

Wetlands Advisory Committee

Meeting Notes

September 25, 2013

Agenda Items

1. Welcome statement by DNREC Sec. Collin O'Mara
2. Committee Structure and Protocol and DE Wetlands Introduction by DNREC Watershed Stewardship Division Director, Frank Piorko
3. Environmental Law Institute Report by Rebecca Kihslinger of the Environmental Law Institute
4. Review of DNREC Wetlands Status and Trends Reports by DNREC Environmental Scientist, Mark Biddle.
5. DNREC Workgroup Overview, by Watershed Stewardship Director, Frank Piorko
6. Closing remarks

Materials Distributed:

1. Information Binders for committee members
2. Power point presentations given by Frank Piorko, Rebecca Kihslinger, and Mark Biddle (electronically distributed on website)

Welcome Statement by DNREC Secretary Collin O'Mara

- Secretary Collin O'Mara thanked all committee members for taking time from their schedules to serve on the committee
- Secretary O'Mara named Mike Parkowski and Porter Schutt to co-chair the committee
- There's a huge economic value in this resource, and we haven't done a good job in the past of compensating folks for that value. There are a lot of innovative ideas in other states around mitigation banks, around other types of tools we could use to begin to provide additional value to folks that have these resources.
- There are two main reasons why addressing wetlands protection is important now:
 - Economic value of the resource: DE has many drainage needs, and wetlands can be a resource for helping to avoid flooding and storm damage costs in the future
 - The Army Corps of Engineers has made major cuts over the past few years: This makes receiving federal permits take a long time, which slows projects and has major economic implications.
- Secretary O'Mara's challenge for the committee: "Are there ways we can have a system that is protective, but at the same time much more efficient and economical?"
- Delaware has a nearly 1 billion dollar thriving tourism economy which relies on healthy natural resources for hunting, birding, and outdoor recreation. There is a huge potential for our long-term economy here.
- The water quality benefits and storm protection from wetlands are about the health of our economy more than just an environmental conversation. A challenge for the committee is to find areas that make sense and are good for the economy and the environment.

- Attempts to increase wetland protection failed in the late 90's largely because of overshooting goals. Sec. O'Mara asked the committee to find areas that could be widely agreed on, and to focus attention and progress there.
- The committee was meant to be inclusive and represent a wide range of Delaware stakeholders, Sec. O'Mara stated "I do believe there's an opportunity here to do something special, and I do think it comes down to doing things the way we do things best in DE, which is getting all the right folks around the table, and finding common sense solutions."

Committee Structure and Protocol and DE Wetlands Introduction by DNREC Watershed Stewardship Director, Frank Piorko

- The goal of this presentation was to provide a baseline of how wetlands (non-tidal wetlands, in particular) are important as an ecosystem resource.
- Additionally, this presentation outlined the Committee Workgroup Process and a proposed meeting schedule.
- A copy of this presentation can be found at:
<http://www.dnrec.delaware.gov/swc/Pages/Wetland-Advisory-Committee.aspx>
- Noted Point: 1 acre of forested wetland can hold as much as 300,000 gallons of water at a 1-foot depth which equals about 40,000 cubic feet of water. Storm water management practice offset costs are rated at \$10 per cubic foot which means that a 1 acre wetland saves \$400,000 in storm water management costs.

Delaware Wetland Protection Vision and Strategic Plan by Rebecca Kihslinger of the Environmental Law Institute

- This presentation outlined:
 - ELI's work with Delaware on reviews and assessments
 - Existing state and federal protection programs relating to wetlands
 - Challenges to wetlands protection in DE
 - Recommendations for improving wetlands protection
- A copy of this presentation can be found at:
<http://www.dnrec.delaware.gov/swc/Pages/Wetland-Advisory-Committee.aspx>
- Noted Point: Many challenges identified in 2010 are still relevant today. The number 1 challenge identified by interviewees is the lack of comprehensive non-tidal freshwater protection. Recommendations for a Wetland Protection Strategy include developing a toolbox of landowner incentives such as tax incentives, acquisition funding and regulatory incentives.
- Marty Ross asked about what definition ELI used to define wetlands and if it matched the definition used by federal regulators. The concern was to make sure that the reports are consistent, so loss or gain of acreage is correct. Rebecca clarified that ELI was not part of the wetland acreage inventory and did not play a role in defining wetlands. Mark Biddle commented that his upcoming presentation would cover this.
- Marty Ross asked why only 2 states thus far have assumed Clean Water Act (CWA) §404 programs. Rebecca replied that this is a good question and noted that even those 2 states may not fully cover all the wetlands in their states.
- Ed Bonner from the Army Corps of Engineers clarified that in order for a state to assume a CWA §404 program, the EPA needs to formally make sure the state's program is the same or better than the federal CWA §404 program. For example, CWA §404 requires

coordination by the Army Corps of Engineers with varied federal agencies such as the Department of Fish and Wildlife to ensure that development doesn't occur in areas that are habitat for species protected under the Endangered Species Act. The value of a state program is the process to decide if a wetland is regulated could be easier; because of complicated legal language in the Clean Water Act, it is difficult to determine the exact acreage of land that is federally regulated. This results in an inordinate amount of time going into legal and geographic issues, which slows progress on permitting.

- A concern was raised by the committee that, based on Ed's comments, the wide reaching coordination that a state CWA §404 program requires could quickly lead the committee to focusing on things such as Endangered Species and Historical Lands. This was not the charge of the committee and clarity was needed on the issues to be addressed. This member was not willing to give an unrestricted amount of regulatory power to DNREC.
- Collin remarked that one of the challenges that the Corps has been dealing with is that there are so many pieces of the federal program. The question before us is can we do a better job at the state level and be more efficient without getting into all of those other areas?
- Paul Morrill from the Committee of 100 inquired if an attempted implementation of a state CWA §404 program was the overreach that led to failed wetlands protection efforts in the late 90's, and Sec. O'Mara answered that the overreach was more related to a lack of consensus on categorization of wetlands to be protected.
- Paul Morrill asked if a goal of net gains of wetlands in Delaware was feasible since the sea level rise committee predicts large losses of tidal wetlands. Rebecca Kihslinger answered that the findings of the sea level rise committee should be considered in this context.
- Ed Bonner from the Army Corps of Engineers suggested programmatic general permits as a potentially effective tool, which involves states having similar programs for initiating a general permit. This puts less involvement day to day with the Army Corps of Engineers, but federal authority still in place. This leads to fewer projects rising to the level that needs to be directly considered by the Army Corps of Engineers. The Army Corps of Engineers has several programs in DE already for tidal areas that could be expanded. The Corps staff is getting smaller and relying on state staff more and more to review. Rebecca added that many states have general or joint permit processes where the applicant only submits one application which streamlines the process a lot.
- Mike Parkowski remarked how this discussion was similar to the problems encountered by the wetlands committee in 1998, and mentioned that general permits seemed like a sensible solution because they circumvent the existing difficulty of the existing CWA §404 structure, rather than trying to recreate it on the state level. They stated that landowners are looking for certainty and consistency in permitting for development, and that we need to understand how the CWA §404 program works so that we can understand what we're trying to protect and make sure the protection is real.

Delaware Wetlands Status and Change Report by DNREC Environmental Scientist, Mark Biddle

- The goal of this presentation was to explain Delaware's efforts at documenting wetlands gains and losses over the past few decades. Data collected by DNREC indicates an

increasing annual rate of loss for non-tidal wetlands and a large portion of wetlands are degraded from a reference (natural) condition.

- A copy of this presentation can be found at:
<http://www.dnrec.delaware.gov/swc/Pages/Wetland-Advisory-Committee.aspx>
- Noted Point: The 2007 wetland mapping effort was done to the highest standard available. This landscape level inventory includes wetland acreage and functional estimates. Non-tidal wetlands make up 2/3 of the State's wetland resources. Comparison to 1992 maps indicated a decrease of 3,126 acres of wetlands, 92% of which were non-tidal wetlands.
- Marty Ross asked if the increasing rate of loss could be related to a definitional change or by including areas not currently regulated. Mark Biddle remarked that the report was based on mapping at the landscape level that looked for ecological features, so regulatory definitions were not used.
- Marty Ross asked what soil types were used in the analysis. Mark Biddle answered that NRCS hydric soils were used, and map units were counted that had 80% hydric soils or more. The committee member added that he was curious if the department was going to use NRCS or USDA soil types in the future. Mark Biddle answered that this was a good point to consider, but they should be the same.
- Howard Fortunato representing the Home Builders Association of Delaware asked how many of the acres lost were permitted to be lost. Mark Biddle answered that DNREC met with the Army Corps of Engineers after the reports were published and some wetlands were permitted for loss, and some weren't. Only a portion of permitted losses were covered in DNREC's figures.
- Mike Parkowski agreed that the matter of how many wetlands were permitted for loss was important because Nationwide permits allow for 1/10 of an acre of fill, and not many of these permits are issued. They stressed that it was important to figure out definitions, so it can be determined what the Army Corps of Engineers and others mean by wetlands.
- Marty Ross mentioned that wetlands delineation is done for various land use changes, and that this creates a system of checks built in so this large loss must be due to different definitions.
- Mark Biddle mentioned that delineation is a ground level process whereas the reports are based off aerial imagery which gives a landscape level snapshot.
- Ed Bonner for the Army Corps of Engineers mentioned that there are many activities such as logging, draining and excavating that don't require a permit. The Army Corps of Engineers has no ability to track loss for activities it can't regulate. That in part leads to the error or lack of information.
- Mike Parkowski remarked this was important because there are a number of valuable areas that are impacted by activities that are not regulated by the Army Corps of Engineers.
- Marty Ross responded that we have forest land, farm land, developed land all covered by different programs in the state of Delaware that involve permits and BMPS. By and large, these bases are checked off by the processes that we have in the state which compliments the federal program. There are triggers in place that should address these issues.

DNREC Workgroup Overview, by Watershed Stewardship Director, Frank Piorko

- The six functional areas of the Wetland Evaluation Process were introduced. DNREC employees were selected to populate these groups and have already met to begin

compiling and preparing information that can support Advisory Committee discussions and formation of recommendations, as needed. The 6 groups are available to present material to the Advisory Committee upon request. They are:

- Conservation and Protection
- Regulatory and Permits
- Restoration
- Science
- Policy
- Education and Outreach
- A copy of this presentation can be found at:
<http://www.dnrec.delaware.gov/swc/Pages/Wetland-Advisory-Committee.aspx>

Closing Questions/Remarks

- Senator Venables reflected on the failure of the attempts at wetlands protection in 1998. He suggested that the failure was a result of a lack of common sense. Wetlands that weren't clearly identifiable as such were not able to obtain a consensus for protective action, and wetlands that are more easily identifiable will be easier to find common ground in. The committee member also expressed concerns about Delaware's economy and the impact excessive regulation might have.
- Andy Manus commented that comprehensive wetlands protection might have regulations as one component but voluntary protection options should be explored. Large amounts of wetlands in North America have been protected voluntarily and we would be remiss to overlook non-regulatory opportunities. It is important to determine what motivates landowners.
- For the next meeting, it was suggested that committee members share their experiences with the current system in place. By understanding current processes, duplication of the federal procedure by the state processes can be avoided. Possible speakers for the next meeting could include the Army Corps of Engineers, Agriculture, the Home Builders Association, Andy Manus on previous efforts at non-tidal protection, and a county perspective.
- Mike Parkowski agreed that it is important to establish a good baseline of information to lead to recommendations.
- The next meeting will take place during the first week of November. An exact date will be established using a Doodle Poll.

Attendees: Names in bold were in attendance.

Edward Bonner	U.S. Army Corps of Engineers
Joanne Cabry	Center for the Inland Bays
Sarah Cooksey (Bob Scarborough as alternate)	DNREC- Coastal Programs
Mark Davis	Dept. of Agriculture
Tim Deschepper	Town of Middletown- LLG

Hal Godwin (Howe Donnell as alternate)	Sussex County Planning
Brenna Goggin (Kristen Travers as alternate)	Delaware Nature Society
Mary Ellen Gray	Division of Planning- Kent County
George Haggerty	New Castle County Planning
Rep. Debra Heffernan	Delaware House of Representatives
Sen. Gerald Hocker	Delaware Senate
David Hugg (Dawn Thompson as alternate)	Town Hall Smyrna- LLG
Sally Kepfer	Natural Resource Conservation Service
Josh Littleton	City of Seaford- LLG
Andy Manus	Land Conservationist
Robert McCleary	Del DOT
Jim McCulley (Howard Fortunato as alternate)	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* (Kate Hackett as alternate)	The Conservation Fund/Open Space Council
Sen. Robert Venables	Delaware Senate
Bob Walls	Farm Services Agency
Rep. Dave Wilson	Delaware House of Representatives

In addition, 15 members of the public and/or DNREC supporting staff were in attendance.