

Delaware Wetlands Advisory Committee June 11, 2014, Meeting Notes- Approved 8.13.14

Chairman Mike Parkowski called the meeting to order at 9:07 a.m.

Suggested timeline to fulfill the mission of this committee: At the adjournment of the Wetlands Advisory Committee (WAC) meeting today, the DNREC will have a schedule for developing a draft final report incorporating all additional recommendations and information to complete the draft final report (due December 31 to the General Assembly). This draft report will be reviewed and commented on by the WAC prior to a formal meeting and acceptance of the final report (date to be determined).

Approval of Meeting Notes

- Motion by Phil McGinnis, seconded by George Haggerty, to approve the April 9 meeting notes.
All in favor, motion passed.
- Motion by Phil McGinnis, seconded by Senator Hocker to approve the May 14 meeting notes to include a notation that the Delaware Farm Bureau submitted a document to be attached to the meeting notes.)
All in favor, motion passed.

Landowner Incentive Draft Recommendation #2

The Committee recommends that the existing Delaware Land and Historic Resources Protection Incentive Act of 1999 be amended and expanded as follows:

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

- Motion by Phil McGinnis, seconded by Marty Ross to accept Landowner Incentive Recommendation
- 20 yes, 4 absent, 1 abstaining 3 non-voting members. Recommendation passed.
(Land Conservationist abstained due to potential conflict of interest.)

Category 1 Wetlands Recommendation (Discussion: Category 1 wetlands should be verified with a map and an onsite visit, estimate one year to update maps on the 4,019 acres of privately owned wetlands.)

Recommendation:

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

- Motion by Andy Manus, seconded by Phil McGinnis to approve the Recommendation regarding Category 1 Wetlands. 21 yes, 4 absent, 3 non-voting members. Recommendation passed.

Presentations:

(Note: Handouts, presentations, and other pertinent documents are posted on <http://www.dnrec.delaware.gov/swc/Pages/Wetland-Advisory-Committee.aspx>)

- Jayme Arthurs, Natural Resource Conservation Service (NRCS)
- Ron Vickers, DNREC, Division of Parks, Open Space Council
 - Advise and recommend to the Secretary of DNREC regarding projects that are supported by science, management priorities and public needs.
- Questions submitted by Andy Manus regarding the Open Space Council presentation by Ron Vickers. Andy requested the questions be answered by DNREC in the next 30 days:
 1. Property ranking process: Has this process been formally adopted by the Open Space Council and DNREC as required under section 7506¹ of the Land Protection Act?
 2. How does the Delaware Ecological Network relate to the State's existing SRAs under section 7507²?
 3. What has been the average score of the properties ranked and protected over the last five years by the Open Space Council?
 4. How many times has the ranking process been used at an Open Space Council meeting to prioritize the selection of competing properties?
 5. Section 7507 of the Land Protection Act calls for the Open Space Council and DNREC to update the state resource area maps in consultation with county governments at least every five years. Currently DNREC is out of compliance with this legislative requirement. Does DNREC have a timeline for coming into compliance with this requirement that can be shared with the Committee and speak to how our Fresh Water Wetland concerns may be addressed in this update process?

Possible Schedule for Final Report

- Draft outline sent to Committee – August 1
- Comments on draft outline from the Committee by August 15
- Draft report from DNREC Secretary to Committee for review – September 15
- Committee to meet and discuss the report - September 30
- Final draft from DNREC Secretary to the Committee – October 15
- Letters of support or opposition to the final report from Committee to DNREC Secretary – November 15
- Final report submission date November 30 (due to the General Assembly by December 31, 2014)

Next Meeting: **August 13, 9:00am-12:00pm** at the Kent County Administration Building for the purpose of commenting on a robust draft outline, other possible recommendations, and the conclusion of the conversation on Potential Funding Sources for Land Acquisition.

The meeting adjourned at 11:50 a.m.

Respectfully submitted,

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.

Title 7 Chapter 75: Delaware Land Protection Act
<http://www.dnrec.delaware.gov/landuse/Pages/DelawareLandProtectionAct.aspx>

¹ § 7506. Powers and duties of the Council.

The Council shall:

- (1) Review and recommend to the Department for adoption, after a public hearing, criteria for delineation, and dedication of open space;
- (2) Review and recommend to the Department for adoption, after public hearing, state resource area maps;
- (3) Review and recommend to the Department for approval lands for permanent protection according to the adopted state resource area maps;
- (4) Review and recommend to the Department for adoption, a ranking system to establish land acquisition or permanent protection priorities;
- (5) Advise and consult with the Secretary of the Department of Natural Resources and Environmental Control and with other state land preservation agencies and staff on preservation matters;
- (6) Advise and consult regarding any change from permanently protected status of open space lands acquired or otherwise protected;
- (7) Use the "Greenspaces for Delaware's Future" report prepared by the Department in 1990 as a starting point for carrying out the duties, and purposes of this chapter;
- (8) Promote and assist, in conjunction with state agencies, in the development and establishment of creative and innovative methods to secure the permanent protection of open space including but not limited to:
 - a. Local and regional land
 - b. Conservation and preservation easements on a statewide basis;
 - c. Purchase of less than fee simple property rights;
 - d. Program(s) to create financial incentives for private sector contributions to establish operations and maintenance funds at state resource areas;
- (9) Analyze, in conjunction with the Department of Finance, the state and local tax codes and formulate incentives to encourage landowners and developers to donate or retain ownership of their lands in an undeveloped state;
- (10) Coordinate with an interagency working group to be appointed by the Secretary that shall provide technical advice on all matters relevant to this chapter. At a minimum the working group shall consist of state agency technical staff from the Department of Agriculture, the Delaware Economic Development Office, and the Divisions of Historical and Cultural Affairs, Fish and Wildlife, and Parks and Recreation. Non-state agency membership shall be comprised of representatives from each county government, which may include up to 1 member each from the Planning Department, Parks and Recreation, and or Executive Office, as determined by the County Executive or Levy Court President. The Secretary shall select a chairperson from among the members. The group will work to

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maximize the use of funds, and use of protection methods other than fee simple acquisition to permanently protect statewide priority projects through utilization of open space criteria and the ranking system adopted by the Department;

(11) Review and recommend to the Department for approval funding from the Conservation Trust Fund and serve as the review authority for other state and federal funding programs if called upon to do so;

(12) Work with the Department, private nonprofit conservation groups and interested private sector interests to preserve and protect open space for the benefit of the citizens of the State;

(13) Recommend to the Department for adoption, after public hearing, any rules and regulations as may be necessary to carry out any provisions of this chapter.

² § 7507. State resource areas.

(a) In furtherance of the purposes of this chapter, the Council shall, in conjunction with the interagency working group, develop and forward to the Department for adoption:

(1) Standards and criteria consistent with the purposes of this chapter for evaluating the lands and waters of the state for inclusion as state resource areas in the open space program;

(2) A system for determining the existence and location of state resource areas; their degree of endangerment; an evaluation of their importance; and information related to their natural, historic or open space values;

(3) A priority ranking system for the acquisition of said lands and waters or rights therein.

(b) The Department shall carry out the following actions in furtherance of this chapter:

(1) Designate and adopt state resource areas for inclusion in the open space program. State resource areas shall be shown on maps of sufficient scale to identify individual properties for planning and zoning purposes.

(2) Update the state resource area maps, in consultation with county governments, at least every 5 years.

(c) Upon adoption of the state resource area maps the Department shall send copies to the affected county for inclusion in the conservation element of their respective comprehensive plans, and send copies to affected municipalities for inclusion in their respective comprehensive plans. Updated state resource area maps shall also be submitted to said agencies no later than 1 year prior to mandatory comprehensive plan updates as required in the Delaware Code.

(d) It is the intent of the General Assembly that the Council shall, in conjunction with the Department, analyze the feasibility and advisability of establishing a right of first refusal to purchase any property located within a state resource area. The Council shall propose and recommend to the General Assembly legislation to accomplish the foregoing, after holding public hearings with respect to such proposal.

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>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 Connely alt</i>	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 – <i>Jayme Arthurs alt</i>	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	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