

Wetlands Advisory Committee Meeting

Meeting Notes-Final

February 11, 2014

(Approved April 9, 2014)

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

1. Welcome and Announcements
2. Review and acceptance of the January meeting notes
 - a. *Accepted December and January meeting notes*
3. Presentation on the Framework for a non-tidal wetlands program in Delaware by Virgil Holmes, DNREC Wetlands and Subaqueous Lands Section
4. Presentation on Unique Non-tidal freshwater wetlands in Delaware by Bill McAvoy, DNREC Heritage Program
5. Presentation on Landowner incentives subcommittee report by Andy Manus
6. Committee discussion of future direction and actions
7. Public Comments

Materials Distributed:

1. Agenda
2. Landowner incentive program handout from Andy Manus

Welcome and Announcements

- Mike Parkowski (Co-Chairman) called the meeting to order at 9:04 AM. He made 2 announcements:
 - Mr. Parkowski announced a change in order of the agenda, starting with Bill McAvoy's presentation, followed by Virgil Holmes. He noted that the committee has been successful in agreeing on a definition of wetlands by the 3 criteria and now needs to move on to consider if there are wetlands that aren't covered by the federal program and what we should do about them.

Review and acceptance of the meeting notes:

- Mike asked for comments on the meeting notes. Marty asked if the decision to accept the '87 manual, did that include the exemptions that are in the regulatory law itself? Mr. Parkowski responded that we have not gotten into where we say what is or is not included because we have not decided if there should be a permit program yet. The decision was just to recognize what is federally regulated as a wetland compared to everything else, not how it is applied. Our discussions will be in the context of federal wetlands by the 3 criteria test, not control measures. Upon no further comments Mr. Parkowski

entertained a motion to accept the January meeting notes. Motion was made and second. All were in favor, none in opposition. Marty Ross and Mike Valenti did not vote.

Presentation on Unique Non-tidal freshwater wetlands in Delaware by Bill McAvoy of DNREC, Division of Fish and Wildlife Heritage Program 9:10

- Bill introduced himself as a botanist with the Species Conservation and Research Program for nearly 25 years. Has spent considerable time studying the flora and plant communities of Delaware. Will focus his presentation on unique and nontidal wetlands. These were once known as 'Category 1' and considered a priority for conservation.
 - A few statistics to start: there are 1588 species of plants in Delaware; 45% of them are wetland plants, 88% of all wetland plants are found in nontidal wetlands making them biodiversity hotspots, supports the majority of our wetland flora and the animals associated with these plants; 38% of our nontidal wetland plants are rare; 61% of rare nontidal wetland plants occur in unique nontidal wetlands.
 - Unique nontidal wetlands include black ash seepage swamps, inner dune depression meadows, piedmont stream valley wetlands, peat land fens, bald cypress swamps, Atlantic white cedar swamps, and coastal plain seasonal ponds.
 - WMAP recently found that unique nontidal wetland cover about 10.5% of total nontidal wetland acreage in the state. They cover a small area. Mr. Parkowski clarified that the total acreage that Bill is working with is from the mapping exercise, not federal wetlands and estimated that there should be roughly 20,000 acres of unique wetlands.
 - Black ash seepage swamps: black ash trees are the dominant tree; found in headwaters of streams mostly in southern New Castle County into central Kent County; soils are rich in nutrients, are groundwater fed systems, seeps into these areas. Combination of soil and groundwater seepage results in unique ecological conditions which supports 11 rare plant species.
 - Inner dune depression meadows: develop in the back dune of our Atlantic coast; are small depressions influenced by groundwater and precipitation, usually flooded in the spring; meadows of grasses and sedges, support 20 rare plants, including many rare orchids.
 - Piedmont stream valley wetlands: develop in the piedmont of northern New Castle County; are groundwater fed systems. Phil McGinnis asked which of these photos are taken in private or state property? Bill noted that all known black ash seepage swamps are on private property. The inner dune depressions were on state property. Stream valley wetlands develop along corridors of stream valleys and associated ravines and valleys; are groundwater fed systems. Groundwater hits an impermeable layer and begins to flow laterally and seep out at base of slope and wetland develops. Photo from White Clay Creek SP. Hosts 19 rare plants including a globally rare sedge; buttercup; they support rare plants as well as animals- bog turtles which is listed as endangered by USFWS.
 - Peatland Fens: truly unique in Delaware and globally rare; fens have an input and output; groundwater is a major influence. All are found in Sussex County, many in the Inland Bay region

along the coast; support 39 rare plants as well as black duck and mallards. Delmarva alder is endemic to Delmarva peninsula- found nowhere else in the world.

- Bald cypress swamps: classic tree of the southeastern coastal plain, mostly in Sussex, few in southern Kent County, many in Laurel area, along James Branch, Trap Pond, Broad Creek. Develop along floodplains of groundwater streams. Photo of James Branch state nature preserve. Can find wood duck and hooded mergansers.
- Atlantic white cedar swamps: develop along floodplains of groundwater streams; mostly in Sussex County, Milford, Milton; no longer exist in NCCo and Kent CO.; host to 12 rare plant species and some carnivorous plants such as pitcher plants and sundews, and swamp pink which is endangered. Also host to Hessels' Hairstreak- globally rare butterfly, host plant is Atlantic white cedar.
- Coastal Plain Seasonal Ponds: CPSP are the most significant nontidal wetland resource; they 42 rare plants, many are globally rare, one listed as endangered by USFWS. Are also crucial breeding grounds for salamanders, frogs and toads. Open, shallow, seasonally-flooded depressions within forested areas. Influenced by groundwater areas. Flooded in winter and spring and are dry by late summer and fall. Not permanent bodies of water. Also called Delmarva Bays, whale wallows or Carolina Bays. On aerial photos they are dark with standing water. Aerial photos are taken in spring. Usually elliptical in shape with a sandy ring around the perimeter, typically less than an acre, often 0.1 acre in size and are usually in groups or found in isolation. The highest concentration is in southwest NCCo or northwestern Kent Co. Their ecology is driven by fluctuating groundwater levels. Begin to fill up in winter and can freeze, remain flooded into spring. As summer season progresses, precipitation decreases, the groundwater table drops and by late summer to early fall the ponds are dry, exposing bottom. After drawdown, there is an abundance of vegetative growth, and are attractive to deer. Even when dry, these ponds would still be delineated as a wetland because the groundwater is only a few inches below the surface. CPSP are mostly privately owned although many are state owned in Blackbird State Forest. Of all unique wetlands, CPSP make up more than any other type, not sure the exactly percentage.
- Question from the audience: if we had more control structures in the tax ditch system would they keep the groundwater high when they usually dry up? Bill responded that the hydrology of these areas are driven by fluctuating levels. A control structure would impact the hydrology. Mr. Schutt clarified that these don't have an input and output? Correct.
- Mr. Parkowski asked the audience to please hold your questions until end of presentation.
- Tree rings show that water was about 3' high in spring. Featherfoil is a good example as it is entirely dependent on fluctuating groundwater levels. Seeds germinate when ponds are dry in late summer or fall. Will overwinter in standing water. In spring when ponds flood a stem develops and grows to water surface where it flowers, seeds mature, fall and settle on the pond bottom and wait until the pond dries out and the cycle starts again. Other plants of CPSP: dwarf fimbry sedge-globally rare, yellow water crowfoot, Hirst brothers' panic grass-globally rare, and candidate species to be listed as endangered by USFWS. Also find wood ducks in CPSP. Crucial breeding grounds for salamanders, frogs and toads. Because they dry up seasonally they do not

- support fish which would eat the eggs. Carpenter frogs, spotted salamanders, Cope's gray tree frog, barking tree frog, and marbled salamanders. Salamanders spend the majority of their lives in the forests surrounding the ponds, only visiting ponds to lay eggs in the spring. Surrounding forests are very important to maintain the ponds by cleaning water, reduce spread and establishment of non-native, invasive species, and are very important groundwater recharge areas that can be used for irrigation and drinking.
- In closing, unique nontidal wetlands are hosts to rare plants and animals. Their unique components make them worthy of conservation. Hope this information has been helpful to make informed decisions.
 - A copy of his presentation can be found [online](#).
- Mr. Parkowski asked if all of these areas would fit the federal wetland delineation criteria. Yes. *MP*: We have direct wetlands, adjacent wetlands and isolated wetlands. How many of these would you describe as isolated? *BM*: CPSP are isolated, inner dunal depression meadows are isolated, rest are associated with rivers and streams. Mr. Parkowski asked DNREC to present the acreages of the unique wetland types and how we came up with these figures and how many are isolated. The report we prepare needs some quantification.
 - Andy Manus would like to know the acreage how many are protected by conservation organizations and by the state? Bill McAvoy commented that nearly 60% of unique wetlands are in private ownership.
 - Jim McCully asked what is the feel for how much upland land would need to be protected to maintain viability of these areas? Mr. McAvoy responded as much as you can, the more the better.
 - Mr. Parkowski asked have you discovered any of these areas that have been impacted by human related activities? Bill responded that sedimentation, groundwater contamination, groundwater pumping, salt water intrusion, and non-native invasive species are all issues. Mr. Parkowski would like to know if buffers would be necessary.
 - Paul Morrill asked if by isolated we mean those that are not now protected federally? Yes. *PM*: in the CPSP, impacts such as to the surrounding forests would require that the protection go beyond fill. Of these 20,000 unique acres, what have been the losses in the last 20 years? *BM*: Have lost quite a few, not sure how many. Ed Bonner commented that Delmarva bays are often very small and are hard to see until you are on it. Drainage ditches into or near a CPSP can have a significant impact on these. *MP*: has anyone successfully been permitted to fill one? Yes, because these are sometimes close to building sites. Delmarva bays are a weak point federally. You can't get an answer because the process is so long; some may have a headwater stream very close to them.
 - Marty noted we were trying to narrow the scope last month. He embraces voluntary means but regulatory measures come with a cost of impact that need to be considered. Mr. Parkowski noted that Jayme and Andy will give a report of the incentives program soon.
 - Andy followed-up on uniqueness, that during spring and fall migration these Delmarva Bays light up with migratory bays and surrounding forests.
 - Brenna asked Bill if these unique areas that are economic drivers; are people coming in to visit? Bill responded that visitors are mostly birding, not so many botanists. Most of these areas are unknown, infrequent on the landscape and rare.

- Alex Schmitt asked if any of these that are already protected because of a species, like a bog turtle? *BM*: only 2 plant species. Phil McGinnis clarified that if the species is protected by federal government, is the habitat protected because of presence of species? *BM*: Not necessarily, you can get a permit to disturb it but you need to demonstrate avoidance and minimization. Brenna further clarified that activity is permitted, not prohibited.
- How accurate is the GIS mapping to locate these unique features? Bill felt they are very accurate. Heritage mapped these areas were before WMAP did their mapping, we gave them our mapping. Mr. Parkowski would like a description of how they were quantified. *Alex*: If DNREC took ownership of these could we trust the mapping? *BM*: we have ground trothed the areas and mapped them and clarified that he proceeds with permission on private property which has left some unique wetlands unvisited.
- Tim: have you seen any species fall off because of the diminished wetlands? *BM*: Some species may have been delisted, but we have lost populations and they begin to become more rare. *Tim*: Have any turned around? *BM*: Yes we have delisted some by finding more populations.
- Question from the audience: What percent are degraded or not in pristine condition? Is there any value to going back and restoring them to what they were before? *BM*: There is a lot of restoration potential, particularly CPSP, because they have been disturbed, degraded, altered. Hydrology is 1st hurdle to restore the CPSP. Inner dunal depression meadows have been altered from *Phragmites*, salt water intrusion and groundwater pumping. Q: Can they be duplicated? *BM*: Very difficult b/c they are so complex. Q: Is there rulemaking on the horizon that may clarify which areas are under jurisdiction? *Ed*: Has been in process since 70's. EPA and Corps HQ are working on developing a new definition, capturing some of these areas. Is a very complicated process. You can affect these wetlands without ever going into them so the Corps has no regulatory authority over harmful activities.
- John Schneider followed-up on Paul's comments that it is more than protecting the wetland itself. If you have a sufficient forest buffer you will not need an irrigation well or a drinking water well. The drawdown of groundwater is a localized event. Groundwater rebounds so by protecting enough buffer you will be avoiding other problems (threats).
- Bob Walls asked if someone wants to timber an area how close can you get to one of these? *BM*: The wider the buffer the better, if you did a selective or clear cut it will recover in time and it's better than being paved.
- Marty Ross asked how do these impact the dredge and fill of navigable waters? *Ed*: biological, physical and chemical integrity of navigable waters to consider. Sedimentation does work its way down to affect biological conditions.
- Mike thanked Bill for an informative presentation and suggested we get a start on the next topic and follow that with a status report from the carrot committee.

Presentation on the Framework for a non-tidal wetlands program in Delaware by Virgil Holmes of DNREC, Division of Water, Wetlands and Subaqueous Lands Section 10:03

- Put together what a program of part regulatory and part incentives would look like. Program objectives would be to protect unique resources and provide incentives that share the cost of the protection and permitting that streamlines the process. We just saw Category 1 wetlands and the isolated types such as Coastal Plain Seasonal Ponds that are isolated would not be covered. Our goals would be to
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designate criteria to guide field-determinations for Category 1 wetlands and create maps for guidance, and develop a protection strategy that uses regulation and incentives.

- Streamlined permitting involves Category 1 and then Category 2 which are more common and less diverse in terms of plant and mammal communities; most are currently regulated because most are not isolated.
- Program goals expedite decisions on JD, expedite issuance of permits and reduce uncertainty of current and future regulatory jurisdiction. DNREC can provide some greater assurance. Also interested in developing an in-lieu fee program to allow payment for a wetland impact rather than doing mitigation themselves and provide mitigation banking.
- Regarding wetland delineations, DNREC would use the 1989 ACOE delineation manual.
- Two categories for Jurisdictional Determinations: in agricultural areas, JD's are currently made by NRCS on prior converted croplands and that would continue. JD's will not change if cropland is converted to another use. Once a decision is made by NRCS the state would stand behind it. In non-ag areas the current process would remain, an environmental consultant would be hired to do a delineation and DNREC would review delineations and make the JD, allowing DNREC to expedite the process.
- Steps to Obtain a Permit: Submit all applications to DNREC, DNREC would take over Nationwide Permits from the Corps through an SPGP (Statewide General Permit Program) for minor permits. DNREC would still forward applications requiring an Individual Permit to the Corps.
- Benefits to regulated community: One-stop shopping for 95% of applications, expedited permitting process, and reduce uncertainty by making some concessions in cropland areas and by protecting some isolated wetlands.
- Benefits to the wetland resources: interested in incentives to protect unique wetlands, regulations to protect unique wetlands, and through the incentives program gain higher valuation of wetlands.
- A copy of the presentation can be found [online](#).
- Sarah Cooksey commented that DNREC spent time going over this but have not have the benefit of the committee's thoughts.
- Brenna Goggin asked about the difference between Category 1 and 2. Do they both provide the same services for flooding mitigation and nutrient reduction? Virgil responded that it is more related to their topographic position and if development has been allowed the wetlands left provide higher relative benefit. Uplands provide some services as well.
- Phil McGinnis asked what the cost of this program would be. *VH*: Our current program is 8 individuals and current budget is \$750,000 and could see staying within that over again, depending on our level of involvement. Phil asked Dave Small if that \$750,000 of new dollars or redirected dollars? Dave responded that it could be either. DNREC wanted initial reaction and then we can do more work. *PM*: we need to be cognizant as we go down that road. Mr. Parkowski noted that a review of cost should be part of our review. Virgil did not think DNREC would exceed that.
- Frank Piorko asked if the committee wants to pursue this avenue, how do we approach the Corps? *Ed*: The decision would be made higher on the chain of command. It would not be an overnight process. In states where authority was transferred there was already a state program that the Corps could review

to see if the goals are attainable. Biggest issue is, is the program similar to the federal program in its goals? If so, we can step in and develop an SPGP. First step: what would the program look like?

- Mr. Parkowski commented that our round robin exercise clarified that the committee is looking for efficiency and reduction of duplication. Ed if you could get a hold of MOA's from other states for review?
- Brenna: Virgil, do you have examples of in-lieu fee program information that you can provide? Virgil: our tidal wetlands program is a good example and we would mirror off of that. Maryland is doing something similar that can be examined.
- Marty: the benefit of a state regulatory program would be a nationwide permitting process but from an agricultural and development stand point does feel that the current process is burdensome so what do you get other than a \$750,000 price tag? Mr. Parkowski commented that others who have been through the process can verify the time required to get through the process. Time waiting for delineation before permitting process even begins can take a lot. The idea of a one-stop shop is something to consider. We don't want to create another system on top of federal system. If we are considering something that can create efficiency and streamlining then it's worth exploring. *VH*: the \$750,000 figure reflects their current capacity. More than half of their program is supported by fees and he did not see exceeding that number. *MP*: Mitigation is part of this, even for NWP and can be a nightmare. In-lieu fee idea is good concept for efficiency and better use of money to take the money somewhere where it can go further. There is a lot involved in mitigation end that warrants review.
- Gary Warren: this group needs to understand the land use process on the local level, particularly in NCCo. Protects 100% of wetlands. The UDC calls for mandatory 50% open space set aside. Mike's mention of in-lieu fee program is good. Wetlands are usually included in the mandatory open space set aside. If you understand the local land use entities are doing, it goes above and beyond the state law.
- Mr. Parkowski noted that our county representatives are here and should be weighing in.
- Paul Morrill: any references for incentives for Category 2? *VH*: A discussion for Andy Manus to tackle. Category 1 is one piece, what do you we do with the rest is another piece. That's where we can be more user-friendly.
- Bill Moyer: why the 5% for IP's to the Corps, why not take over the whole thing? *Virgil*: not sure we are ready to take full assumption. Only 2 states have done that so there must be a reason. Bill: how palatable will the process for the 5% be compared to the 95% if we have the same problems?
- Venables: we set aside \$10 million for open space and \$10 million for farm land every year. Maybe we should concentrate on buying wetland property from the farmer or instead of planting trees and let the state regulate their own land. If 60% is privately owned, over a period of years the state could own that. Mike: Delaware ranks as a state with one of the highest with percentage of state owned property and the biggest criticism is that the state cannot take care of what they own because they don't get sufficient appropriations. Even something as simple as *Phragmites* control.
- Venables: some wetland properties are not worth more than how they are. A farmer would like sell the property and make money off of it. *MP*: it takes 2 to tango, need a willing seller and a willing buyer, sometimes the value isn't enough to make a deal. It's a complex question that is worth discussion.
- At 10:35 Mr. Parkowski suggested that the committee take a 10 minute break and then reconvene.

- Mr. Parkowski reconvened the meeting at 10:54 with a unanimous approval of the December minutes. He commented that we just had a good set of conversations and presentation regarding the flora and fauna of Category 1 wetlands and would like to get a sense from the committee if these are areas that we should try to protect. Would like to go around the room and hear from each committee member. Does the committee feel that this is an area where we would like to pursue?
 - Mary Ellen Gray: yes, makes sense to regulate isolated wetlands. Cost benefit analysis needs to be weighed out. Agrees with coordinating with the Corps, DNREC could be a clearing house for permitting, defer to Corps where the Corps has a program and not take over whole program.
 - Phil McGinnis: Sensitive wetland areas should be protected. Still working on how. Is still trying to get brain around different agencies that have some regulatory authority directly or indirectly. There has to be an inventory somewhere. There are a lot of regulations already in place especially regarding sensitive species. Withholds judgment until we can see a whole list of things and where or how they are being regulated. We may be putting more layers where we don't need to.
 - Mr. Parkowski interjected that you can go into a regulated wetland and cut everything, you just can't fill. There is no protection of vegetation. The protection that exists at the federal level isn't total and we need to appreciate that.
 - Bob Walls: there are some wetlands that really need to be protected but we don't need regulations on top of regulations. If it's working that's one thing, if it's not we need to do something. How many regulations are we going to have? Mr. Parkowski commented no one wants duplication unless there is consolidation. Mr. Walls added- where does the \$ come from, who is going to do it? Mr. Parkowski agreed that there will have to be a quantification if we go that way.
 - Paul Morrill: yes, these are unique wetlands that need to be protected. We need to afford more than against fill, beyond the federal program. Bumps it into the field of a strong incentive program or purchase rights to protect them properly.
 - Jim: Yes, Category 1 wetlands need protection. Need to protect more around them and that can only be done with an incentive program.
 - Frank: Agree with Jim, incentive programs needs to consider more than footprint of just wetlands. If we need to identify those footprints and it renders a parcel unusable we need to consider protecting the entire parcel. Mr. Parkowski added that next time DNREC quantify acreages of Category areas, losses of Category 1 wetlands that have occurred and perhaps account for buffers as well.
 - Andy: Agrees with everything so far. Category 1 wetlands need to be protected. It is impossible to say we can replace them if they are destroyed. It is cheaper to protect the ecological infrastructure.
 - Terry Fulmer: Category 1 wetlands are important and should be protected. Is important to distinguish from Category 1 and isolated wetlands. Roadside ditches and such are not unique biologically.

- Ed Bonner: there are limitations as to where the Corps can regulate and what we can regulate. We can supplement what the Corps does through regulations or owner incentives and outreach. Often times a review ends up with a NWP if we can educate people about the issues and how to get around them.
- Alex Schmitt: Unique wetlands should be protected whether they are currently protected or not keeping in mind that Corps regulations changes. Our program should cover them all. Like the buffer idea but is concerned buffers making a parcel undevelopable. Mr. Parkowski noted that it is an issue of control that we need to discuss. Right now our question is should they be protected.
- Josh Littleton: On the surface yes but with concern for actual location, concern for mapping, would these be further defined with boots on the ground, what has been delineated vs. aerial. Buffer topic will be big, to what extent do we protect them and how far does that reach? Are we getting into property rights issues and maybe overreach? Mr. Parkowski noted the concern over identifying mapped wetlands; they (DNREC) map them with property owner approval. Need to give people the opportunity to know what is happening with their land.
- Tim Deschepper: I deal with FEMA map approval and know to stay away from the floodplains. We have wetlands on our maps but we don't get materials like FEMA floodplains so the state should be very tight in language to sure up any holes that were found in the past.
- Mike Valenti: Supports incentive-based protection measures especially for sensitive habitats that Bill mentioned.
- Jayme: Agrees with Mike. Look at Category 1 and restoration of Category 2 also.
- Bill Jester: Incentive program could really address needs especially for the farming community. We are impacted differently by regulations. Need to get out the education part for how important these wetlands are, what they do and will supply to us. As we regulate them we need to also educate and make it a whole rounded issue.
- Hal Godwin: There is enough science and information here to convince the average person that they are important. Sussex Co has recognized that and has not been reckless. There are land use provision and policies that protect existing wetlands. I cannot give you a vote on if they should be regulated until Sussex county council tells me but everything they do gives support to individual private property rights. Mr. Parkowski commented that a lot of people are waiting to see what develops.
- Sarah: Yes, make an effort to protect.
- Brenna: Yes. We have an idea of a cost to set up a program, at least a maximum, but would like to consider what the state currently on an annual basis pays to mitigate flooding or clean up drinking water due to the loss of wetlands or if \$750,000 is a drop in the bucket. If we do not go the regulatory route, who will be liable should neighborhoods have to be bought out or homes go under or for contamination of drinking water. Would like clear ideas of who is liable for protection of landowners. Mr. Parkowski commented that the protection of liabilities may be outside this committee.
- Marty: It really doesn't matter what lands you are talking about, whether they are category I or uplands as far as I am concerned, or Farm Bureau is concerned. The question is what are we

- protecting these lands for, from whom and at whose cost? The issue of an incentive program is easy because that invites a voluntary agreement by two parties and everybody is in agreement. So if anytime someone wants to sell a car the right price is whatever price is agreed to and that is because both the buyer and seller agreed. It is the same way in a voluntary program. In a regulatory program; you mentioned condemnation, but the regulation itself condemns the land. It doesn't require any action of incentive beyond that. If the government feels in its largesse it wants to it could but it is not required to. The regulation already "protects" actually it reduces the value and the use of those properties. I would like to remind the committee that these lands we are discussing are there because of the land owners that own them; the 60% that is privately owned. Those lands would not be a topic of discussion today if those land owners had not chosen to already preserve them at no cost to anyone. So those land owners heart, that are predominately left, those in agricultural and rural areas obviously have some emotional attachment to preserving the resource that they have owned in many cases for generations. So again, I will beat this drum until we finish this process. A voluntary incentive program to protect whatever land you all want is fine. But a regulatory one is unfair to those individuals that are still giving you this opportunity to even discuss the issue.
- George Haggerty: NCCo protects them 100% so certainly we advocate for protection. Jim's question regarding buffers, sometimes just drawing a line around an area does not accomplish what we wanted so there are some areas where we need to look. I'd like to not have to go to Ed and wait for the Corps to give a JD, would like to shorten the time frame and process. We give the option to avoid and they simply avoid. Is talking about the development process, not a farming or timbering process. If the government is going to assess something so valuable that you can't use it, the government should value it equal to what they have put on it by protecting it. The back side is sometimes that sometimes the value is diminished because the government has taken action.
 - Chris Bason: Supports protection and we should make sure they stay in good condition and species in them persist. The real threat is not fill but the actions going on around them degrading them. Important that we protect the buffers around the wetlands and do it right.
 - Dave Wilson: As soon as we say regulations the flags come up with calls from general public. If we can do it from a voluntary and incentive way we will get more acceptance by the general public. Mr. Parkowski noted that no matter what the committee decides to do the federal program will not go away. Is there potential for more efficiency and less hassle if the state has a program vs. the feds? Is a question of if there is a desire for a single system of regulation between the federal and the state instead of just the federal?
 - Hocker: Agrees with what has been said. This is a state and private issue. Private: must be a state agency that the private individual can work with. Under Virgil has improved from in the past. Needs to be strengthened with incentives. The state has let some wetland areas go and I'm concerned with what the state is doing with its tidal wetlands. There are areas where nice tidal wetlands have gone to *Phragmites* and state is doing nothing. If you can't give economic benefit vs. the cost we won't do anything. Why are state agencies against showing benefit?

- Bob Venables: You are probably not going to like what I say. I'm scared of phone and the pen. I don't know what we're going to give to DNREC but sometimes the administrative procedure isn't what we intended. Referring to Nanticoke watershed where they didn't have to come to a legislator to get approval yet there is tremendous impact. Same thing with Cardinal credits that can have a tremendous impacts. Agrees with Category 1, and in the past agreed with Category 1, 2 and 3, but not 4 and 5. What Marty said is way we need to go. All on voluntary basis because he is concerned that these wetlands will take in our lakes and ponds and I believe that if we give DNREC carte blanche control they will take over more without coming back to the General Assembly (not only the Nanticoke River but streams that feed it). Not in support of anything that turns over to DNREC.
- Mike: we are at a point where we need to decide if the committee has a desire to have a regulatory permit program that takes over Category 1 wetlands alone from the federal program. The details would have to be worked out once we decide that we would like a regulatory permit program that protects Category 1 wetlands. Please take that home for thought and vote on next meeting. If we have 19 votes we will go forward with determining the bells and whistles and anything else beyond Category 1. If not we will go forward with incentives program because otherwise we are wasting everyone's time.

Presentation on Landowner incentives subcommittee report by Andy Manus 11:30

- Thank you to Sally and Jayme for hosting the Carrot Committee meeting.
- Slides from DNREC were previously given to the committee. Is important to see large forests; 85% of nontidal wetlands are forested. Looking at wetland changes it is clear that we are losing forested wetland habitats, even if you agree with the maps or not. The Carrot Committee agreed to focus on forested habitats that contain complexes such as Delmarva Bays and headwater wetland areas and should be priority areas to target with incentive programs. This is the wisest area to focus limited conservation funds to. Has been presented that ~80% of our wetlands are privately owned and landowners want to be stewards so we need to target a landowner incentive program.
 - Examples of key components that an incentive program should have (refer to handout).
 - Leverage existing state and federal programs
 - Conservation NGOs participation and funding
 - Should be voluntary
 - Should have understandable criteria
 - Provide for permanent protection
 - Have a dedicated source of funding
 - 6 Next steps:
 - Need to find a way to document which programs are available to private landowners. Most have been documented already by Delaware Nature Society in 2005 binder, The Nature Conservancy, and Brenna has worked with the National Wildlife Federation. This doesn't need to be recreated.
 - Jim McCully is working on an ordinance in consultation with county and municipal land use practitioners.

- The Carrot Committee will review the Ag-lands Preservation Model to evaluate lessons learned and how they can be applied to the now dormant Forest Preservation Program and bring forward some incentives program and protect remaining forest tracts. Some Category 1 wetlands are imbedded within forested habitat. Would like to drill down into that program and evaluate what the cost and benefits might be.
 - CC will evaluate all incentives against the 'Parkowski Points' before bringing them before the full committee doing a feasibility analysis.
 - Review studies and other states for attitudes and opinions of private landowners concerning participation. Jayme has provided a national survey that we will use. People who participated tend to go for the conservation oriented programs to protect and improve lands. Sarah will be leading this effort. Mike Valenti has provided a thesis with some forest landowner opinions in Delaware.
 - At March meeting of DWAC we will drill into a few of the incentives and provide more details, case studies including costs.
 - Continue to coordinate with DNREC Conservation and Restoration subcommittee.
 - A copy of the presentation can be found [online](#).
- Mr. Parkowski commented that from timing standpoint, you can come back in 2 meetings? Yes, in 2 meetings we can present incentive ideas. At the next meeting (March) we can review some case studies and then contribute to the WAC report. *MP*: If you and Jayme could give us your rec's in 2 meetings (April) and we can consider them. Andy will come back with more information next time.
- Gary Warren suggested use a more palatable baby carrot photo.
- Brenna asked if there are outlying concerns or areas missing? None.
- Jim McCully asked if there is anyone here who would like sit down with me next week to discuss county and municipal opinions.
- Mr. Parkowski asked if everyone can be ready next week for a vote on supporting Category 1 wetlands and emphasized to please be represented.

Public input

- Bill Moyer: participation by farm community in federal programs is fairly low; would like to learn more about why and why not set up a similar program with state dollars because of mistrust with federal programs? Andy Manus thought that was a good comment; we will review the fed ag program and lessons learned and wetland complexes across the landscape.
 - Sarah commented that it would be helpful to see the question in writing. Mr. Parkowski clarified that to the extent that there is a federal program, is there support for the state to take over as it relates to Category 1. Sarah is correct, there are some areas where it would not apply.
 - Bill Moyer is concerned about comments from elected officials serving on this committee regarding DNREC having more power. We are talking about areas of wetlands that are already regulated by the Corps. Not trying to add another program simply to give DNREC more authority but to reduce the involvement of federal govt. It is helping to simplify the overall process.
 - Brenna wanted to clarify that we are not talking about taking over completely. Mike: only Category 1 wetlands as being sensitive areas, NWP's and general permits. Not suggesting taking over entire
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program. Do we want to pursue a regulatory program involving permits including NWP's and general permits for providing protection to Category 1 wetlands? Not case by case or full assumption.

- Terry: may be talking about wetlands that the Corps does not cover. Mr. Parkowski responded this was correct but we are not ready for bells and whistles yet. There is no sense in going there if there is no interest in that concept.
- Gary Warren: An incentive to mention for converting ag back into forest is a said amount per acre for lease. Also regarding the CREP program: most people realized it cost more to comply than to benefit. Need to consider the ongoing maintenance involved. Must be economically feasible to carry it on. Mr. Parkowski said it was a point well taken and every landowner needs to decide if it's worth it.
- Dave: recap DNREC's homework is to determine programmatic costs, quantification of resources that Bill presented. Is there anything else? Mr. Parkowski would also like to see what DNREC can discern as losses to this category including buffer impacts. Plans to present this before a vote.
- Andy would also like to see layers that show state lands and conservation lands. *MP:* It is more a matter of maintenance than control.
- Josh: will we be able to discern which are navigable and jurisdictional? *MP:* the question of jurisdiction is a nightmare that relies on interpretation. It doesn't matter if they are isolated or not because the question on the table is do we want to protect them?
- Ron Vickers commented that DNREC can separate isolated from riverine wetlands with maps.
- Alex Schmitt asked for clarification: Are we considering only the types that Bill displayed as unique? *MP:* Yes. Category 1 is unique.
- Mr. Schutt asked Ed what % of his time is spent on unique/Category 1 wetlands. *Ed:* Would guess 15%. From a federal perspective there is no buffer. Often times he is dealing with something that is on the edge of wetland. Rarely someone comes in and fills the Delmarva bay but rather is doing something right next to it.
- Hal Godwin requested to have the 3 part question put in writing. Mr. Parkowski agreed.
- Mr. Parkowski adjourned the meeting at 12:01 PM.

Next meeting: Wednesday March 12 9-12

Attendees: Underlined names were present or represented by an alternate

Name	Agency
<u>Chris Bason</u>	Center for the Inland Bays
<u>Edward Bonner</u>	U.S. Army Corps of Engineers
<u>Sarah Cooksey</u>	DNREC – Coastal Programs
<u>Mark Davis (Mike Valenti alternate)</u>	Dept. of Agriculture
<u>Tim Deschepper</u>	Town of Middletown – LLG
<u>Hal Godwin</u>	Sussex County Planning
<u>Brenna Goggin</u>	Delaware Nature Society
<u>Mary Ellen Gray</u>	Division of Planning – Kent County

<u>George Haggerty</u>	New Castle County Planning
Rep. Debra Heffernan	Delaware House of Representatives
<u>Sen. Gerald Hocker</u>	Delaware Senate
David Hugg	Town Hall (Smyrna) -- LLG
<u>Sally Kepfer</u>	Natural Resource Conservation Service
<u>Josh Littleton</u>	City of Seaford – League of Local Govts.
<u>Andy Manus</u>	Land Conservationist
<u>Robert McCleary (Terry Fulmer alternate)</u>	DelDOT
<u>Jim McCulley</u>	Home Builders Association of Delaware
<u>Phil McGinnis</u>	Delaware Association of Realtors
<u>Brian Michalski (Bill Jester alternate)</u>	Delaware Forestry Association
<u>Paul Morrill</u>	Committee of 100
<u>Michael Parkowski</u>	Delaware Bar Association
<u>Frank Piorko</u>	DNREC – Watershed Stewardship
<u>Marty Ross</u>	Delaware Farm Bureau
<u>Alex Schmidt</u>	Council of Engineering Companies
<u>Porter Schutt</u>	The Conservation Fund/Open Space Council
<u>Sen. Robert Venables</u>	Delaware Senate
<u>Bob Walls</u>	Farm Services Agency
<u>Rep. Dave Wilson</u>	Delaware House of Representatives

In addition, 25 members of the public were in attendance.