

**Wetlands Advisory Committee Meeting**  
**Meeting Notes-Final**  
**January 8, 2014**  
(Approved February 11, 2014)

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**Agenda Items (Action Items are bulleted under the Agenda Items):**

1. Welcome and Announcements
  - *Committee members may still chose to join the 'Carrot' Committee*
  - *The Delaware Wetlands Conference is being held on January 30, 2014 at Dover Downs. Committee members and their alternates should contact Maggie Pletta for registration waivers.*
  - *Feb. 12<sup>th</sup>, Mar. 12<sup>th</sup>, and April 9<sup>th</sup> have been discussed as dates for future meeting. Correction: February 12 has been rescheduled to February 11.*
2. Presentation on Current State Wetlands and Waters Program Overview by Virgil Holmes of DNREC, Division of Water
3. Presentation on History, Requirements, and Opportunities for Restoration in Delaware's Tax Ditch Program by Frank Piorko of DNREC, Division of Watershed Stewardship
4. Committee Discussion of Wetland Definitions
  - *The committee voted in favor of a motion to use the federal definition of wetlands as regionally applied for the sake of discussions moving forward.*
5. Committee Roundtable Discussion on Future Directions of the Committee
  - *Next meeting, DNREC staff will present on isolated wetland habitats in Delaware*
  - *Next meeting, the Carrot Committee will present either an interim report or a final report to the committee*
6. Public Comments

**Materials Distributed:**

1. Agenda
2. Handout- summary table of tax ditch regulations and permitting requirements from Frank Piorko

**Welcome and Announcements**

- Mike Parkowski (Co-Chairman) called the meeting to order at 9:10 AM. He made four announcements:
  - Andy Manus and Jayme Arthurs (NRCS) would be chairing the "Carrot Committee". The purpose of the Carrot Committee is to review landowner incentives for engaging in behaviors that are beneficial from a wetlands standpoint. Mr. Parkowski reminded the committee that there is still time to join this committee. He noted that one of the things the Wetlands Advisory Committee was initially tasked with was to look for ways to use incentives as a means of protecting and enhancing freshwater wetlands, so he asked that the Carrot Committee plan on presenting their findings and recommendations to the Wetland Advisory Committee so that consideration of incentives can proceed.

- The Delaware Wetlands Conference is being held on January 30, 2014 at Dover Downs. Committee members that are interested in attending are advised to contact Maggie Pletta (DNREC, Div. of Watershed Assessment). Committee members and their alternates will be granted waived registration fees.
- Dates (Feb. 12<sup>th</sup> (now 11<sup>th</sup>), Mar. 12<sup>th</sup>, and April 9<sup>th</sup>) have been set for future meetings. Mr. Parkowski asked Frank Piorko (DNREC, Division of Watershed Stewardship) to send out an email to committee members regarding these dates.
- Meeting notes from last meeting (12/11/13) are not in a completed form. Committee members still have time to make comments on the draft form of the notes to Mr. Piorko.
- Mr. Parkowski remarked that today's meeting was designed to give the committee members an idea of how Delaware currently manages tidal wetlands and subaqueous lands, and how tax ditches function in Delaware, since this has been a topic of discussion in past meetings. Mr. Parkowski then welcomed Virgil Holmes (DNREC, Division of Water) to present on the state's current permitting process regarding tidal wetlands and subaqueous lands.

**Presentation on Current State Wetlands and Waters Program Overview by Virgil Holmes of DNREC, Division of Water**

- Mr. Holmes gave a presentation on Current State Wetlands and Waters Program Overview:
  - Mr. Holmes began by outlining the staff DNREC currently has in their tidal wetlands and subaqueous water program:
    - 1 section manager
    - 1 program manager
    - 2 administrative assistants
    - 5.5 scientists
  - Delaware regulates tidal waters up to the mean high water line, and in non-tidal waters, regulation extends to the ordinary high water line.
  - In practice, state jurisdiction in non-tidal streams typically includes perennial waters, which are streams that are always flowing, and intermittent water courses. Typically, the state does not take jurisdiction over any ephemeral streams or ditches or intermittent agricultural ditches. Mr. Holmes commented that he wanted to address that the slide of tax ditches used by Marty Ross (Delaware Farm Bureau) at the last committee meeting was not a representation of how the subaqueous program regulates water bodies.
  - Delaware mapped tidal wetlands in 1973 and again in 1988, and those maps are the limitations of Delaware's jurisdiction over tidal wetlands of the state. Delaware currently doesn't have any jurisdiction over non-tidal wetlands of the state. There is a provision that allows wetlands over 400 acres that are not used for agriculture to be mapped, but no areas under that category have been mapped. Mr. Holmes addressed this provision specifically because he wanted to demonstrate to the committee that in the regulatory process Delaware looks at existing uses, which is why there's the caveat not to regulate any of those over 400 acre areas that are being used for agriculture. There are some mapped impounded tidal wetland areas that are also mapped as jurisdictional if they were tidal waters within the last century.
  - The way Delaware currently regulates tidal wetlands is different from the federal approach because Delaware uses mapped tidal wetlands whereas the federal program is entirely dependent upon field verification using the 1987 Wetland Delineation Manual.

- Mr. Holmes remarked that this can be confusing for landowners when a landowner possesses lands that fall under both state and federal jurisdiction. He referenced an email he received from a landowner in the past that read “Can you please help me understand why the wetlands delineation indicates the area is within tidal wetlands, but is not considered to be within the state regulated tidal wetlands?” He remarked that this is a common issue, and that the committee’s recommendations could potentially help to resolve it, because if the state had jurisdiction over federal (field delineated) wetlands, the state could serve as a “one stop shop” for applicants with lands under joint jurisdiction.
- Mr. Holmes reviewed several approaches the state currently takes to make the permit application process run more smoothly for applicants:
    - Currently the state has two state programmatic general permits:
      - SPGP 18 is used for activities in artificial tidal lagoons
      - SPGP 20 is used for construction on and maintenance of existing structures.
    - Delaware also uses a nationwide permit process, so some of the activities Delaware permits also are permitted by the Corps through the nationwide permits. Every 5 years, Delaware reviews the nationwide permits proposed by the US Army Corps of Engineers from a water quality perspective. The state goes through those permits and determines which ones are unlikely to have an impact on the state’s water quality and issues a blanket waiver for those activities. This process helps to reduce duplication because if the applicant receives a permit from the US Army Corps of Engineers, they will automatically receive the state’s authorization for water quality.
    - Delaware holds joint permitting processing meetings with the US Army Corps of Engineers and other resource agencies once a month. Applicants can come before these groups and receive guidance on their projects with respect to what permitting needs they may or may not have.
    - Delaware performs joint enforcement actions with the US Army Corps of Engineers and the US EPA. Even though Delaware does not regulate non tidal wetlands of the state, the state frequently receives calls about non tidal wetlands and ends up responding to the situations. Mr. Holmes remarked that Delaware has some interest from the regulatory side of having a non-tidal wetland program, because the state is already taking calls regarding non-tidal wetlands and responding. It would be more expedient to be able to handle non-tidal regulation in house rather than forward it to the US Army Corps of Engineers.
    - Delaware has a letter of authorization process. Generally, if you were to come to the state for a permit, the project would be put on public notice for 20 days of public review. However, for common procedures like repair of docks and piers, the state has something called an SAA. The SAA is pre-published. Essentially, the state has determined that for minimal activities, decisions can be made without going to public notice on that specific project, which allows the project to move at a much more rapid pace (within 2 weeks for a permit). Delaware currently has SAA’s in place for repair of existing structures, activities in tidal lagoons, and shoreline stabilization (added in 2013).
    - To expedite the permitting process, Delaware also has waivers that allow for life threatening emergencies, public safety, and loss of infrastructure. These waivers

had previously existed in subaqueous land regulation, but they were added to wetlands regulations in 2013. Mr. Holmes remarked that these waivers were useful dealing with the damage caused by Hurricane Sandy.

- Delaware has special exemptions, many of which are targeted towards agriculture. There are exemptions in place that allow for maintenance activities to occur in areas that have watersheds less than 800 acres. Exemptions also exist for activities that occur under the guidance of the state and other agencies.
- Lastly, Mr. Holmes noted that Delaware has added the ability to do after the fact permitting and the ability to apply administrative penalties this year. Administrative penalties help make the process easier because in the past, violations would typically end up as civil or criminal actions. Administrative penalties help expedite violations to closure, rather than going through a lengthier criminal or civil process that costs the state and violator unnecessary money.
- Mr. Holmes closed his presentation by giving the committee an idea of his background as the person who is in charge of implementation of the state's wetlands regulation program. He stated that he has been a wetland scientist for 30 years. He worked for DNREC from 1985 to 1990, left to go into private consulting, and returned to DNREC about 2 years ago. During his time as a private consultant, he owned his own business where he obtained permits from the US Army Corps of Engineers and most states east of the Mississippi River. He is also a landowner and owns 438 acre farm which is tilled as an income property. Mr. Holmes also uses the land for timber, and remarked that committee member Brian Michalski's (Delaware Forestry Association) company has harvested his land for timber in the past. He stated it was important to him that the committee understands that he's not just an individual from DNREC looking to promote a new program, but that he's also someone who will be regulated by this program, and it's important to him that the program makes sense and works efficiently. He closed with telling the committee that he has sat on both sides of the regulatory fence and understands what is at stake at these meetings.
- A copy of this presentation can be found [online](#).
- Mr. Parkowski stated that a common concern is that in the process of regulating wetlands, the regulations could stretch or go beyond the scope of the statute. Mr. Parkowski asked if Mr. Holmes, as someone who is on both sides of the fence, has any observations or philosophies relating to that issue. Porter Schutt (Co-Chairman) asked what in Mr. Holmes' opinion was broken about the current system of wetland regulation in Delaware.
- Mr. Holmes responded that Sen. Hocker has told him, "I want what you implement to reflect clearly what we authorized." Mr. Holmes conceded that there have probably been some cases in DNREC and other states he's worked in where authority might have been stretched, and he thinks the places where that can occur is the implementation of internal policies. Mr. Holmes remarked that when he began his current position with DNREC, he had a conversation with the Secretary and Deputy Secretary in which he stated that he had concerns looking at the program, where he felt the Department needed some efficiencies and may have overreached. The Secretary and Deputy Secretary said that they wanted those issues to be cleared up. Referring to what is broken about the current system, Mr. Holmes stated that the US Army Corps of Engineers is currently doing a great job with the resources they have, but the problem is that resources are limited. He also mentioned that with recent court decisions, there is now currently no ability to protect some of Delaware's more unique wetland resources, such as the Delmarva Bays, and

other isolated areas. Mr. Holmes clarified that these areas aren't under attack from development, agriculture, or other industries, but they are a resource that currently doesn't have any protection.

- Chris Bason (Center for the Inland Bays) stated he was more concerned that Delaware might be underreaching on what the laws say the state should do to protect wetlands. Mr. Bason asked why efforts have not been made to map wetland areas greater than 400 acres not used by agriculture that could be afforded protection under the Wetlands Act of 1973. He also asked if wetlands are waters of the state, how Delaware works with ERES (Exceptional Recreational or Ecological Significance) waters that include wetland areas. He stated that he had particular interest in that because the Inland Bays are ERES waters and it's been difficult to clean them up.
- Mr. Holmes responded that Delaware's limitation is that outside of the wetlands maps, the state doesn't have jurisdiction, so Mr. Bason's concerns would have to go to the US Army Corps of Engineers. Regarding under-mapping, Mr. Holmes stated that he was gone from DNREC for 23 years, so he wasn't sure what decisions were made not to map. He stated that the areas of more than 400 acres not currently used for agriculture was most likely targeted at the Cyprus Swamps in Sussex County.
- Mr. Bason responded that it'd be interesting to have those areas mapped. He wasn't sure off the top of his head, if there would be other areas other than Cyprus swamps that would be over 400 acres, but he remarked that it could be possible. Mr. Holmes responded that it was possible, but if there were any of these areas, there would be very few of them.
- Brenna Goggin (Delaware Nature Society) referenced Mr. Holmes' assertion that the US Army Corps of Engineers does a good job with limited resources, and asked if in Mr. Holmes' experience with other states that have a joint permitting process, if he thought Delaware and the US Army Corps of Engineers could benefit from that type of program, or if he thought another type of program would be more appropriate, and what that type of program might look like.
- Mr. Schutt asked how Mr. Holmes would suggest Delaware end confusion of applicants when moving through Delaware's permitting process. Mr. Holmes responded that Delaware taking on permitting of non-tidal wetlands would go a long way towards accomplishing that goal, because applicants could go to one place and know they can get all their permitting answers at that one location. For example, currently a landowner could have tidal wetlands on their property that are under state jurisdiction as defined by the tidal wetland maps, but there may be in many cases, wetlands that extend further inland that are under federal jurisdiction, so a landowner might think they've gone through all the proper channels by just having permits for the wetlands under state jurisdiction, but be unknowingly in violation of the US Army Corps of Engineers. The state having jurisdiction of non-tidal wetlands could help end this confusion.
- Sen. Robert Venables commented that regulations hurt economic development and asked when DNREC was going to stop introducing more regulations. He asked why, with all the of regulations that are currently in place in freshwater wetlands, would more power be needed by DNREC? Sen. Venables mentioned that what he was afraid of related to a meeting he went to last night in Bethel. At that meeting, a new regulation put forth by DNREC that requires high tech septic systems within 1000 feet of any tidal water was discussed. Sen. Venables noted that most freshwater wetlands drain into tidal wetlands, he stated that it was just a matter of time until someone from DNREC expands this regulation to include all wetlands. Sen. Venables stressed that he felt that people in Delaware were already regulated enough, and if DNREC has a freshwater wetlands program, there will be even more regulation. He stated he'd rather see the problems we have with the US Army Corps of Engineers and DNREC as they are right now rather than DNREC assume a freshwater wetlands program and make it worse.

- Mr. Holmes responded with an example of what he would currently experience as a landowner. On his property he has areas under state jurisdiction and areas under federal jurisdiction, so he would have to go to 2 different agencies to get decisions or permits, which is more cumbersome. He doesn't see the current situation as DNREC trying to grab more than what the US Army Corps currently has jurisdiction over now. The one difference Mr. Holmes identified between the current US Army Corps of Engineers permitting process, and what Delaware could do under a freshwater wetland program was protection of unique isolated wetland areas that the Corps currently does not protect.
- Sen. Venables countered that the committee has seen examples in which DNREC has classified wetlands that an ordinary person would not think are wetlands. He stated that the committee has heard testimony here that basically all wooded areas now are considered wetlands. He stressed that he doesn't consider them wetlands, and that he thinks DNREC has already overstepped what it regulates. Mr. Holmes clarified that prior recent wetland mapping efforts performed by Mark Biddle and his team are being done across the country to track general wetlands gains and losses. These mapping efforts would not be used as tools to implement a program in Delaware, in Mr. Holmes' opinion. Delaware would use the 1987 Wetland Delineation Manual that the US Army Corps of Engineers uses, so determining areas of jurisdiction would remain the same. Sen. Venables followed up with his comments at the December meeting that DNREC has already overstepped what the US Army Corps of Engineers would consider a wetland. He expressed his confusion at this situation, and referenced past maps that showed wetland loss in Delaware in areas that were not considered wetlands during US Army Corps delineations. Mr. Holmes responded that he was confused by those maps as well, and remarked that his section is part of the implementation and regulation side of DNREC, and did not generate those maps. The science part of DNREC that includes Mark Biddle's group is where the mapping took place, and those maps are used as a general overview and don't have the ability to do on the ground regulatory work, which would have to be done in the field. Mr. Holmes reiterated that the maps concerned him as well, because he knows wetland delineation very well as a wetland scientist, and those maps are not correct on his property.
- Chip West (Delaware Farm Bureau) stated, that even though Mr. Holmes said the maps won't be used in any regulatory capacity, it would still be possible for them to become a part of legislation that is passed. Mr. West expressed skepticism about the federal government giving up power, which he feared would lead to double regulation if Delaware had a freshwater wetland program. He stated that he agreed with Sen. Venables and that the US EPA and US Army Corps of Engineers are not going to go away. Mr. Holmes responded that these federal agencies won't go away, but applicants would only have to come to the state agency, as he demonstrated for the SPGP permits.
- Mr. Parkowski reflected on prior discussions that Mr. West had missed in which Edward Bonner (US Army Corps of Engineers) explained how other states have been able to deal with the federal permitting process, and opportunity for a form of delegation, but he agreed with Mr. West that this process was not easy because the federal agencies don't like giving up jurisdiction, but it has happened in other states. Mr. Parkowski also wanted to clarify the distinction between wetlands that have been claimed to be lost in mapping studies and how that relates to the federal definition of wetlands. Mr. Parkowski stressed that this reported loss hasn't been described as a loss of federal wetlands, and mentioned that the committee would have to further discuss how it wants to define wetlands moving forward, which he hoped would help resolve what Sen. Venables and Mr. West are concerned about. Mr. Parkowski remarked that he agrees with Mr.

West and Sen. Venables that it is a concern because the reports state we're losing these planning mapped areas which don't correspond to things that are regulated on the federal level, which creates a discrepancy. Mr. Parkowski offered that he thinks what Sen. Venables is saying is this discrepancy shouldn't be the pretext or justification for making major changes.

- Andy Manus asked if the state were to take over a freshwater wetlands program, what such a program would entail with respect to staffing. Mr. Manus stated that he'd like to see this information in two different ways: in terms of new positions and in terms of repurposing existing positions within the Department to make such a program work. Mr. Holmes responded that he could undertake this task.
- Josh Littleton (City of Seaford, League of Local Governments) stated that one of the major aspects of this committee is to try and streamline the process of permitting. He asked Mr. Holmes to outline the timeline of getting permits for some minimal activity that would require permits on a portion of his own land that is under joint jurisdiction and what the cost of doing so would be to him as a landowner. Mr. Holmes responded by referencing an excerpt from a letter he received from a consultant who does a lot of work in Delaware, which read, "I've had several challenging projects this past year, all of which were resolved in a fair and respectful manner to the satisfaction of my clients and myself, for which I'd like to express my appreciation. The 12 applications I've submitted since July of this year have all been processed within 60 days or less. The review process has become much more streamlined and efficient." Mr. Holmes offered anyone present the opportunity to review the letter if they so wished, and stressed that his program has been all about streamlining the process, and their target is to try to get everything done within 60 days or less. Mr. Holmes continued that at the federal level, the timeline has similar constraints to DNREC in terms of how much staffing is available. He commented that he's heard stories of it taking a year to get a permit. Mr. Holmes stated that a typical price for a permit is about \$250, and asked Mr. Bonner what federal permits cost.
- Mr. Bonner responded that the fee for the federal permits was almost a waste of time. Nationwide permits have no fee, the fee spent would be the time and money you spend on a consultant to develop the drawings. Individual projects that are private and non-commercial have a \$10 fee, and individual projects that are commercial cost \$100. Mr. Bonner referenced an effort back in the early 80's during the Reagan administration, of pursuing the user fee issue. One aspect of that effort was to fashion the program fee to match the size of the project; however, this proposal never gained any traction. Mr. Bonner commented that one of the recommendations he'd make is to have Mr. Holmes' staff trained such that you could ask them that question, "Is there a wetland on my property and where exactly is it?" This would mean applicants wouldn't have to wait for the US Army Corps of Engineers to make that decision. For clarification, Mr. Littleton asked if these hypothetical trained state employees would have the same standards as when the US Army Corps of Engineers assesses a property. Mr. Bonner responded that with very slight variations of a few feet, it should be the same answer, generally. Mr. Bonner also spoke in reference to the mapping effort performed by DNREC to track wetlands loss, stating that in many cases areas that were mapped as lost wetlands, aren't currently wetlands, but would have existed as wetlands in prior centuries before extensive drainage programs in the state. He stated that regulatory programs are only concerned with what areas are currently wetlands, regardless of their hydrological history. Mr. Holmes followed up, this comment stating that it would not make sense to him or anyone else at the state to use any technique other than the 1987 Wetland Delineation Manual to delineate wetlands for regulation.

- Mr. Parkowski commented that further discussion on drainage in the state could commence after Mr. Piorko gives his presentation. Mr. Parkowski asked that Mr. Holmes present to the committee on the kinds of resources that would be required for Delaware to assume delegation of the federal program if the committee starts moving towards the notion of a takeover or delegation of the federal program at future meetings. Mr. Parkowski also highlighted that getting permits is not always an easy matter because of the inherent costs of hiring consultants to perform wetland delineations.
- Phil McGinnis (Delaware Association of Realtors) asked about what kinds of penalties Delaware can currently impose in tidal wetlands and who determines what those penalties should be. Mr. Holmes responded that it is a complex process involving a matrix to identify the amount of a penalty. Variables include, but aren't limited to ability to pay, how egregious the violation was, and whether the violator is a repeat offender. Mr. McGinnis asked if the penalties are only fines or if the violators have to restore wetlands and/or remove structures. Mr. Holmes responded that in the past, DNREC would work out some kind of agreement with the property owner, and a typical agreement may result in removal of a structure that was placed without a permit and restoration of that area; however, now DNREC has the ability to allow property owners to keep the structure after paying for a permit and paying a fee as a result of after the fact permitting. Mr. Holmes commented that this is not a money making venture for the state, the fees are used to cover the costs of taking actions to address violations. He referenced a current action the state is involved with that has cost \$10,000 just to have a court reporter present during the discussions.
- Mr. Parkowski suggested that the committee take a 10 minute break and then reconvene. He asked Mr. Piorko who would be presenting next to keep his presentation short to allow for committee discussion later in the meeting. (Break began at 9:57 AM)

**Presentation on History, Requirements, and Opportunities for Restoration in Delaware's Tax Ditch Program by Frank Piorko of DNREC, Division of Watershed Stewardship**

- Mr. Parkowski called the meeting back to order at 10:09 AM.
- Frank Piorko (DNREC, Division of Watershed Stewardship) gave a presentation on History, Requirements, and Opportunities for Restoration in Delaware's Tax Ditch Program:
  - Mr. Piorko thanked Tom Barthelmeh (DNREC, Div. of Watershed Stewardship) for his help in providing pictures and information for the presentation. He also commented that although his presentation was 60 slides long, it was predominantly pictures and assured the committee he would move quickly through it. He also thanked Brooks Cahall, a program manager at DNREC for helping to put the presentation together.
  - Mr. Piorko referenced a handout he had distributed at the beginning of the meeting which contained information about permits and exemptions as they relate to tax ditches.
  - Mr. Piorko then asked if there was anyone present who was in a tax ditch watershed, to which several individuals in attendance raised their hands. He then asked if anyone in the room had a tax ditch right of way (ROW) on their property, to which several individuals responded they did. Last he asked if anyone was a tax ditch officer, and some individuals were. This exercise was done to demonstrate how pervasive the tax ditch system is in DE.
  - Tax ditch organizations (TDOs) are formed on a watershed basis to construct and maintain a water management system, and those organizations are managed by the officers elected by those who are taxed on these systems.

- Title 7, Chapter 41 in the Delaware Code in 1951, last revised in 2008 deals with ROW issues that relate to drainage of land and management of water in tax ditches. The law declares that that drainage and prevention of flooding in the lands and management of water for resource conservation shall be considered a public benefit, and conducive to public health, safety, and welfare.
- Very early definitive legislative actions authorizing public drainage facilities go back to 1793. In Delaware, drainage activities are undertaken by the federal and state government. Some drainage work in DE was completed by the Civilian Conservation Corps in the 1930's, which predates the Tax Ditch Law of 1951.
- The Tax Ditch Law of 1951 created TDOs and mandated that DNREC and conservation districts assist the TDOs in planning, construction, and maintenance of tax ditches. Mr. Piorko wanted to correct an assertion made in the meeting last [month] that tax ditches were initiated by the government, and informed the committee that TDOs are not initiated by the government. TDOs are initiated by a group of landowners in an area that are affected and need assistance, and the process begins by a petition that is submitted by the landowners to the board of supervisors at the conservation districts. After a petition is submitted the, a tax ditch commission will generate a report about the necessity of a tax ditch in the affected area and how to go about planning a tax ditch. DNREC then takes the petition, planning order, and commissioner's report and moves it through a legal process that ends with a court order allowing the construction of a tax ditch. Mr. Piorko then showed the committee pictures of areas that experience flooding that currently have submitted tax ditch petitions. One picture was of Hudson Road in Lewes, which was just approved for a tax ditch by the Superior Court. This tax ditch was going to include a natural wetland that would remain as a part of the ditch. This example demonstrated the possibilities for tax ditches that are very different from the straight line tax ditches that were constructed in the past.
- TDOs can levy taxes to provide minor maintenance (not reconstruction) and make and execute contracts. DNREC assists TDOs technically and administratively. Maintenance activities include controlling woody vegetation, mowing, and applying herbicides, dip outs, and removal of obstructions such as beavers and beaver dams. More intensive maintenance such as dip outs and spreading of accumulated sediment occur every 10 to 20 years.
- New Castle County has about 26 TDOs, Kent County has about 78 TDOs, and Sussex County has about 136 TDOs. Tax ditches across the state total over 2,000 miles in length and provide benefit to over 37,662 land parcels (about 1/3 of the state's land area). Over 15,000 parcels have a tax ditch ROW. Tax ditches provide benefits to almost 1/2 of all state maintained roads. Additionally, 71% of Delaware's tax ditches are located in the Chesapeake Bay watershed.
- Tax ditches exist on state, federal, and private lands. When the tax ditch and tax ditch ROW are on private property that area belongs to the landowner, so DNREC is very careful to work with the landowner and respect their rights to the property. Landowners are always notified before DNREC does any work on a tax ditch.
- Some tax ditch documents are very old, and they're all different but they all show how the tax ditch was planned relating to the ROW limits. In some cases, there is an area for disposal that is different from a ROW, which has led to a lot of confusion. This confusion led to a Tax Ditch Right-of-Way Task Force that convened in 2007. This effort was led

- by Sen. Gerald Hocker, Rep. Pamela Thornburg, George Carey, and others. This effort identified problems with types of tax ditch right-of-ways (ROWs), how tax ditch ROWs were recorded, and identified problems with landowner rights and structures that need to be resolved. As a result of this effort, the law was changed to reflect recordation in the Recorder of Deeds Office, three tiers of tax ditch ROW widths were established, tax ditch ROWs were reduced for thousands of parcels, and permanent obstructions that were in the reduced tax ditch ROWs were grandfathered.
- State Subaqueous Lands exemption and Federal Permit exemptions hasten the permitting process for working on tax ditch projects.
  - There is a tax ditch BMP (Best Management Practices) manual and BMPs are always employed.
  - Methodology of tax ditch design was done originally by NRCS and, with the exception of a few tax ditches in New Castle County, the tax ditches were designed to remove excess runoff from agricultural fields. Most tax ditches in the coastal plain will come out of bank at somewhere between a 2 to 5 year storm event, so the purpose of tax ditches is not to convey huge quantities of water. Tax ditches are meant to provide an outlet for excess run-off.
  - Tom Barthelmeh has been very active over the past 10-15 years in working with landowners to take tax ditches and provide restoration efforts. These projects always start with outreach from the landowner to DNREC or NRCS requesting assistance with the tax ditch. He then showed the committee pictures of several projects that involved restoration.
  - Projects that are done in urban areas are more for control and stabilization. Since most of these projects are done outside of the coastal plain, they generally have greater permitting requirements. These complex projects can take 1 to 2 years to obtain a permit.
  - Mr. Piorko closed his presentation with a conversation he and Mr. Holmes had where they reflected that DNREC might need to better collaborate with consultants and landowners to make them aware of possibilities for restoration and construction rather than immediately pulling out a rule book and finding potential roadblocks that could exist for a particular project.
    - A copy of this presentation can be found [online](#).
  - Paul Morrill (Committee of 100) asked if projects involving restoration of tax ditches could be used for offsets in the storm water program. Mr. Piorko responded that they are not currently, but they absolutely could be.
  - Mr. Morrill then asked about the source of funding for a new tax ditch on Hudson Road in Lewes. Mr. Piorko responded that it was currently uncertain, but the Harrington tax ditch was joint funded by a bond bill and 21<sup>st</sup> Century. Mr. Piorko also reflected that using the offset provision for storm water for restoration and enhancement activities could be a beneficial approach in the future.
  - Mr. Manus asked Mr. Piorko to summarize a take-home message for the committee of his presentation in two declarative sentences. Mr Piorko responded that DNREC is not trying to force landowners in doing anything with their tax ditch ROW that they're not choosing to do, and that there are unlimited opportunities with those tax ditches and ROWs for restoration and ecological improvements. Mr. Parkowski suggested that Mr. Piorko meet with the Carrot Committee to discuss some of the benefits that are derived from the tax ditch program in terms

of drainage, and to see if incentives can be developed to encourage landowners to do restoration activities in tax ditch areas.

- George Haggerty (New Castle County Planning) asked if there is a maintenance program that is established when a tax ditch is constructed. Mr. Piorko responded that the establishment of tax ditch ROWs serves to ensure that future maintenance takes place. TDOs levy taxes are delivered by the county to fund maintenance activities.
- Mr. Haggerty then asked Mr. Piorko if any evaluations were performed to look at how tax ditches change the hydrology of surrounding areas, and specifically, how changes in hydrology may impact the value of those areas. Mr. Piorko asked Mr. Barthelmeh if he knew of any instances of tax ditch projects negatively impacting the hydrology of surrounding farms. Mr. Barthelmeh responded that historically, drainage of agricultural lands has been beneficial to the stability of the agricultural world. He also added that the Division of Fish and Wildlife recently completed a successful drainage project on one of their farms. Mr. Piorko commented that controlled inlets and berms help to maintain the prior hydrology of surrounding areas.
- Mr. Morrill asked for more details about the permitting process. He asked if the federal permits would be from the US Army Corps of Engineers. Mr. Piorko responded that the federal permits would come from the US Army Corps of Engineers if the project wasn't exempt, especially if structures that weren't farming structures were involved. Mr. Cahall added that most of the permits from the US Army Corps of Engineers are nationwide permits. He added that one of the most recently completed tax ditches in Harrington required an individual permit. Jim McCulley (Home Builders Association of Delaware) asked if Mr. Piorko knew the approximate number of nationwide permits that are obtained by the state in a year and the overall average acreage impact. Mr. Piorko was not sure of the number, but mentioned he could ask staff at DNREC.

### **Committee Discussion on Wetland Definitions**

- Mr. Parkowski thanked Mr. Piorko for his presentation. He told the committee that the premier question they are dealing with currently is, "What is it we're trying to protect?" The answer is "freshwater wetlands", but Mr. Parkowski referenced differences in defining freshwater wetland areas between the field methodology the US Army Corps of Engineers uses and the planning level study conducted by DNREC using aerial photography and soil maps. Mr. Parkowski wanted to see if the committee had some consensus to the definition of freshwater wetlands, so that going forward the committee would know that everyone is speaking the same language when they refer to freshwater wetlands. Mr. Parkowski stated that he'd like to ultimately move answering this question to a motion and a vote on whether or not the committee is considering the federal wetland definition for the purpose its discussions and considerations moving forward. He then opened up the floor for questions from the committee.
- Mr. Bason asked exactly what Mr. Parkowski meant by adopting the federal definition of wetlands. Specifically, Mr. Bason was concerned that adopting this definition would mean excluding isolated wetlands, such as the Delmarva Bays, since the US Army Corps does not currently have jurisdiction over those areas. Mr. Parkowski responded that at this point in the conversation, he is not referring to inclusions or exclusions. Mr. Parkowski clarified that adopting the federal definition of a wetland for the purpose of discussion would mean an area would be considered a wetland only if it would be delineated as such using the 1987 Wetland Delineation Manual published and used by the US Army Corps of Engineers.
- Mr. McCulley added that along with the 1987 Wetland Delineation Manual, there were regional supplements that have been adopted, two of which (Piedmont and Coastal Plains) are used in

Delaware. He also mentioned that hydric soils criteria change frequently along with the list of national wetland plants. Mr. Parkowski remarked that he didn't want to get too into the weeds and nuances of the issue, and clarified that for the generic definition used a federal wetlands could be sufficient for the sake of conversation. He then asked if any committee members felt that the committee should consider something other than the federal definition of wetlands. When no committee members responded, Mr. Parkowski remarked that he wanted to entertain a motion that the committee uses a federal definition of a wetland for the purpose of discussions moving forward.

- Mr. Haggerty made the motion, and Mr. McCulley seconded it.
- Mr. Bason interjected that after Mr. McCulley's statement about the regional supplements to the 1987 Wetland Delineation Manual, it would make more sense to use the definition of a wetland as defined in those regional supplement documents. Mr. Parkowski asked if Mr. Bason would want to amend the motion to be adopting the federal definition as applicable to our region. Mr. Bason agreed that this amendment addressed his concern. Both Mr. Haggerty and Mr. McCulley supported the amendment to the motion. Mr. Parkowski asked if there were any comments on the motion as amended.
- Mr. Morrill asked for clarification if the committee were taking into account that the federal definition will be amended from time to time. Mr. Parkowski responded that the vote on this motion will not be a final decision on action from the committee. The purpose of this vote will be to narrow the scope of the committee's discussions moving forward and it won't have any impact of the final recommendation that come out of the process. Mr. Bonner added that it's important that the definition the committee decides on is generic enough to give the flexibility to change along with federal program methods as they change.
- Mr. Parkowski stated that he wanted to put this all in context. He stated that the committee has been asked to come up with recommendations regarding a number of different things pertaining to wetlands. He commented that the committee spent a good deal of time getting on the same channel in having a discussion regarding wetlands. He reminded the committee that they don't have the ability to implement anything, and that the committee's job was to give the legislature recommendations. Mr. Parkowski felt that the amendment to make the definition regional was useful; however, he cautioned the committee about getting too far into talking about changes to something that may never be adopted. He asked if any committee members had further input on the motion. When no committee members offered more opinions he asked that everyone who was in favor of utilizing the federal definition of wetlands as regionally applied to raise their hands. Mr. Parkowski then asked Mr. Piorko to count the hands. Any other comments? What I'd like to do is call for a vote. Frank? If you could do the favor of counting hands. All those in favor of utilizing the federal three prong definition as regionally applied, raise your hands.
- The motion passed with 21 committee members voting in favor.

### **Committee Roundtable Discussion on Future Directions of the Committee**

- Mr. Parkowski stated that he wanted the committee to have a broader interaction with itself as to what each committee member felt the committee should focus on and what they wanted to come out of the process. Mr. Parkowski wanted to go around the table and have each member present speak. He asked that the legislators speak at the end, since they are the ultimate decision makers in this process.

- George Haggerty (New Castle County Planning) stated that the important thing for the committee to do is to determine whether or not the resource was worth protecting at the time of encroachment on the resources. It is also important to determine how you're going to determine the resource, which Mr. Haggerty felt was addressed in the committee's prior vote on wetland definition. Mr. Haggerty stated that he was in favor of reduction of regulation, but stated he felt it was important to consider that there are many different ways wetlands are being encroached on, specifically by development, agriculture, and forestry. Mr. Haggerty stated that in development they protect wetlands at 100% and either don't encroach on them or mitigate their encroachment, but mentioned that development is protecting wetlands for a defined purpose. He further explained that if he were regulating for agriculture, he might be looking at the resource differently. He closed by stating that there could be some degrees of separation for the protection of resources depending on what they are, or what the encroachment is on the resource.
- Leslie Merriken (DE Forestry Association) stated that the DE Forestry Association goes to great lengths to protect the environment with the forestry permitting process they go through. During a timber harvest, they are always replanting to be sustainable. She stated that the entire process for dealing with permits in wetland areas needed to be simplified. The current system that requires landowners deal with both state and federal agencies needs to be made simpler so the general public can better understand the process. Mr. Parkowski asked if Ms. Merriken would support the delegation of certain aspects of the federal program to the state level. Ms. Merriken responded that she just wanted to see everyone on the same page, instead of someone needing to go to multiple agencies, so she affirmed that she would support such an approach.
- Phil McGinnis (Delaware Association of Realtors) stated he felt that the committee has to identify the inefficiencies in the current process so that wetlands can be more effectively managed at the least possible cost without interfering on private property rights.
- Alex Schmidt (Council of Engineering Companies) agreed that the committee should work on determining if there's a more effective way to do permitting at the state level. He mentioned that having to go to two agencies is something him and his clients and colleagues are used to. Mr. Schmidt also referenced the time constraints he currently experiences, mentioning that he has had federal permit applications that have taken years to come back. He questioned if doing things at the state level would increase the speed of permitting; he also questioned if proper resources would be allocated to DNREC to add personnel to allow for delegation of aspects of the federal program. Mr. Schmidt also added that the committee needed to identify if there are any existing resources that are critical resources that need protection such as the Delmarva Bays and intertidal swales. He closed by stating that it wouldn't be fair to impact farmers and foresters for something that the state sees as a benefit, but harms their business.
- Josh Littleton (City of Seaford, League of Local Govts.) stated that one of his concerns regarding enforcement of regulation was the duplication of permitting. He mentioned that no matter what the state decides to do, they will still be subject to federal regulation. He stated he felt it was important to streamline the federal permitting process. He questioned how the state could be any better at streamlining the process. He also expressed concern about delegating to DNREC, fearing that over time the regulations could grow legs and change into something that they weren't initially meant to be.
- Mr. Parkowski stated that Mr. Littleton's concern was a valid point, and the committee would have to be cognizant of what the future might bring and at the same time take into account that legislation could get some genuine efficiencies and resources available.

- Paul Morrill (Committee of 100) stated that from a developmental standpoint, the key is protecting the resource. He mentioned that he was placing a lot of hope in the Carrot Committee's suggestions. He stated that the less that needs to be done to protect wetlands with regulations, the better. He's not opposed to the idea of Delaware being delegated aspects of the federal program, but he's skeptical of whether or not Delaware can do things more efficiently at the state level. He's looking mostly for non-regulatory ways to protect wetlands.
- Jim McCulley (Home Builders Association of Delaware) stated that in order to best protect wetlands, he feels that there has to be some incentive for private property owners to preserve wetlands. The more valuable the resource is, the bigger the incentive needs to be. He mentioned that he's outlined a program and given that program to the Carrot Committee. Mr. McCulley stated that home builders are content with the process as it is now, because they know how to navigate the program as it stands and rely mostly on nationwide permits or avoid wetlands. Mr. McCulley also stated that the biggest hold up his clients experience in getting nationwide permits is waiting on a response from DNREC's Heritage Department, explaining that it could take months and months to get a response which is supposed to arrive within 30 days. Mr. Schutt asked Mr. McCulley to elaborate on the Heritage Department. Mr. McCulley responded that the Heritage Department has to respond to any nationwide permit along with other agencies such as SHPO, State Historic Preservation, Fish and Wildlife, and the US EPA. Heritage deals with rare species and critical habitats. He closed by saying it doesn't look good for DNREC to claim that they can streamline the process, and then be responsible for 3+ month delays on decisions that are supposed to arrive within 30 days.
- Andy Manus (Land Conservationist) expressed that he'd like to see this group chart a path forward that illustrates the best way to conserve, protect, and manage Delaware's remaining non-tidal wetlands. He clarified that this needs to be a balanced approach that considers regulation, but also has a land owner incentive piece that emphasizes compensating private landowners for restoration and stewardship if the habitat needs to be conserved.
- David Hugg (Town of Smyrna – League of Local Governments) expressed that he'd like to see a permitting process that is efficient and easily understandable. He stated that he was concerned about the objectives of communities as they grow being restricted. He mentioned that communities that have intensive land uses are going to conflict with some environmental standards.
- Terry Fulmer (DelDOT) stated that DelDOT currently follows the US Army Corps of Engineers' process and completes many permits, and anything that was done to make the process simpler would be better. She mentioned that lowering the penalty threshold currently set by the US Army Corps of Engineers would be very helpful for DelDOT because mitigation is time consuming and expensive. Ms. Fulmer supported the idea of a in lieu fee for wetland mitigation. For example, DNREC could manage a wetland mitigation bank so that applicants could pay in, so rather than DelDOT or another applicant going out and creating wetlands to compensate for impacts, they could contribute to something that could be used to develop a project that would be of greater environmental value to the state.
- Bob Walls (Farm Services Agency) stated that the process needed to be streamlined. He also stated that he felt using maps to determine wetlands was inappropriate and the only way to accurately determine if an area is wetland is to do a field wetland delineation.
- Edward Bonner (US Army Corps of Engineers) remarked that there's been a shift in public opinion since he started at the US Army Corps of Engineers 34 years ago. Currently, people value wetland resources more. Mr. Bonner stated that attitude should be fostered through

landowner incentives. He also referenced the very complex process the US Army Corps of Engineers has to engage in to determine if a wetland is federally regulated because of court decisions. Mr. Schutt asked Mr. Bonner what he thought of Delaware assuming aspects of the federal program as a citizen. Mr. Bonner responded that he wasn't a citizen of Delaware, but speaking generally, the value of any increased state program is the autonomy; it gives the state greater latitude to dictate for itself where it wants the program to go, as opposed to the federal government dictating it to the state. Mr. Schutt responded that he was having a hard time trying to understand how Delaware can affect the hiring of more personnel to help the US Army Corps of Engineers and was skeptical of whether it would be possible.

- Mr. Parkowski stated that he and Mr. Schutt as chairmen are the rudders on the committee, and remarked that it would probably be best for him and Mr. Schutt to observe the proceedings and withhold their opinions at this point.
- Sally Kepfer (NRCS) stated that her purpose on the committee was to make the committee members aware of NRCS programs and how NRCS protects wetlands, restores wetlands and has incentive programs for wetlands.
- Mike Valenti (Department of Agriculture) stated that his department views agriculture and forest lands as working lands that provide many benefits for the public. For agriculture, that benefit is obvious, but for forestry land provides timber, paper and pulp products, clean air, clean water, and habitat for wildlife. 50% of the population of the US gets drinking water that was filtered by a forest. He reminded the committee that agriculture and forestry landowners have adapted to new practices to protect the environment over the years. He referenced integrated pest management of the 1970's, no-till practices, cover crops, and more recently, nutrient management plans. He stressed that landowners have a willingness to work without regulations to improve environmental conditions and to preserve the land. He closed that his department was looking for collaborative efforts with minimal regulations that is incentive based.
- Frank Piorko (DNREC, Division of Watershed Stewardship) observed that he noticed a pattern indicating that the Carrot Committee is going to hold some of the keys to the committee's future success. He stated that he thought incentives and mitigation that can take place with non-profit organizations, conservation organizations, and private landowners far surpasses the government's ability to knock on people's doors and say "We're the government; we want to help you" and get the job done. He stated he was highly anticipating what comes out of this committee's effort in terms of what might be the right mix to try something new. He hoped that Delaware is small enough that they can try something new and make it succeed.
- Mary Ellen Gray (Kent County Division of Planning) remarked that the goal of the committee is to recommend a comprehensive approach for improving non-tidal wetland conservation, restoration, and education in the state. She stated that she thinks the committee needs to assess whether it makes sense to regulate isolated wetlands. Ms. Gray also expressed support of Ms. Fulmer's ideas regarding the committee looking into mitigation strategies.
- Hal Godwin (Sussex County Planning) stated that he was on the committee to represent the broad interests of the Sussex County Council's interests which include agriculture and balance of regulation and how it applies to Sussex County. He remarked that he's on the committee mostly as ears and to vote on issues that represent Sussex County's direction.
- Chip West (Delaware Farm Bureau) stated that the main thing the committee needed to be concerned about was private property rights, and the incentive to do the right thing. He referenced several individuals he knew personally who were voluntarily undertaking restoration projects. He cautioned the committee not to overreach on regulations, because landowners will

get angry feeling like regulations are being forced on them and won't cooperate. He urged the committee to remember that many wetlands are on working lands and if farmers can't till that land, and foresters can't do forestry with all the BMPs they have in place, then the chances Delaware is able to preserve those wetlands are going to be very slim.

- Sarah Cooksey (DNREC, Coastal Programs) stated that she did not want to regulate prior converted wetlands and destroy forests or other important habitats in the process of protecting wetlands. She also stated she didn't want to exacerbate flooding in the state. She expressed interest in streamlining the permitting process and protecting the unique wetlands Delaware has left such as the Delmarva Bays, Atlantic White Cedar Swamps, and interdunal swales. She'd like to accomplish these goals through an incentive-based volunteering program with restoration and willing landowners.
- Chris Bason (Center for the Inland Bays) stated that the purpose of the Center of the Inland Bays is to oversee the restoration of the Inland Bays, and accomplishes that through their management plans. One of the actions in that management plan is to reverse the decline of wetland loss in the Inland Bays watershed. He specified that a report has documented a loss of 1000 acres of natural wetlands in the Inland Bays watershed. Mr. Parkowski asked Mr. Bason if he was referring to federally regulated wetlands or a different type of wetland. Mr. Bason responded that he was referring to a planning level study that was done by the Division of Fish and Wildlife. Mr. Parkowski advised Mr. Bason that the planning level study would not address the federal definition of wetlands that the committee had agreed on. Mr. Bason clarified that he was making his statement based on what was in the report. Mr. Parkowski responded that Mr. Bason's statement was an accurate statement as to what's in the report, but stated for the purpose of clarification that the report was talking about the hydric soil wetlands as opposed to federally regulated wetlands. Mr. Parkowski stated that preventing any loss of federally regulated wetland is an important issue, and remarked that he wasn't disagreeing with Mr. Bason. Mr. Parkowski encouraged Mr. Bason to continue.  
Mr. Bason remarked that he was in line with the definition the committee decided on, and that he was using the report to back up the fact that in the Inland Bays watershed, there is some of the highest level of nutrient inputs to creeks in the region. He further explained that the Inland Bays tend to be very polluted and wetlands reduce nitrogen, which is one of the many reasons why the Center for the Inland Bays is interested in stopping the loss of wetlands. Mr. Bason expressed that what he'd like to see come out of the committee is a recommendation for designated funding sources for wetland restoration, and planning for wetland restoration. He thought that if the committee could be creative in finding some sources to designate to wetland restoration, maybe through the state's revolving fund, that Delaware could do a lot more and really scale up what Mr. Piorko was showing with restoring floodplain wetlands. Mr. Bason remarked that what Secretary O'Mara said at the first meeting about incentives and the opportunity to put the economic value of the services of wetlands into that was inspiring, and thought that the committee should take his challenge on that. Mr. Bason also expressed that the state should be protecting isolated wetlands that were previously federally protected, and lost protection. Finally, Mr. Bason remarked that the committee should examine the existing state laws and regulations that are on the books to determine if they are being implemented. Those laws would include the Wetland Act of 1973 and then the ERES provision of the state water quality standards.
- Brenna Goggin (Delaware Nature Society) stated that citizens of Delaware are already paying as taxpayers for the filling of wetlands, flooding mediation, and bad land use decisions that have been made about where to build or where not to build in the form of additional waste water

facilities, homes going under, and bailing out homeowners. She stated that this is a cost of wetland loss that hasn't been discussed by the committee yet. She also remarked that the committee should consider that if DNREC's role with the wetland program increases, then adequate resources need to be provided to DNREC to support that program. She referenced Mr. McCulley's statement about the long processing time of DNREC's Heritage Department, stating that they have 1.5 people to review all of those applications that come in, and stressed that 1.5 people not an adequate resource. She suggested instead of cutting DNREC's resources and expecting them to do more, their funding needs to be in line with the legislature's and the citizens' expectations for what they think that needs to be accomplished. She countered the idea that protecting wetlands doesn't have a lot of value and it presents a lot of consequences by referencing the value that wetlands play, not only as a revenue source for our growing tourism industry, but also as a cultural resource for a way of life that we want to continue for future generations.

- Sen. Robert Venables (Delaware Senate) stated that most of the things he's heard he has agreed with. He further explained that he would like to see wetlands protected, and would be interested in ways that the committee could more easily accomplish that goal. However, he stressed that it was important to not intrude on private property rights. He expressed that he wanted to see something come out of this committee that he could stand up on the floor of the Senate and support. He remarked that after listening to everyone around the table he thinks that the committee can come up with something that he'll be able to stand up and support. He expressed an interest in making the permitting process less burdensome, and expressed a concern about making sure the definition of a wetland is clearly set and reflects what most people would consider to be a wetland.
- Rep. Dave Wilson (Delaware House of Representatives) stated that the issue he gets the most phone calls on is the permitting process from start to finish. He remarked that agencies will give timelines of several weeks, but he gets phone calls from landowners that have been waiting for months to years. He commended farmers for their efforts to work with the Department of Agriculture on Nutrient Management, and felt that the process for wetland permitting needs to be streamlined and move quicker. He expressed that he sees a lot of funding going to DNREC already, and doesn't know how DNREC can streamline the process. However, he would like to see the permitting process be less cumbersome to his constituents.
- Sen. Gerald Hocker (Delaware Senate) remarked that the first words he wrote down for his notes were "streamline the process". He indicated that he agreed with both Sen. Venables and Rep. Wilson's comments. He wanted to talk to the committee as a business man and a legislator. Sen. Hocker informed the committee that he and his wife were going into their 43<sup>rd</sup> year of being in business, and that they saw the state as being entirely overregulated with regard to business and farming. He stressed that Delaware needs to make sure that farmers are still able to farm, and know what the right definition of wetlands should be. He referenced a situation of a farmer calling him because he wanted to take out a corner of woods to allow an irrigation system to make a full swing, and DNREC not allowing it because the woods were considered wetlands. He stressed that this is overregulation. As a business person, Sen. Hocker stated that the environmental benefits to him had to outweigh the costs. He stated that DE is the only state in the nation not showing signs of recovery from the recession and stated that overregulation was to blame.
- Mr. Parkowski thanked all the committee members for their input. He stated that he'd like to start narrowing the committee's focus at each meeting on more specific issues, and see if there is

a consensus. He reflected that a common theme seems to be a desire to simplify the permitting process, but that people are very skeptical of what DNREC might do with the permit programs with respect to specific areas of individual property rights. Mr. Parkowski also noted that several comments were related to isolated wetlands such as Delmarva Bays, and asked Mr. Piorko if someone from DNREC could present to the committee on Delmarva Bays and other isolated wetlands that DNREC thinks are areas that should be protected. Mr. Parkowski also asked that the Carrot Committee either present an interim or final report on their findings, so the committee can be brought up to speed on potential landowner incentive programs. Mr. Parkowski also stated that at the next meeting he was planning on giving the committee a delineation of what he thinks the legislature is asking the committee to do with specific, so everyone has a framework of knowing what the committee is supposed to be doing at the end of this process. Mr. Parkowski then opened the floor to public comments.

### **Public Comments**

- Jim Baxter addressed the committee:
  - He informed the committee that he was a farmer and had been farming since he was 15 years old. To demonstrate his history as a farmer, he told the committee a story about a corn growing contest he won in 1940. He reflected on the cruelty of the leaders of Germany during World War II, and noted that the first thing they did was eliminate small business. He commented that due to the Soviet Union taking over land resources, farms didn't exist in Russia, but people were able to grow their own produce on ½ acre plots, and that was the only place in the landscape that looked inviting.
  - Mr. Jim Baxter told the committee that when freedom is taken away from the people they know how to handle it. He implored the committee to look at the situation in the United States today, where people who work for companies may have to have blood tests, whereas a person who receives federal aid such as food stamps has no such requirements. He stressed that the way the federal government does things is not necessarily the best way things can be done.
  - To give an example of a successful way to approach a problem, Mr. Jim Baxter told the committee a story of how he was able to successfully work with a mule on his father's farm by being kind to the animal.
  - Mr. Jim Baxter noted that Delaware has lost 70,000 acres of farmland. He asked the committee what the year 2050 meant to them. Mr. Manus replied that this was the year the world population is expected to reach 9 billion people. Mr. Jim Baxter further elaborated that 9 billion people are going to need food at that point, and they will need to be fed.
  - Mr. Baxter expressed that he agreed with Sen. Venables that landowners don't need 1,000 page regulations and referenced Patient Protection and Affordable Care Act (ObamaCare) as an example of such. He expressed his disagreement with a representative's quote that legislation can be passed now and the details worked out later. Mr. Baxter stated he felt like this was a stupid way to run a business in the legislature. He stated that he didn't like federal regulation because he remembers what they said about Hitler, that he destroyed Germany.
  - Mr. Baxter stressed to the committee that they needed to find some way to make the regulations reasonable. He expressed his frustration that when he wanted to clear a 20

- acre parcel of his farm that only had shrub growth on it because trees wouldn't grow, he was denied the ability to develop that land because aerial photography had indicated it was a wetland. Mr. Baxter also reflected on the successes of the Nutrient Management group that included Mr. Chip West (present on the committee). He stated that the success of this program could serve as a template for how to get things done while still being fair to and protecting landowners.
- Mr. Baxter remarked that farmers don't put too much chemicals on their land because it is expensive and because they ultimately have to drink the water that comes from under their farmland. Mr. Baxter expressed that this year was too wet (in terms of precipitation) for his farm to have good corn production, but he knew farmers in VA who had good years for corn. However, he stressed it was important that the committee not violate the man that owns land, but help him to do in the extent that he can live, and you can live. He expressed concern that the US could have an issue with feeding people if farmland continues to be lost. He urged the committee that they needed to take care to cultivate the nation to make sure their grandchildren had access to adequate food supplies.
  - Mr. Parkowski thanked Mr. Jim Baxter for his comment and asked if anyone else from the public had input.
  - Jay Baxter IV addressed the committee:
    - Mr. Jay Baxter introduced himself as the grandson of Mr. Jim Baxter.
    - Mr. Jay Baxter commended the committee on their decision to use the federal definition of wetlands as regionally applied for the sake of discussion, because he believed that the way wetlands are defined for planning purposes was not accurate in assessing wetland loss in Delaware.
    - Mr. Jay Baxter then asked the committee how many tax ditches in Delaware are underfunded. Mr. Piorko asked Mr. Jay Baxter how he defined underfunded. Mr. Jay Baxter responded that underfunded meant the infrastructure is not able to be improved upon because there is not funding to do it. Mr. Piorko responded that most tax ditches would fall under that definition. Mr. Jay Baxter expressed concern about where the funding for regulation enforcement would come from if Delaware can't fund its own tax ditches. Mr. Jay Baxter noted that he understood that tax ditches are funded through taxes, but expressed that as a conservative landowner he didn't want to raise his own taxes. He encouraged the committee to try to find a way to fund the efforts, and expressed hope that the Carrot Committee could think of some creative ways, but remarked that there would need to be a whole lot of carrots.
    - Mr. Jay Baxter expressed a concern about the definitions of wetlands changing at the federal level, which might have unforeseen consequences on state regulations. He encouraged the committee to keep their definitions broad that most people could accept.
  - Mr. Manus expressed that he was also heartened by how the committee took on the motion to define wetlands. He informed the committee that back in 1989 in the roundtable report, the same motion that passed today passed then. He disagreed with Mr. Bonner's assertion that conversations about wetlands would have been different in the 1980's. Mr. Manus remarked that based on the similar response to how wetlands should be defined in 1989 compared to 2014, he feels that professionals in the future will also be rational in their approach to the definition of wetlands. Mr. Parkowski quipped that the committee has proven that they can reinvent the wheel.

- Mr. Jay Baxter reiterated his gratitude to the committee for voting to use the federal definition of wetlands in their discussions. He reiterated that concern was in the future aspects that contribute to defining wetlands such as the national wetlands plant list are subject to change, and have changed recently. He worried that these changes could have impacts on the definition as it was discussed today. Mr. Parkowski responded that the committee will have opportunities to go into more details. He noted that the time was now 12:00 and wanted to move the meeting towards a conclusion. He expressed to Mr. Jay Baxter that his points were well taken and invited Mr. Jay Baxter to share his thoughts with the committee at every opportunity he wish and asked if Mr. Jay Baxter could summarize his thoughts from today’s meeting. Mr. Jay Baxter responded that he’d like to thank the committee and encouraged them to keep up the good work.
- Sen. Hocker wanted to leave the committee with one thought. He commented that he was fortunate to serve with the former Representative George Cary, and heard him describe his definition of wetlands several times. Rep. Cary commented that wetlands are defined on whether a duck can swim or if he has to walk.
- Pam Bakerian commented that there are many trade organizations similar to the Delaware Farm Bureau of which Ms. Bakerian is executive director. She wanted the committee to keep in mind that as they go to voting, representatives from trade organizations will need policy to take back to their boards. Mr. Parkowski responded that for people who wanted to go back and report to their organizations on next meeting’s content, the committee will be hearing a presentation by DNREC on isolated wetlands and will get a final or interim report from the carrot committee.

**Attendees: Bolded names were present**

Name	Agency
<b>Chris Bason</b>	Center for the Inland Bays
<b>Edward Bonner</b>	U.S. Army Corps of Engineers
<b>Sarah Cooksey</b>	DNREC – Coastal Programs
<b>Mark Davis (Mike Valenti alternate)</b>	Dept. of Agriculture
Tim Deschepper	Town of Middletown – LLG
<b>Hal Godwin</b>	Sussex County Planning
<b>Brenna Goggin</b>	Delaware Nature Society
<b>Mary Ellen Gray</b>	Division of Planning – Kent County
<b>George Haggerty</b>	New Castle County Planning
Rep. Debra Heffernan	Delaware House of Representatives
<b>Sen. Gerald Hocker</b>	Delaware Senate
<b>David Hugg</b>	Town Hall (Smyrna) -- LLG
<b>Sally Kepfer</b>	Natural Resource Conservation Service
<b>Josh Littleton</b>	City of Seaford – League of Local Govts.
<b>Andy Manus</b>	Land Conservationist
<b>Robert McCleary (Terry Fulmer alternate)</b>	DelDOT

<b>Jim McCulley</b>	Home Builders Association of Delaware
<b>Phil McGinnis</b>	Delaware Association of Realtors
<b>Brian Michalski (Leslie Merriken alternate)</b>	Delaware Forestry Association
<b>Paul Morrill</b>	Committee of 100
<b>Michael Parkowski</b>	Delaware Bar Association
<b>Frank Piorko</b>	DNREC – Watershed Stewardship
<b>Marty Ross (Chip West alternate)</b>	Delaware Farm Bureau
<b>Alex Schmidt</b>	Council of Engineering Companies
<b>Porter Schutt</b>	The Conservation Fund/Open Space Council
<b>Sen. Robert Venables</b>	Delaware Senate
<b>Bob Walls</b>	Farm Services Agency
<b>Rep. Dave Wilson</b>	Delaware House of Representatives

In addition, 19 members of the public were in attendance.