

Delaware Wetlands Advisory Committee May 14, 2014, Meeting Notes

Wetlands Advisory Council Chairperson, Mike Parkowski called the meeting to order @ 9:16 a.m.

Chairman Parkowski commented that during this meeting, the members of the Delaware Wetlands Advisory Committee (WAC) will discuss the report from the Carrot Committee, Recommendations Four and Five that received approval at the April 9 meeting, and the implementation of those two measures. The WAC will also discuss the possibility of additional recommendations to consider, the scope of the record including the process, and the collective contributions of this Council.

The WAC Committee Members reviewed the April 9 meeting notes, there was discussion about formatting and all agreed to defer approval until the next meeting.

Interim Report: The WAC interim report does not come from the WAC, it comes from the Secretary of DNREC. It is an accurate reflection of the work of the WAC.

- Comments on the interim report:
 - Committee members submitted comments, some of which were not included in the Interim Report.
 - Include the explanation and adoption of voting procedures.
 - The Delaware Legislature determined the representation on the committee from all the sectors. For the Interim Report, follow the mandate and establish a record of the accomplishments of the Wetlands Advisory Council.
 - WAC members were asked to resend their comments on the Interim Report to Frank for compilation. They will be sent to all WAC members and attached as an addendum and will serve as a record of the input of this group.
 - Submitted written comments are attached as addendum to these notes and to the Interim Report.

Expressing Dissenting Opinions:

- Operate within the rules. Allow for a dissenting views/opinion.
- There is an opportunity to submit any comments committee members want to make and include in the meeting notes for the record. Submit before close of business June 13. Mike instructed Frank to let him know if any comments are received past this date.
- DNREC staff worked hard on the draft Interim Report to make things fair, equitable, and a balanced portrayal.

Presentation:

- Tax Credit Incentive (Brenna Goggin)
- One done by UD intern and the other borrowed Andy Manus' report put into the agreed format.
 - Are we focusing tax credit incentives for Category One Wetlands only? Will get the same bump up as other wetland types on property. Can consider extra incentive for freshwater wetlands. Everyone agreed Category 1 needs most protection and should get extra focus and incentive. Could prioritize credit by wetland type but needs to be determined (i.e. higher credit for Category 1).

- Incremental changes made by other states
 - Lessen the fiscal impacts
 - How much would it cost to put a conservation easement or purchase these lands? How much would the owner get back in tax credit? There are many variables to consider.

Discussion:

The Legislature should review the existing program. The fair market value is in line with sixteen other states that have this type of program. The current limit in Delaware is \$50,000, in other states \$250,000; we should look at setting up the program based on what works in Delaware. Should evaluate exchange program. North Carolina and Virginia found a greater fiscal impact on the state when the program is made more appealing. The downside is what we don't know. From a budget standpoint, \$3,100 per acre of marsh land was sold to DNREC from a private owner. Budget \$12.4 million if property is purchased in fee simple, easements are less expensive. We have a law already and it relates to all land and if we expand the applicability on a broader scale to include fresh water wetlands specifically, how would we determine the cap for each owner? Tax credits are more valuable when taking a deduction on the taxable dollar. It's a Market Place scenario; the amount of the tax credit is a portion of the value and can be prorated over a period of years – an incentive system.

Create a priority for freshwater wetlands. The most valuable resources are Category One wetlands; we should focus on that recommendation to the Legislature. It's important to protect all wetlands including Category One, fresh water, tidal wetlands, and buffers – but not to exclude any other defined wetland.

- What size should the wetland properties be?
- How large are Category One Wetlands?
- Should they be broken into smaller segments?

There are currently 4,019 unprotected privately owned vulnerable isolated Category One Wetlands in the State. Federal program does not regulate or protect these areas making them vulnerable. Sussex County is concerned about the impact to the State's fiscal budget as a result of the passage of these recommendation measures.

The current program has been in place for thirteen years and is very broad, less than \$1 million was spent during that time. Delaware is dead last among states in tax incentive programs like this. Consider a blend of all the programs including the ones that are currently in place.

- For review at the next meeting - Brenna Goggin, Paul Morrill, and Marty Ross will help to provide financial impacts, total cost, value of property, how the property will be identified and evaluated, and what will be done special for Category 1's.

Presentation: Forestland Preservation Program Incentive (handout)

- 85% of the remaining wetlands are imbedded in forestland.
- Request General Assembly to make this a priority. Submit an official funding request for a line item in the budget.
- Works in conjunction with Agland preservation program.

- Only the forestland component is subject to review but if you have ag and forest lands, there is an opportunity to submit an offer in both portions and the land owner can select (if chosen for both programs) which one is the best incentive for them
- There will always be more requests for easements than there are funds to pay for them. Most of the forestland that fits into the program contains wetlands, and some eligible properties that don't.
- The forest land preservation program is designed to protect the forest. Best Management Practices have worked, but the objective of that program is to protect forest land for the industry and not to protect it environmentally.

The Delaware Nature Conservancy, DNS, Center for Inland Bays annually spends one million dollars for projects. The Morris family track was purchased by State for one million dollars. If groups work collaboratively through leveraging and blending of funds, it will be a more effective way to make an outright purchase. (i.e. Delaware Wildlands, Ducks Unlimited, Conservation Fund, Open Space, and others).

With thirty-four properties in the queue, when funding available, who determines which properties will receive funding? Based on discount, once it scores it's considered to be worth protecting. Not designed for development but to protect forestland for the future (same with agland). The North American Wetland Council has a successful and effective spending formula.

The Delaware Forestry Association used Timber Easements as a great tool for the past thirty years. Clean air and clean water is the result and it benefits everyone.

The thinning industry is about ready to collapse – pulpwood industry due to the economy and use of technology. The Incinerator bill has been interpreted to ban the use of chip products for energy production. Forestlands need to be protected for the industry and for the future and naturally preserve the forest and use the wood for fuel. Putting aside \$200,000 annually for Forestland preservation will help this industry.

- Habitat is built into the scoring process (component, not the main focus)
- Protection of headwater streams
- Existence of wetlands
- Adjacent to other protected lands – wetlands, forestland or aglands preserved.
- NGO will match the remaining properties on the list.

Real Estate Transfer Tax collects funds \$10 million annually designated for the Open Space Council. Unfortunately, those funds have not been received on a consistent basis. A change in criteria and evaluation of leverage options is necessary. If the law that is on the books is honored, the \$10 million will be available for aglands in addition to the \$10 million for the Open Space program.

Motion was made by Mike Parkowski and seconded by Marty Ross that \$200,000 per year be allocated by the forestland preservation program separate allocation

21 yes, 2 absent, 2 abstaining, 3 non-voting – Motion passes.

Note: Senator Hocker and Senator Venables abstained from voting due to the potential for conflict of interest due to their positions on the Bond Bill Committee.

Brenna Goggin explained the proposed changes to the tax credit incentive.

Amend existing tax credit law to add wetlands to conservation value and limit it to 5,000 acres, bump the cap from \$50,000 - \$100,000 for individual cap, leave 40% of appraised value of property the same, offer exchange program for transfer of credits, education tax advisors and landowners.

Discussion continued.

Motion by Dave Hugg seconded by Chris Bason to amend the tax credit law as described above.

Discussion continued.

Motion by Senator Hocker, seconded by Paul McGinnis to table the discussion and request Mike and Brenna to send the math and wording to the WAC members for review and discussion with the groups they represent. The finalized recommendation will be discussed and voted on at the next meeting.

Dave Hugg withdrew his original motion in lieu of need for further discussion and details.

Discussion continued.

- Cost of setting up the program and maintaining it – Division of Revenue can do it and is easily absorbed by existing staff and funds.
- 4,019 acre limit conservation wetlands cap for individuals to \$100,000 (currently \$50,000). Exchange program for transferability, educate tax experts and land owners. Across the board availability for the raised cap. Emphasis is on the transferability of the tax credits and educational component is the distinction. Five year carryover
- Tax exchanges, raising max credit per individual, and increasing the statewide cap, setting up an exchange that sets up a Market Place, doubles participation in the programs.
- Amending legislation that would allow only four category one wetlands
- 4,019 acres privately owned Category 1 wetlands acres 23 projects protecting invigorating a program that will be readily used. There is a program cap and how many programs can fit into the program funds available.
- **Public Input**
 - Comments from Gary Warren, Delaware Farm Bureau – We all have the same goals in mind. Funding is an issue. Title 9, Chapter 3 states \$10 million funding from provision for the roll back taxes (section 8335 of Title 9) be transferred to the foundation (transfer tax goes to farmland, open space and aglands). He asked the committee to consider a request to the county to send funds directly to the foundation as they collect it – so it’s a “hands off” dedicated source of funding. 27% of all aglands are woodlands and 7% of those are wetlands. Statewide transfer tax is made up of funds from all three counties, 47% from New Castle, and 53% from Kent and Sussex.

Follow up items:

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- The pooling of resources is a concept that should be considered and will be discussed at the next meeting.
- Frank and ELI consultant will look at state and federal programs and write a three to five page white paper on leveraging funds for these programs. Frank will make a presentation for the next meeting.
- Hal Godwin, Sussex County: Needs proposal by June 3 for Sussex County's June 10 meeting.

Next Meeting – Scheduled for Wednesday June 11, 2014 from 9-12 at the Kent County Building Room 220

Adjourn 12:03 p.m.

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.

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.

List of Committee Members	Agency
Chris Bason	Center for the Inland Bays
Edward Bonner	U.S. Army Corps of Engineers
Sarah Cooksey	DNREC – Coastal Programs
Mark Davis- <i>Lauren Torres alt</i>	Dept. of Agriculture
Tim Deschepper	Town of Middletown – LLG
Hal Godwin	Sussex County Planning
Brenna Goggin	Delaware Nature Society
Mary Ellen Gray	Division of Planning – Kent County
George Haggerty	New Castle County Planning
Rep. Debra Heffernan , District 6	Delaware House of Representatives
Sen. Gerald Hocker, Senate District 20	Delaware Senate
David Hugg	Town Hall (Smyrna) -- LLG
Sally Kepfer	Natural Resource Conservation Service
Josh Littleton	City of Seaford – League of Local Govts.
Andy Manus	Land Conservationist
Robert McCleary- <i>Terry Fulmer alt</i>	DelDOT
Jim McCulley	Home Builders Association of Delaware
Phil McGinnis	Delaware Association of Realtors
Brian Michalski- <i>Leslie Merrikan alt</i>	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	Farm Services Agency
Rep. Dave Wilson, District 35	Delaware House of Representatives

Bolded Members Absent

Delaware Farm Bureau Comments

Wednesday, May 14, 2014

TO

Delaware Wetland Advisory Committee

Marty Ross

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

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

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

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

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

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

However the Interim Report says "This action left the Committee with 19 votes required to pass a motion; representing 19 of the 25 voting members of the 28 member Committee". A fact written in a way to mislead a reader into thinking that two thirds voting threshold was arbitrary. Perhaps to buttress

the publicly stated sentiment of Secretary O'Mara which belies the actions of the Committee intentionally misleading anyone with interest.

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

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

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

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

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

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

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

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

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

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