

# Delaware Wetlands Regulatory Advisory Committee (RAC)

October 7, 2026



DELAWARE DEPARTMENT OF  
NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL

# October 2026 RAC Meeting Objectives

1. Approve RAC operating procedures and a “living document” work plan.
2. Establish a shared understanding of how other states have designed their comprehensive wetlands programs and considerations around federal-state regulatory overlap.
3. Discuss options developed by the Wetland Definition and Exceptional Value Wetlands Subcommittees; as relevant, guide subcommittees around further options development.
4. Discuss an approach to keeping the public apprised of and engaged with the RAC process.

# Agenda

- 9:00 a.m.** Welcome and Agenda Review
- 9:10 a.m.** RAC Administrative Business
- 9:20 a.m.** RAC Regulatory Scope and Review RAC Operating Procedures
- 10:00 a.m.** Comprehensive Wetlands Regulatory Programs in Other States and Federal-State Regulatory Overlap
- 11:00 a.m.** Break
- 11:15 a.m.** Report-Out and Discussion: Wetland Definition Subcommittee
- 12:30 p.m.** Approach to Public Engagement
- 1:15 p.m.** Lunch
- 2:15 p.m.** Report-Out and Discussion: Exceptional Value Wetlands Subcommittee
- 3:20 p.m.** Break
- 3:30 p.m.** Public Comment
- 3:45 p.m.** Next Steps and Closing Remarks
- 4:00 p.m.** Adjourn



# Housekeeping

- Restrooms
- How to get in speaker queue
- Reminder to speak up and say your name when talking (for Zoom participants)
- Don't be afraid to ask questions – We'll regularly pause for “understanding checks”
- What's in your meeting packets today.

***To view meeting materials from past RAC meetings or join an email list for updates on the RAC:***

**[de.gov/wetlandsrac](https://de.gov/wetlandsrac)**

***Questions or public comments may be submitted to:***

**[DNREC\\_Wetlands\\_RAC@delaware.gov](mailto:DNREC_Wetlands_RAC@delaware.gov)**

# RAC Administrative Business



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# Recap of RAC Regulatory Scope



# DRAFT Wetlands RAC Regulations List (1 of 7)

| Regulatory provision to develop                                                | What the regulation needs to establish                                                                                                                                                                                                                                                                                                        | DE Code Section<br>(As Amended by SB 9 Section 1) |
|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| <b>Delaware Wetland Screening Tool &amp; Presence/Probable Absence studies</b> | <p>Statewide screening methodology for likely wetlands, field confirmation/refinement, tidal vs. nontidal wetlands, EVWs, high, moderate, and low functioning, etc.</p> <p>Standardized field methods and survey requirements for rebutting the presumption that a wetland supports a listed species; mapping will be considered as well.</p> | §6603 (e), (g); §6607(b)                          |
| <b>Exceptional Value Wetlands (EVWs)</b>                                       | Criteria and process for identifying EVWs, including unique/high-function wetlands, threatened or endangered species habitat, Source Water Protection Areas, and designated natural areas.                                                                                                                                                    | §6603 (g)                                         |

*Note: Nothing in this Table is meant to amend the authority granted to the Committee by the Act or Delaware law; to the extent there is a conflict between this Table and the Act, the Act controls.*

# DRAFT Wetlands RAC Regulations List (2 of 7)

| Regulatory provision to develop              | What the regulation needs to establish                                                                                                                                                                                              | DE Code Section<br>(As Amended by SB 9 Section 1) |
|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| <b>Wetlands Definition &amp; Delineation</b> | Definitions and delineation criteria for tidal, nontidal, and statewide wetlands, using accepted methodologies including the 1987 Army Corps Wetlands Delineation Manual and applicable regional supplements.                       | §6603(r)                                          |
| <b>Non-Tidal Wetlands 0.5 acres or less</b>  | Professional certification process and protocol for high functioning wetlands                                                                                                                                                       | §6606(b)(3)                                       |
| <b>Wetland Function</b>                      | Criteria and methodology for determining whether a wetland qualifies as high, medium, or low-function for purposes of the ≤0.50-acre exemption, independent of listed-species status. High, medium, and low function to be defined. | §6606(b)(3);<br>§6607(b)                          |

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# DRAFT Wetlands RAC Regulations List (3 of 7)

| Regulatory provision to develop                      | What the regulation needs to establish                                                                                                       | DE Code Section<br>(As Amended by SB 9<br>Section 1) |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| <b>Professional Certification &amp; Oversight</b>    | Certification and oversight requirements for professionals using the Wetland Screening Tool on behalf of the public.                         | §6606(b)(3);<br>§6607(b)(6)                          |
| <b>Additional Protections for EVWs</b>               | Additional restrictions on activities in EVWs and Best Management Practices for activities that are allowed.                                 | §6607(d)(4)                                          |
| <b>Federal/State Permitting Coordination</b>         | Procedures to reduce duplication with U.S. Army Corps permitting and, where possible, facilitate joint applications and one-stop permitting. | §6607(d)(5)                                          |
| <b>Cumulative &amp; Individual Impact Accounting</b> | Regulatory mechanisms for accurately accounting for cumulative and individual impacts associated with wetland permitting.                    | §6607(d)(6)                                          |

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# DRAFT Wetlands RAC Regulations List (4 of 7)

| Regulatory provision to develop               | What the regulation needs to establish                                                                                                                                                | DE Code Section<br>(As Amended by SB 9 Section 1) |
|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| <b>Mitigation Framework</b>                   | Mitigation strategies designed to facilitate no net overall loss of wetland acreage and function throughout Delaware and protect Delaware's climate resilience.                       | §6607(d)(7)                                       |
| <b>Mitigation Mechanisms &amp; Incentives</b> | Regulatory structure for mitigation banking, an aquatic restoration fund, an in-lieu fee program, and other incentives for wetland creation, restoration, enhancement, or protection. | §6607(d)(7)                                       |
| <b>EVW Preservation Incentives</b>            | Incentives within the mitigation framework that strongly encourage preservation of Exceptional Value Wetlands.                                                                        | §6607(d)(7)                                       |

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# DRAFT Wetlands RAC Regulations List (5 of 7)

## Regulatory Provision- Establishing General Permits

| What the regulation needs to establish                                                                                                                                                                          | DE Code Section<br>(As Amended by SB 9 Section 1) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| General Permit for expediting <b>Voluntary Wetland Habitat Restoration</b> Projects.                                                                                                                            | §6607(d)(8)(a)                                    |
| General Permit for <b>Linear Utility Infrastructure</b> Projects.                                                                                                                                               | §6607(d)(8)(b)                                    |
| General Permit for appropriate <b>pilings in nontidal wetlands</b> , including protections addressing sedimentation, bottom replacement, loss of aquatic/biological functions, and building structural support. | §6607(d)(8)(c)                                    |
| General Permit for <b>educational signage and public-use infrastructure</b> such as viewing towers and nature trails.                                                                                           | §6607(d)(8)(d)                                    |

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# DRAFT Wetlands RAC Regulations List (6 of 7)

## Regulatory Provision- Establishing General Permits (continued)

| What the regulation needs to establish                                                                                                                                                                | DE Code Section<br>(As Amended by SB 9 Section 1) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| General Permit for <b>individual-property wetland walkways</b> under designated conditions, including opportunities for one-stop state/federal permitting through State Programmatic General Permits. | §6607(d)(8)(e)                                    |
| General Permit allowing one <b>community access</b> structure per multi-unit or multi-home community under designated conditions.                                                                     | §6607(d)(8)(f)                                    |
| <b>Default General Permit for activities disturbing ≤0.50 acres</b> of qualifying nontidal wetlands, including required mitigation measures.                                                          | §6607(d)(8)(g)                                    |
| Consultation with conservation districts, Department of Agriculture, and other relevant agencies and made consistent with the regulations.                                                            | §6607(f)                                          |

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# DRAFT Wetlands RAC Regulations List (7 of 7)

| Regulatory provision to develop                     | What the regulation needs to establish                                                                                                                                                                                                                                                    | DE Code Section<br>(As Amended by SB 9 Section 1) |
|-----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| 120-Day Permitting & Default Permit Procedures      | Application and processing procedures implementing the 30-day completeness determination, 120-day decision timeline, complete-application requirements, and Default General Permit process.                                                                                               | §6607(g)-(h)                                      |
| Best Management Practices for Wetlands              | Committee consider national best practices, neighboring state incentive programs, policies and reg roles. Reducing duplication, 1-stop permitting, expediting voluntary restoration projects, accurately counting for cumulative and individual impacts, and facilitating permit tracking | §6621(c); §6607 (i)                               |
| Reduce Permit Duplication / National Best Practices | Best practices, incentive programs, assumption of regulatory roles, etc.                                                                                                                                                                                                                  | §6622(b)                                          |
| Promulgation of Initial regs                        | Final regulatory document                                                                                                                                                                                                                                                                 |                                                   |

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# Proposed Revisions to the RAC Operating Procedures





# Overview of Wetland Programs in Other States & Federal-State Overlap



DELAWARE DEPARTMENT OF  
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# Overview of State Wetlands Regulatory Programs and Federal Permitting Overlap

Delaware Wetlands Resource Agency Committee

October 7, 2026

Jeff Lapp – National Association of Wetland Managers

# Adjacent State Wetlands Programs

Focusing on Non-Tidal Wetlands Programs

# Index of Select Terminology

- 1987 Manual and Supplements – An ecological sampling methodology developed by the federal government to determine wetland areas. The Supplements are utilized in specific geographic areas to refine the method. The manual requires evidence of wetlands plants, soils, and hydrology to meet the 3-parameter test.
- IP – Individual Permit – an application process requiring a thorough review of the proposed project and impacts.
- GP – General Permit – A class of activities with predetermined impacts and activities to qualify for a simpler permit review process.
- SPGP – State Program General Permit – A permit issued to a State by the Army Corps which authorizes the State to issue a joint State and Federal Permit for a specified suite of impacts and activities. These permits are valid for 5 years and can be reissued.

# Index of Select Terminology (cont.)

- Mitigation – Referring to the replacement of lost wetlands function which results from the proposed activity. Can be determined by pre-established ratios based on wetlands type or utilization of a functional assessment method.
- RAM – Rapid Assessment Methodology – Simplified functional assessment methodology to determine wetland benefits based on existing functional models utilizing reference indicators.
- BMPs – Best Management Procedures – Methodologies designed to minimize impacts of proposed projects. May be required to utilize the procedure in order to qualify for specific permits.

# Index of Select Terminology (cont.)

- Non-Tidal Wetland – A wetland system that is not subject to the Ebb and Flow of the Tide.
- Tidal Wetland – A wetland system influenced by the Ebb and Flow of the tide. There is both fresh water and saline tidal wetlands.
- MHW – Mean High Water – The average height of all high tides measure over a tidal datum epoch (19 years).
- MHHW-Mean Higher High Water Line: Is a tidal datum, but it is not itself the Corps standard regulatory jurisdiction line. MHHW is the average height of the higher of the two daily high tides over the National Tidal Datum Epoch. MHHW is normally slightly higher in elevation than MHW.
- HTL-High Tide Line: Maximum height reached by normal periodically occurring tides, including spring tides, excluding storm surge.
- Spring Tide – Highest tide after a full moon with the greatest difference between high and low tides.

# Brief Overview of Adjacent State Regulations And Activities Requiring a Permit.

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# Chart of Reg. Citation and Activity Descriptions

| State        | Regulation                                   | Description                                                                                                              |
|--------------|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
|              |                                              |                                                                                                                          |
| Maryland     | COMAR 26.23.01                               | “regulated activity” undertaken or originating in a non-tidal wetland                                                    |
| Pennsylvania | Dam Safety Act Section 7, Chapter 105        | regulates water obstructions and encroachments in streams, wetlands, the floodways of streams, and other bodies of water |
| Virginia     | Code of Virginia, § 62.1-44.15:20            | Non-tidal wetlands program Chapter 210, Regulated Activities: 9VAC25-210-50                                              |
| New York     | revised Article 24, Freshwater Wetlands rule | Almost any activity which may adversely impact the natural values of the wetlands or their adjacent areas is regulated   |

## Programs Descriptions (cont.)

| State        | Regulated Activities                                                                                                                                                                                                               |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Maryland     | removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind; changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics; |
| Pennsylvania | Water obstructions and encroachments include activities such as bridges, stream channel work, utilities, fills, etc. which are located within, along, or across stream, wetlands, floodways, or bodies of water                    |
| Virginia     | regulates excavation in a wetland; new activities to cause draining that significantly alters or degrades existing wetland acreage or functions; filling or dumping; permanent flooding or impounding                              |
| New York     | construction of buildings, roadways, septic systems, bulkheads, dikes, or dams; placement of fill, excavation, or grading; modification, expansion, or extensive restoration of existing structures; drainage,                     |

# Permitting Procedures and Criteria - Maryland

## Description

- A person may not conduct a regulated activity in a nontidal wetland, or within a buffer or expanded buffer, unless the Department has issued a permit or letter of authorization, or the regulated activity is exempt under COMAR 26.23.01.02

## Require

- (1) An application for a nontidal wetland permit or letter of authorization shall include all of the information required in the application form and any additional information required by the Department in §D of this regulation.

# Maryland: (COMAR 26.23.01)

(74) "Regulated activity":

(a) Means any of the following activities which are directly undertaken or originate in a nontidal wetland, or within a buffer or expanded buffer of a nontidal wetland:

- (i) Removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;
- (ii) Changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- (iii) Disturbance of the water level or water table by drainage, impoundment, or other means;
- (iv) Dumping, discharging of material, or filling with material, including the driving of piles, and placing of obstructions;
- (v) Grading or removal of material that would alter existing topography; and
- (vi) Destruction or removal of plant life that would alter the character of a nontidal wetland; and

(b) Does not include an agricultural activity or forestry activity as defined in this subtitle.

# MD Project Description – Joint Application

## 2. PROJECT DESCRIPTION

### a. GIVE WRITTEN DESCRIPTION OF PROJECT:

Has any portion of the project been completed? ☐ Yes ☐ No If Yes, explain:

Is this a residential subdivision or commercial development? ☐ Yes ☐ No

If yes, total number of acres on property  acres

Will there be temporary or permanent tree clearing occurring on the overall project site (i.e., uplands and wetlands), including but not limited to, tree clearing for site development, road/highways, utilities, mining, stormwater management, restoration, energy production and transmission, etc.)? Yes ☐ No ☐

If yes, total estimated acres of tree clearing for the overall project site:  acres

Does the application propose temporary fill impacting wetlands or waterways that will remain in place for more than one year? ☐ Yes ☐ No

**b. ACTIVITY:** Check all activities that are proposed in the wetland, waterway, floodplain, and nontidal wetland buffer as appropriate.

- A. ☐ filling  
B. ☐ dredging  
C. ☐ excavating

- D. ☐ flooding or impounding  
water  
E. ☐ draining

- F. ☐ grading  
G. ☐ removing or destroying  
vegetation  
H. ☐ building structures

Area for item(s) checked: Wetland  (sq. ft.) Buffer (Nontidal Wetland Only)  (sq. ft.)  
Expanded Buffer (Nontidal Wetland Only)  (sq. ft.)

Area of stream impact  (sq. ft.)

Length of stream affected  (linear feet)

### c. TYPE OF PROJECTS: Project Dimensions

For each activity, give overall length and width (in feet), in columns 1 and 2. For multiple activities, give total area of disturbance in square feet in column 3. For activities in tidal waters, give maximum distance channelward (in feet) in column 4. For dam or small ponds, give average depth (in feet) for the completed project in column 5. Give the volume of fill or dredged material in column 6.

|                                                      | Length<br>(Ft.)<br>1 | Width<br>(Ft.)<br>2  | Area<br>(Sq. Ft.)<br>3 | Maximum/Average<br>Channelward<br>Encroachment<br>4 | Pond<br>Depth<br>5   | Volume of fill/dredge<br>material (cubic yards)<br>below MHW or OHW<br>6 |
|------------------------------------------------------|----------------------|----------------------|------------------------|-----------------------------------------------------|----------------------|--------------------------------------------------------------------------|
| A. <input type="checkbox"/> Bulkhead                 | <input type="text"/> | <input type="text"/> | <input type="text"/>   | <input type="text"/>                                | <input type="text"/> | <input type="text"/>                                                     |
| B. <input type="checkbox"/> Revetment                | <input type="text"/> | <input type="text"/> | <input type="text"/>   | <input type="text"/>                                | <input type="text"/> | <input type="text"/>                                                     |
| C. <input type="checkbox"/> Vegetative Stabilization | <input type="text"/> | <input type="text"/> | <input type="text"/>   | <input type="text"/>                                | <input type="text"/> | <input type="text"/>                                                     |
| D. <input type="checkbox"/> Gabions                  | <input type="text"/> | <input type="text"/> | <input type="text"/>   | <input type="text"/>                                | <input type="text"/> | <input type="text"/>                                                     |
| E. <input type="checkbox"/> Groins                   | <input type="text"/> | <input type="text"/> | <input type="text"/>   | <input type="text"/>                                | <input type="text"/> | <input type="text"/>                                                     |
| F. <input type="checkbox"/> Jetties                  | <input type="text"/> | <input type="text"/> | <input type="text"/>   | <input type="text"/>                                | <input type="text"/> | <input type="text"/>                                                     |

# Permitting Procedures and Criteria - Pennsylvania

## Description

- A person may not construct, operate, maintain, modify, enlarge or abandon a dam, water obstruction or encroachment without first obtaining a written permit from the Department.

## Require

- § 105.13. Regulated activities  
(a) Application for permits under this chapter shall be submitted to the Department, in writing, upon forms provided by the Department. Applicants are encouraged to request a meeting with the Department prior to submission of their applications. 3 pages.

# PA Joint Application Completeness Checklist

## Section F. Application Completeness Checklist

Applicant must place an entry - Y = Yes, N = No, N/A = Not Applicable - in each left side column space. See Section 105.13 for additional details. If you are applying under the Small Projects Application format, place an entry in only those comments prefixed by an asterisk (\*).

| Requirement                                                                                                                                                                                                                                                                                                  | Applicant Entry | DEP Use Only |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------|
| a. GIF and permit application properly signed, sealed and witnessed                                                                                                                                                                                                                                          | *               |              |
| b. Application Fee & Worksheet enclosed (see Section G.)                                                                                                                                                                                                                                                     | *               |              |
| c. Copies and proof of receipt - Act 14 notification - Acts 67/68/127                                                                                                                                                                                                                                        | *               |              |
| d. Cultural Resource Notice (Notice, return receipt and PHMC review letter, as appropriate)                                                                                                                                                                                                                  | *               |              |
| e. Pennsylvania Natural Diversity Inventory (signed PNDI Receipt showing Avoidance Measures or Potential Impacts and proof of delivery to the appropriate jurisdictional agency(ies) where further coordination is required, as appropriate, including any USFWS coordination through <a href="#">JPaC</a> ) | *               |              |
| f. Plans (site plan including cross sections and profiles for Subsections 151, 191, 231, 261)                                                                                                                                                                                                                | *               |              |
| g. Location map                                                                                                                                                                                                                                                                                              |                 |              |
| h. Project description narrative including PNDI avoidance measures (if applicable) AND Aquatic Resource Impact Table                                                                                                                                                                                         | *               |              |
| i. Color photographs with map showing location taken                                                                                                                                                                                                                                                         | *               |              |
| Requirement                                                                                                                                                                                                                                                                                                  | Applicant Entry | DEP Use Only |
| j. Environmental Assessment form                                                                                                                                                                                                                                                                             | *               |              |
| k. Erosion and Sediment Control Plan and approval letter                                                                                                                                                                                                                                                     |                 |              |
| l. Hydrologic and hydraulic analysis                                                                                                                                                                                                                                                                         |                 |              |
| m. Stormwater Management Analysis with consistency letter                                                                                                                                                                                                                                                    |                 |              |
| n. Floodplain Management Analysis with consistency letter                                                                                                                                                                                                                                                    |                 |              |
| o. Risk Assessment                                                                                                                                                                                                                                                                                           |                 |              |
| p. Professional engineer's seal and certification                                                                                                                                                                                                                                                            |                 |              |

# Permitting Procedures and Criteria - Virginia

## Description

- Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands;

## Require

- Any person who is required to obtain a VWP permit, except those persons applying for an emergency VWP permit for a public water supply emergency, shall submit a complete VWP permit application to the Department of Environmental Quality through the most current Joint Permit Application procedures established within each type of Joint Permit Application. 45 pages long.

## VA Joint Permit Application (portion)

### 3. DESCRIPTION OF THE PROJECT, PROJECT PRIMARY AND SECONDARY PURPOSES, PROJECT NEED, INTENDED USE(S), AND ALTERNATIVES CONSIDERED (Attach additional sheets if necessary)

- The purpose and need must include any new development or expansion of an existing land use and/or proposed future use of residual land.
- Describe the physical alteration of surface waters, including the use of pilings (#, materials), vibratory hammers, explosives, and hydraulic dredging, when applicable, and whether or not tree clearing will occur (include the area in square feet and time of year).
- Include a description of alternatives considered and measures taken to avoid or minimize impacts to surface waters, including wetlands, to the maximum extent practicable. Include factors such as, but not limited to, alternative construction technologies, alternative project layout and design, alternative locations, local land use regulations, and existing infrastructure
- For utility crossings, include both alternative routes and alternative construction methodologies considered
- For projects that will alter surface water supply withdrawals, or projects that will alter in-stream flows, include the basis of the proposed project.

Presentation last saved: Just now

|                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Date of proposed commencement of work (MM/DD/YYYY)<br>_____                                                                                                                                                                                                                                                                                  | Date of proposed completion of work (MM/DD/YYYY)<br>_____                                                                       |
| Are you submitting this application at the direction of any state, local, or federal agency? ____ Yes ____ No                                                                                                                                                                                                                                | Has any work commenced or has any portion of the project for which you are seeking a permit been completed?<br>____ Yes ____ No |
| If you answered "yes" to either question above, give details stating when the work was completed and/or when it commenced, who performed the work, and which agency (if any) directed you to submit this application. In addition, you will need to clearly differentiate between completed work and proposed work on your project drawings. |                                                                                                                                 |

# VA Waterways Impact Information

## 8. WETLANDS, WATERS, AND DUNES/BEACHES IMPACT INFORMATION

Report each impact site in a separate column. If needed, attach additional sheets using a similar table format. Please ensure that the associated project drawings clearly depict the location and footprint of each numbered impact site. For dredging, mining, and excavating projects, use Section 17.

|                                                                                                                                                                                                                                                                                                                                                              | Impact site<br>number<br>1 | Impact site<br>number<br>2 | Impact site<br>number<br>3 | Impact site<br>number<br>4 | Impact site<br>number<br>5 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Impact description (use<br>all that apply):<br>F=fill<br>EX=excavation<br>S=Structure<br>T=tidal<br>NT=non-tidal<br>TE=temporary<br>PE=permanent<br>PR=perennial<br>IN=intermittent<br>SB=subaqueous bottom<br>DB=dune/beach<br>IS=hydrologically isolated<br>V=vegetated<br>NV=non-vegetated<br>MC=Mechanized Clearing<br>of PFO<br>(Example: F, NT, PE, V) |                            |                            |                            |                            |                            |
| Latitude / Longitude (in<br>decimal degrees)                                                                                                                                                                                                                                                                                                                 |                            |                            |                            |                            |                            |
| Wetland/waters impact<br>area<br>(square feet / acres)                                                                                                                                                                                                                                                                                                       |                            |                            |                            |                            |                            |
| Dune/beach impact area<br>(square feet)                                                                                                                                                                                                                                                                                                                      |                            |                            |                            |                            |                            |
| Stream dimensions at<br>impact site<br>(length and average width<br>in linear feet, and area in<br>square feet)                                                                                                                                                                                                                                              |                            |                            |                            |                            |                            |
| Volume of fill below Mean<br>High Water or Ordinary<br>High Water (cubic yards)                                                                                                                                                                                                                                                                              |                            |                            |                            |                            |                            |

# Permitting Procedures and Criteria – New Jersey

## Description

- No person shall engage in a regulated activity subject to this chapter without a permit or authorization listed in (b) below.

## Require

- A person shall obtain an individual permit under this subchapter in order to undertake any activity that does not meet the requirements of an authorization under a general permit-by certification pursuant to N.J.A.C. 7:7A

# NY Title 7, Freshwater Wetlands Regulations Section 24- 0701. Permits.

2. Activities subject to regulation shall include any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in section 24-0105 of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially effect the wetlands and are located not more than one hundred feet from the boundary of such wetland. Provided, that a greater distance from -10- any such wetland may be regulated pursuant to this article by the appropriate local government or by the department, whichever has jurisdiction over such wetland, where necessary to protect and preserve the wetland.

# Examples of GPs

## Pennsylvania

|                                          |                                                                                                           |                                                                  |
|------------------------------------------|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| GP-1 Fish habitat enhancement structures | GP-2 Small docks and boat launching ramps                                                                 | GP-3 Bank rehabilitation, bank protection and gravel bar removal |
| GP-4 Intake and outfall structures       | GP-5 Utility line stream crossings                                                                        | GP-6 Agricultural crossings and ramps                            |
| GP-7 Minor Road crossings                | GP-8 Temporary Road crossings                                                                             | GP-9 Agricultural activities                                     |
| GP-10 Abandoned Mine reclamation         | GP-11 Maintenance, testing, repair, rehabilitation or replacement of water obstructions and encroachments | GP-15 Private residential construction in wetlands               |

## Virginia

- [WP1](#) covers activities with impacts less than one-half acre or up to 300 linear feet of stream channel.
- [WP2](#) covers facilities and activities of utility and public service companies regulated by the Federal Energy Commission or the State Corporation Commission, and other utility line activities. Authorizes impacts up to 1 acre of wetlands and open waters, and/or 1,500 linear feet of stream channel.
- [WP3](#) covers activities for linear transportation projects. Authorizes impacts up to 2 acres of wetlands and open waters, and/or 1,500 linear feet of stream channel.
- [WP4](#) covers activities with impacts from development and certain mining activities. Authorizes impacts up to 2 acres of wetlands and open waters, and/or 1,500 linear feet of stream channel.

# Exempt Activities

## New York:

1. normal agricultural practices, except filling, clear cutting of trees, or construction of non-agricultural structures;
2. the harvesting of natural products and recreational activities (fishing, hunting, trapping, hiking, swimming, picnicking, or firewood collection);
3. continuance of lawfully existing land uses;
4. routine maintenance of existing functional structures such as repairing broken docks, repainting structures, or resurfacing paved areas; and
5. selective cutting of trees and harvesting of fuel wood (not clear cutting).

## Virginia:

1. Discharges of dredged or fill material into state waters, except wetlands, which are addressed under a USACE Regional, General, or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.
2. Any discharge of stormwater from municipal separate storm sewer systems or land-disturbing activities authorized by [9VAC25-875](#), or the discharge of sewage, industrial wastes, or other wastes or any noxious or deleterious substances into surface waters that is authorized by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with [9VAC25-31](#) or a Virginia Pollution Abatement (VPA) permit in accordance with [9VAC25-32](#).
3. Any activity governed under Chapter 13 (§ [28.2-1300](#) et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act. State certification is waived if the activity meets the provisions of subdivision 10 a of this section. The activity does not require a VWP permit pursuant to § [62.1-44.15:21](#) G of the Code of Virginia.
4. Normal residential gardening and lawn and landscape maintenance in a wetland, or other similar activity, that is incidental to an occupant's ongoing residential use of property and is of minimal ecological impact. The criteria governing this exclusion are set forth in the definition of "normal residential gardening and lawn and landscape maintenance" in [9VAC25-210-10](#).
5. Maintenance of currently serviceable structures, such as purpose-built stormwater and utility structures, transportation structures, dikes, groins, levees, dams, riprap breakwaters, causeways, or bridge abutments or approaches. Maintenance includes the emergency reconstruction of recently damaged parts but does not include modifications that change the character, scope, or size of the original design. If the original design is not available, the permittee shall submit the best available information on the design for consideration and approval by the department. In order to qualify for this exclusion, emergency reconstruction shall occur as soon as practicable after damage occurs.

# Federal vs State Comparison

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# Permitting Procedures and Criteria – Section 404

## Description

- The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites.
- The Administrator is authorized to prohibit the specification (including the withdrawal of specification)

## Require

- CFR 40 Part 230 Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material; a) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem

# Non-Tidal Wetlands Geographic Scope

## States:

- In general, all States regulate wetlands which meet the 1987 manual criteria as State Waters. Depending on factors such as wetland size, watershed acreage, species composition, or activity depends on the type of permit, if any, that is required. Ohio only regulates specific high value isolated wetlands and rely on the CWA Section 404 process and CWA 401 Certifications for other State Waters.

## CWA Section 404

- Army Corps and EPA utilize the 1987 manual to identify if an area meets the federal definition of a wetland. They then determine whether that wetland meets the criteria to qualify as a Water of the United States (WOTUS) as defined by the Supreme Court in *Sackett vs EPA*. A wetland must be “indistinguishable” from a relatively permanent water.

# Activities Regulated

## State Regulated Activities

- States regulate a broader range of activities in wetlands than the federal government. This may include clearing, mowing, buildings, excavation, and dredge disposal.
- Several States include buffer requirements, setbacks from specific wetlands types, including NY, NJ, and MD.

## Federal Regulated Activities

- Section 404 regulates the discharge of a pollutant, identified within the CWA, from a point source.
- Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.
- EPA Authorizes States to issue 404 Permits.
- Corps Authorizes State to issue SPGPs.

# Tidal Wetlands

## State Tidal Wetlands Programs

- VA:
  - Non-vegetated TW -Soft and Hard Sediment Habitat.
  - Veg. Tidal Wetlands – Regularly Flooded and Irregularly Flooded
- NY: Intertidal Marsh; High Marsh; Fresh Marsh; Formerly Connected; Coastal Shoals, Bars and Mudflats; Littoral Zone <6ft.
- MD: “Tidal wetlands” means all State and private tidal wetlands, marshes, submerged aquatic vegetation, lands, and open water within the Chesapeake Bay and its tidal tributaries, the Coastal Bays and their tidal tributaries, and the Atlantic Ocean to a distance of 3 miles offshore of the low water mark.

## Federal Tidal Wetlands Program

- Section 10 of the Rivers and Harbors Act (Navigation). Mean High Water (MHW)
- Section 404 CWA (Dredge Disposal). High Tide Line



# NOAA Tides & Currents Page – Lewes, DE

## Datums for 8557380, Lewes, DE

**NOTICE:** All data values are relative to the MLLW.

### Elevations on Mean Lower-Low Water

**Station:** 8557380, Lewes, DE

**Status:** Accepted (Sep 13 2017)

**Units:** Feet

**Control Station:**

**T.M.:** 75

**Epoch:** 1983-2001

**Datum:** MLLW

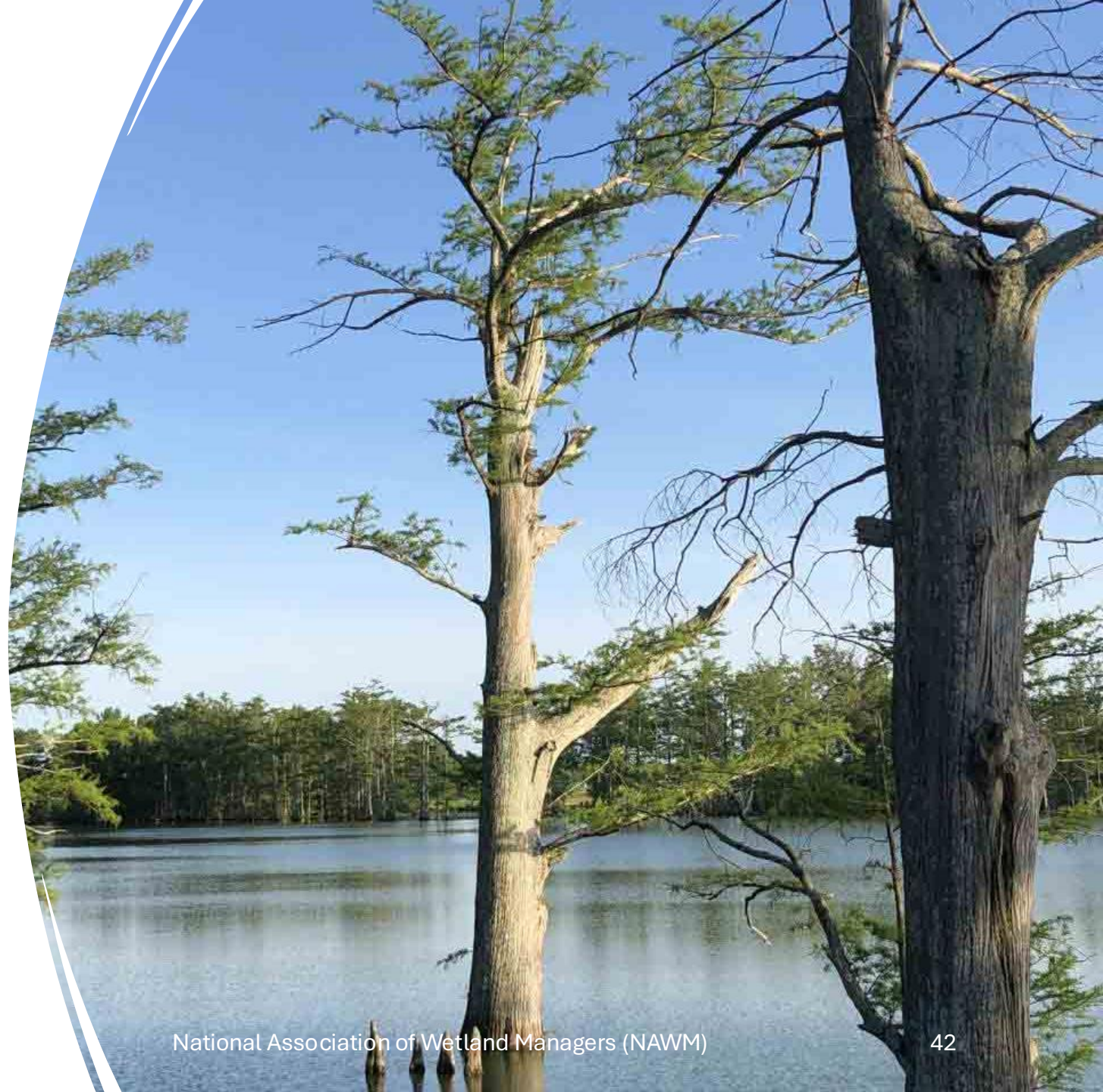
| Datum  | Value | Description                           |
|--------|-------|---------------------------------------|
| MHHW   | 4.65  | Mean Higher-High Water                |
| MHW    | 4.23  | Mean High Water                       |
| MTL    | 2.20  | Mean Tide Level                       |
| MSL    | 2.23  | Mean Sea Level                        |
| DTL    | 2.33  | Mean Diurnal Tide Level               |
| MLW    | 0.16  | Mean Low Water                        |
| MLLW   | 0.00  | Mean Lower-Low Water                  |
| NAVD88 | 2.63  | North American Vertical Datum of 1988 |
| STND   | -2.78 | Station Datum                         |
| GT     | 4.65  | Great Diurnal Range                   |



# Future Topics

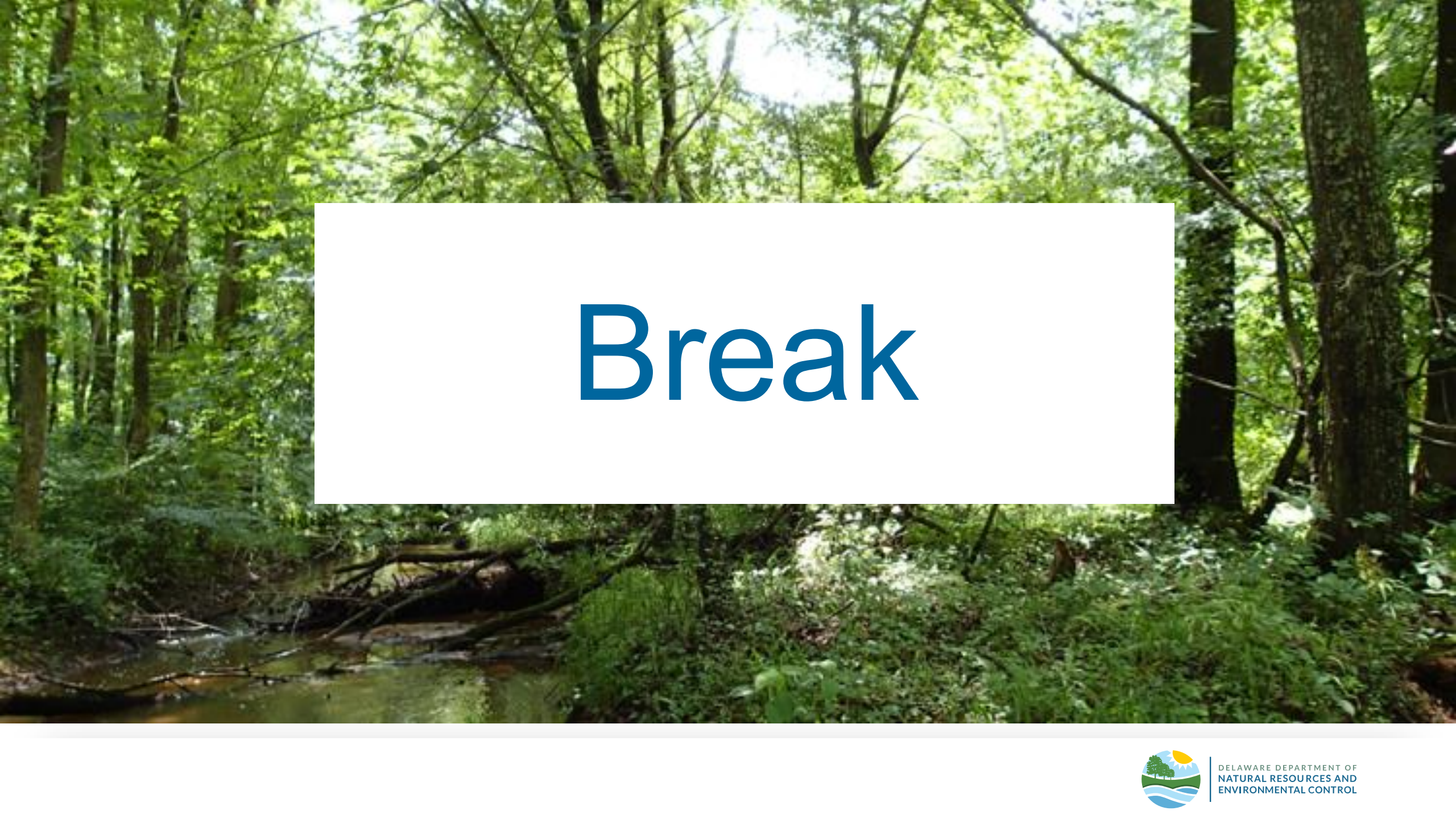
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- RAMs
- Mitigation
- BMPs



# Questions?



A lush green forest scene with a stream flowing through the bottom left. Sunlight filters through the dense canopy of tall trees, creating a dappled light effect on the forest floor and water.

# Break



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A lush green forest with a small stream flowing through it, surrounded by dense foliage and tall trees.

# Report-Out & Discussion: Wetland Definition Subcommittee



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ENVIRONMENTAL CONTROL

# Discussion Roadmap

- 1 Review the subcommittee's charge.
- 2 Subcommittee presents recommendations, options, and questions it has for the RAC (and DNREC, where relevant).
- 3 Check for understanding among RAC members.
- 4 Small group discussions around options presented.
- 5 Full committee discussion and testing for broad consensus.



# Wetland Definition Subcommittee Charge

- **The Wetlands RAC Co-Chairs charge the Wetland Definition Subcommittee with deliberating, exploring, and generating options on the following for RAC consideration and decision-making:**
  - Regulatory definition of “wetlands,” “nontidal wetlands,” and “tidal wetlands”
- **The options the subcommittee develops must be based on upon generally accepted criteria and methodologies, including:**
  - The U.S. Army Corps of Engineers Wetlands Delineation Manual dated January 1987
  - Any regional supplemental guidance pertaining to local conditions

*The subcommittee may deliberate on guidance to consider when generating options.*



# Definition of a Wetland

## *1.1 Core Definition*

### **Consensus Recommendation:**

**Adopt the federal regulatory definition of wetlands** (codified by the USACE and EPA at 33 C.F.R. § 328.3(c)(1) and 40 C.F.R. § 230.3):

“Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”

# Definition of a Wetland

## *1.2 Tidal and Nontidal Wetlands Included*

### Consensus Recommendation:

The wetlands definition should state clearly that it fully encompasses the areas defined as “tidal wetlands” and “nontidal wetlands”.

### Options for RAC Consideration:

Regarding this text in the core definition: “Wetlands generally include swamps, marshes, bogs, and similar areas.”

- **Option 1.2A** – Add “tidal swamps” and “tidal marshes” to the list.
- **Option 1.2B** – No additional language.

# Definition of a Wetland

## 1.3 Delineation Method

### Consensus Recommendation:

Wetlands shall be identified and delineated in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual (Technical Report Y-87-1, January 1987) and the official regional supplements to that manual applicable to Delaware.

### Options for RAC Consideration:

If the 1987 Manual or the supplements are replaced or updated (excluding routine revisions to the indicator lists for hydrology, plant species, and hydric soils):

- **Option 1.3A** – Regulations stipulate that delineation shall follow the replaced or updated manual/supplements.
- **Option 1.3B** – Regulations stipulate that the definition and delineation method will be reconsidered by a multi-stakeholder deliberative body before any replacement or major update is adopted in Delaware.

# Definition of Tidal and Nontidal Wetlands

## 2.1 Classification

### Proposal to the RAC and Exceptional Value Wetlands Subcommittee:

Define all wetlands subject to the ebb and flow of tidal waters as Exceptional Value Wetlands.

### Contingent Consensus Recommendation (if RAC accepts proposal):

- Tidal wetlands are all wetlands at or below the mean high water (MHW) line.
- Nontidal wetlands are all wetlands above the mean high water (MHW) line.

*If the RAC does not accept the proposal, the subcommittee will deliberate further and return with options.*

# Definition of Tidal and Nontidal Wetlands

## 2.2 Mean High Water (MHW)

**Suggestion/Consideration from the Subcommittee Chair & Co-Author  
(not yet deliberated by the full subcommittee):**

Adopt federal definition of MHW (33 C.F.R. § 329.12(a)(2)):

“The mean high water line is the line on the shore reached by the plane of the mean (average) high water. Where precise determination of the line is necessary, it shall be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the apparent shoreline, may be used only where an estimate of the line is sufficient.”

# Small Group Assignments

| Group | Participants                                        |
|-------|-----------------------------------------------------|
| 1     | Matt, Ross, Jim Minner, Hans, Ann                   |
| 2     | Mark T., Sydnie, Nikki, James, Sigrid, Jim McCulley |
| 3     | Christophe, Leah, Tyler, Mark N., Holly, Mike       |
| 4     | Emily, Jason, Jay, Phil, Marcia                     |
| 5     | LeeAnn, Mark W., Karen, Nikki                       |

# Questions for Small Group Discussion

- **1.3 Delineation Method**
  - Is there consensus (or concerns) around Options 1.3A and 1.3B?
- **2.1 Classification**
  - Is there consensus (or concerns) around the proposal?
  - Is there consensus (or concerns) around the contingent recommendation?
- **2.2 Mean High Water – *Assuming MHW is used for wetland classification***
  - Is there consensus (or concerns) around using the federal MHW definition?
  - Should the subcommittee further deliberate on how to determine MHW line in practice?

# Questions

- **1.3 Delineation Method**
  - Is there consensus (or concerns) around Options 1.3A and 1.3B?
- **2.1 Classification**
  - Is there consensus (or concerns) around the proposal?
  - Is there consensus (or concerns) around the contingent recommendation?
- **2.2 Mean High Water – *Assuming MHW is used for wetland classification***
  - Is there consensus (or concerns) around using the federal MHW definition?
  - Should the subcommittee further deliberate on how to determine MHW line in practice?



[linkly.link/2vNF6](https://linkly.link/2vNF6)

# Approach to Public Engagement



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# Purpose of Public Engagement

- Help interested members of the public learn about the RAC process, including ways to keep apprised and provide input.
- Solicit questions from the public around the RAC process to ensure greater clarity around the RAC's decision-making.
- Ensure the RAC is made aware of public interests and concerns ***before*** initial regulations are put to public comment and a public hearing (as part of the formal regulation development process).

# Proposed Approach

Two rounds of educational public workshops:

- **Late Fall/Winter 2026 (Nov/Dec)**
  - Provide an overview of why the RAC exists; the RAC's role, scope, and charge; expected timeline of RAC activities; and ways to keep apprised of RAC progress and provide input
  - Solicit public questions and comments for RAC consideration
- **Spring 2027 (Mar/Apr/May)**
  - Respond to public questions; provide progress update, including what RAC decisions are leading toward
  - Solicit public questions and comments for RAC consideration

# Points to Keep in Mind

- All workshops will be framed as “RAC-hosted, DNREC- and CBI-staffed” to clarify that questions and comments are sent to the RAC.
- The RAC is not obligated to integrate or respond to public comments in its initial regulations (but may wish to consider them all).
- While RAC members are encouraged to attend public workshops, members will not be expected to speak on behalf of the RAC nor carry specific comments/questions that anyone may raise.

# Questions for the RAC

- What should CBI/DNREC/Co-Chairs consider to ensure the workshops are most effective for **both** public engagement **and** RAC decision-making?
- What is useful to share with the public for them to understand the RAC process?
- What is most helpful to hear from the public?
- Any other ideas?

A lush green forest with a stream in the foreground and a white rectangular box in the center containing the word LUNCH.

# LUNCH



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# Report-Out & Discussion: Exceptional Value Wetland Subcommittee



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# Discussion Roadmap

- 1 Review the subcommittee's charge
- 2 Subcommittee reports out on initial deliberations, level-setting presentation, and key question for the wider the RAC.
- 3 Check for understanding among RAC members.
- 4 Breakouts to discuss DRAFT "functions" list
- 5 Full RAC discussion



# EVW Subcommittee Charge

The Wetlands RAC Co-Chairs charge the Exceptional Value Wetlands Subcommittee with deliberating, exploring, and generating options on the following for RAC consideration and decision-making:

- Definition of an exceptional value wetland;
- Criteria for screening for the identification of exceptional value wetlands and;
- Criteria for assessing wetland function, including scored criteria for classification of high, medium, and low function.

# EVW Subcommittee Charge (cont.)

- Documented and appropriate habitat criteria to determine wetlands that support flora or fauna listed as endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. or listed as endangered pursuant to 7 Del. C. § 601
- Guidance on how a landowner can rebut any presumption that a particular wetland supports any such species through a “Presence/Probable Absence Study” that will, using standardized field methods and survey efforts, determine whether any particular species is detected or, if not detected, can be treated as probably absent.

# EVW Subcommittee Charge (cont.)

- DRAFT regulatory language that classifies how to identify “unique” wetlands, wetlands located in public water supply Source Water Protection Areas, and wetlands in designated natural areas
- Frameworks to provide a strong incentive for the preservation of exceptional value wetlands
- Additional protections to exceptional value wetlands, including restrictions on allowed activities and development of best management practices for any allowed activity in such areas

The subcommittee may need to coordinate its options development with additional subcommittee(s) created by the Wetlands RAC Co-Chairs, including around a Delaware Wetland Screening Tool and Incentives.

# Where the Subcommittee Is Starting



## Start with the definition

Focus first on defining exceptional value wetlands



## Build on the statute

Incorporate the elements of the definition in Chapter 66, §6603(g) of the Delaware Code (the codified SB 9)



## Learn from nearby states

Many have already wrestled with this question; their definitions include elements we may wish to incorporate



## Goal

Options for RAC consideration at its November 4 meeting



# Functions That Might Define a “Unique or High-Functioning” Wetland

## Listed species habitat

Protecting Federal or state endangered or threatened species by preserving their habitats (e.g., VA, PA)

## Ecological or educational value

Providing exceptional ecological or educational value (e.g., MD)

## Iconic or unique species

Incorporating iconic or unique wetland species

## Water quality

Protecting drinking water supply (e.g., Source Water Protection Areas); reducing sediment and nutrient flows into surface or groundwater

## Flood mitigation

Mitigating flooding from extreme precipitation events, extreme tides and storm surges

## Carbon sequestration

Sequestering carbon from the atmosphere

## Shoreline protection

Protection from wave action, excessive flows from extreme precipitation, sea level rise, and storm surges

## Scenic beauty

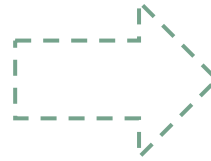
Preserving scenic beauty



# Presence/Probable Absence Studies

## **PRESUMPTION**

A species of concern  
is presumed present in  
a given wetland



## **REBUTTAL**

A Presence/Probable  
Absence Study

The Subcommittee acknowledged this will require some special attention.

# Next Steps

**NOV**

**4**

Next RAC meeting

The Subcommittee will bring

**Options for an exceptional value  
wetland definition for RAC  
consideration**

Incorporating the elements of Chapter 66, §6603(g)

Drawing on approaches from nearby states



# Exceptional Value Wetlands



DNREC DIVISION OF  
**WATERSHED  
STEWARDSHIP**

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## Wetland Monitoring and Assessment Program

October 1, 2026

Alison Rogerson – Environmental Scientist



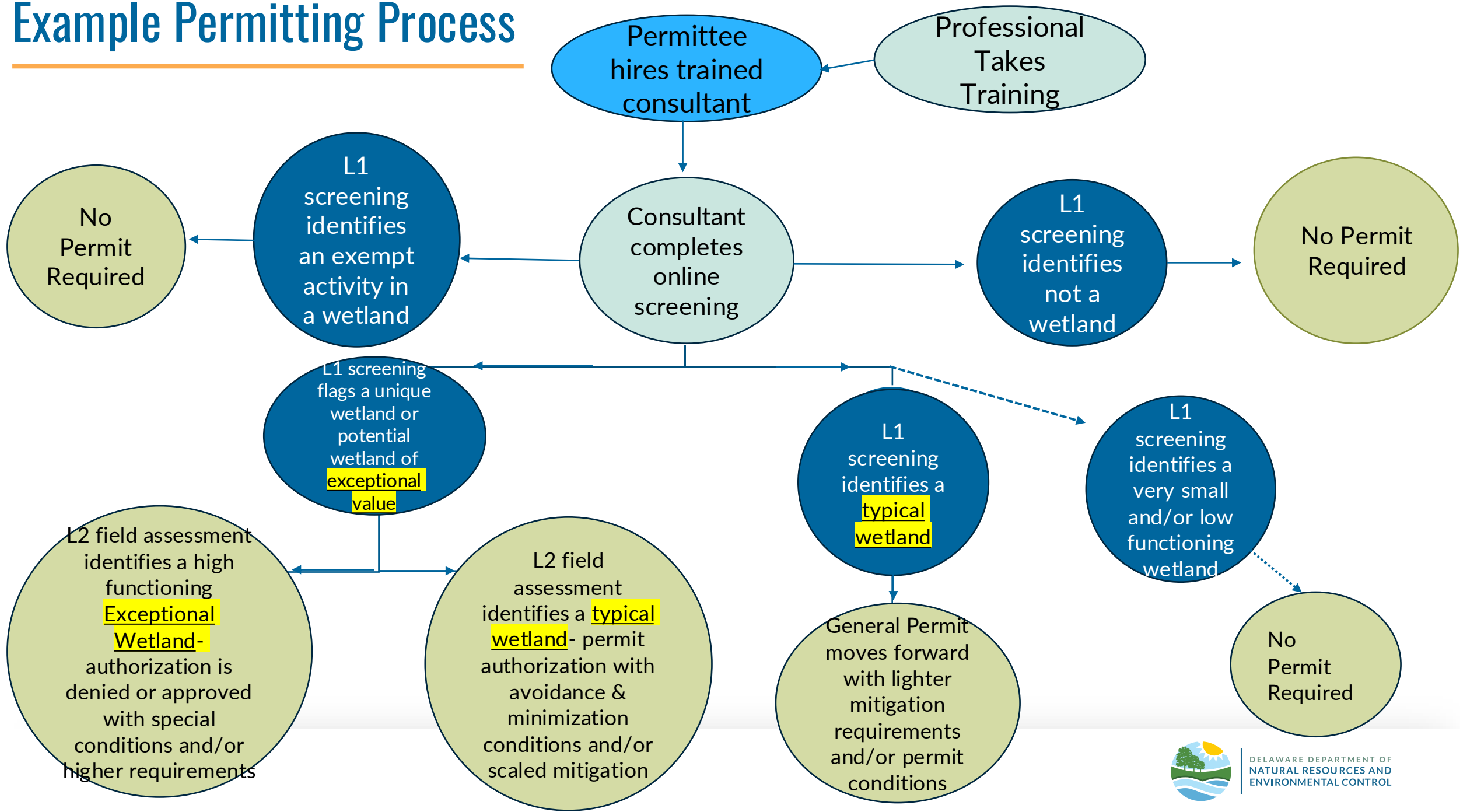
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# Agenda

- ❑ EVW role in draft permit process
- ❑ Takeaways from 2025 EVW stakeholder subcommittee
- ❑ Components of the EVW definition in SB9
- ❑ Where the EVW subcommittee has input
- ❑ Other places EVW is mentioned in SB9



# Example Permitting Process



# Takeaways from the Exceptional Value Wetland Areas Stakeholder Subcommittee

## What we have:

- Knowledge of habitat requirements for endangered and threatened flora and fauna
- Statewide wetland maps that predict Unique wetland types- updated ~10 years
- Designated Natural Areas (protected areas of unusual natural significance; privately and publicly owned)
- Mapped wellhead protection areas statewide

## What we don't have:

- Location maps for all threatened & endangered species
- Maps of highest functioning wetlands
- Regulatory powers or special protection for wetlands in designated Natural Areas

## What we value:

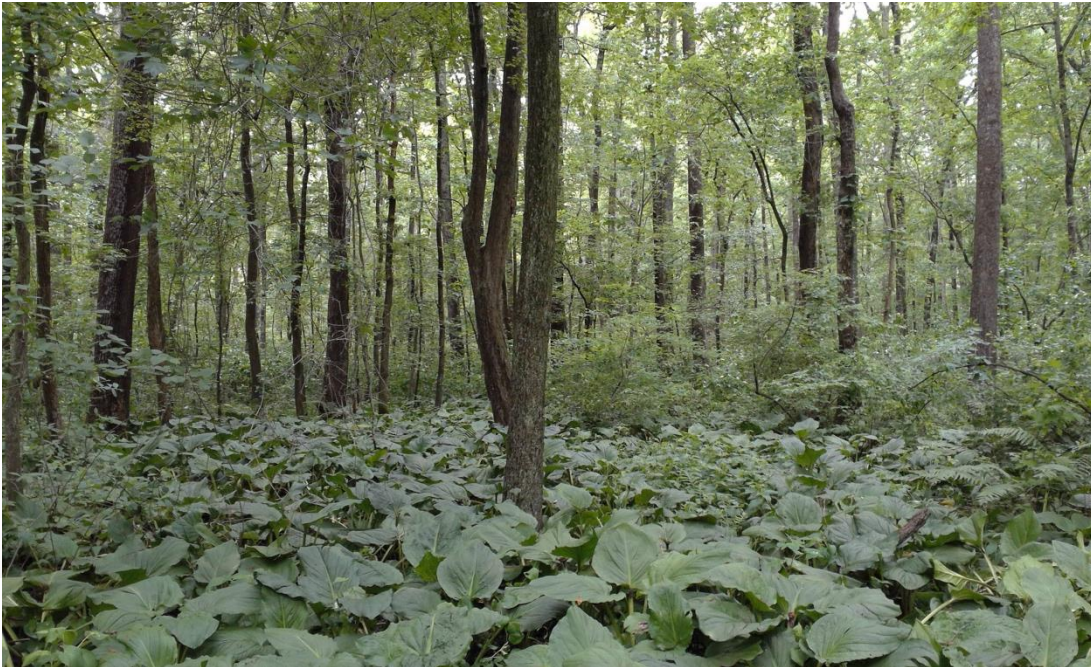
- Wetland areas that are unique, rare and special
- Wetlands that are in near pristine, high functioning, top condition
- Wetlands that protect and filter human drinking water supplies
- Protecting areas for T&E flora and fauna to grow into



# Exceptional Value Wetlands

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- Value = Rating of function, condition and health
- Includes wetlands in reference condition (best of the best)
- Values can vary by audience



# Exceptional Value Wetlands in SB9

“Exceptional Value Wetlands” shall be defined by regulations, and shall include: wetlands that are:

- (i) Unique or high functioning;
- (ii) wetlands that, based upon documented and appropriate habitat criteria, support flora or fauna listed as endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. or listed as endangered pursuant to § 601 of this title
- (iii) wetlands located in public water supply Source Water Protection Areas; and
- (iv) wetlands located within designated Natural Areas.



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Fork Branch Natural Area Photo credit: Laura Parks

# ia. Unique Wetland Types



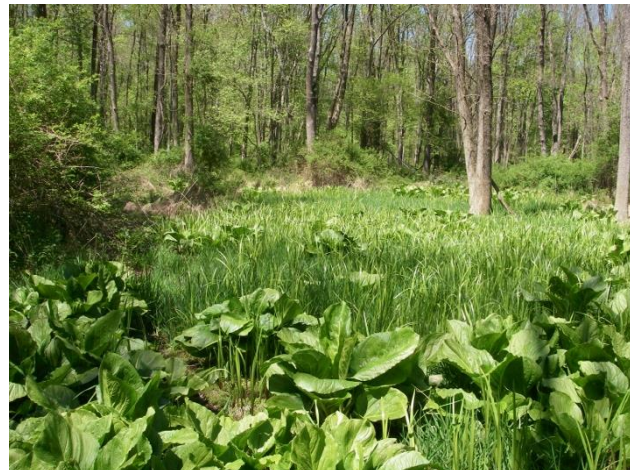
Atlantic White Cedar



Bald Cypress Swamps



Coastal Plain Ponds



Piedmont Stream Valleys



Black Ash Seeps

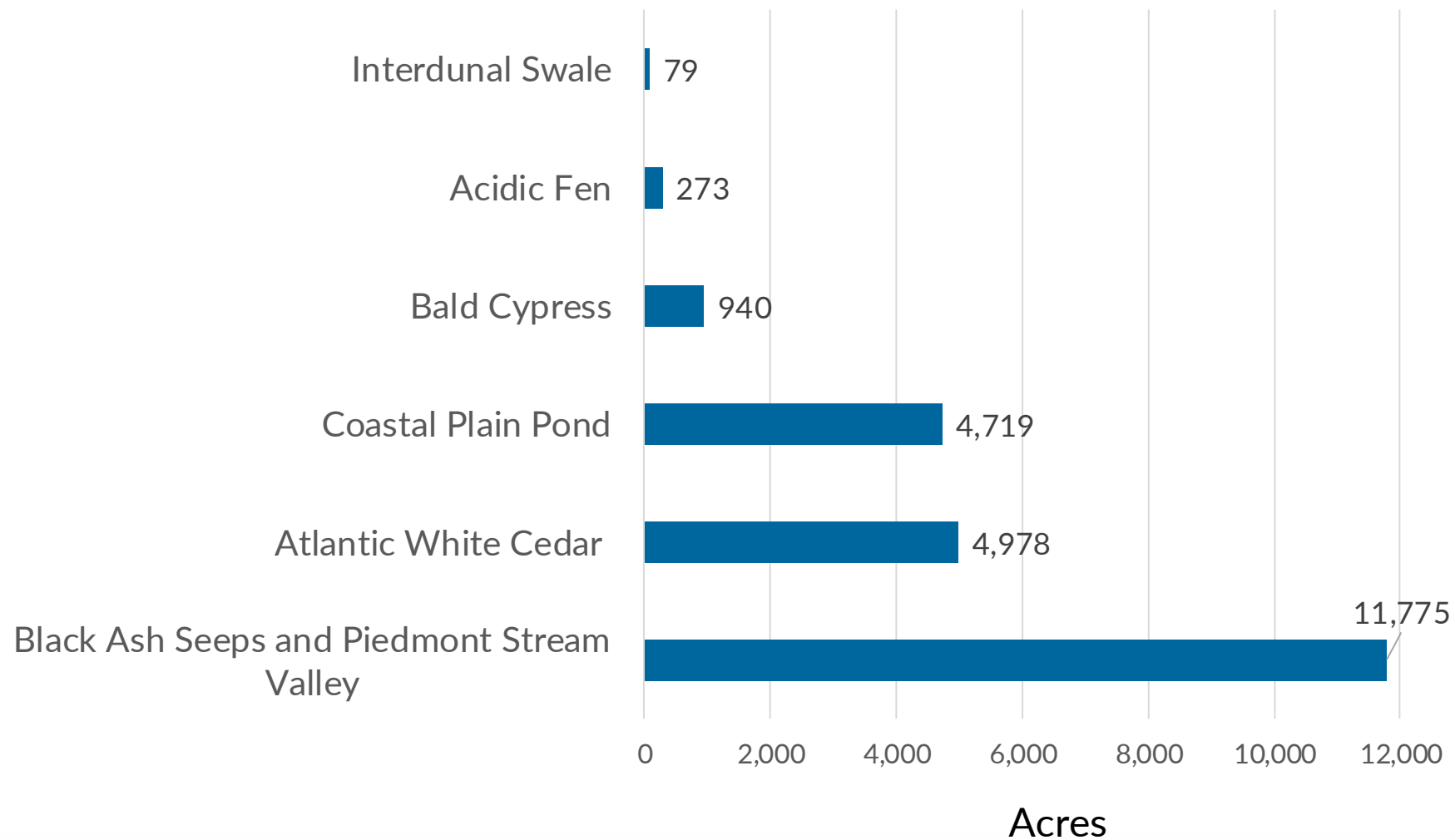


Inner Dune Swales



Peatland Fens

## ia. Unique Wetland Types



Based on 2017 Statewide Wetland Mapping



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# ib. High Functioning Wetlands \*

---

**Wetland Functions :** Natural processes of wetlands which continue regardless of their perceived value to humans.

## Common Function Examples:

ib. High Functioning Wetlands \*  
Flood and Storm Water  
Management

Water Purification

Wildlife Habitat

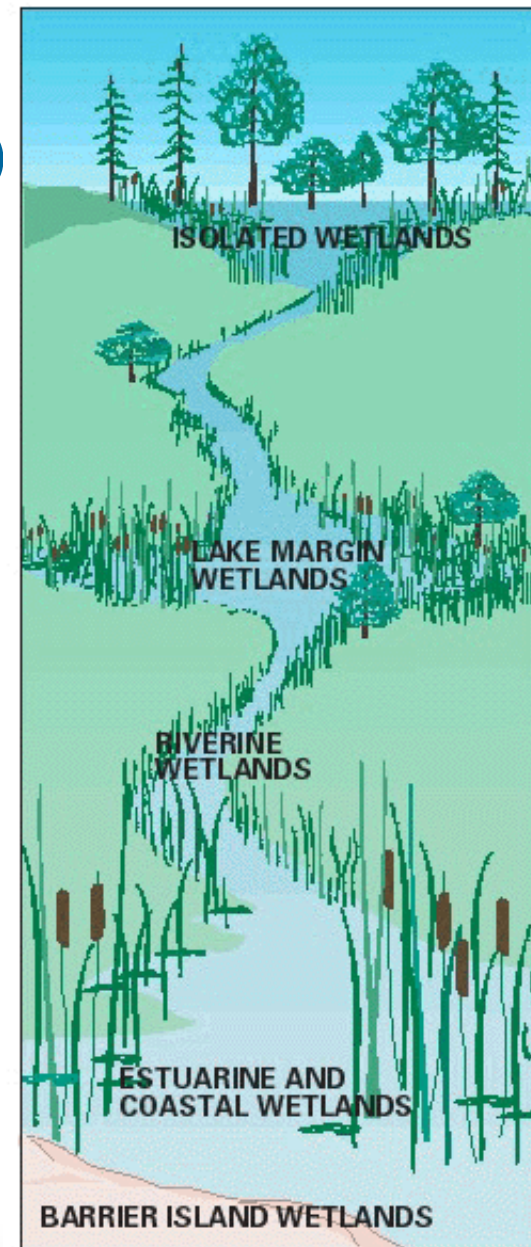
Biological Productivity

Climate Regulation



# Wetland Functions by Typ

- Not all wetlands perform the same functions or equally well.
- Depends on wetland type, size, location, quantity of water source, disturbances in and around.



## CHARACTERISTICS AND FUNCTIONS OF WETLANDS

### Isolated Wetlands

1. Waterfowl feeding and nesting habitat
2. Habitat for both upland and wetland species of wildlife
3. Floodwater retention area
4. Sediment and nutrient retention area
5. Area of special scenic beauty

### Lake Margin Wetlands

1. See "isolated wetlands" above
2. Removal of sediment and nutrients from inflowing waters
3. Fish spawning area

### Riverine Wetlands

1. See "isolated wetlands" above
2. Sediment control, stabilization of river banks
3. Flood conveyance area

### Estuarine and Coastal Wetlands

1. See "isolated wetlands" above
2. Fish and shellfish habitat and spawning areas
3. Nutrient source for marine fisheries
4. Protection from erosion and storm surges

### Barrier Island Wetlands

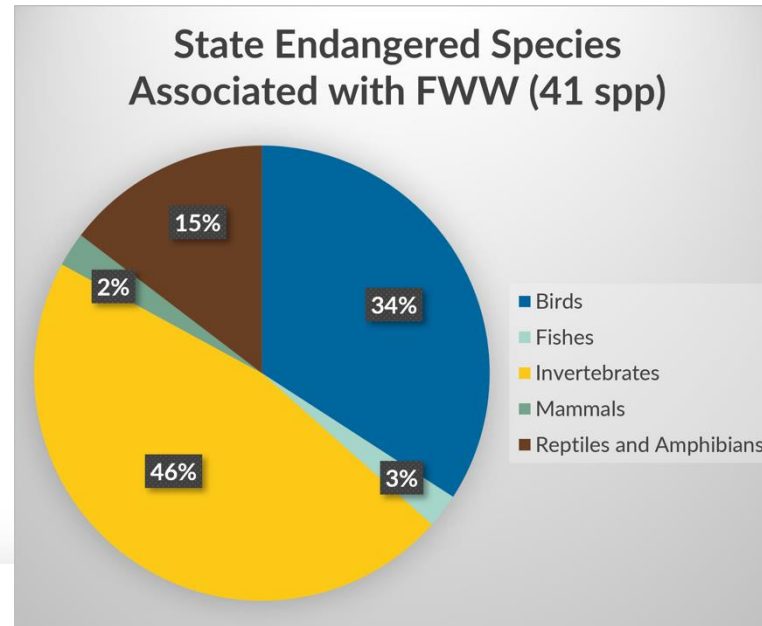
1. Habitat for dune-associated plant and animal species
2. Protection of backlying lands from high-energy waves
3. Scenic beauty

**Figure 50.** Wetland functions depend upon the location of the wetland within a watershed. (Source: Modified from J.A. Kusler, *Our National Heritage: A Protection Guidebook*. Copyright (c) 1983 by the Environmental Law Institute. Reprinted by permission.)

## ii. Wetlands that Support Flora and Fauna Species\*

- Not Species of Greatest Conservation Need (SGCN); 1,009
- Not all S1 or S2 species; 603
- Refers to federally threatened and endangered and state endangered
  - State endangered; 90 species; all animals, plants ineligible
  - Federally threatened or endangered; 31 spp
    - Includes 3 Fed FWW species: bog turtle, swamp pink, Canby's dropwort (and proposed Bethany Beach Firefly)

(i) wetlands that, based upon documented and appropriate habitat criteria, support flora or fauna listed as endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. or listed as endangered pursuant to § 601 of this title



Swamp Pink, Federally Threatened



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## ii. Wetlands that Support State T&E Flora and Fauna Species \*

- Mapping all threatened and endangered species not possible
- Wildlife move around; seasonally, for food, mates, habitat, competition
- Majority of records occur on various public lands that are already protected
- Known element occurrences are very limited beyond publicly owned or managed lands
- Reliable documentation of presence requires specific time of year, specialized training and equipment, optimal conditions
- Have knowledge of habitat requirements for endangered and threatened flora and fauna

“With regard to the second listed criteria, the regulations shall provide guidance on how a landowner can rebut any presumption that a particular wetland supports any given species of concern. This presumption may be rebutted through a “Presence/Probable Absence Study” that will, using standardized field methods and survey efforts, determine whether any particular species of concern is detected or, if not detected, can be treated as probably absent.”

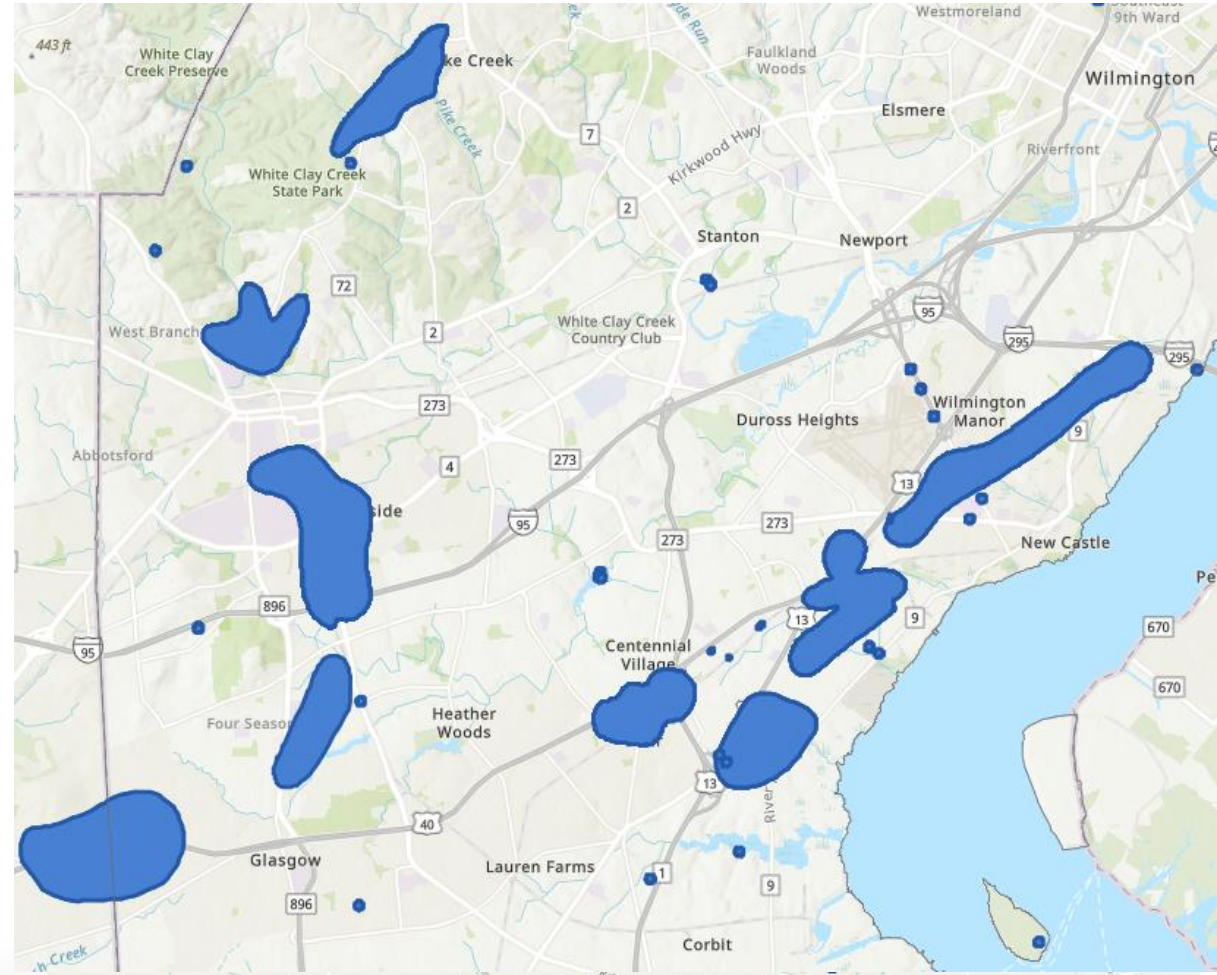


Bethany Beach Firefly, Proposed to be listed under the ES



### iii. Public water supply Source Water Protection Areas

- 2001 Source Water Protection Law
- Counties and all municipalities over 2,000 persons create Wellhead Protection Areas (WHPA) around public drinking water supply wells
- Currently 1,000-1,200 WHPAs statewide
- 150ft fixed radius around the well
- ~200 300ft radius WHPAs(NCCo)
- Some larger unconfined aquifer areas too
- Providing protection areas around public water supply wells
- Recharge is critical in wellhead protection areas for water quantity and quality
- Wetlands overlapping with WHPAs provide direct connection between surface water and groundwater

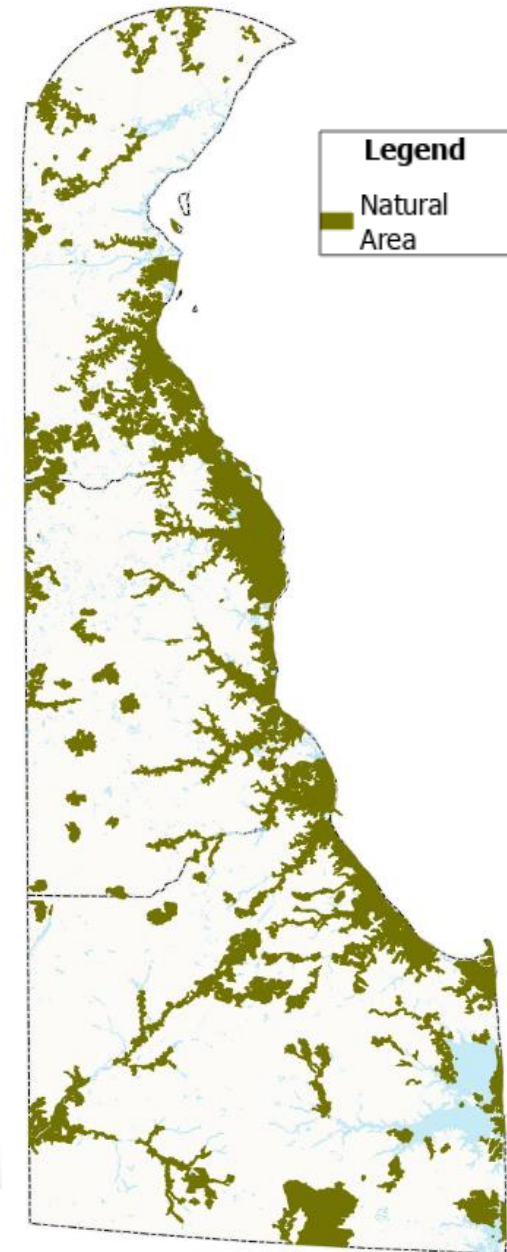


## iv. Wetlands in designated Natural Areas

### Title 7, Chapter 73

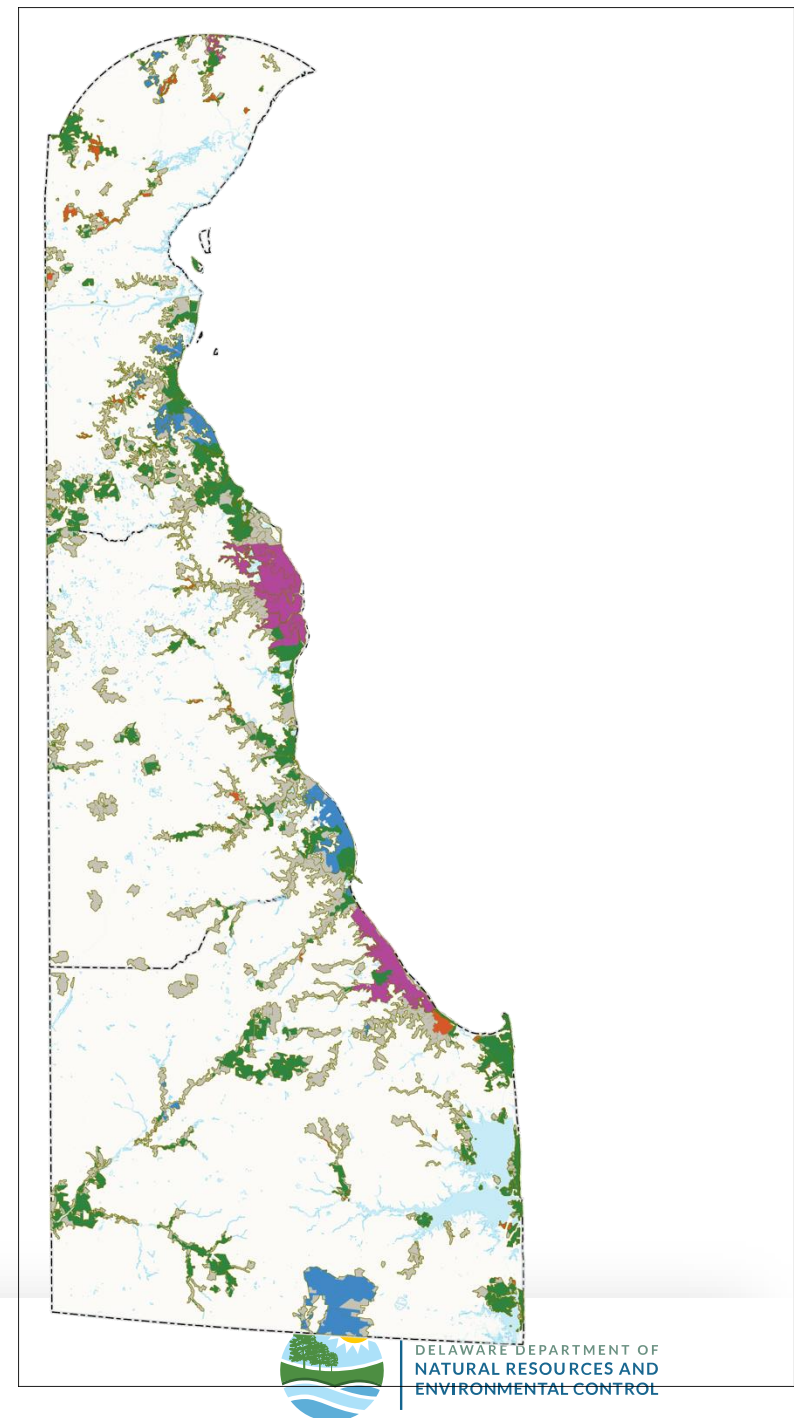
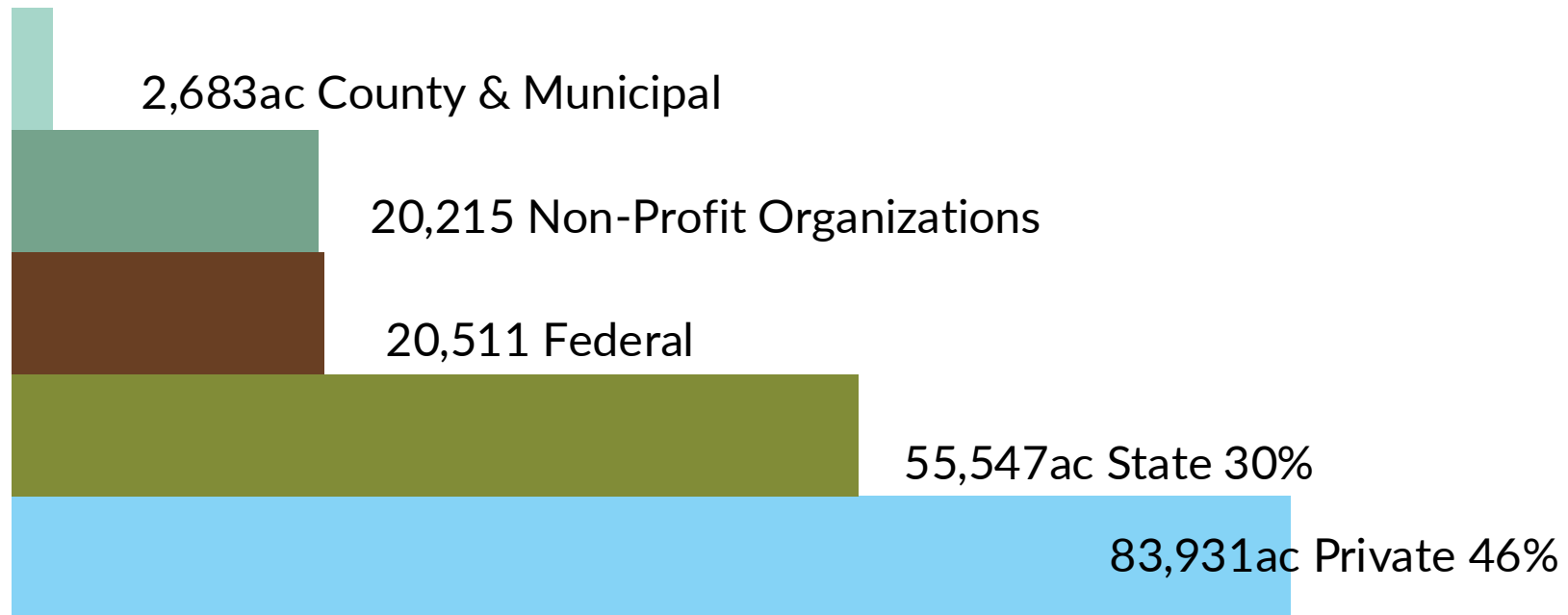
#### Natural Areas Preservation System

- **§ 7302 (Definitions):** “ ‘Natural Area’ shall mean an area of land or water, or of both land and water, whether in public or private ownership, which either retains or has reestablished its natural character (although it need not be undisturbed), or has unusual flora or fauna, or has biotic, geological, scenic or archaeological features of scientific or educational value.”
- Delaware First Map: [Delaware Protected Natural Resources 2.0](#)
- 68 Natural Areas totaling 182,680 acres
- Natural Areas can be listed and delisted
- ~7,665 acres (~4%) of Natural Areas have been permanently protected by being mapped as Nature Preserve
- The State/DNREC does not have regulatory power over Natural Areas
- 70% (128,056ac) of Natural Areas are functioning wetlands
- 29% (53,798ac) of Natural Areas are freshwater wetlands



## iv. Wetlands in designated Natural Areas

Natural Areas Acreage by Owner



# Exceptional Value Wetlands in SB9

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## § 6603 Definitions:

“Delaware Wetland Screening Tool” means a screening tool to be developed as a component of the initial regulations promulgated by the Department...and could indicate those areas that may require further evaluation to determine if the wetlands are of “**Exceptional Value**,” utilizing the factors set forth in this section.

## § 6606 Exemptions:

### (b) Conditionally Exempt Activities:

(1) In nontidal wetlands that do not qualify as **Exceptional Value Wetlands**, any activity that would be allowed under a Nationwide Permit issued by the Army Corps of Engineers and in effect in Delaware, provided that a Water Quality Certification has been received from the Department where necessary.

## § 6607 Procedures:

(b) ...The Delaware Wetland Screening Tool may include...(iv) criteria for screening for the identification of **Exceptional Value Wetlands**; ...



# Exceptional Value Wetlands in SB9

## § 6607 Procedures:

(d) The Secretary shall, in furtherance of the purpose of this chapter, adopt regulations:

(4) Affording additional protections to **Exceptional Value Wetlands**, including restrictions on allowed activities and development of best management practices for any allowed activity in such areas.

**Value** (7) Promulgating mitigation strategies designed to facilitate no net overall loss...Incentives shall be structured to create a framework that provides a strong incentive for the preservation of **Exceptional Wetlands**.

(8) Establishing General Permits...

**mitigation section.** g. A General Permit, to be known as the “Default General Permit,” applicable to activities that disturb a cumulative area of nontidal wetlands equal to or less than 0.50 acres in extent that do not qualify as **Exceptional Value Wetlands**. This “Default General Permit” shall require measures and shall only issue in the circumstances set forth in subsection (h) of this

**120 days in** (h) Where a permit application is submitted for activities that disturb a cumulative area of nontidal wetlands equal to or less than 0.50 acres in extent that do not qualify as **Exceptional Value Wetlands**, and where the Department has not issued or denied a permit within from receipt of a complete application for such activities, the Default General Permit set forth paragraph (d)(8)g. of this section shall be automatically issued in connection with the application. The foregoing timeline does not apply to applications involving the resolution of identified violations or applications involving a permit hearing.





# Questions



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# Breakout Discussion

## Functions for discussion

Listed species habitat

Ecological or educational value

Iconic or unique species

Water quality

Flood mitigation

Carbon sequestration

Shoreline protection

Scenic beauty

1

Functions around which your group had **consensus**?

2

Anything that **merits wider RAC discussion / surfaced a question today?**

3

Anything you want to **send back to the Subcommittee** for further deliberation?

# Small Group Assignments

## Group 1

- Matt
- Ross
- Jim  
Minner
- Hans
- Ann

## Group 2

- Mark T.
- Sydnie
- Nikki
- James
- Sigrid
- Jim  
McCulley

## Group 3

- Christophe
- Leah
- Tyler
- Mark N.
- Holly
- Mike

## Group 4

- Emily
- Jason
- Jay
- Phil
- Marcia

## Group 5

- LeeAnn
- Mark W.
- Karen
- Nikki

Go to:  
[www.menti.com](https://www.menti.com)

Enter Code:  
**5340 4572**



A lush green forest with a stream in the foreground and a white rectangular box in the center containing the word BREAK.

# BREAK



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# Public Comment



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# Public Comment

## Those on Zoom:

- Use the 'Raise Hand' button to get in the queue; or
- Submit your comment via the Q&A box and *clearly indicate it as a public comment to be read out loud.*
- Keep comments to **2 minutes**, you will hear a chime sound when 2 minutes has elapsed.
- Written public comments may also be submitted to:  
**[DNREC\\_Wetlands\\_RAC@delaware.gov](mailto:DNREC_Wetlands_RAC@delaware.gov)**

# Next Steps



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# Look Ahead and Next Steps

- **Homework:**
  - Subcommittees continue to meet
- **Next meeting Wed, November 4th**
- CBI will draft meeting summary and circulate for review with November meeting documents



# Meeting Materials

**To view meeting materials from past RAC meetings  
or join an email list for updates on the RAC:**  
[de.gov/wetlandsrac](https://de.gov/wetlandsrac)

**Questions or public comments may be submitted to:**  
[DNREC\\_Wetlands\\_RAC@delaware.gov](mailto:DNREC_Wetlands_RAC@delaware.gov)





Thank You!