



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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April 30, 2014

To Members of the 147th Delaware General Assembly:

Governor Jack Markell signed [Senate Bill 78](#) into law in July 2013. This legislation establishes a Wetlands Advisory Committee (Committee) to develop comprehensive recommendations for conserving and restoring non-tidal wetlands in Delaware. As part of the legislative charge of SB 78, an interim report of the activities of this Committee is to be delivered to the General Assembly by May 1, 2014. Enclosed is a short summary to date of the work of this 28 member Committee.

The Committee has met seven times since September 2013, and has developed several recommendations regarding regulatory and permitting activities as well as possible landowner incentive programs. This group representing a broad cross section of Delaware agricultural, business, environmental and municipal interests has been hard working, thoughtful and deliberate in their consideration of a myriad of recommended actions for the long term protection of Delaware's non-tidal wetlands.

The Committee will reconvene in mid-May to discuss additional proposals and research to be developed and brought forth to the Committee before its conclusion at years end. I offer my thanks to the Governor, General Assembly and members of this Committee for the support given to this important environmental issue. I look forward to delivery of a comprehensive final report and recommended plan of action to be delivered to the General Assembly by December 31, 2014.

Best Regards,

A handwritten signature in blue ink, appearing to read 'Collin P. O'Mara'.

Collin P. O'Mara
Secretary

Delaware's Good Nature depends on you!

Delaware Wetland Advisory Committee: Interim Report

April 30, 2014

Governor Jack Markell signed Senate Bill 78 into law in July 2013. This legislation establishes a Wetlands Advisory Committee (Committee) to develop comprehensive recommendations for conserving and restoring non-tidal wetlands in Delaware, including evaluating national best practices and standards, incentive-based programs, and reviewing state and federal wetland permitting processes to identify opportunities to improve efficiency and eliminate redundancy.

Prior to the Senate Bill 78, DNREC contracted with the Environmental Law Institute (ELI) to conduct a preliminary report detailing relevant information on Delaware's past and current wetlands program efforts and those in surrounding states. Internal to DNREC, subgroups were formed to address the ELI report's findings in the areas of: Restoration, Conservation and Protection, Regulatory and Permits, Science, Education and Outreach, and Policy. This information was presented to the Committee at the first meeting.

The legislation charges DNREC Secretary Collin P. O'Mara, within 18 months of the effective date of the legislation and through consultation with the Committee established under this section, with developing wetland protection priorities for the State of Delaware and recommending for consideration by the General Assembly a comprehensive approach for improving non-tidal wetland conservation, restoration, and education within the state.

The Committee is asked to consider nationally recognized best practices and standards, as well as actions that surrounding states have implemented in the way of incentive programs, policies, and assumption of regulatory roles. The Committee is also asked to evaluate the permitting process for activities regulated by state and federal agencies with the goals of reducing duplication, providing efficient one-stop permitting, and improving the state's ability to account accurately for cumulative and individual impacts.

The Committee representation is as follows:

Delaware Farm Bureau (1)	Delaware Forestry Association (1)
Delaware State Bar Association (1)	County government planning agencies (3 total)
Delaware Association of Realtor (1)	Delaware Chapter of the American Council of Engineering Companies (1)
U.S. Army Corps of Engineers (1)	Delaware Department of Natural Resources and Environmental Control (2)
Delaware Home Builders Association (1)	Delaware Senate (2)
Delaware League of Local Governments from each county (3 total)	Delaware House of Representatives (2)
Committee of 100 (1)	U.S. Department of Agriculture Farm Service Agency (1)
Delaware environmental organizations (2)	U.S. Department of Agriculture Natural Resources Conservation Service (1)
Delaware outdoor recreation and wildlife conservation organizations (2)	
Delaware Department of Transportation (1)	
Delaware Department of Agriculture (1)	

The Committee is co-chaired by Michael Parkowski and Porter Schutt. The Committee adopted voting procedures and provided adequate time for discussion, consensus building and consultation with represented

groups. Committee members or designated alternates may vote on action items. It was determined an affirmative vote of 2/3 of total Committee membership is required to pass any motion. Dissenting opinions on any recommendation will be recorded. Representatives from all three federal agencies opted to be non-voting members due to conflicts of interest. 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.

The Wetland Advisory Committee convened its first meeting on September 25, 2013 and met monthly six additional times through April 2014. Several recommendations have been considered to date on both permitting and incentives for wetland protection. A special subcommittee was formed to develop voluntary options for landowner incentives. The Committee is currently considering implementation measures primarily in the area of these voluntary programs. Permitting program alternatives were also developed and presented to the overall committee for their discussion and consideration. Details on both the permitting options and the incentive recommendations are included below.

Committee members heard formal presentations from DNREC scientists and program managers, regulatory officials from the U.S. Army Corps of Engineers, as well as Committee representatives of the Delaware Farm Bureau, Delaware Nature Society, Delaware Forestry Association, Delaware Forest Service and Homebuilders Association of Delaware. DNREC expert botanist William McAvoy also presented to the Committee on the subject of Category 1 unique non-tidal wetlands.

Incentive Considerations

Chairman Parkowski requested a workgroup be established to investigate an incentive based approach to protecting freshwater wetlands. Andy Manus and Jayme Arthurs were co-leads assisted by Committee members Marty Ross, Brenna Goggin, Jim McCulley, Sarah Cooksey, Phil McGinnis, Paul Morrill, Mark Davis, Mark Biddle, Mike Valenti, and Tim DeSchepper. The subcommittee met several times during the period from January to March and corresponded often by phone and e-mail. Several presentations were made during the February, March and April full Committee meetings, and as time allowed, discussion occurred around the various options. In advance of full Committee meetings, the subcommittee was actively engaged in sharing information, ideas and possible program options with the full Committee. All of the presentations are available on the Delaware Wetland Advisory Committee web site and Committee discussions are memorialized in the minutes of the meetings. <http://www.dnrec.delaware.gov/swc/Pages/Wetland-Advisory-Committee.aspx>

Initial ideas related to voluntary landowner incentives that were more fully developed during the subcommittee process include the following:

1. A Natural Resource Protection Incentive Ordinance
2. Revitalizing the Forestlands Preservation Program
3. A Conservation Credit Exchange

Full Committee votes were taken on two of the three program recommendations above. The first option is still being investigated. Chairman Parkowski asked the Committee if they supported the following proposals. Voting results are as follows:

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?

Voting Results - 23 Yes/ 2 No/ 3 non-voting

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 Results – 21 Yes/ 4 No/ 3 non-voting

Permitting Considerations

DNREC staff presented the topic entitled “Potential Framework for a Non-Tidal Wetlands Program in Delaware” at the February 11 meeting. This presentation outlined three primary program objectives that focused on regulatory protection and streamlined permitting options for consideration. For Category I wetlands, the Committee was asked to consider a program that utilizes “Protection” in the form of new and/or updated regulations and permitting efficiency. For Category II wetlands, the Committee was asked to consider a State program that would implement portions of the existing Federal regulatory program for the purpose of expediting permit processing and establishing DNREC as a single point of contact for all wetland permits. After this meeting, Chairman Parkowski asked DNREC to provide more detailed information specific to the regulation of Category I wetlands.

DNREC staff presented the “Potential Framework for a Category I Wetlands Program in Delaware” at the March 12 meeting. This presentation illustrated the difference between two areas of Category I wetlands which are isolated Category I wetlands that are not currently regulated by the Corps of Engineers (approximately 5,775 acres statewide); and non-isolated Category I wetlands that are regulated by the Corps of Engineers (approximately 12,983 acres statewide). A significant level of effort was generated to compare proposed efficiencies in a state administered program with those currently being managed by the Corps. Additional information provided by DNREC included the fiscal and staff requirements necessary to operate various levels of state programs, a comparison of the existing Federal program and the proposed State program as it relates to improved environmental outcomes and benefits to the regulated community.

At the April 9th meeting, the Committee was asked by Chairman Parkowski to vote on three questions intended to determine if the Committee supports the development of a program within DNREC to develop regulatory and permitting efforts for Category I and Category II wetlands. It should be noted that prior to voting on these regulatory options, each Committee member was asked to share their thoughts on the importance of the information that was presented and discussed. Only after that level of discussion had taken place was a vote taken.

The questions posed to the Committee and the voting results on Permitting Considerations are as follows:

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

Voting Results - 15 Yes/ 10 No/ 3 non-voting

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

Voting Results - 15 Yes/ 10 No/ 3 non-voting

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 Results - 14 Yes/ 11 No/ 3 non-voting

Final Voting Results

The results of voting on recommendations were that recommendations related to incentives passed the 2/3 voting majority and were accepted. For recommendations related to permitting considerations the voting did not reach a 2/3 voting majority and did not pass, although a simple majority were in favor.

Future Considerations

The Wetland Advisory Committee anticipates several more meetings before completing its review and providing a comprehensive set of formal recommendations to the Secretary of DNREC. The next meeting of the Wetland Advisory Committee is scheduled for Wednesday, May 14 from 9am to 12pm at the Kent County Administration Building in Dover.

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".



Department of Planning Services
Division of Planning

SARAH E. KEIFER, AICP
Director of Planning Services

MARY ELLEN GRAY, AICP
Division Head

Phone: 302/744-2471
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April 9, 2014

Frank M. Piorko
Division Director
DNREC Division of Watershed Stewardship
89 Kings Highway
Dover, DE 19901

Re: Wetlands Advisory Committee response to April 9, 2014
Poll

Dear Frank:

We offer the following responses to the questions discussed at the February and March 2014 Wetland Advisory Committee meetings and sent via email on 3/27/14:

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

Yes. It is our understanding that this process is not an assumption of the entire Section 404 program from the US Army Corps of Engineers (Corps) such as New Jersey has done. Rather it is delegation of a component of the Section 404 program which, is the delegation of authority for processing Federal Nationwide Wetland Permits. This effort will provide a benefit to Kent County citizens by providing Federally delegated services to those citizens seeking assistance on wetland issues and permitting.

- 2. Does the Committee recommend that DNREC be given the authority to adopt a freshwater wetland program to protect Category I wetlands that are not currently regulated by the Corps?*

Yes. Isolated wetlands are a valuable resource that warrants protection.

-
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?*

No. Rather, we support phasing in this effort over time. Phasing in this effort will give the wetlands staff time to focus on the implementation of processing Nationwide Permits for Category I wetlands, and to garner the additional resources needed to take on protecting all Federally regulated wetlands that are subject to Nationwide Permits.

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 of Chapter 9 of Title 3 of the Delaware Code?*

Yes. A consistent source of funding proactively provides non-regulatory protection to wetlands.

5. *Does the Committee recommend that the availability and limits of tax credits provided under the Delaware Land and Historic Resources Protection Incentives Act of 1999 (Subchapter I, Chapter 18, Title 30 of the Delaware Code) be amended and expanded to create greater incentives to private landowners to protect and preserve freshwater wetland and adjacent natural resource areas?*

Yes. Tax credits proactively provides non-regulatory protection to wetlands.

Please don't hesitate to contact me with any further questions.

Sincerely,



Mary Ellen Gray, AICP

Division Head

Planning Services

Andrew T. Manus
Comments on Motion 1-5
DWAC meeting April 9, 2014

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

Move to amend question and/or clarify that DNREC is directed to seek approval from the Corps for a programmatic general permit (PGP) to replace specific federal nationwide permits. There are currently 52 Corps nationwide permits (NWP). Confirm with Corps that if state is approved for certain PGP that these state issued permits replace the respective NWP.

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

Clarify that the adoption of a freshwater wetland program will be done through the existing State regulatory process. Recommend that DNREC's draft report (required by SB 78) detail the regulatory and staffing components of any such program. A critical component of such a program should be the adoption of water quality criteria specific to Category I wetlands. Water quality criteria specific to wetlands has been a recommendation contained in two Environmental Law Institute (ELI) reports that address the State's need for a freshwater wetlands program (1999 and 2010).

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?

Have DNREC in the draft report required by SB 78 clarify if is looking for full assumption of the Corps 404 Program. If DNREC is it looking to seek approval for PGP authority for a specific number of NWP that are currently administered by the Corps please list the specific nationwide permit numbers. For these NWP that DNREC seeks PGP authority please provide a staffing and capacity assessment for each. A 2012 Congressional Research Service report notes that the average processing time for a Corps NWP is 24 days. What does DNREC estimate its processing time for the various NWPs that it seeks PGP approval? Several of the NWP require compensatory mitigation and/or in lieu fees to offset unavoidable losses of wetlands. DNREC should detail in its draft report how specific compensatory requirements will be determined.

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 of Chapter 9 of Title 3 of the Delaware Code?

There are a number of appealing reasons to revitalize this program. Foremost among them is the fact that 80-85% of the remaining non-tidal wetlands are embedded in the State's approximately 385,000 acres of forested landscapes and the majorities are privately owned. Additionally this program contains a number of the key attributes of an incentive program that the Carrot Committee identified as important back in January. Briefly several of these attributes include that the incentive proposed be: voluntary for private landowners; be capable of leveraging of funding sources such as ENGO and Federal funds; be transparent in the manner in which implemented and have understandable criteria; target forest and help foster public and private partnerships for conservation.

All of the above said, I am also very mindful of the State's current budgetary situation and the findings in the recent DEFAC report. I would note that by revitalizing the *Forestlands Preservation Program* we are giving the administration and the General Assembly a viable and fiscally responsible alternative to accomplish its land preservation and non-tidal wetlands program and policy goals. To do conservation in a time of scarcity requires that we rethink the way we do business. For example, under the Open Space program, the State owns the property and has to budget additional funds to maintain and manage it. Under the *Forestlands Preservation Program*, the landowner bears the burden of managing and maintaining the property. By revitalizing the *Forestlands Preservation Program* as a viable option for land preservation this incentive gives the administration and the General Assembly another reasonable and responsible way to accomplish their objectives.

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

DNREC should include this incentive in its draft report. Several specific examples of how landowners might utilize this incentive should be described.

Wetland Advisory Committee Questions –

Should the State develop a regulatory program for Category 1 Wetlands?

Homebuilders Association of Delaware Position.

- HBADE believes that ALL wetlands in the State of Delaware are currently regulated by the Corps of Engineers and that the proposed Federal rulemaking will further solidify the current policy of the Philadelphia District, Corps of Engineers to regulate all wetlands, including isolated wetlands.
- HBADE acknowledges that Category 1 wetlands are important and should be afforded the highest level of environmental protection.
- HBADE acknowledges that according to DNREC records, two to three acres of these wetlands are lost per year.
- HBADE believes that all of these losses are illegal losses of Federally regulated wetlands and that further regulation by the State would not in itself protect these areas any better.
- HBADE recommends mapping of these resources with wide distribution of the mapping, including county planning offices, municipal planning offices, DelDOT, DEDO, DNREC and other pertinent public and private agencies, so that the locations of these areas are known to those making land use decisions.
- HBADE recommends reaching out to private owners of these resources to alert them of the value of these resources and to educate them about possible incentives available for protection of these resources.
- HBADE recommends that a robust set of incentives that provide real value to property owners be established prior to the communication with private owners of these resources.

- HBADE recommends that the recent losses of Category 1 wetlands be mapped and that property owners be interviewed with regard to the reasons for the loss of these areas in order to better understand the pressures on these resources.
- Additionally, HBADE acknowledges that there are numerous other important resources on private property with great Public Value and that these resources should be part of any incentive program with incentive commensurate with the value of the resource.
- HBADE feels strongly that additional regulation will do nothing to protect these resources and may put additional pressure on owners of these resources to eliminate or reduce them.
- Additionally, HBADE feels that regulations that layer on top of existing regulations tend to hurt the business climate in the State and that we should be streamlining regulatory efforts instead.

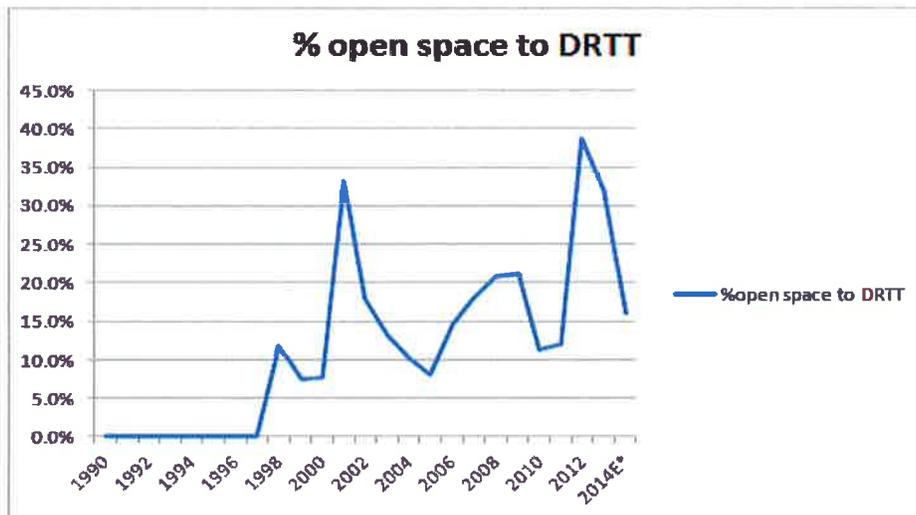
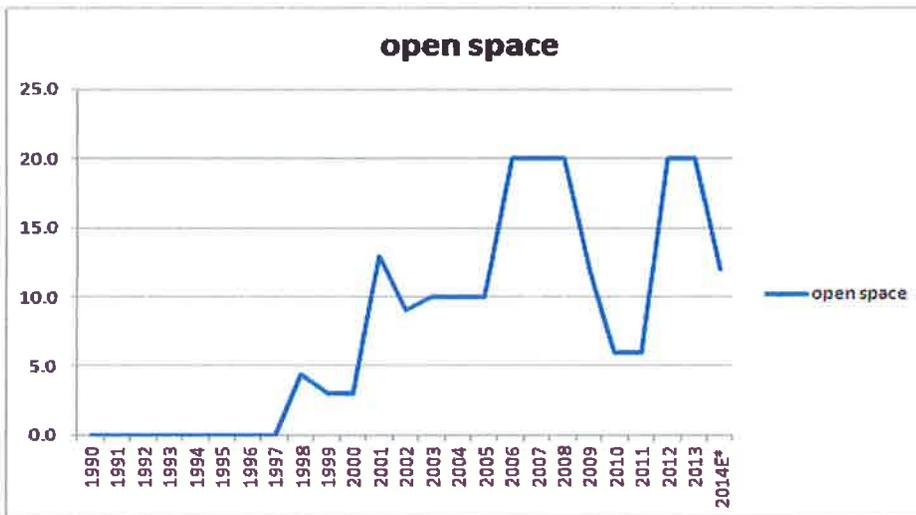
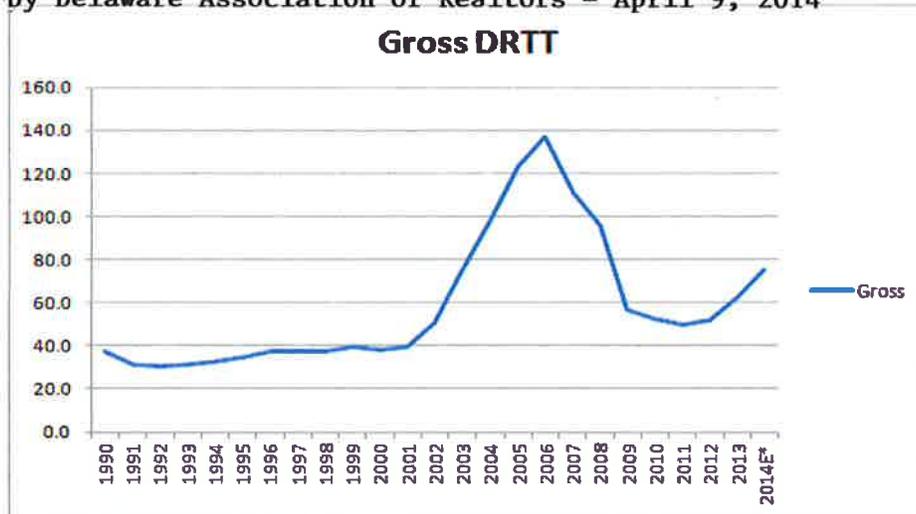
Submitted by Delaware Association of Realtors - April 9, 2014

TABLE 2. DELAWARE REALTY TRANSFER TAX REVENUES AND TRANSFERS, 1990 - 2014 ESTIMATED

IN MILLIONS OF DOLLARS						
<u>FY</u>	<u>Gross</u>	<u>open space</u>	<u>farmland</u>	<u>net GF</u>	<u>Gross % Ch RTT</u>	<u>Net % Ch RTT</u>
1990	37.6	0.0	0.0	37.6		
1991	31.5	0.0	0.0	31.5	-16.2%	-16.2%
1992	30.3	0.0	0.0	30.3	-3.8%	-3.8%
1993	31.3	0.0	0.0	31.3	3.3%	3.3%
1994	32.7	0.0	0.0	32.7	4.5%	4.5%
1995	34.8	0.0	0.0	34.8	6.4%	6.4%
1996	37.6	0.0	0.0	37.6	8.0%	8.0%
1997	37.6	0.0	0.0	37.6	0.0%	0.0%
1998	37.6	4.5	0.0	33.1	0.0%	-11.9%
1999	39.7	3.0	0.0	36.7	5.6%	10.7%
2000	38.5	3.0	0.0	35.5	-3.0%	-3.3%
2001	39.2	13.0	0.0	26.2	1.8%	-26.2%
2002	50.2	9.0	0.0	41.2	28.1%	57.3%
2003	76.0	10.0	0.0	66.0	51.4%	60.2%
2004	98.6	10.0	0.0	88.6	29.7%	34.2%
2005	123.6	10.0	0.0	113.6	25.4%	28.2%
2006	136.9	10.0	10.0	116.9	10.8%	2.9%
2007	110.9	10.0	10.0	90.9	-19.0%	-22.2%
2008	96.0	10.0	10.0	76.0	-13.4%	-16.4%
2009	56.6	6.0	6.0	44.6	-41.0%	-41.3%
2010	52.9	3.0	3.0	46.9	-6.5%	5.2%
2011	50.1	3.0	3.0	44.1	-5.4%	-6.1%
2012	51.6	10.0	10.0	31.6	3.1%	-28.3%
2013	62.3	10.0	10.0	42.3	20.7%	33.7%
2014E*	75.0	6.0	6.0	63.0	49.8%	43.0%

SOURCE: DELAWARE DIVISION OF REVENUE, DEL DEPT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

* ESTIMATES BY DELAWARE DIVISION OF REVENUE FOR FY 2014 ENDING JUNE 30, 2014



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

For Question #1, It is my understanding that the wetlands we are discussing in this particular question are the 12,983 acres of non-isolated Category 1 wetlands currently regulated by the U S Corps of Engineers.

I have reviewed my notes, which contain so many numbers, arrows and question marks that I am not certain, or could even guess, how many acres are already owned by the federal and state governments, and how many acres are privately owned.

I question the need to replace the Corps in wetlands regulations no matter which type or however many acres are in play.

Michigan and New Jersey are larger states with way more financial resources than we have in Delaware. I question our ability to afford such a program.

Further, Mr Bonner has conceded, and other evidence was presented, that the Corps never relinquishes its authority, and any decision DNREC would make under any type or degree of Assumption would still be subject to Corps oversight. So I am not sure just how much autonomy DNREC would have.

In my world, local government planning departments have a lot to say about how I can impact wetlands, and for the most part, local government rules and regulations discourage if not prohibit altogether disturbance of wetlands.

I call this "Intergovernmental Coordination," because local governments are helping state government conserve and protect natural resources.

To that end, I am alarmed to discover at the last meeting, and not to criticize DeIDOT or anybody associated with DeIDOT, but if our state agencies cannot agree to conserve and protect our natural resources, we are not enjoying Intergovernmental Coordination to the greatest extent possible.

We have heard from Secretary O'Mara, and we have heard from Governor Markell, and it is obvious that the rhetorical priority is wetlands.

To that end, I believe the Governor should task DeIDOT with the mitigation and conservation of wetlands, whether a permit is needed or not. If the Governor is willing to ask private citizens to sacrifice their rights as land owners, then he shouldn't hesitate to ask his own government to do the same.

Secretary O'Mara complained that the Corps slows his projects down, and I quote, "I'm frankly tired of having projects delayed by the Army Corps process." It seems to me that DNREC and the Corps can enter into an MOU on permit and regulatory processes that state and federal governments can impose on themselves without the necessity of an overall regulatory program. I see efficient Intergovernmental Coordination there. And in any event, as I pointed out before, the Corps is still looking over our shoulder at any decision made. I participated on the Carrot Cmte, and I approve and I support the objectives and goals which resulted from those meetings. I have distributed an analysis of the Delaware Realty Transfer Tax. The transfer tax in Delaware is an onerous tax, and I could go on for hours about how bad it is, but for consideration of the questions before us, we have \$20 million per year divided between DNREC and the Department of Agriculture to purchase easements and fee simple title to properties for open space and resource conservation. If the rhetorical priority is wetlands, then the fiscal priority should likewise be wetlands, and we should dedicate the \$20 million annually spent on open space on wetlands until, by either easement or fee simple title, the state has acquired the highest priority wetlands.

It has been less than a year since Executive Order 36 was released. I was proud to introduce the Governor at his press conference announcing the results of EO 36, which was a review of State regulations. Twelve executive branch agencies reviewed 385 regulations, of which 83 regulations were amended and 61 regulations were deleted, totaling 144, or three - eights of all regulations. And we are already discussing adding more regulations.

The Delaware Association of REALTORS is a trade association whose primary mission is to protect private property rights. A wetlands regulatory program that does not concentrate on acquiring properties but rather seeks to de-value properties by presenting obstacles and limitations through a regulatory program is distasteful.

I am not saying the wetlands in question are not worth preserving or conserving. I am saying the wetlands in question can be preserved and conserved without a state – managed regulatory program.

I do nonetheless see a distinct need for the development of a definition of what might be described as a “wetland” in the State, and I agree with employing the Corps definition as we agreed earlier in the process, subject to whichever tweaks are necessary for updates in the Manuals employed by the Corps, or exemptions, or other similar issues.

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

For Question #2, It is my understanding that the wetlands we are discussing in this particular question are the 5,775 acres of isolated Category 1 wetlands that are not currently regulated by the Corps.

I have a better handle of the acreage allocations in this group, in that approximately 1600 acres, or 28 percent, are already owned by the state, and approximately 100 acres are already in conservationist's possession, leaving approximately 4000 acres, or 69 percent, in private property.

My notes also reveal that we have lost approximately 28 acres of this category of wetlands between 1992 and 2007. I cannot follow my arrows and question marks through 2013 or whichever is the latest year of count, but, not to bop DeIDOT, I am pretty sure I heard that DeIDOT disturbs annually the greatest number of these types of wetlands each year.

For the many reasons I stated for the last question, I am much more comfortable with developing an overall incentive program, and an intergovernmental coordination policy, that encourages protection, preservation and conservation of wetlands in the State of Delaware while at the same time protecting private property rights.

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?

For Question #3, I am opposed for all of the reasons as stated earlier.



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

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June 12, 2014

State Wetlands Committee Chair,

On behalf of the Markell Administration, I am writing to reiterate support for the three recommendations presented by the Chair for a vote at the April 9th Committee meeting and included in the interim report to the Delaware General Assembly dated May 1, 2014. As Governor Markell stated in his letter to the Committee, wetland protections should be administered at the state level, rather than by the U.S. Army Corps of Engineers that has insufficient resources to run the program well. We can do it better in Delaware with greater efficiency and predictability—and this will become even more important as the U.S. Environmental Protection Agency finalizes the “Waters of the U.S.” rule, which will require significantly more local knowledge to implement.

At the April 9th meeting and as reported, the three agencies voted for the three recommendations for consideration by the Committee. These recommendations received majority votes of the full committee but did not receive a super majority.

The recommendations were as follows:

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?

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?

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?

We cannot meet our goals of protecting Delaware’s wetlands with incentives alone. An effective wetlands program should include a state permitting component designed to reduce uncertainties

Delaware's Good Nature depends on you!

Letter to State Wetlands Committee Chair
June 12, 2014
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and maximize efficiencies by relying on local staff that are more accessible and familiar with our wetlands and can provide greater capacity than the current Federal system, resulting in timely and predictable decisions.

We continue to advocate for a freshwater wetlands program that will incorporate improvements made to the State tidal wetlands regulatory program along with its long-established policy framework that provides for accountability and clear appeal rights. We equally support efforts toward enhanced and more strategic coordination of funding and incentives for private landowner programs that have been identified through this Committee and that will be a necessary compliment to a fair and balanced, locally run, permitting program.

Thanks to you and your Committee for its hard work and continued commitment toward protection of Delaware's freshwater wetlands resources.

Sincerely,

A handwritten signature in blue ink, appearing to read "Collin P. O'Mara". The signature is fluid and cursive, with the first name "Collin" being the most prominent.

Collin P. O'Mara
Secretary