

April 9, 2014, Meeting Notes
Delaware Wetlands Advisory Committee
Room 220, Kent County Levy Court Building

Delaware Wetlands Advisory Committee Chairman Mike Parkowski called the meeting to order at 9:05 a.m.

A quorum was established. The committee approved the February 11, and March 12, 2014 meeting notes.

Mike Parkowski reminded the Committee of their legislative charge¹. It instructs this Committee to submit recommendations to the General Assembly within eighteen months. The Committee has an obligation to give consideration on best management practices for environmental protection and conservation, regulatory approaches, statutory guidance, permitting process goals for reducing duplication, and impacts. The Committee is on course to accomplish this.

The Carrot Subcommittee report was transmitted to Committee members on April 3; it contains a comprehensive dialogue on the five recommendations. DNREC can use the information as guidance for narrative text.

Summary discussion of Recommendations 4 and 5 by Committee members and the public:

- The Committee's recommendations to the General Assembly will include possible funding sources, consideration for tax credit adjustments, and possible offsets.
- Meet with the Agland Foundation and Open Space council to ask for consideration of "weighted" ranking to include Category 1 Wetlands in the selection process.
- Make better use of existing funds.
- Review federal programs for leveraging funds
- Our recommendations are conceptual.
 - How can they be implemented? (determine the details)
 - DNREC is responsible for formulating the regulations.
 - Bonus density
 - Tax incentive measure.
 - Preservation measure Incentive Program Report.
 - Research various scenarios.
 - Every recommendation comes with implementation.

¹ Senate Bill 78 SA1 was signed on July 31, 2013: AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO NON-TIDAL **WETLANDS**. This legislation establishes a **Wetlands Advisory Committee** to develop comprehensive recommendations for conserving and restoring non-tidal **wetlands** in Delaware, including evaluating national best practices and standards, evaluating incentive-based programs, and reviewing state and federal wetland permitting processes to identify opportunities to improve efficiency and eliminate redundancy. The Secretary will provide a final report of recommendations to the General Assembly no later than December 31, 2014.

The bill also amends Title 7 Del C. Chapter 66, §6607 and §6617 and Title 7 Del C. Chapter 72, §7205 and §7214 to expedite resolution of violations by allowing the use of administrative procedures and penalties to resolve wetland and subaqueous lands violations and by minimizing the use of civil or criminal prosecution to resolve violations. The bill also allows the Secretary to issue after-the-fact permits and assess administrative penalties as appropriate.

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

Center for the Inland Bays – yes
City of Seaford - no
Committee of 100 - yes
Conservation Fund/Open Space Council - yes
Council of Engineering Companies - yes
Delaware Association of Realtors - yes
Delaware Bar Association - yes
Delaware Department of Agriculture - yes
DE Department of Natural Resources and Environmental Control, Coastal Programs - yes
DE Department of Natural Resources and Environmental Control, Division of Watershed Stewardship - yes
Delaware Department of Transportation - yes
Delaware Farm Bureau - yes
Delaware Forestry Association – yes
Delaware House of Representatives, The Honorable Debra Heffernan – yes
Delaware House of Representatives, The Honorable Dave Wilson - yes
Delaware Nature Society – yes
Delaware Senate, The Honorable Gerald Hocker – yes
Delaware Senate, The Honorable Robert Venables - yes
Home Builders Association of Delaware – yes
Kent County, Division of Planning - yes
Land Conservationist - yes
New Castle County Planning – yes
Sussex County Planning - no
Town of Middletown - yes
Town of Smyrna - yes

Recused committee members:

Farm Services Agency
Natural Resource Conservation Service
U.S. Army Corps of Engineers

Voting tally: 23 yes, 2 no, 3 members not voting Recommendation measure #4 passes.

Recommendation 5: Does the Committee recommend that the availability and limits of tax credits covered under the Delaware Land and Historic Resources Protection Incentives Act of 1999 (subchapter 1, Chapter 18, Title 30 DelCode) be amended and expanded to create greater incentives to private landowners to protect and preserve freshwater wetland and adjacent natural resource areas?

Voting record for Recommendation #5:

Center for the Inland Bays – yes
City of Seaford - no
Committee of 100 - yes
Conservation Fund/Open Space Council - yes
Council of Engineering Companies - yes
Delaware Association of Realtors - yes
Delaware Bar Association - yes
DE Department of Agriculture - yes
DE Department of Natural Resources and Environmental Control, Coastal Programs - yes
DE Department of Natural Resources and Environmental Control, Division of Watershed Stewardship - yes
DE Department of Transportation - yes
Delaware Farm Bureau – no,
Delaware Forestry Association – no
Delaware House of Representatives, The Honorable Debra Heffernan – yes
Delaware House of Representatives, The Honorable Dave Wilson - yes
Delaware Nature Society – yes
Delaware Senate, The Honorable Gerald Hocker - yes
Delaware Senate, The Honorable Robert Venables - yes
Home Builders Association of Delaware – yes
Kent County, Division of Planning - yes
Land Conservationist - yes
New Castle County Planning - yes
Sussex County Planning - no
Town of Middletown - yes
Town of Smyrna - yes

Recused committee members:

Farm Services Agency
Natural Resource Conservation Service
U.S. Army Corps of Engineers

Voting tally: 21 yes, 4 no, 3 not voting Recommendation measure #5 passes.

Summary of discussion for Recommendations 1, 2, and 3 by Committee members and the public:

- This is an opportunity to protect nine percent of our rarest species. Incentives alone are not enough.
- These recommendations provide clarity, and a more seamless effective process. There are few environmental efforts that will gain this much.
- These areas are there for a reason and serve a function for the public. We live in a regulated society, these recommendations will protect resources. An opportunity to protect our wetlands with the endorsement of the citizens.
- Appreciate the work of the committee, the education of the ecology, and life cycles these recommendations will protect.
- US Army Corps of Engineers are not involved in general permit reviews at state level. There are limitations as to how far the Corps can reach into as state wetlands program. Specific language is needed to include wild, scenic, and endangered species. If the recommendations pass, the delegation and transition of programs and transfer of responsibility will take time. Perhaps a year to eighteen months. Explore a Memorandum of Understanding (MOU) between DNREC and the Corps. There is no benefit moving authority from the Corps to DNREC. The State can do it better and with greater efficiency and effectiveness. State authority is better; landowners can call our state agencies for options, answers to questions.
- The current wetland program is 50% fee funded, if these recommendations pass, it will triple the land mass. Mapping and five additional scientists will be needed and \$500,000 in additional funding. Mapping will help identify the resources and the reason we are losing these wetlands.
- Question replacement of Corps program no matter how many acres of wetlands are in play. Concerned about the cost of the program and the state would still be subject to Corps oversight. Local government rules and regulations discourage and prohibit disturbance of wetlands. DelDOT has many of the yearly wetland impacts and should mitigate for any impacts. Intergovernmental coordination policies and Memorandums of Understanding with the Corps could help alleviate current issues.
- Encourage discussions regarding the balance between protecting wetland resources and the possible effect on the devaluing of personal property.
- Streamline the permitting process; make it simpler and easier for citizens to understand the processes. Though the development process wetlands are largely regulated and protected, isolated wetlands need protection. A phased-in process is recommended.
- The Clean Water Act minimizes and mitigates impacts. No additional regulations are needed.
- A voluntary incentive program is more effective than adding more regulations. More wetlands will be protected if done under a voluntary basis – based on input from farmers including tree farmers. Budgetary funding source can be included in the twenty million dollars in the government budget.
- The current State programs are more efficient and effective than federal programs.
- Concern for funding, staffing, implementation. Is streamlining better? Will it help with permit coordination?
- Incentives and mapping are important. Let's move forward with programmatic details. Let's try voluntary programs first before regulatory.
- Want no new regulations at the state. New regulations have impacts on businesses and farmers and can hurt the economy.
- We are already subjected to regulations that come with strings. Enough conservation tools and regulations are in place now.
- Don't see a benefit in moving the regulations from the Corps to the state.
- Category 1 wetlands are worthy to protect. Having authority over them makes sense. Wetlands in general will be regulated no matter what. At the state level and from a legal perspective we have some

real benefits. The Environmental Appeals Board is a local review process that does not exist on the federal level. Landowners are more protected by a state system.

- There are USDA regulations and programs in place that protect wetlands, and a concern for duplication and a shift of costs to delegate from the Corps to the State.
- Incentives are a valuable tool. Local input and knowledge, ability to appeal, approve questions so we can get to the details.
- Farmland preservation and open space exist; capitalize on it and make it work.
- Property rights are the same as freedom of speech. Transfer programs for unregulated wetlands, adopt regulations and negate preservation.
- Category 1 wetlands are exempted from Nationwide Permits. There are not many determinations of isolated wetlands by the Corps, so for #2 not sure it's worth it. Mapping is crucial.
- If these are voted on favorably, it will allow for discussion of the details of each to continue and then a recommendation can be formed and voted upon.
- Would support a streamlined process at the state and would support DNREC having an In-lieu fee program for mitigation. Federal Highway funding requires review of through National Environmental Protection Act.

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

Voting record for Recommendation #1:

Center for the Inland Bays – yes

City of Seaford - no

Committee of 100 - no

Conservation Fund/Open Space Council - yes

Council of Engineering Companies - yes

Delaware Association of Realtors - no

Delaware Bar Association - yes

DE Department of Agriculture - yes

DE Department of Natural Resources and Environmental Control, Coastal Programs - yes

DE Department of Natural Resources and Environmental Control, Division of Watershed Stewardship - yes

DE Department of Transportation - yes

Delaware Farm Bureau - no

Delaware Forestry Association - no

Delaware House of Representatives, The Honorable Debra Heffernam – yes

Delaware House of Representatives, The Honorable Dave Wilson - no

Delaware Nature Society - yes

Delaware Senate, The Honorable Gerald Hocker - no

Delaware Senate, The Honorable Robert Venables – no

Home Builders Association of Delaware – no

Kent County, Division of Planning - yes
Land Conservationist - yes
New Castle County Planning - yes
Sussex County Planning - no
Town of Middletown - yes
Town of Smyrna - yes

Recused committee members:

Farm Services Agency
Natural Resource Conservation Service
U.S. Army Corps of Engineers

Voting tally: 15 yes, 10 no, 3 members not voting. Recommendation measure #1 failed.

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

Voting record for Recommendation #2:

Center for the Inland Bays – yes
City of Seaford - no
Committee of 100 - no
Conservation Fund/Open Space Council - yes
Council of Engineering Companies - yes
Delaware Association of Realtors - no
Delaware Bar Association - yes
DE Department of Agriculture - yes
DE Department of Natural Resources and Environmental Control, Coastal Programs - yes
DE Department of Natural Resources and Environmental Control, Division of Watershed Stewardship - yes
DE Department of Transportation - yes
Delaware Farm Bureau - no
Delaware Forestry Association - no
Delaware House of Representatives, The Honorable Debra Heffernan – yes
Delaware House of Representatives, The Honorable Dave Wilson - no
Delaware Nature Society – yes
Delaware Senate, The Honorable Gerald Hocker – no
Delaware Senate, The Honorable Robert Venables - no
Home Builders Association of Delaware - no
Kent County, Division of Planning - yes
Land Conservationist - yes
New Castle County Planning – yes

Sussex County Planning - no
Town of Middletown - yes
Town of Smyrna - yes

Recused committee members (per committee decision):
Farm Services Agency
Natural Resource Conservation Service
U.S. Army Corps of Engineers

Voting tally: 15 yes, 10 no, 3 members not noting. Recommendation measure #2 failed.

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

Voting record for Recommendation #3:

Center for the Inland Bays - yes
City of Seaford – no
Committee of 100 - no
Conservation Fund/Open Space Council - yes
Council of Engineering Companies - yes
Delaware Association of Realtors - no
Delaware Bar Association - yes
DE Department of Agriculture - yes
DE Department of Natural Resources and Environmental Control, Coastal Programs - yes
DE Department of Natural Resources and Environmental Control, Division of Watershed Stewardship - yes
DE Department of Transportation - yes
Delaware Farm Bureau - no
Delaware Forestry Association – no
Delaware House of Representatives, The Honorable Debra Heffernan – yes
Delaware House of Representatives, The Honorable Dave Wilson - no
Delaware Nature Society – yes
Delaware Senate, The Honorable Gerald Hocker – no
Delaware Senate, The Honorable Robert Venables - no
Home Builders Association of Delaware – no
Kent County, Division of Planning - no
Land Conservationist - yes
New Castle County Planning - yes
Sussex County Planning - no
Town of Middletown - yes

Town of Smyrna - yes

Recused committee members:

Farm Services Agency
Natural Resource Conservation Service
U.S. Army Corps of Engineers

Voting tally: 14 yes, 11 no, 3 members not voting. Recommendation measure #3 failed.

Public input and comments:

- Disappointed recommendations one, two and three failed. Kent County, Sussex County, and the City of Seaford voted “no” and they will gain the most from these recommendations.
- Take the comments and find a way to find a resolution at some point. I am proud of the state agencies and the Governor for recognizing this important issue. We need to find a way to move forward.
- In the past, twenty million dollars was budgeted for Open Space. In recent years those funds have been drastically reduced or cut completely from the budget.

Committee Interim Report

May 1 is the deadline for the interim report, and it’s important that the committee members provide input. Mike Parkowski instructed Frank Piorko to prepare a draft report, and send it to committee members for input and reflection on the comments and recommendations made. The committee has two incentive measures to explore and three different recommendation proposals to work on; the vote was not adequate to approve them.

Frank Piorko stated the importance of the opportunity to talk about the other recommendations and items discussed like mapping, fees in lieu of doing wetland mitigation, interagency agreements, etc. There is room for taking on the other recommendations and perhaps focus on them.

Mike Parkowski asked the Committee to get started on those things that have been adopted, and coordinate with Frank and the members of the Carrot Committee. The interim report needs something concrete regarding the enhancements to the existing recommendations.

Think about ways to consider the transferability of what is essential to protect Category 1 wetlands, including buffers. Take a comprehensive look at other issues and components for the Secretary of DNREC and the General Assembly to review when considering our recommendations. Forest Land Preservation – what’s been done already with the allocated funding, what are the funding needs and specific programs/projects if you had permanent funding?

Permit authority programmatically. Mike will draft something and send it to Paul before it’s sent out to the Committee and discussed at a meeting. Political subdivisions, conservation districts, Density Bonus

Feedback is needed from Aglands Preservation and the Open Space Council regarding the addition of wetlands consideration for preservation. Develop a point system to score each property. Take into consideration unique

ecological bonus points and adjust the selection process. Identify properties that have unique ecological features and look for leveraging opportunities. Is it in a Natural Area or a Resource area? Combine them to add bonus points.

The selection process – scoring and bids received until funding runs out. For example, if there are 120 eligible properties, 100 submit offers, 50 are selected to share \$10 million of funding. Land owners are awarded about one-third of the value of their property, a great benefit for the State. Landowners select the winning properties. Over the years, New Castle County invested substantially in the Agland Preservation program. If a property has Natural Resources Value, it can be given additional consideration. It may have value to Open Space and Ag Land Preservation – the two can join together to fulfill NGO or County incentives. There is a cost for obtaining the easement needed for the existing programs. Marsh lands are valued for hunting. Mike Parkowski will send a copy of the incentives already adopted. There is an Environmental NGO partnership with the Nature Conservancy, it's all about leverage.

Isolated wetlands are not regulated and important to preserve. Mapping can be used as an internal tool so the value of surrounding properties doesn't escalate when the information is made public; the value arrives at itself. The value package is not necessarily intrinsic value, in the free market system, the value is evident. Incentives should start at the low end level and evaluated based on participation, as demand increases the value will self-correct.

Category 1 wetlands can be regulated, or we can establish some value for it. If government protects them, the perception is they have no value. Targeted properties have limited value; land used for bird migration has some value for that purpose.

Mapping should identify the location of wetlands and buffers. Establish a standard protocol every agency follows and the rationale of what is used to measure the value. Mapping is an important topic of discussion for the next meeting.

The meeting adjourned at 11:36 a.m.

Next Meeting – Wednesday May 14, 2014 from 9-12 at the Kent County Building Room 220

Respectfully submitted,
Karen Garrison, CAP-OM
DNREC, Division of Water

The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Delaware Wetlands Advisory Committee members and the public in supplementing their personal notes and recall of the topics and presentations. Submitted statements, documents, and reports are attached. A digital recording of the meeting is available upon request.

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