

**Delaware Wetlands Advisory Committee**  
**August 13, 2014 Meeting Notes**

Chairman Mike Parkowski called the meeting to order at 9:00 a.m.

MP reminded committee what their purpose here is. As a reminder, under SB 78 the Secretary of DNREC, in consultation with the Advisory Committee, will develop the wetland protection priorities and recommendations for consideration by the General Assembly. We have approved several recommendations. It is DNREC's charge to develop the final report, take in feedback from the committee, and assemble the final copy. There are three presentations of additional recommendations to consider today. DNREC will present an outline of the final report to consider.

**Approval of Meeting Notes**

- Review of June meeting notes- motion by Phil McGinnis, seconded by Sarah Cooksey, to approve the June 11 notes as presented. All in favor, motion passed.

**Land Conservation Funding Partnership presentation-Frank Piorko.**

Highlighting progress under the Chesapeake Bay Program. The new agreement has high conservation priorities, including protecting 225,000 additional acres of wetlands by 2025. This includes 695,000 of forestland of high priority for water quality. Funding and match allows conservation leveraging and partnering. There are funding opportunities with new CB agreement; we can look for partnering opportunities with our farm preservation programs.

A review of the ELI report revealed some similar recommendation points to this WAC recommendations: review tax credits, direct acquisition, evaluating open space program collaboration, federal programs with NRCS, wetland mitigation and in-lieu fee programs. In state coordinated funding and incentive programs, there are innovative programs around the country that we can explore such as easement programs or leverage from private industry ideas. Already in the works in Delaware: Land Conservation Loan Program- using EPA and state funding- we can fund construction loans for municipal wastewater treatment facilities and implementation non-point source program projects and Estuary Comprehensive Management Plan items. This can lower loan rates and provide incentives for municipalities which allows addition project funds for the same final payback amount. Kent County was an early participant for addressing TMDL's in Murderkill watershed; lowered from 3.6% to 1%; extra leverage allowed purchase and restoration of 255 acres of woodlands to natural habitat and protect 165 acres of wooded riparian buffer.

The Brandywine-Christina Watershed Water Fund Research funded by William Penn Foundation; TNC and University of Delaware are partners looking for various funding mechanisms to protect headwater forested habitats. We should stay in touch and see what options they find viable in Delaware.

Ducks Unlimited Partnering for Wetland Protection through a NAWCA grant. Requires a 1:1 match; some match is being provided by Ag Lands Preservation Program but more match is needed so there lies an opportunity for partnership. At least \$500,000 will be used for restoration in Prime Hook and Bombay Hook NWR, Ted Harvey and Delaware Wild Lands properties.

More details on the Forestlands Preservation Program; O the landowners in the queue for funding 9 were funded in 2009, since 2009 and additional 24 of 34 parcels were funded through Ag Lands Preservation Program. Of the remaining 10 parcels 1 contains Category 1 wetlands. It may be time to redevelop the list of parcels as we attempt to reinvigorate the program.

MP: there is a lot of work already going on. A lot of existing programs are suffering from a lack of funding in last cycle or two. There should be an emphasis on this in the final report.

**Recap of Committee progress- Frank Piorko.** Review of committee recommendations that have been presented for voting and the outcomes thus far that are documented in past meeting notes.

### **Review and Discussion of New Recommendations**

#### **Center for the Inland Bays- Chris Bason.**

The Committee does not support the recommendations suggested by the Center for the Inland Bays.

Focusing on what is in place that can be implemented. In the original CIB CCMP there are several action items that focus on conserving and protecting wetlands in order to improve water quality in the Inland Bays. Four suggested recommendations:

#1 Request the Governor to reissue the No Net Loss Executive Order (EO) and request that state agencies plan together to achieve this. Mr. Bason took suggestion to request a resolution from the GA to encourage DNREC to adopt a policy to achieve no net loss, reverse wetland loss trends, and persue multiagency actions to accomplish this.

#2 Update the regulatory maps established under 1973 Wetlands Act. Tidal wetlands change often and current maps are outdated. The 1973 Wetlands Act also includes the provision of protecting freshwater wetlands >400 contiguous acres. There are 28 acres that could be considered under this provision for protection. DNREC needs to develop criteria-based definition in order to implement this and Mr. Bason encourages DNREC to do this and investigate these 28 and see if they meet the criteria.

#3 Encourage DNREC to use Section 401 certification authority to help reverse wetland losses. As many waters in the Inland Bays do not meet their designated uses there is justification for the state to become involved in the certification process to increase permit review, increased consultation with permittees to avoid wetland impacts and set adequate mitigation ratios in watersheds of most needs. Other states have made an example of this involvement. The Inland Bays and other waters of DE have the Exceptional Recreational and Ecological Significance (ERES) designation and have a higher level of protection. Freshwater wetlands reduce pollution to reduce wetland impacts.

#4 Use the ERES policy to reduce impacts to wetlands. Policy requires BMP's for non-point source control and least environmentally damaging practices. These policies justify 401 WQ Certification.

Discussion: Could recommendation #1 be amended to request a resolution by the GA to recognize the value of wetlands and direct state agencies to avoid wetland impact? Is the EO an

opportunity for DNREC to lead by example to avoid wetland losses before asking private landowners to avoid wetland impacts? Is the EO an administrative task? Does an EO bypass the General Assembly and oppose the intent of the Committee? Perhaps #1 should be pursued on an individual organization level. If DeIDOT causes most wetland impacts should they be targeted with a no net loss request? It is not the charge of this committee to direct state agencies how to do their business. This process has unearthed many administrative powers that DNREC could use if they choose to implement their current powers.

Motion by Senator Venables, seconded by Senator Hocker, to dismiss these suggestions from consideration of a recommendation vote by the committee. Vote: 15 in favor of motion, 2 DNREC abstained, 3 non-voting, 4 members absent, and 4 opposed. The motion to dismiss passed. Even though these recommendations were not considered they will be presented in the final report as those of CIB. Mr. Bason declined coming back with more composed recommendations at the next meeting.

Break 10:37

**DNREC- Frank Piorko.**

Tabling a presentation of DNREC's ideas. They represent areas where DNREC can make improvements in certain areas and don't need to take the Committee's time for formal conversation and votes. These ideas can be documented in the final report.

**Delaware Farm Bureau-Marty Ross.**

Recommendation that Title 30 Chapter 5426 be amended by making deletions as show by strike through and insertions as shown by underline as follows:

§ 5426 Farmland Preservation Fund receipt transfer.

~~On or before October 15 of each fiscal year, the State shall transfer \$10 million in receipts received under Chapter 54 of this title, to the Farmland Preservation Fund maintained under Chapter 9 of Title 3.~~ Notwithstanding any law, code, ordinance, or regulation to the contrary, the Foundation shall be entitled to adopt and impose procedures and requirements under Title 29 chapter 101 to collect Fifteen million dollars from the respective county receiver of taxes, treasurer or director of finance as the Foundation's share of the Real Estate Transfer tax under Title 30 Chapter 54 and shall when collected and after deduction of the seven and a half percent administration charge, be transferred to the Foundation of which, ten million dollars will be allocated for Agland Preservation and five million dollars for Forestry Preservation for use in carrying out Title 3 Chapter 9.

Synopsis

Current law provides for the mandatory transfer of \$10 million annually from the Division of Revenue for the use by the foundation. The recommendation would require the foundation to adopt and impose procedures for the direct transfer of monies collected under the Real Estate Transfer tax, change the amount to \$15 million dollars, allocate \$10 million to farmland preservation and \$5 million dollars to forestland preservation.

#### Qualifiers:

- Amend Real Estate Transfer Tax
- Open Space Program intentionally left out of motion
- Makes it more difficult for the GA and future administrations to use funding for other than preservation
- Makes collecting funds easier and difficult to divert funds
- Funds would be remitted directly to the Foundation
- The 7.5% administration charge already happens in rollback tax
- Make it more difficult for Open Space to get less; provides more security
- State share of Real Estate Tax will be taken (extra \$5M) and County/local share is not affected

Second motion made by Marty, seconded by Andy Manus, calls for semi-annual meetings to be held by the Ag Preservation Foundation, Open Space Council, NGO's and pertinent federal agencies to identify opportunities to coordinate additional funds. The NGO community has begun meeting to ID property where they can collectively work as a group to protect land. This is still a voluntary program. 21 in favor, 0 opposed, 3 non-voting, 4 absent. Motion passed.

#### **Final Report Outline Discussion**

The final report will be written by Dave Small. Comments on the outline:

- Opposition to final bullet in Executive summary regarding the inclusion of the Department's comments.
- Opposition to second to last bullet in Executive Summary. MP reminded the committee that the Sectary will pass recommendations to the GA upon the consultation of the committee. The committee may review the report from DNREC and can express dissenting opinions which should be included as an appendix, not in the executive summary.
- The ELI report should not be included in background and introduction.
- Can include how the committee reacted to the information provided in the packet.
- Need to mention that the Committee's definition of wetlands differed from that of some 'planners'.
- Need to add the Committee's vote on a definition of a wetland into the rundown of votes/recommendations.

#### **Committee Discussion**

Next meeting will include more information and a vote on funding. Please be present and ready to vote.

DNREC will make changes based on today's comments and redistribute to Committee. Committee will provide comments on revised outline due back on Monday Aug. 18 by COB. DNREC will distribute a draft final report by Sept. 15 for review at next meeting (September 25). Comments will be taken at the September meeting. We will likely need to meet one more time after the final draft has been distributed. Present final report Oct. 15.

**Opportunity for Public Input**

Ron Vickers, DNREC: applauded the effort to get Open Space funding into discussion.

The meeting was adjourned at 12:04 p.m.

Submitted,  
Alison Rogerson  
DNREC Division of Watershed Stewardship

*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.*

<b>List of Committee Members</b>	<b>Agency</b>
Chris Bason	Center for the Inland Bays
Edward Bonner	U.S. Army Corps of Engineers
Sarah Cooksey	DNREC – Coastal Programs
Mark Davis- <i>Ed Kee alt.</i>	Dept. of Agriculture
<b>Tim Deschepper</b>	Town of Middletown – LLG
Hal Godwin	Sussex County Planning
Brenna Goggin	Delaware Nature Society
Mary Ellen Gray – <i>Kris Connelly alt.</i>	Division of Planning – Kent County
George Haggerty- <i>Mike Valenti alt.</i>	New Castle County Planning
<b>Rep. Debra Heffernan</b> , 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
<b>Robert McCleary</b>	DelDOT
Jim McCulley	Home Builders Association of Delaware
Phil McGinnis	Delaware Association of Realtors
Brian Michalski	Delaware Forestry Association
<b>Paul Morrill</b>	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