Wetlands Regulatory Advisory Committee (RAC)

Meeting #1 Summary | September 9, 2026

Disclaimer: This meeting summary was prepared by the Consensus Building Institute (CBI), a nonprofit organization contracted by DNREC to facilitate the Wetlands Regulatory Advisory Committee meetings. This summary is not intended to be a meeting transcript. Rather, it focuses on the main points covered during the meeting. The meeting recording and presentation slides are available on the DNREC RAC webpage.

Meeting Overview

The Delaware Wetlands Regulatory Advisory Committee (RAC) held its first meeting of the full RAC in person at the Dover Public Library and via Zoom. The meeting goals were to orient the RAC to the scope of topics and decisions it needs to address to meet its August 1, 2027 deadline; establish a shared baseline understanding of Senate Bill 9 of the 153rd General Assembly (SB 9) as the RAC's statutory foundation; and establish RAC operations, including the Committee's draft work plan and operating procedures, as well as elect the Wetlands RAC co-chairs.

Action Items

RAC Members	Review the draft Operating Procedures and Work Plan and submit written comments by September 23, 2026. Designate an alternate in writing and share contact information with CBI.
DNREC	Share House Bill 456 (Subaqueous Lands Act) with RAC members for reference on areas of overlap. Post all presentation slides, background materials, and the RFP for Work Group consultants to the RAC webpage.
CBI	Revise the draft Operating Procedures to clarify alternates' role in testing for consensus. Distribute the revised Operating Procedures and Work Plan to RAC members for review ahead of the October meeting. Discuss subcommittee charges and phasing with the RAC co-chairs. Poll RAC members to confirm the October meeting date (Oct. 7, 8, or 9); send calendar holds and the meeting schedule for the year. Circulate an abbreviated initial meeting summary for review within one week of each RAC meeting, going forward.

Discussion

Opening Remarks and Welcome

Ian Yue and Sofia Soto Reyes, Consensus Building Institute (CBI), opened the meeting and reviewed CBI's role as a third-party facilitator. CBI invited RAC members to introduce themselves and share the unique perspective they bring to the RAC. DNREC staff and technical consultant Jeff Lapp, National Association of Wetland Managers (NAWM), then introduced themselves and their role in the process. Sofia reviewed the agenda for the meeting and discussion guidelines.

Review of Wetlands Stewardship Act and Previous Stakeholder Engagement
Steve Smailer (DNREC) underlined the importance of Delaware's wetlands and reviewed the history of Delaware's wetlands protections. His overview spanned Section 404 of the 1972 federal Clean Water Act through the signing of the 2026 Senate Bill. Steve outlined what the bill changes regarding jurisdiction, decision-making, and exemptions. He also clarified the timeline for implementing the state-designed program following the RAC's delivery of its initial regulations in August 2027.

RAC members raised the following questions and comments during and after the presentation. Clarifications and responses from DNREC staff are italicized in the sub-bullets.

- The federal protection of wetlands has significantly reduced, and it reinforces the importance of the RAC's work.
    - *DNREC: Attempting to adjust and respond to the shifting federal landscape is problematic for the wetlands program.*
- During the previous wetlands process, the group developed recommendations that were ultimately not implemented. I hope this process results in this group's recommendations being incorporated.
- To keep future RAC discussions on topic and within our scope, the group should review the list of exemptions.
- Does the RAC need to consider federal approval while drafting regulations?
    - *DNREC: Certain aspects of this program must meet the federal standards, but we do not need explicit approval. We want to ensure we are aligned with the US Army Corps of Engineers (USACE) and mitigate any duplication of effort where possible.*
- House Bill 456, Subaqueous Lands Act, is a helpful reference for RAC discussions.
- We should keep in mind that counties and municipalities have local wetlands regulations and consider how to address overlap between state and local regulations.
- Can the RAC discuss and propose incentives as part of their scope in the regulations?
    - *DNREC: It depends on the scale and scope of the incentives. DNREC's regulations cannot mandate other actions from other jurisdictions. The department could consider incentives within DNREC's jurisdiction.*

Regulations: Drafting Process and Role of RAC
Lisa Vest (DNREC) and Caitlin Barrett (Department of Justice) reviewed the regulatory drafting and adoption processes and the RAC's statutory role. Lisa offered drafting tips for regulatory language. Senator Stephanie Hansen also joined the meeting, she thanked the group, reflecting on the decades-long effort to reach this point, and shared gratitude for the compromises reached to create the bill.

RAC members raised the following questions and comments during and after the presentation. Clarifications and responses from DNREC staff are italicized in the sub-bullets.

- What is the timeframe between submitting regulations and the 3-year review period?
    - *DNREC: The three-year review begins at implementation.*
- Who will ensure that we are on track to complete the adoption process?
    - *DNREC: It is DNREC's obligation to comply with the promulgation process*

- If there are substantive legislative changes proposed during the public hearing process, the RAC should reconvene.

Interview Insights and RAC Operating Procedure
Ian Yue (CBI) shared themes from the twenty-three RAC member onboarding interviews conducted to date. He highlighted areas of early alignment among the group and priority areas for future discussions such as the definition of wetlands, Exceptional Value Wetlands (EVW), the permitting process, and the development of the Delaware Wetlands Screening Tool. In small groups, the RAC reflected on the interview insights. Using online polling, RAC members shared takeaways from their group discussions. Their responses are summarized below; the full results of the poll are attached in Appendix A.

- Several members said they were encouraged by how much agreement already exists across the group, especially given the members' varied expertise and interests.
- Members highlighted that many participants have long histories with this issue and with one another.
- Several members recognized that the details will be difficult to resolve and shared specific concerns, including reaching consensus as a large committee and discussing EVWs.
- Members shared a variety of priorities, such as streamlining the process, grounding policy in science, and using incentives as a tool.
- Members expressed interest in how the state process will overlap with county and local land use regulations.

CBI facilitators then reviewed the draft RAC Operating Procedures and highlighted the respective roles and responsibilities of RAC members, alternates, DNREC staff, NAWM, and CBI. The presentation clarified the purpose of subcommittees and the decision rules in the operating procedure. CBI requested that RAC members review the document and offer comments, noting that the RAC would adopt the operating procedures at the October RAC meeting. RAC members raised the following questions and comments during and after the presentation. Clarifications and responses from CBI and DNREC staff are italicized in the sub-bullets.

- Will there be summaries of each meeting?
    - *CBI: Yes. They will be distributed with meeting materials prior to each meeting.*
- Keep in mind that the harvest season may impact the farmers' RAC meeting attendance.
- Is DNREC responsible for completing the Regulatory Flexibility Act/Regulatory Impact Statement (RFA/RIS)?
    - *DNREC: Yes. DNREC will draft the RFA/RIS.*
- The Operating Procedures appear to cover the first year of the process, not the full RAC process.
    - *CBI: The Operating Procedures were written for the year-long process.*
- Will CBI support the subcommittees?
    - *CBI: Yes.*
- As written, the operating procedures do not make it clear if alternates can participate in 'tests for consensus'.
    - *CBI: We can clarify that language.*

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- Will each RAC member's individual vote be recorded?
    - *CBI: Yes.*
- To support RAC members' discussions with their communities please distribute meeting summaries quickly, ideally one week after each meeting.

Election of RAC Co-Chairs
Secretary Greg Patterson thanked members for their time and commitment and expressed optimism for the group's collaboration during the work ahead. He then called the group to a vote to select the RAC's Co-chairs. Emily Knearl and Mike Riemann were elected as RAC co-chairs by the full RAC in attendance, with no abstentions or opposition.

Overview of RAC Topics for the Year
The CBI facilitators reviewed topics that the statute indicates the RAC must consider. They also highlighted that amendments to legislative text, and definitions, impact fee rates, and specific conditions for permit issuance were outside the scope of the RAC. The group reviewed each topic, flagged items for further discussion, and determined focus areas for subcommittees. In its discussion, the group considered the level of specificity necessary for the definition and proposed approaches to balance specificity that serves Delaware's unique features with generality that allows for consistency.

The RAC's comments and questions are summarized below, organized based on topic. Clarifications and responses from DNREC staff and NAWM are italicized in the sub-bullets.

<u>Wetlands Definition</u>
- One member noted that the previous wetlands process reached consensus on a science-based definition that led to the current exemptions, and urged the group not to reopen that discussion.
- Several members asked for an opportunity to review the listed guidance and suggest additions. Several members emphasized that the regulations should be specific in their supplemental guidance and definitions.
- A member raised they preferred using the Army Corps' wetlands delineation definition because it is broad and standard in delineation work, while recognizing the need for an additional layer tailored to Delaware's landscape.
- One member encouraged the group to consider the definition for tidal wetlands and suggested referencing the mean high tide lines in Section 10 of the Rivers & Harbors Act, and Section 404 of the Clean Water Act. Another member agreed that the regulations would need to make the distinction between tidal and nontidal wetlands.
- One member reminded the group that statutory and regulatory definitions serve different purposes, and asked whether the basis for Delaware's definition is comparable to Mid-Atlantic states' regulatory definitions.
    - *NAWM: The statute indicates the intent of the legislative body, and regulations provide more detail on specific elements and definitions. Neighboring states typically include a detailed list of what each defined term means.*
- A member asked whether Delaware's current definition is map-based, and whether the RAC could propose a narrative definition instead, noting that maps change annually due to storms and precipitation.

    - *DNREC: The current definition is a map based on the language in the original Wetlands Act.*
    - *RAC Member: The statute indicates that the RAC can determine a narrative definition so long as it is in agreement with generally accepted criteria and methodologies.*

Exceptional Value Wetlands

- The group clarified that "threatened and endangered species" and "species of concern" refer to the same species, not separate categories. Members agreed the original language was unclear and should not be left open to interpretation.
- Members recommended that DNREC review and update the unique wetlands maps.
    - *DNREC: The maps are currently being updated, as required every 10 years.*
- One member noted that some sites may not match the mapped classification of the unique wetlands maps and hoped to avoid reliance on static maps.
    - *DNREC: "Unique value wetlands" are classified within the maps. There is a method for confirming these wetlands in the field.*
- One member noted that "high functioning" will require significant scientific input and dedicated discussion time.

Delaware Wetland Screening Tool

- A member asked what it means for the tool to be "a component of the initial regulations," and whether it will change outside of the regulatory process.
    - *DNREC: The tool will continue to evolve as maps and resources are updated.*

Certification

- A member sought clarification on whether certification is required to use the tool.
    - *DNREC: The certification is required to review conditional exemptions.*

Mitigation

- One member hoped the group would keep in mind that where a wetland is jointly regulated by the Army Corps and the state, applicants must use a federally approved wetland mitigation bank for mitigation. However, if a wetland is regulated solely by the state, additional options are available, such as a state-only bank or an in-lieu fee program.

General Permits

- One member wanted to differentiate between trenchless and open-cut linear utility installation methods, and shared interest in analyzing the cumulative impact of walkway shading on vegetation.
    - *DNREC: It needs to be clarified in the considerations for qualified criteria.*
- One member expressed hope to repair conveyance without completing the full permitting process; another member noted that this is covered under the exemptions.

Exemptions

- A member asked for clarification on required permits for work on jurisdictional wetlands.
    - *DNREC: If it does not meet the negative elements of that requirement, it is not exempt.*
- A member asked whether there are existing exemptions for tidal wetlands.

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    - *DNREC: Yes. The Chapter 66 exemptions are carried forward, and the Chapter 72 exemptions are mirrored here as well.*
- Members contemplated how to address non-erosive discharge via a general permit.
- A member wondered if any of the listed unique wetlands were tidal wetlands.
    - *DNREC: No.*
- Members noted there are two types of discharge, which could be addressed through a general permit.
- A member spotlighted the maintenance of a stream drainage function as a potential exemption.

CBI polled RAC members for their three most salient topics to address in group discussions. 21 RAC members selected definitions of exceptional value wetlands; 19 people selected definitions of wetlands, nontidal wetlands, and tidal wetlands. The detailed poll results are attached in Appendix A.

RAC Work Plan
CBI presented a draft year-long work plan and asked members to share their comments prior to the October meeting.The group agreed to prioritize launching the Exceptional Value Wetlands (EVW) and Wetland Definitions subcommittees before the October RAC meeting. At the end of the meeting RAC members were asked to indicate if they would like to participate in and/or chair either of the groups.

Public Comment
Lisa Rice, a Delaware resident, shared concerns with potential development in state wetlands. She urged the committee to protect all wetlands and habitats and shared concerns about development pressure on the state.

Next Steps and Closing Remarks
CBI thanked the group and agreed to share the meeting schedule for the remainder of the year. The next RAC meeting is on October 7th, 2026 at the Kent County Levy Court and on Zoom. To close the meeting the co-chairs shared their gratitude to the group and eagerness to begin substantive work.

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Participant List

RAC Members and Designated Alternates

Name	Affiliation
James (Jay) Baxter IV	Delaware Farm Bureau – Sussex County
Jason Berry	Kent County (Designee)
Tyler Brown	Sussex Conservation District
Ann Burruss	Delaware Chapter of the Sierra Club
Doug Eitelman	American Council of Engineering Companies of Delaware
Marcia Fox	Delaware Wild Lands
Nikki Ghorpade	Ducks Unlimited
LeeAnn Haaf	Partnership for the Delaware Estuary
Karen Igou	Northeast Rising
Emily Knearl	The Nature Conservancy
Jim McCulley	Watershed Eco
Phil McGinnis	Delaware Association of Realtors
Hans Medlarz	Sussex County (Designee)
James (Jim) Minner	Delaware Farm Bureau – Kent County
Mark Nardone	Delaware Nature Society
Leah Palm-Forster	University of Delaware, Department of Applied Economics and Statistics
Grayson Middleton*	Alternate, Delmarva Chicken Association
William (Bill) Powers, Jr.	Delaware Farm Bureau – New Castle County
Mike Riemann	Home Builders Association of Delaware
Matt Sarver	Delaware Ornithological Society
Sigrid Smith	Delaware State University, Department of Agriculture and Natural Resources
Mark Trostle	Kent Sussex Leadership Alliance
Christophe Tulou	Delaware Center for the Inland Bays
Jennifer Volk	University of Delaware Cooperative Extension
Mark Wolanski	New Castle County (Designee)

DNREC Staff and State Employees

Name	Affiliation
Caitlin Barrett	Department of Justice
Mike Bott	Division of Watershed Stewardship
Senator Stephanie Hansen	Delaware State Senate
Matt Grabowski	Division of Water
Matt Jones	Division of Water
Greg Patterson	DNREC Secretary
Ashley Norton	Division of Water
Alison Rogerson	Division of Watershed Stewardship
Steve Smailer	Division of Water
Lisa Vest	Office of the Secretary, Office of Admin. Services, Administrative Law Branch

Facilitation Team and Technical Consultants

Name	Affiliation
Ian Yue	Consensus Building Institute

Sofia Soto Reyes	Consensus Building Institute
Meira Downie	Consensus Building Institute
Jeff Lapp	National Association of Wetland Managers (NAWM)

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Appendix A: Polling Results

Prompt 1: Share one key takeaway from your small group discussion.

Impressed by the level of consensus evident in the feedback.

Christophe Tulou

How can this process can be streamlined? Relatively narrow set of issues that need to be addressed.

Grayson Middleton

Concern about setting an effective date was shared so as not to present an administrative burden in county land use and planning as a result of the regs. e.g. XX days after promulgation

Matt Sarver

Looking for clarification on the permitting process and how it fits with local land use regulations

Mark Wolanski

Regulations and how they are interpreted can vary throughout different jurisdictions.

Jason Berry

Exceptional value wetlands will be challenging

Emily

Use sience to create policy.

Jim Minner

There are a lot of people on committee which may make the consensus process difficult.

Jim McCulley

Agribusiness has been accused of being the main source of phosphate in waterways.

Mark Trostle

Lot of work ahead but ready to work through the process! Let's get started.

Marcia

Value system of unique and high functioning

Doug Eitelman

We were pleased with the common ground that already exists but know the specifics will be tricky to work through.

Jenn Volk

Incentives can be a valuable tool.

Mike Riemann

We agreed on the complexities upcoming

Ann Burruss

Varied specialties and interests

Phil McGinnis

Effective date of the regulations past promulgation process should be considered to line up with county land use processes.

Hans Medlarz

We are all inter-connected in this process... Everyone has been involved in this process for so long, we have crossed paths (or at least with a reletive or acquaintance) along the way!

Jay Baxter

I how we have in common with the different groups

Bill Powers

Prompt 2: Which topics are most salient to address first?

