minimize these resources, this ordinance attempts to add value for the property owner for preservation and enhancement of these resources. The public will pay for the preservation of these resources through the acceptance of higher density development in appropriate areas by right as allowed by this ordinance.

The incentives contained in this ordinance attempt to provide incentive commensurate with the public value of the resources being preserved and/or enhanced.

The public value of the resources will be proposed by the property owner and reviewed by the Regulating Agencies as described in this ordinance based on established criteria.

Sending and Receiving areas will be determined by the Regulating Agencies utilizing the State Spending Strategies, recommendations from the State Office of Planning and other appropriate agencies and stakeholders. Sufficient Receiving Areas will be established to ensure that all density bonuses or other incentives can be implemented.

All incentives will be “by-right” and not subject to a political vote for implementation. This does not mean that there is no review by appropriate agencies in order to help refine the site design while still achieving the allowable density. This can be accomplished by establishing a Natural Resource Protection overlay zoning that would allow alternate unit types and mixed use in appropriate areas.

Natural Resource Categories:

Category 1 – Highest Priority for Preservation, Threatened and Endangered Species Present, S1, SH or SX Species Present. Examples include: Intact Delmarva Bays, White Cedar Swamps, Intact Cypress Swamps Bog Turtle Colonies, Delmarva Fox Squirrel Colonies, Swamp Pink Colonies and other areas that meet the established criteria.

Category 2 – 2nd Highest Priority for Preservation, Rare Species Present, Threatened and/or Endangered Species Habitat Present, S2 Species, Intact Mature Forest greater than 5 acres. Examples Include: Bog Turtle Habitat (no individuals found or no search), Delmarva Fox Squirrel Habitat (no individuals found or no search), Consistent Bald Eagle Nesting Areas and buffers and other areas that meet the established criteria.

Category 3 – Typical Wetland Areas, S3, S4 Species, Natural Forest Areas deemed worthy of protection, Forested, Scrub/Shrub and Emergent Wetlands not meeting the criteria for Category 1 or 2 and other areas that meet the established criteria.

Category 4 – Disturbed or Man-Made Wetlands, Disturbed Forest Areas

Category 5 – Area dominated by Invasive or Exotic Species

The property owner will perform a Natural Resource Mapping Plan and Report (NRMPR) and submit to the reviewing agencies with a proposal for the categorization of the resources found on the site. This NRMPR can be submitted at any time in order to categorize the resources on a property. The NRMPR must be no older than 36 months old when using it to establish incentives at the time of submission of a development plan or submission of an application to sell development rights.

Review of the NRMPR and any proposed restoration, enhancement and conservation practices will be reviewed by the regulating agencies and comments provided within 60 days from the date of submittal. The NRMPR will be amended by the property owner based on the comments and final review by the regulating agencies will be provided within 15 days of the amended report submission. If the property owner and reviewing agencies have a dispute related to the Natural Resources that cannot be resolved, the case will be reviewed by the Environmental Appeals Board within 120 days of the original submittal or 60 days from the date of the reviewing agency comments.

Incentives:

Incentives will be determined based on the area of the preserved resources and buffers established in the NRMPPR and will determine the basis for the developable area on the site and the incentives provided on the site as a density bonus or offsite as a TDR or some combination of the two.

The following equivalent density bonuses will apply to the following categories as established above:

Category 1 – 8x Density of the underlying zoning with TDR

Category 2 – 5x Density of the underlying zoning with TDR

Category 3 – 3x Density of Underlying Zoning with TDR

Category 4 – 2x Density of Underlying Zoning no TDR

Category 5 – No density bonus unless restoration plan approved and implemented to get to Category 4 status.

Examples:

100 acre parcel zoned for 1 unit per acre = net density is 100 units. 2 acres of Category 1 and 5 acres of Category 3 resources found on site. New density = 93 units + 16 units + 15 units = 124 units.

10 acre parcel zoned for 1 unit per 10 acres = net density is 1 unit. 2 acres Category 1 and 8 acres Category 2 resources found on site. New density = 16 units + 40 units = 56 units all transferred to suitable property and site preserved.

TDR Program details to be provided shortly.

Wetlands Advisory Committee
DNREC Response to Questions Related to the Open Space Program

1. Property ranking process: Has this process been formally adopted by the Open Space Council and DNREC as required under Section 75061 of the Land Protection Act?

Answer: Section 7506(1) refers to criteria for delineation and dedication of open space. Section 7506(4) refers to a ranking system to establish land acquisition or permanent protection priorities. At the last Wetlands Advisory Committee meeting I provided copies of the Open Space Program Property Ranking Process. This was reviewed and adopted by the Open Space Council at its December 7, 2011 meeting. Attached is a copy of this document (new ranking). Also attached is a copy of the previously-used Open Space Rating Criteria (old rating). The old rating was adopted by the Open Space Council in 1991 and used through December 2011. The new ranking has been used from January 2012 forward.

2. How does the Delaware Ecological Network relate to the State's existing SRAs under Section 75072?

Answer: Section 7507(a) (2) states "A system for determining the existence and location of state resource areas; their degree of endangerment; an evaluation of their importance; and information related to their natural, historic or open space values;" The Delaware Ecological Network (DEN) is a science-based approach that identifies core areas and corridors on the Delaware landscape. Core areas contain fully functioning natural ecosystems and provide high-quality habitat for native plants and animals. Corridors link core areas together and allow for animal movement and seed and pollen transfer between core areas. The DEN analysis looks at core forests, core wetlands and core aquatic areas and the connecting corridors. To date this is an internal analysis conducted by The Conservation Fund for the Department over the past two years.

The Open Space Council may decide to use all, some or none of this analysis in any action related to Section 7507(a) (2). Also the State Resource Areas associated with the Open Space Council involve not just natural resource lands, but recreational and cultural lands also.

3. What has been the average score of the properties ranked and protected over the last five years by the Open Space Council?

Answer: Under the old rating (see #1 above) a property could receive a minimum score of zero to a maximum of 120. The old rating was used on 34 projects from July 1, 2009 through December 31, 2011. The average score was 36.94. Under the new ranking (see #1 above) a property could receive a minimum of zero to a maximum of 560. The new ranking was used on 22 projects from January 1, 2012 through June 30, 2014. The average score was 211.59.

4. How many times has the ranking process been used at an Open Space Council meeting to prioritize the selection of competing properties?

Answer: During Executive Session the Open Space Council reviews the specific properties for that quarterly meeting. The Council discusses each project on its merits and factors in the available funding for the program. It also considers that projects coming before the Council are typically priorities at that time for the qualifying land managing agencies that are eligible for Open Space Program funding (Division of Fish & Wildlife; Division of Parks & Recreation; Delaware Forest Service; Division of Historical & Cultural Affairs). The prioritization by the land managing agencies significantly reduces the “competition” discussion. Each agency is aware of funding constraints and works together to move projects through the process. The ranking process is a factor, just like other factors such as price, bargain sale, endowment, in-holding, and timing, to name a few.

5. Section 7507 of the Land Protection Act calls for the Open Space Council and DNREC to update the state resource area maps in consultation with county governments at least every five years. Currently DNREC is out of compliance with this legislative requirement. Does DNREC have a timeline for coming into compliance with this requirement that can be shared with the Committee and speak to how our Fresh Water Wetland concerns may be addressed in this update process?

Answer: In recent past meetings the Open Space Council briefly discussed the status of State Resource Area maps. The Council expressed a desire to have a more informed discussion. This will be an agenda item for the September 17, 2014 meeting. At that time it is anticipated that timelines may be established for addressing the issue of non-compliance. Also the concerns of the Wetlands Advisory Committee, particularly as it relates to Category I wetlands, will be presented as part of the discussion.

Email from 3 Legislators on Final Report

From: Wood, Bonnie (LegHall)

Sent: Monday, August 18, 2014 10:42 AM

To: Delaware Wetlands Advisory Committee

Subject: Comments from Senators Venables, Hocker and Representative Wilson



On Behalf of Senator Robert L. Venables, Sr.:

Committee Members,

After digesting the discussion Wednesday regarding the final report outline and possible recommendations from the Secretary of DNREC, we feel compelled to comment not only as committee members but also from our perspective as members of the General Assembly voting in favor of SB 78.

First, regarding the committee report:

It is our opinion that submitting reports to the General Assembly that include excess verbiage is counterproductive. It is for that reason SB 78 provides the following instructions:

“DNREC shall compile the results of the Committee recommendations, develop a draft report and reconvene the Committee to review the draft report and solicit feedback before finalizing the report of recommendations.” (lines 69/70 of the bill)

Therefore, our intent in supporting the bill was to have a concise report simply stating the Committee recommendations. Links should also be provided guiding the reader to the DNREC/WAC website for detailed information so that a person with interest can peel the layers of the onion back as far as they desire.

Additionally, by stating the recommendations only, any debate over what supporting information is included and how it is presented is preempted.

Second, regarding recommendations by the Secretary:

We feel recommendations by the Secretary, within the final report, is not the intent of SB 78. The Committee was formed specifically to get input beyond that of the State agencies. The General Assembly is in continuous communication with the Executive Branch of Government. We did not need to form a Committee to get input from the DNREC Secretary and limiting the report to Committee recommendations only does not prevent future communications with him or anyone else for that matter.

Sincerely, **Senator Robert L. Venables, Sr; Senator Gerald W. Hocker;**
Representative David L. Wilson

APPENDIX E – Other ideas from Committee members requested by the Chair

All,

The WAC has chosen to pursue an incentive based conservation approach to preserve wetlands. As I understand the numbers provided by DNREC and the Delaware Dept. of Agriculture the math works as follows in acres:

Privately Owned 404 regulated lands;	220,000
Privately owned non-regulated Category I	4019
Privately owned buffer (minimum 50 ft.) for Cat I	13896
Privately owned buffers for 404 regulated lands	unknown
Total Privately owned wetlands	237915
Forested lands with conservation easements	31451
85% of forestland	26733
Wetlands available for conservation incentives	211182

Everyone can do their own math but I think we can agree it is a big number.

To date the WAC has adopted two incentive recommendations. One is to fund Forest preservation annually \$200,000 and the other is to modify the Conservation Tax Credit to hopefully make it functional. The tax credit financial impact is limited to \$1M/yr.

If we assume both of these are used entirely to preserve wetlands of one sort or another (not likely) and assume a discounted value presented to the committee of a round number of \$2000/acre; 600 acres per year will be preserved. This means that it will take 351 years to preserve all the wetlands in the State without further incentive recommendations from this committee.

The first Delaware Farm Bureau recommendation would, if adopted by the General Assembly, provide DDA the ability to collect \$15M of the Real Estate Transfer Tax directly from the counties. If a similar measure were adopted for Open Space in the amount of \$10M (DFB would support this) the total financial commitment toward resource preservation would be \$26M annually.

The bottom line is that by ensuring funding for AgLand Preservation and Forest Preservation the State would likely preserve 3500 acres per year of freshwater wetlands with these two programs alone; without making any changes to program selection criteria. This one change reducing the timeline for preservation of ALL wetlands from 351 years to 60 years.

A critical component to the financial commitment is the second recommendation of ensuring a venue for consideration of joint use of these funds. Any financial commitment by Open Space to leverage money with these two programs would obviously increase the annual resource protection acreage.

Providing a forum for joint planning and coordinated use of committed funds will not only improve efficiency but shore up support for resource preservation for years to come. Include consideration of federal programs and perhaps we can at least say we made meaningful incentive recommendations.

The Delaware Farm Bureau is asking the Committee to consider the following two recommendations.

The Committee recommends that Title 30 Chapter 5426 be amended by making deletions as shown by strike through and insertions as shown by underline as follows;

§ 5426 Farmland Preservation Fund receipt transfer.

~~On or before October 15 of each fiscal year, the State shall transfer \$10 million in receipts received under Chapter 54 of this title, to the Farmland Preservation Fund maintained under Chapter 9 of Title 3. Notwithstanding any law, code, ordinance, or regulation to the contrary, the Foundation shall be entitled to adopt and impose procedures and requirements under Title 29 chapter 101 to collect Fifteen million dollars from the respective county receiver of taxes, treasurer or director of finance as the Foundation's share of the Real Estate Transfer tax under Title 30 Chapter 54 and shall when collected and after deduction of the seven and a half percent administration charge, be transferred to the Foundation of which, ten million dollars will be allocated for Agland Preservation and five million dollars for Forestry Preservation for use in carrying out Title 3 Chapter 9.~~

Synopsis

Current law provides for the mandatory transfer of \$10 million annually from the Division of Revenue for the use by the foundation. The recommendation would require the foundation to adopt and impose procedures for the direct transfer of monies collected under the Real Estate Transfer tax, change the amount to \$15 million dollars, allocate \$10 million to farmland preservation and \$5 million dollars to forestland preservation.

The Committee recommends that bi-annual meetings be held by the Ag. Preservation Foundation, Forest Preservation Foundation, Open Space Council and pertinent Federal agencies to identify opportunities for coordination and efficient use of funds.

Regards to all,

Marty Ross

DFB Representative

DNREC Wetlands Protection Suggested Ideas

DNREC proposes the following recommendations to the Wetlands Advisory Committee for incentives and other mechanisms for wetlands conservation and protection in the future. Several ideas have already been mentioned during Wetlands Advisory Committee meetings. A few of these have become recommendations. Some have not been yet been discussed due to lengthy discussion of other recommendations and time constraints.

Coordinate state and federal wetlands protection responsibilities. In consideration of diminished Corps resources, DNREC could work with the Corps to identify program areas where improved coordination and wetland management could occur including: verifications, permitting, and enforcement. Additionally, DNREC would like to develop a Statewide Programmatic General Permit for common activities undertaken by state agencies in tidal wetlands, and investigate potential for special expedited permits for the similar activities in non-tidal wetlands. The Corps would provide technical support and training to DNREC in order to ensure consistency between the two agencies. More State and federal staff in the field could improve efficiencies in the permitting process and could help prevent unpermitted loss of all wetland types. Such coordination could be memorialized in a Memorandum of Agreement.

Develop a wetland fee in-lieu program. An integral part of an enhanced wetlands protection program would be an fee in-lieu program to offset impacts due to unavoidable losses of wetlands. The State would use the revenues generated by in-lieu fees to create, restore or enhance wetlands necessary to offset impacts. In most cases, the State can facilitate more ecologically functional wetlands than can be achieved by the individual permittee on the parcel being impacted due to site constraints. DeIDOT has stated during committee meetings that a fee in-lieu would be very beneficial, and it could also assist other State agencies, and the regulated public.

Use outreach and education to increase wetland stewardship and protection. Education efforts should inform landowners of wetland values and conservation options. Outreach should also include working more closely with county land use planning personnel. This could be done with a landowner contact program or possibly through the Adopt-A-Wetland program, and would highlight incentive recommendations already approved by the Wetlands Advisory Committee.

Develop a state wetland delineator training program and delineation registry. Similar to the sediment and stormwater program, and land surveyors, this would provide for consistency across the state for delineations, allow for Delaware-specific on-the-ground conditions to be incorporated into the process, and provide a mechanism for consultants/delineators to stay current on delineation criteria. The Corps would assist with training Delaware personnel and private delineators. This recommendation would also provide the opportunity for a central repository of delineations completed on parcels throughout Delaware.



July 22, 2014

Members of the Delaware Wetlands Advisory Committee:

This letter is written in response to the call for new recommendations from Committee Members as requested by Chairman Parkowski.

From 1992 to 2007, the Inland Bays watershed lost 1,077 acres of natural freshwater wetlands. These losses are cause for great concern given the regulatory protections for wetlands that were in place and given the impaired status of the Inland Bays for nutrient pollution. Freshwater wetlands reduce nutrient loads to waterways through the microbially-mediated removal of nitrogen, the trapping of nutrients and sediments, and through hydrologic storage. They also reduce flooding, support critical wildlife habitat, and are of great economic value to the people of Delaware.

The original 1995 Inland Bays Comprehensive Conservation and Management Plan included actions to "Provide maximum protection of waterways, groundwater, natural areas, open space, and tidal and non-tidal wetlands," and to "Develop and implement a no net loss of wetlands policy." The 2012 Addendum to the CCMP includes an objective to "Halt the continued loss of wetlands and reverse these loss trends by promoting projects to mitigate for previously lost wetlands."

In addition to these CCMP actions, DNREC's 2008 Inland Bays Pollution Control Strategy contains actions to restore 4,147 acres of wetlands and establish buffers on mapped freshwater streams and ditches. Buffers of such water features would provide additional protection to streamside wetlands. Unfortunately, little progress has been documented on the former action and the latter action was stricken from regulation as the result of a lawsuit.

I recommend the following actions regarding freshwater wetlands protection. These actions are in my opinion priority for implementing the Inland Bays CCMP. Some of these actions have been recommended as a part of the DNREC's Wetland Protection Strategic Plan (2013) and Wetland Program Review (2010). Importantly, most of the actions should be able to be accomplished within the existing authorities of the State and under existing regulations.

1. Request a new Executive Order on Freshwater Wetlands. An order similar to Executive Order 56, issued by Governor Castle in 1988, should reaffirm the importance of freshwater wetlands and the commitment of all state agencies to avoid and minimize impacts to these resources. Such an order should also include 1) a policy for no-net loss of wetlands or a policy of reversal of wetland loss trends and 2) the requirement for a multi-agency action plan to achieve such a policy over a given period.

As an example of how this could be effective, the reissuance of this Order might encourage DeIDOT to reconsider its preferred alternative to the Route 113 Millsboro South Transportation Study. This study by DeIDOT has recommended a bypass highway around Millsboro that includes a bridge across Indian

River and crossings of 11 other waterways. DeDOT estimates that this will impact 19,246 linear feet of streams, 20,851 linear feet of subaqueous lands, 14,482 linear feet of tax ditches, and impact 30.8 acres of wetlands. With such an Executive Order in place, perhaps DeDOT would have the incentive to reconsider the practicable on-alignment alternative to the bypass, which is based upon improving the existing highway, is less expensive, and results in less than half of the proposed bypass's impacts to wetlands alone.

2. Update State wetlands regulatory maps and include those freshwater wetlands that meet the definition established in the 1973 Wetlands Act. DNREC's wetlands regulatory maps have not been updated for approximately 25 years. An update is overdue considering that tidal wetlands of the Inland Bays have been found to move inland from an average of 0.8 to 6.1 feet per year. Updated maps will regulate significant areas of tidal wetlands that have formed via wetland migration since the last maps were adopted.

The Wetlands Act under Sec. 6603 also defined wetlands to include "those lands not currently used for agricultural purposes containing 400 acres or more of contiguous nontidal swamp, bog, muck or marsh exclusive of narrow stream valleys where fresh water stands most, if not all, of the time due to high water table, which contribute significantly to ground water recharge, and which would require intensive artificial drainage using equipment such as pumping stations, drain fields or ditches for the production of agricultural crops." These wetlands were never included in regulatory maps. An attached analysis conducted by the Center has found that 28 individual contiguous non-tidal wetlands blocks that are over 400 acres and not used for agricultural purposes exist in the State; and in total they include 22,750 acres. Assuredly, some of this acreage will not meet the above definition upon scrutiny. In particular, some blocks may or may not be considered exclusive of narrow stream valleys and may or may not have standing water most of the time. However, it is very likely that a reasonable, criteria-based definition applied to these blocks would result in increased protection for many thousands of acres of important freshwater wetlands.

3. Utilize Clean Water Act (CWA) Section 401 certification authority to help reverse losses of wetlands in watersheds with waters that do not meet State Water Quality Standards and in watersheds having waters with Exceptional Ecological and Recreational Significance (ERES) designations. Under section 401 of the CWA, a federal agency cannot issue a permit for an activity that may result in a discharge to waters of the US until the State has granted or waived certification. Given the inability of so many of the State's waters to meet water quality standards for nutrients and dissolved oxygen and given the aforementioned rates of wetlands loss, DNREC has justification to develop and implement a certification process for all permits in watersheds with waters that do not meet water quality standards and in watersheds having ERES waters. This would include increased review of permits by the State (including nation- wide permits) for avoidance and minimization of impacts, additional limitations and conditions

for permits, and the requirement for increased mitigation ratios based on freshwater wetlands restoration plans developed in response to an Executive Order. General certification conditions could be developed related to project impacts, buffers, wetland types, and sub-watersheds so that all projects are held to the same standards and level of scrutiny. The EPA's 2010 publication Clean Water Act

Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes provides an overview of considerations for utilizing this approach.

4. Utilize the Policies for ERES Waters in the State Water Quality Standards to reduce impacts to wetlands. ERES Waters policies require the following for Waters of the State, of which freshwater wetlands are included by definition:

Section 5.2. ...Further the Department shall assure that there shall be achieved...all reasonable best management practices for nonpoint source control.

Section 5.6.1.3 Discharges to ERES waters shall be avoided to the maximum extent practicable. In order to be permitted, a discharge must be the least environmentally damaging practicable alternative.

Section 5.6.3.5 Best Management Practices. The Department may adopt pursuant to 7 Del. Code 6010, best management practices for selected sources of pollution to ERES waters. Best management practices identified by the Department pursuant to this subsection shall provide a standard for the control of the addition of pollutants which reflects the greatest degree of pollutant reduction achievable including, where practicable, a standard requiring no discharge of pollutants.

These policies could be used to justify utilization of Section 401 certification authority. Further, DNREC intends to review the Inland Bays Pollution Control Strategies in 2018 to assure progress towards achieving water quality standards. If it is determined that adequate progress is not being achieved, ERES policies could be used to justify inclusion of freshwater wetlands regulation into a revision of the Pollution Control Strategies.

Thank you for your consideration of these recommendations.

Sincerely,



Executive Director

encls. (1)

Large Continuous Freshwater Wetland Block Identification

July 17, 2014

Delaware Center for the Inland Bays

In an effort to identify large continuous or uninterrupted blocks of wetland, which are classified as non-tidal and non-riverine in setting, a GIS analysis was conducted using the 2007 Delaware Wetlands layer. This data layer was allocated directly from the DNREC Watershed Assessment Section, to assure the most up-to-date layer was used for the analysis. The Wetlands layer was created by Virginia Tech's Conservation Management Institute in partnership with the U.S. Fish and Wildlife Service, National Wetlands Inventory (NWI) and the Delaware Department of Natural Resources and Environmental Control (DNREC). DNREC's Watershed Assessment Section updated the existing USFWS National Wetlands Inventory (NWI) and Delaware Statewide Wetland Mapping Project (SWMP) data to meet or exceed NWI procedures and the guidelines of the Federal Geographic Data Committee's Wetland Mapping Standard. The minimum mapping unit (MMU) for this data set was 0.5 acres, as identified in the layers metadata.

The minimum size of the continuous blocks to be identified was set at uninterrupted 400 acres. To conduct this identification, a GIS analysis was conducted using ArcMap 10.1. To start the analysis; all tidal, riverine, and standing water bodies (i.e. ponds and lakes) were excluded from the wetland layers. This was done by using a definition query to only include wetlands with an attribute modifier starting with L2 (Littoral Lacustrine) or P (Palustrine) only. The remaining blocks of lacustrine and Palustrine wetlands were then evaluated to identify continuous reaches of non-tidal wetlands that were uninterrupted by changes in land cover or transected by human structures (i.e. roads). Wetland polygons that were uninterrupted and had neighboring polygon features, which intersected them (or had shared borders), were grouped together, using a selection function (select feature by polygon). The selected polygons then had their aggregate area calculated using the sum statistics within the attribute table (using the acreage column). If the continuous selected aggregate area exceeded 400 acreages, the identified (e.g. selected) non-tidal wetland polygons were merged. The individual wetland polygon borders were dissolved to form a continuous block. In all, 28 continuous non-tidal wetland (either Palustrine or Lacustrine, or a combination of both) blocks were identified (Figure 1). Southern New Castle County contained two continuous blocks (Figure 2); Kent County contained 14 continuous blocks (Figure 2); and Sussex County contained 12 continuous blocks (Figure 3). The size of the blocks ranged from 401.56 acres to 3331.42 acres (mean size of 812.48 acres with a Standard deviation of 718.22 acres; Table 1). The total acreage of the 28 identified continuous non-tidal wetland blocks was 22,749.51 acres.

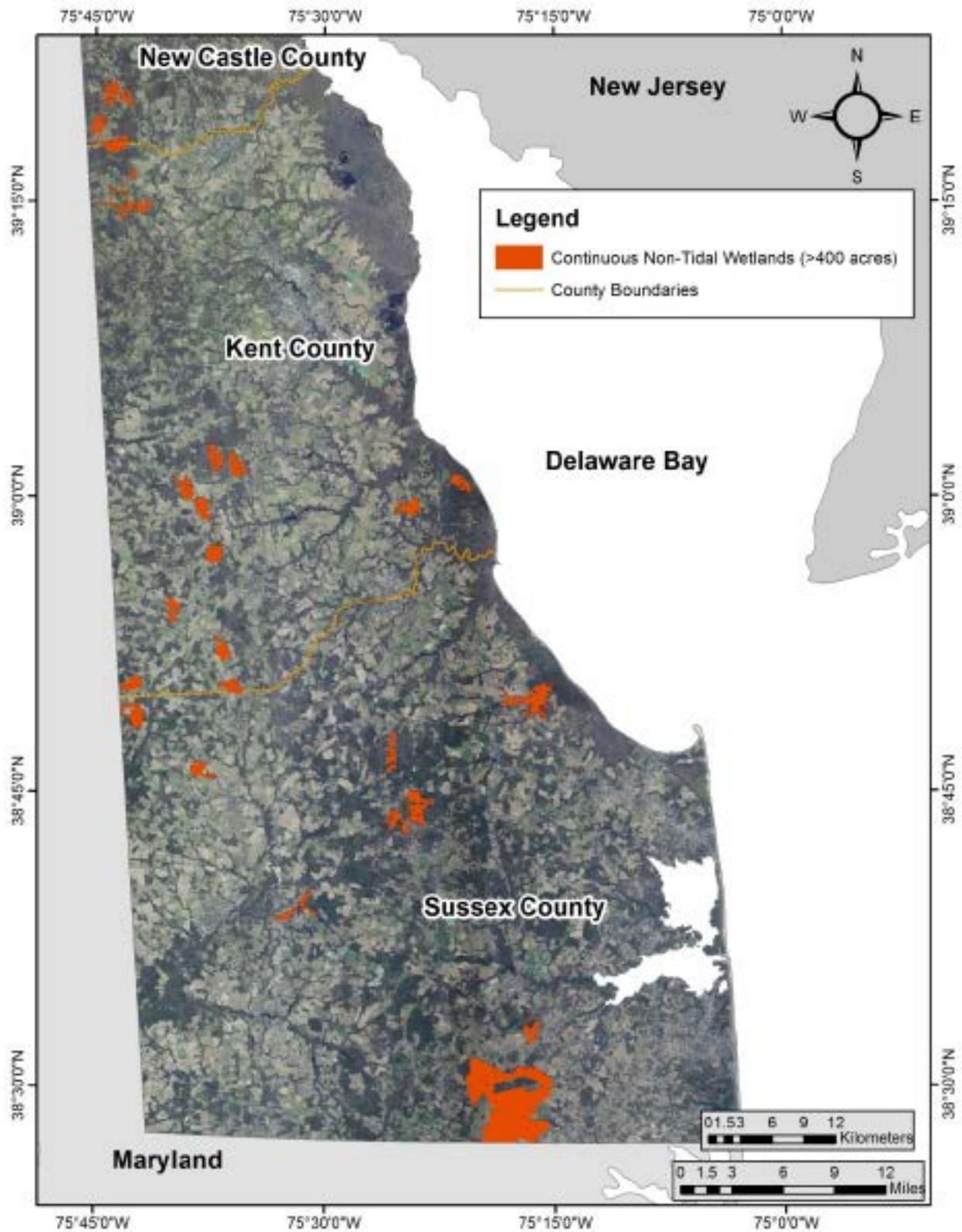


Figure 1. Map of the State of Delaware illustrating the location of the 28 identified continuous non-tidal wetland blocks, greater than 400 acres in aggregate size.

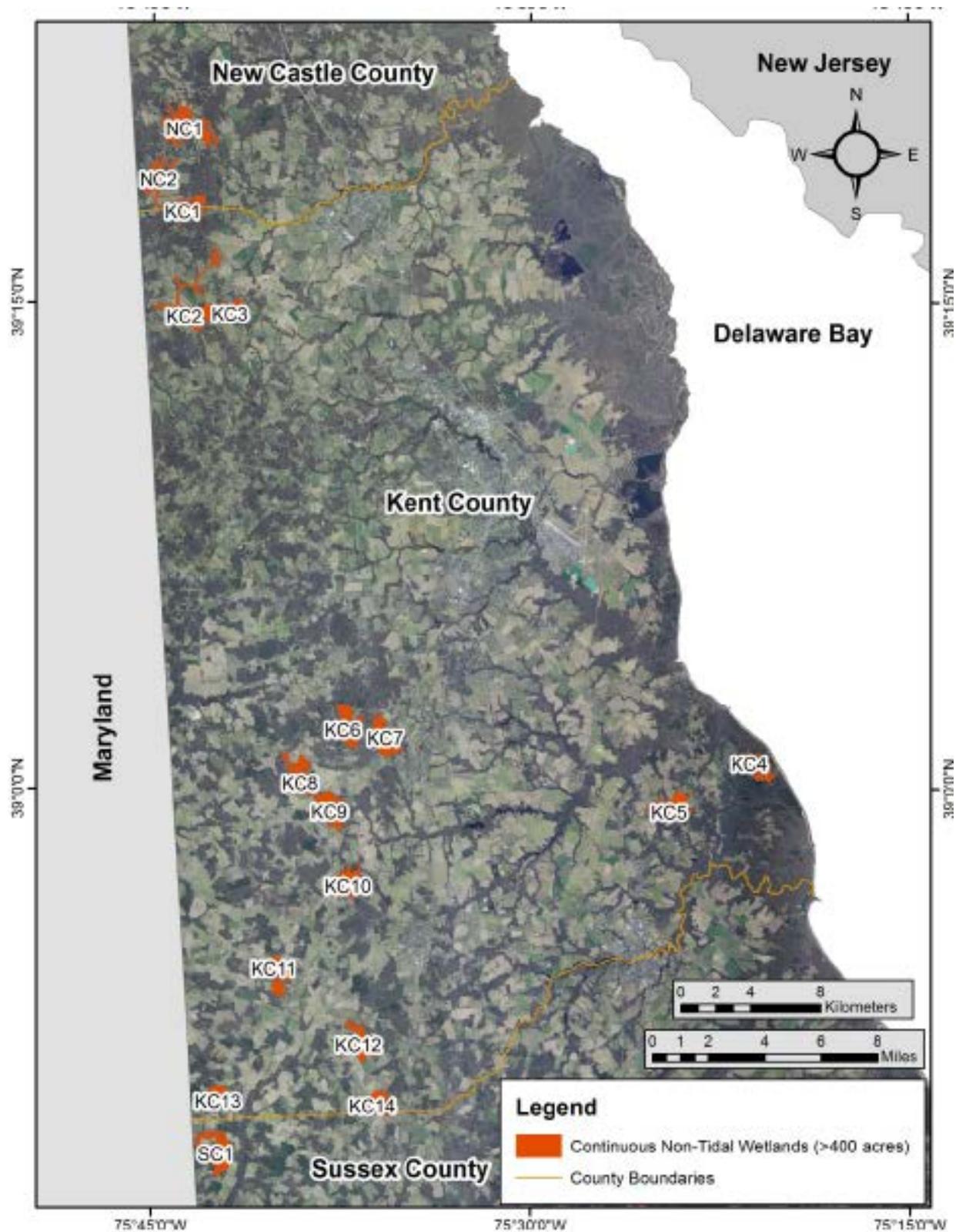
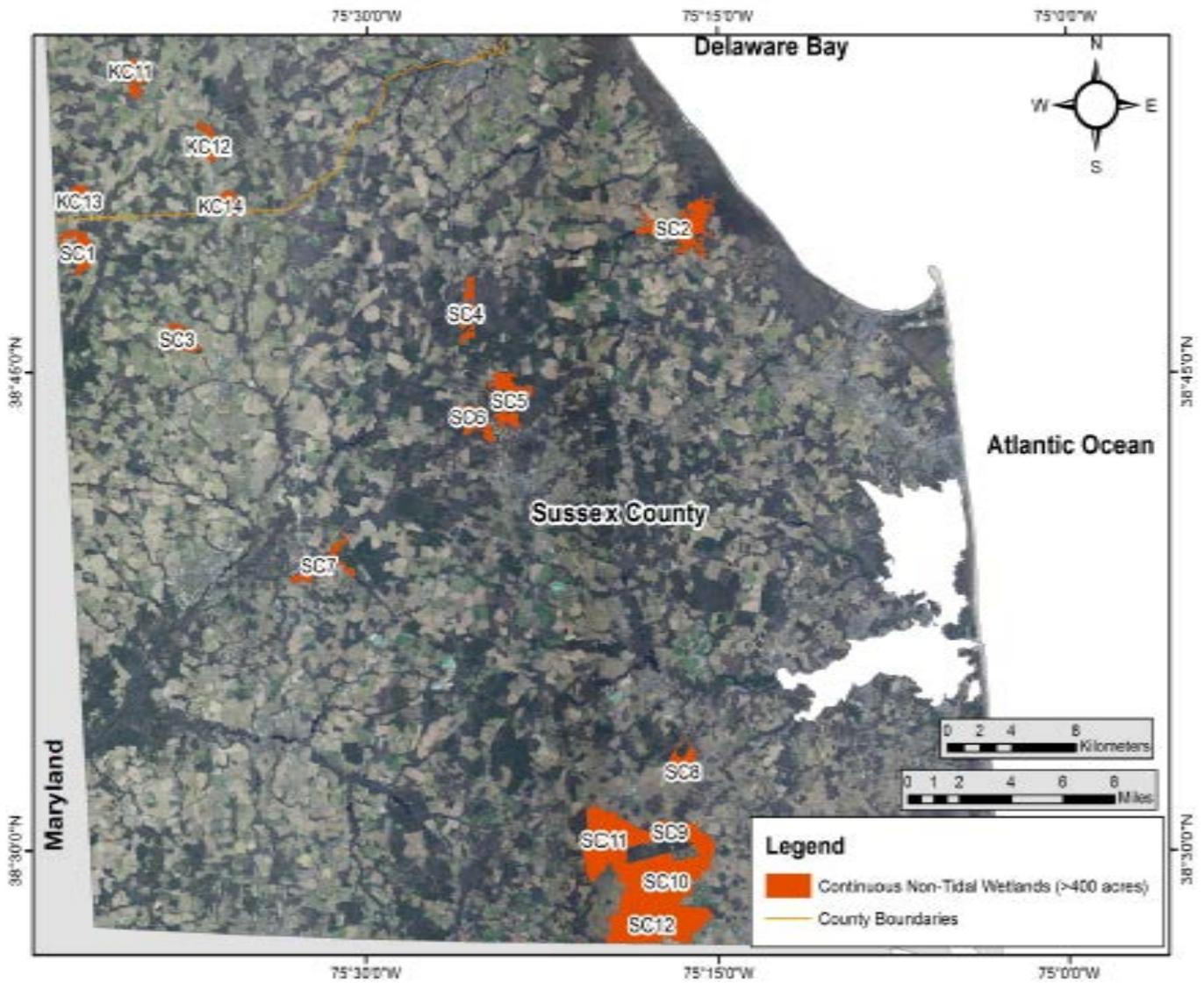


Figure 2. Map of extreme southern section of New Castle County and Kent County, where continuous non-tidal wetland blocks, greater than 400 acres in aggregate size, were identified.

Figure 3. Map of the Sussex County's 12 identified continuous non-tidal wetland blocks, greater than 400 acres in aggregate size.



Block ID	Block Size (Acres)	Individual Wetland Polygon per Block
KC1	526.60	121
KC2	476.97	52
KC3	423.40	35
KC4	420.14	45
KC5	554.74	22
KC6	507.85	26
KC7	521.22	63
KC8	549.28	32
KC9	481.40	15
KC10	494.04	26
KC11	401.56	18
KC12	479.18	8
KC13	452.16	14
KC14	465.47	11
NC1	749.11	121
NC2	436.96	71
SC1	647.66	28
SC2	1392.15	139
SC3	445.70	42
SC4	468.55	31
SC5	1003.27	52
SC6	460.97	30
SC7	496.64	48
SC8	419.91	37
SC9	1356.29	67
SC10	2587.03	45
SC11	2199.82	90
SC12	3331.42	80

Table 1. Aggregate size, in acres, and total number of individual non-tidal wetland polygons for each identified continuous non-tidal and non-riverine wetland block, over 400 acres in aggregate size.

Comments on Circulated Report Recommendations

Andrew Manus, WAC member
August 13, 2014

General Comments: I have read the entire submissions by Chris Bason on 7/22; Marty Ross on 7/24 and Mark Biddle on behalf of DNREC on 7/25 and included my specific comments for the record below (I will provide an electronic version to Karen Garrison so that the comments be included in the meeting minutes and made available to all members and public). It remains my understanding that DWAC's efforts and in particular the recommendations to be included in the final report are to be those items that will require action by the Delaware General Assembly.

- If my understanding is correct, of the above three submissions the only one that meets that criterion is the one submitted by Marty on behalf of the Farm Bureau.

The other two submissions though laudable do not require any legislative action by the General Assembly to be implemented. If DNREC and the Markell Administration were so inclined, they could move forward with all of the recommendations outlined by Chris Bason and Mark Biddle.

- I recommend that all new recommendations supported by the DWAC for inclusion in the final report should be formatted in the same manner as the Forestlands Preservation and Conservation Tax Credits programs. Specifically each recommendation should clearly describe the goal/purpose; major program components; actions required to implement; performance measures; and a fiscal note.

I am not adverse to the Secretary's final DWAC report including recommendations that may not need legislative action. That said it would be useful for those executive branch recommendations, included in the Secretary's final report, to detail how they will be undertaken and who will be accountable for the implementation. Recommendations structured in this manner will help improve agency performance and increase public confidence as the Markell administration moves to fulfill its commitment to develop a comprehensive program for non-tidal wetland conservation.

- Currently DNREC's recommendations appear incomplete and do not include several major components needed in a comprehensive state wetlands program as articulated by Governor Markell in his letter of April 02, 2014 to the DWAC committee members.

Specific Comments (bolded):

Center for the Inland Bays, Chris Bason

1. Request a new Executive Order on Freshwater Wetlands. **This can be done without legislative action. If this recommendation is included in the Secretary's final report to the General Assembly a proposed draft of the executive order should be included in the report.**

2. Update State wetlands regulatory maps and include those freshwater wetlands that meet the definition established in the 1973 Wetlands Act. DNREC's wetlands regulatory maps have not been updated for approximately 25 years. **This recommendation and the analysis provided needs to be reviewed by DNREC and a written response provided to CIB and DWAC regarding its accuracy. If the analysis is correct, DNREC needs to provide a strategy and timeline detailing how the agency will come into compliance with its statutory authority. This strategy should then be included in the Secretary's final report to the General Assembly.**

3. Utilize Clean Water Act (CWA) Section 401 certification authority to help reverse losses of wetlands in watersheds with waters that do not meet State Water Quality Standards and in watersheds having waters with Exceptional Ecological and Recreational Significance (ERES) designations. Under section 401 of the CWA, a federal agency cannot issue a permit for an activity that may result in a discharge to waters of the US until the State has granted or waived certification. Given the inability of so many of the State's waters to meet water quality standards for nutrients and dissolved oxygen and given the aforementioned rates of wetlands loss, DNREC has justification to develop and implement a certification process for all permits in watersheds with waters that do not meet water quality standards and in watersheds having ERES waters. **Over the past 15 years this recommendation has been proposed several times by the Environmental Law Institute and others for implementation by DNREC. DNREC has the authority to develop water quality standards for non-tidal wetlands and EPA has grant funding available that would assist in completing this task. Again, this is another recommendation that does not require action by the General Assembly. To get to the heart of the matter on this recommendation, I suggest the question be asked of the Governor: "Given your concerns about the State's water quality and the need for a comprehensive program for the protection of the state's non-tidal wetlands will you direct DNREC to move forward with an open and public process to develop water quality standards for non-tidal wetlands as provided for under the Section 401 of the Clean Water Act?"**

4. Utilize the Policies for ERES Waters in the State Water Quality Standards to reduce impacts to wetlands. ERES Waters policies require the following for Waters of the State, of which freshwater wetlands are included by definition. **Same comment as noted under item 2 above.**

Delaware Farm Bureau, Marty Ross

The Committee recommends that Title 30 Chapter 5426 be amended by making deletions as shown by strike through and insertions as shown by underline as follows;

§ 5426 Farmland Preservation Fund receipt transfer.

~~On or before October 15 of each fiscal year, the State shall transfer \$10 million in receipts received under Chapter 54 of this title, to the Farmland Preservation Fund maintained under Chapter 9 of Title 3.~~ Notwithstanding any law, code, ordinance, or regulation to the contrary, the Foundation shall be entitled to adopt and impose procedures and requirements under Title 29 chapter 101 to collect Fifteen million dollars from the respective county receiver of taxes, treasurer or director of finance as the Foundation's share of the Real Estate Transfer tax under Title 30 Chapter 54 and shall when collected and after deduction of the seven and a half percent administration charge, be transferred to the Foundation of which, ten million dollars will be allocated for Agland Preservation and five million dollars for Forestry Preservation for use in carrying out Title 3 Chapter 9.

Synopsis

Current law provides for the mandatory transfer of \$10 million annually from the Division of Revenue for the use by the foundation. The recommendation would require the foundation to adopt and impose procedures for the direct transfer of monies collected under the Real Estate Transfer tax, change the amount to \$15 million dollars, allocate \$10 million to farmland preservation and \$5 million dollars to forestland preservation.

This recommendation requires action by the General Assembly and I support it in concept. It would be useful to see the actual annual revenues generated by the real estate transfer tax since 2008 to present; how the funds were used and the state programs they supported; and the actual real estate transfer dollars that were used to support the Agland Preservation Program. This would help farmers and conservationists better understand the Governor's and General Assembly's budget priorities.

The Committee recommends that bi-annual meetings be held by the Ag. Preservation Foundation, Forest Preservation Foundation, Open Space Council and pertinent Federal agencies to identify opportunities for coordination and efficient use of funds.

I support increased coordination and collaboration among the various state land acquisition programs provided it is done in an open and transparent way. If efficiency is going to be used as a way to allocate limited public land acquisition funds, it would be useful to have those performance measures specified.

DNREC, as submitted by Mark Biddle

Coordinate state and federal wetlands protection responsibilities.

Coordination between DNREC's tidal wetland agency personnel and their federal agency counter-parts was clearly evident during our DWAC deliberations. What was lacking was coordination and collaboration by DNREC's watershed assessment group with other state agencies and federal regulators. This is an area that is in need of improvement. It does not require any legislative action by the General Assembly.

Develop a wetland fee in-lieu program.

If this is deemed a priority by DNREC, it may require legislative action by the General Assembly. If pursued, a work-plan should be developed that clearly describes the goal/purpose of this initiative; its major program components; those actions required to implement such a program; performance measures; and a fiscal note. The lead person/DNREC section who/that will be accountable for this deliverable should also be specified.

Use outreach and education to increase wetland stewardship and protection.

How will this be undertaken? What has been DNREC's success to date in this area?

Develop a state wetland delineator training program and delineation registry.

How big of a DNREC priority should this task be given the Governor's vision for a non-tidal wetlands program outlined in his April 02, 2014 letter. Will this task in a substantial way move the needle in a measureable way that will add to the conservation and protection of non-tidal wetlands in Delaware?

Delaware Wetland Advisory Committee
DRAFT Final Report –September 2014
Comments and Observations by Andrew Manus 09/25/2014

Page 4: Previous Consideration of Freshwater Wetland Action – Missing under this section is any mention of the effort by the DAG’s Office. There is draft legislative that was authored by Deputy AG David Ormond that needs to be referenced here. Also it would be helpful to have included a link to the resource document that was provided to the Department that included a side-by-side comparison of past efforts. The Department was to add the Ormond effort to this comparison table.

Page 6-8: Regulation-based Proposals and Incentive-based Proposals – This section appears to be incomplete. Specifically:

- There is no mention of how Secretary Small will reconcile the path forward for DNREC with Governor Markell’s letter of April 02, 2014 and what he believes DNREC’s commitment is under SB 78.

- Missing is a discussion of the various administrative and regulatory mechanisms that were (still are) available to DNREC to provide conservation and protection for non-tidal wetlands in Delaware. Someone needs to cull through all the meeting minutes and make sure that those discussed by the DWAC are included. For example, will this history include a summary of recommendations included the various ELI reports contracted by DNREC and the *Protecting Delaware’s Natural Heritage: Tools for Biodiversity Conservation?*

- Division Director, Frank Piorko noted that he was to recommend to David [Secretary Small] that the Department has a responsibility to develop a multi- faceted wetlands strategy for conservation and protection of freshwater wetlands. *If the Committee recommendations are only a part of that and the final report to the general assembly reflects only those recommendations made by the Committee then so be it but I think we need to also include the reference to a more comprehensive approach of which this committee's recommendations are a piece. I will push for David to include a matrix of all strategies that the Department needs to undertake be developed either within or outside of the report to the GA with all of the accountability that you have suggested.*

Will the referenced matrix of all available strategies be included in this report (main body or appendix)?

- Observation regarding the above bullet: DNREC has been exploring and considering ways to protect and conserve non-tidal wetlands in Delaware for over 25 years. As a landowner, conservationist and taxpayer I want to know what DNREC is actually going to do and not do with respect to protecting and conserving non-tidal wetlands. I want to see in this final report specify programs, policies, legislation and regulations that DNREC intends to undertake. Further I want to see these initiatives stated in a way that allows the various affected public to track the agency's performance on this issue.
- Will the final report which is the responsibility of DNREC and Secretary Small to draft and submit be endorsed by DELDOT and DDA given their membership on DWAC?

Online Links

- [WAC Website](#)
- [SB78](#)
- [Meeting Presentations](#)
- [Meeting Notes](#)
- [Previously Referenced Background Information Reports](#)