

Wetlands Protection in Delaware:

Looking back to see how we are positioned
for the challenges ahead

Steven Smailer, Director
DNREC Division of Water

CIB Citizen Advisory Committee

Thursday, August 22, 2024



Key Legislation in State Program History

- First Wetlands Law passed in the early 1950s
- 1978 Wetlands Act established the current framework
 - 7 Del. C. Ch 66
- 1978 Regulatory Maps
- 1983 Amendment establishing process to correct wetland maps
 - [64 Del. Laws, c. 61, §§ 1, 2](#)
- 1988 Regulatory Maps
- 1991 Fee Bill establishing the current fee structure
- 1993 Oceanport Superior Court Decision
- 2013 Amendment Establishing Ch 66A Non-Tidal Standards
 - [79 Del. Laws, c. 147, § 2](#)
- 2024 SB 290



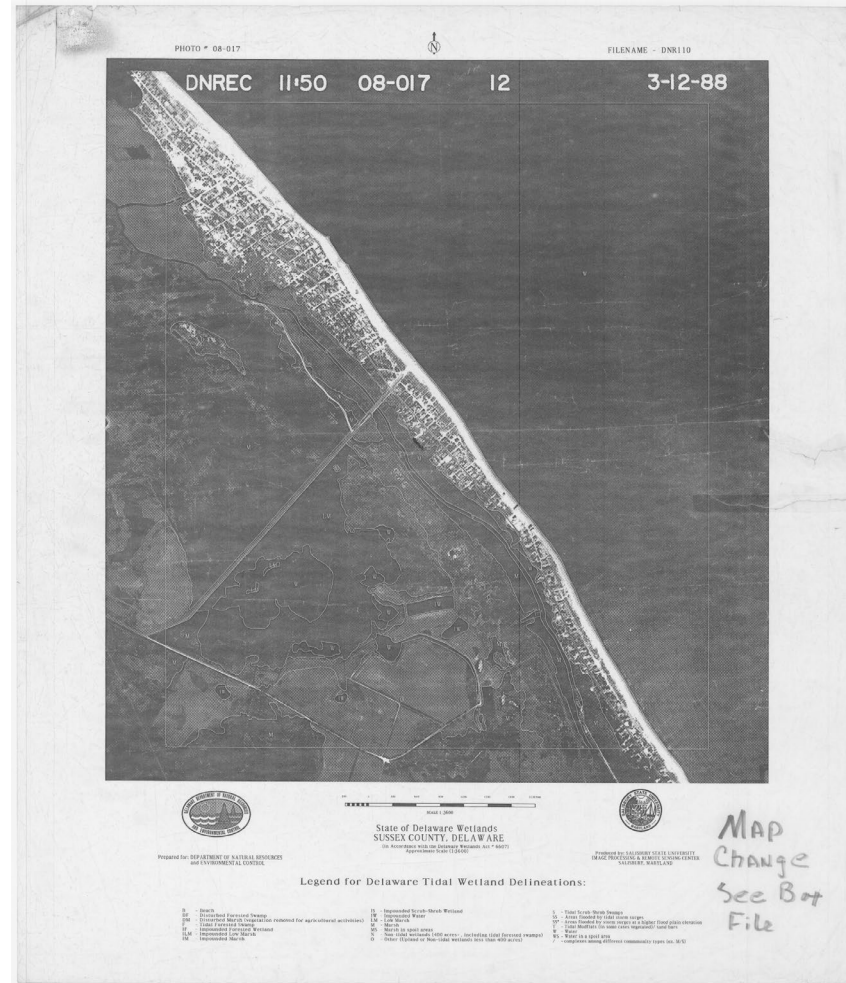
State Program History: 1978 Wetlands Act

- AN ACT TO AMEND TITLE 7, DELAWARE CODE, BY ADDING A NEW CHAPTER TO BE DESIGNATED AS CHAPTER 66 TO ALLOW THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL TO REGULATE THE USE OF DELAWARE'S WETLANDS AND THEIR UPLAND BORDER TO PROVIDE PENALTIES FOR VIOLATION OF THE PROVISIONS THEREOF AND TO PROVIDE AN APPROPRIATION THERETO
- "Wetlands" shall mean those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of Delaware along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary or tributary waterway or any portion thereof, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of two feet above local mean high water, and upon which may grow or is capable of growing any but not necessarily all of the following plants:
- §6607 (b) The Secretary shall inventory, as promptly as he is able, all wetlands within the State and prepare suitable maps. Such maps shall be filed with the Secretary of State and made available for public inspection at the offices of the Department. On completion of a wetlands boundary map for an area, the Secretary shall propose that wetlands within the area be designated as such in accordance with the map. Wetlands designation on the maps shall be conclusive for the purpose of this Chapter upon adoption by the Secretary, subject to the outcome of any appeals taken under this Section. After such designation, the two foot elevation above local mean high water specified in §6603 of this Chapter shall not apply to any land outside the designated area.
- A sum of one hundred thousand dollars (\$100,000) is hereby appropriated to the Department to perform the requirements of §6607 (b), which include surveying for disputed wetland boundaries, staff processing and clerical help.
- A sum of thirty-five thousand dollars (\$35,000) is hereby appropriated to the Department to carry out the provisions of this Chapter

State Program History: 1983 Amendment

- If an **on-site evaluation by the Department** establishes that an error exists in a wetlands map that has been adopted by the Department, the wetlands map containing the error may be corrected by the Department after the Department documents, in writing, the results of the on-site evaluation, and the **Department gives the public notice** of any proposed correction. For purposes of this subsection, the terms 'public notice' shall consist of having notice of the proposed correction, the name of the property owner, location of the property in issue, and a description of the error, published in a daily newspaper of general circulation throughout the State and a newspaper of general circulation in the county in which the activity is proposed. Such notice shall be published at least twenty days in advance of any correction to a map by the Department. If the Department determines that it has received a meritorious objection to any proposed correction set forth in a public notice, the **Department shall hold a public hearing** in accordance with the procedures set forth in 7 Del. C. §6609. Any Department correction made to an adopted wetlands map shall be filed with the Secretary of State and made available for public inspection at the offices of the Department."

State Program History: 1988 Maps



State Program History: 1991 Fee Bill

- **Wetlands**

- Type I \$300 One time
- Type II \$450 One time

- **Subaqueous Leases**

- Non-Commercial Docking Facility: 1 slip \$225 (10 yr lease appl)
- Commercial Docking Facility: 2 or more slips*(C) \$225 (10 yr lease appl)
- Non-Commercial Projects \$225 (10 yr lease appl)

- **Subaqueous Lands Lease**

- Annual Maintenance: Dredging 500 cubic yds or more \$1,000 Annual
- Non-Commercial Dock Facility: 1 slip/ramp *(D) \$.50 per sq ft Annual
- Commercial Dock Facility: 2 – 4 slips/ramps (Single Family Residential) \$.50 per sq ft Annual
- Commercial Dock Facility: 2-4 slips/ramps (non-Residential) \$3.00 per sq ft Annual
- Commercial Dock Fac.: 5 or more slips/ramps (Single Family Residential) \$1.50 per sq ft Annual
- Commercial Dock Facility: 5 or more slips/ramps (non-Residential) \$3.50 per sq ft Annual
- Non-Commercial Project: other than dock facility \$.50 per sq ft Annual

State Program History: 1993 Oceanport

- **Wetlands**

- Type I \$300 One time
- Type II \$450 One time

- **Subaqueous Leases**

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State Program History: 2013 Amendment

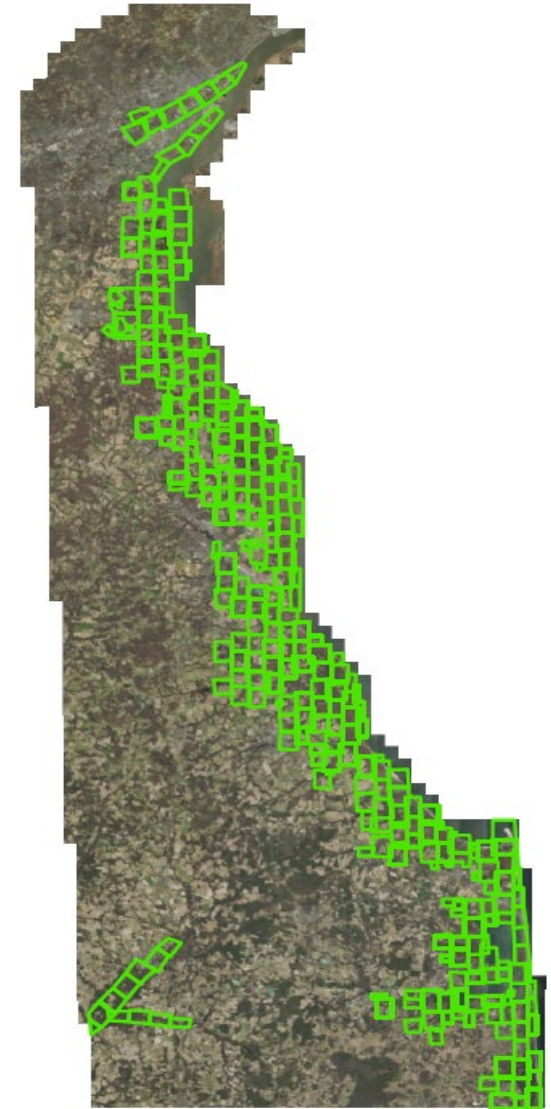
- §6601A. Purpose: It is the purpose of this Chapter to promote public health, safety, and general welfare through the conservation and restoration of non-tidal wetlands, which provide significant public value and critical ecological functions through the mitigation and prevention of flood damage, provision of wildlife habitat, removal of pollutants from water resources, and reduction in costs for governments, residents, and businesses that result when wetlands are degraded.
- §6603A Wetlands Advisory Committee.
- The Secretary shall, within 18 months of the effective date of this legislation and through consultation with a Wetland Advisory Committee (Committee) established under this section, develop wetland protection priorities for the State of Delaware and recommend for consideration by the General Assembly a comprehensive approach for improving non-tidal wetland conservation, restoration, and education within the state.
- The Committee shall consider nationally recognized best practices and standards, as well as actions that surrounding states have implemented in the way of incentive programs, policies, and assumption of regulatory roles. The Committee shall also evaluate the permitting process for activities regulated by state and federal agencies with the goals of reducing duplication, providing efficient one-stop permitting, and improving the state's ability to account accurately for cumulative and individual impacts.
- DNREC shall compile the results of the Committee recommendations, develop a draft report, and reconvene the Committee to review the draft report and solicit feedback before finalizing the report of recommendations. The Secretary shall deliver an interim report of the work of the Committee to the General Assembly no later than May 1, 2014 and deliver the final report of recommendations no later than December 31, 2014.

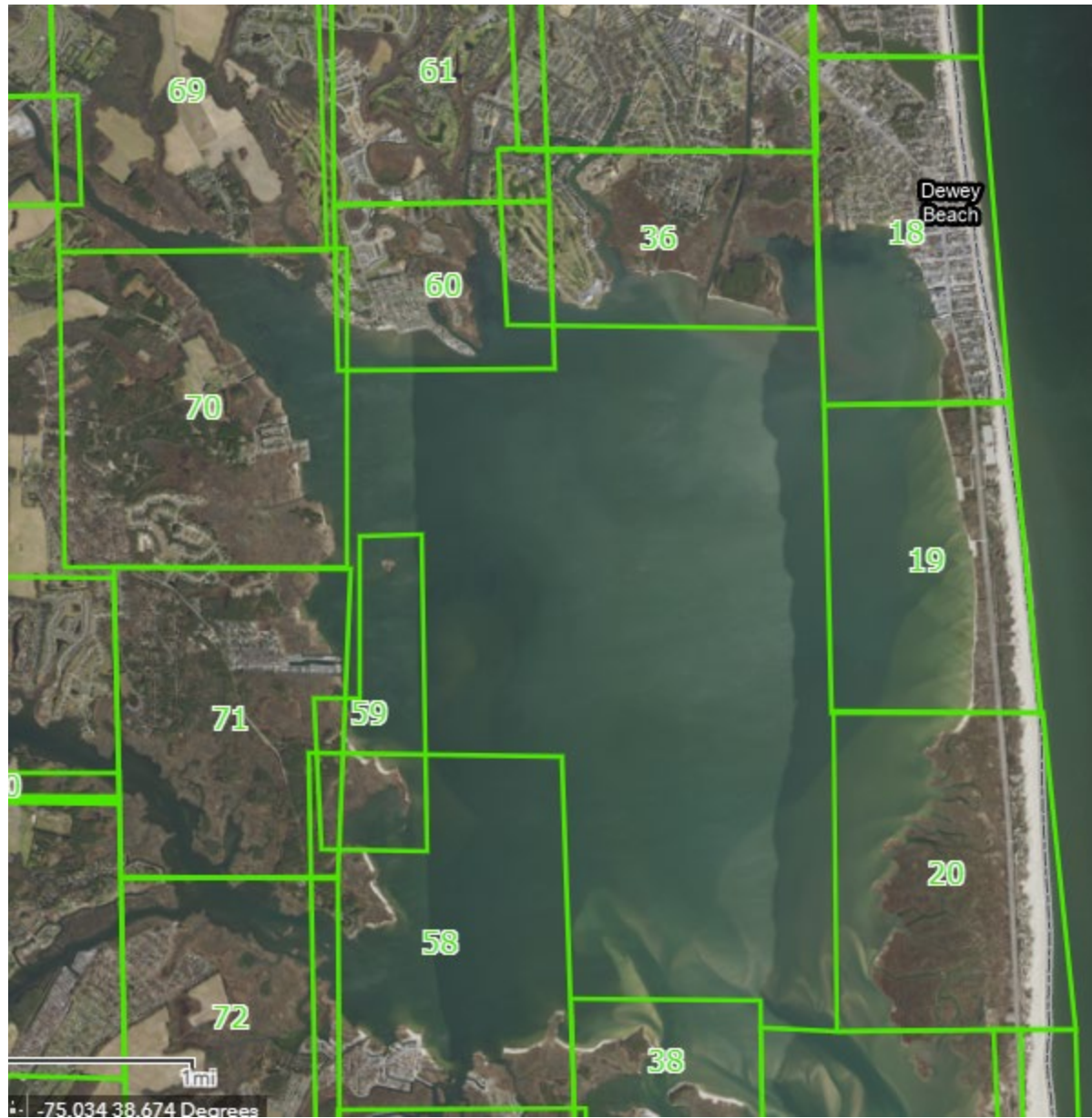
State Program History: 2024 SB 290

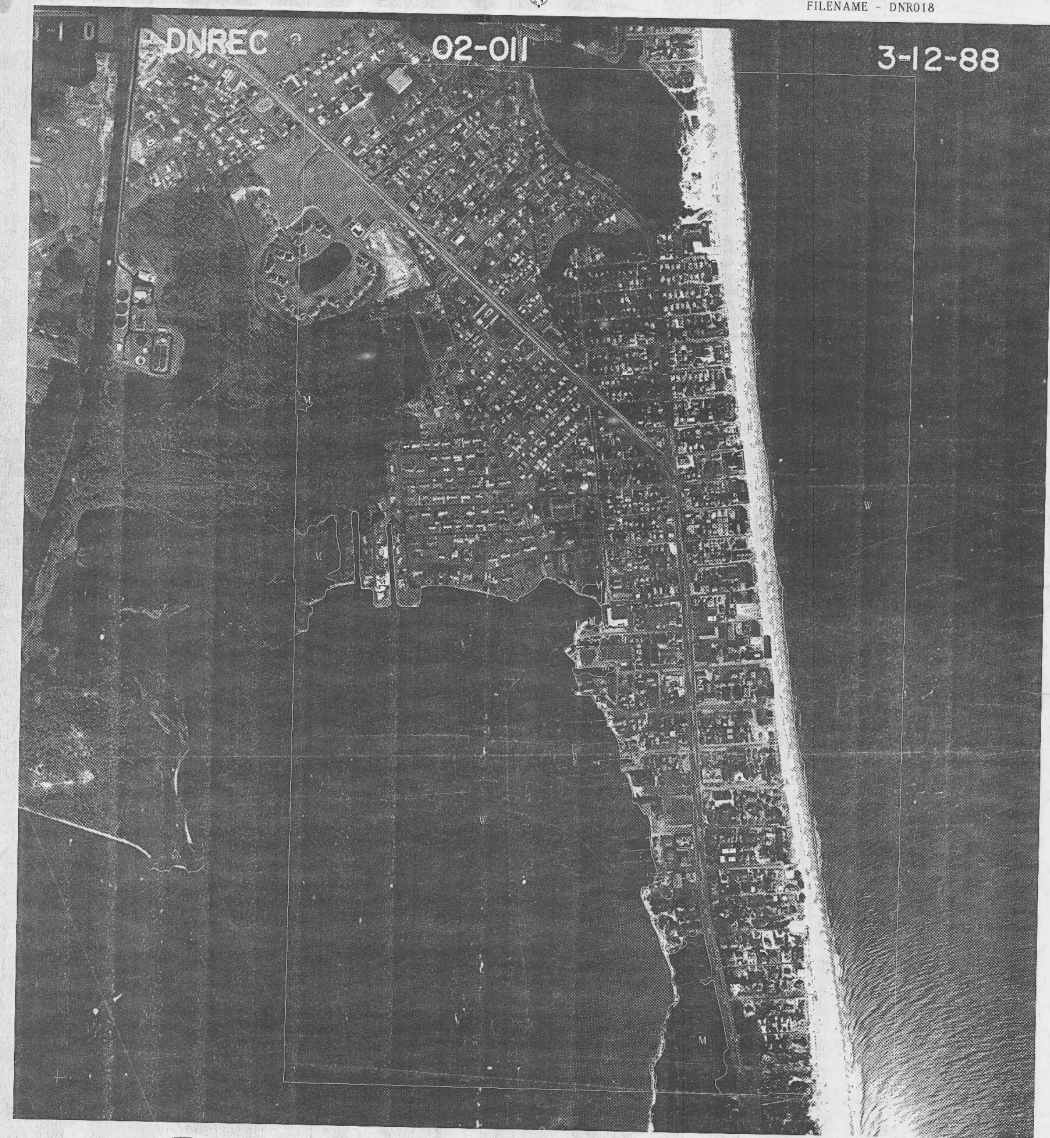
- This Bill institutes a State nontidal wetlands program and leaves intact the current State tidal wetlands program under Chapter 66 of Title 7. Prior to these amendments, the only regulatory protection of the State's nontidal wetlands was through the U.S. Army Corps of Engineers and the federal Clean Water Act ("CWA"). Nontidal (freshwater) wetlands are valuable resources that contribute to the quality of life for all Delawareans and deserve a local program of protection. The State nontidal wetlands program will be more efficient and more responsive than the federal program. The State nontidal wetlands program will cover gaps in federal jurisdiction under the CWA and mitigate the uncertainty surrounding the limits to federal jurisdiction.
- Fiscal Note:
 - Recurring Cost Year 1: \$613,139 + Operating Costs & Contractual Services
 - Recurring Cost Year 2: \$1,124,025 + Operating Costs & Contractual Services
 - Recurring Cost Year 3: \$1,381,495 + Operating Costs & Contractual Services

State Program: Current

- State jurisdiction based on 1988 Tidal Mapping (static)
- Exempt activities in state wetlands:
 - Mosquito control activities authorized by the Department
 - Construction of directional aids to navigation, duck blinds and **foot bridges** (upland to upland, ≤ 3 feet wide)
 - Placement of boundary stakes
 - Wildlife nesting structures
 - Grazing of domestic animals
 - Haying, hunting, fishing and trapping
- ~24 Permitted activities annually
- Annual Fee Revenue: **~\$10,800**
- Annual State Funds: **~\$35,000**
- ~85% of Tidal Wetlands “Protected”







Prepared for: DEPARTMENT OF NATURAL RESOURCES
and ENVIRONMENTAL CONTROL



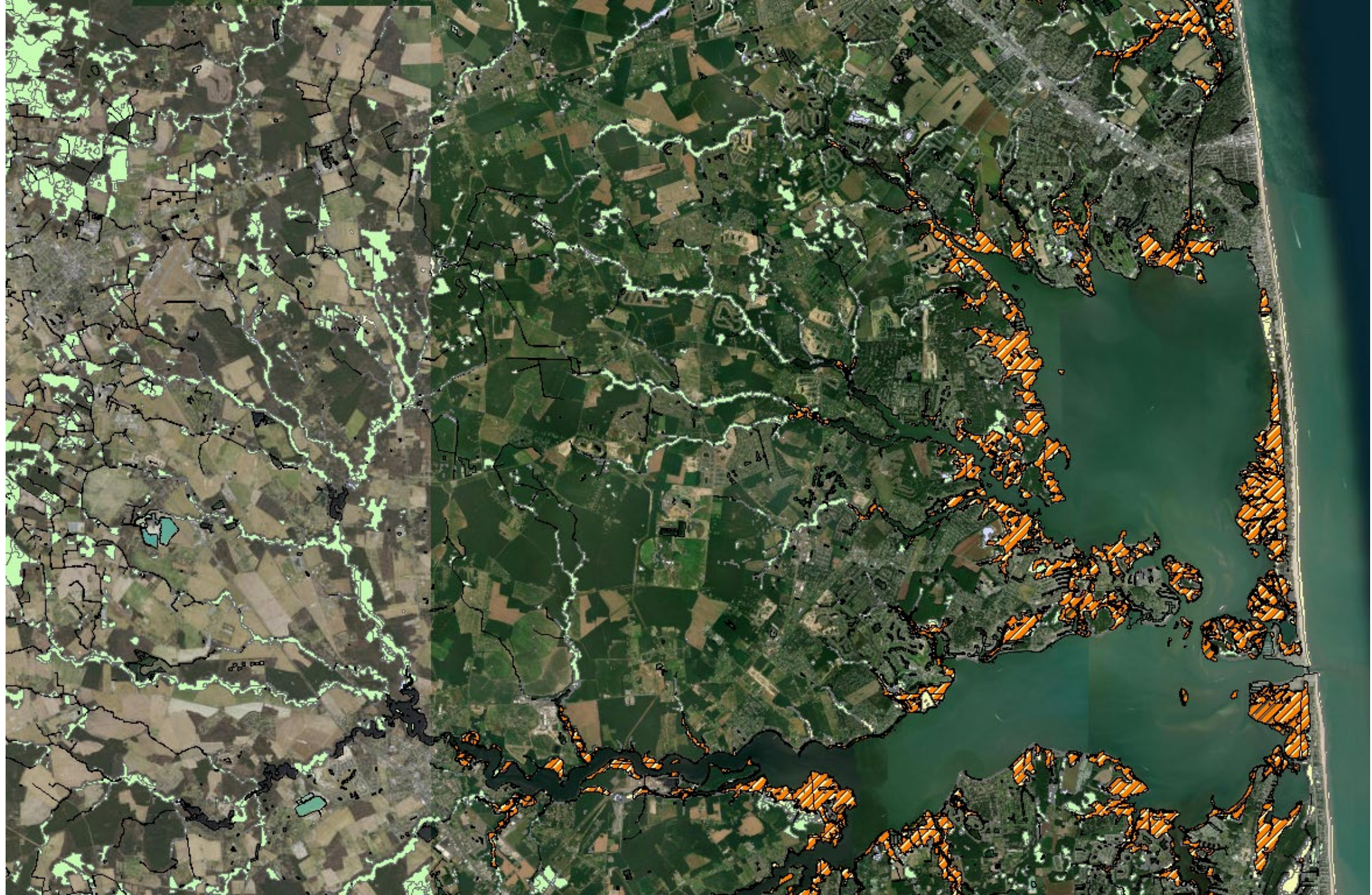
State of Delaware Wetlands
SUSSEX COUNTY, DELAWARE
(in accordance with the Delaware Wetlands Act # 6607)
Approximate Scale 1:13,600

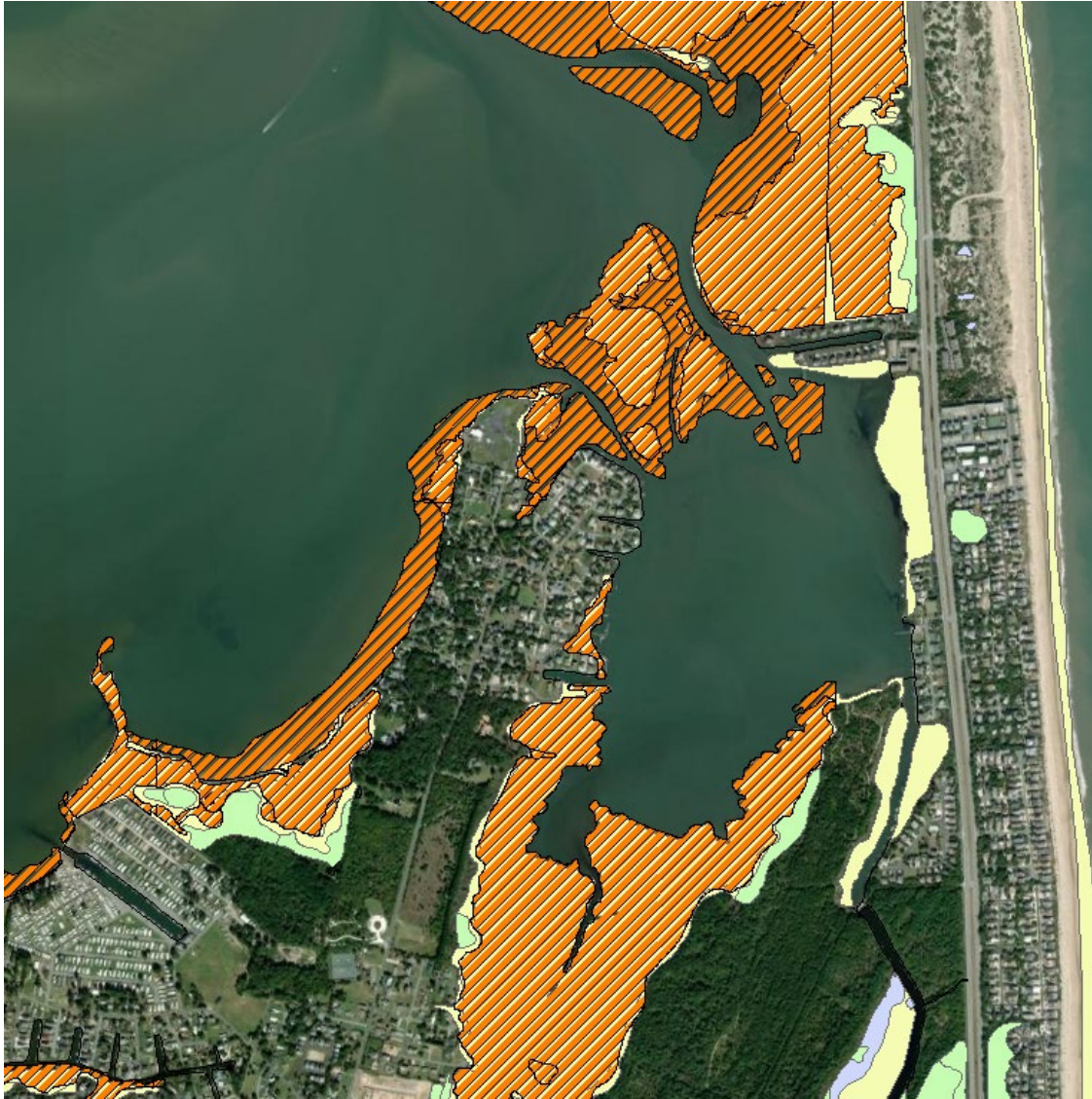


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SALISBURY, MARYLAND

Legend for Delaware Tidal Wetland Delineations:

- | | | |
|---|---|--|
| H - Beach | IS - Impounded Scrub-Shrub Wetland | S - Tidal Scrub-Shrub Swamps |
| DF - Disturbed Forested Swamp | IW - Impounded Water | SS - Areas flooded by river stream surges |
| DM - Disturbed Marsh (vegetation removed for agricultural activities) | LM - Low Marsh | SA - Areas flooded by storm surges at a higher flood plate elevation |
| FM - Forested Swamp | M - Marsh | T - Tidal Wetland (in some cases vegetation/ hard bars) |
| IF - Impounded Forested Wetland | MS - Marsh in spoil areas | W - Water |
| IIM - Impounded Low Marsh | N - Non-tidal wetlands (400 acres+ including tidal forested swamps) | WV - Wet in a spoil area |
| IM - Impounded Marsh | O - Other (Upland or Non-tidal wetlands less than 400 acres) | WV - complexes among different community types (ex. 10/5) |





State Program: Future Needs

- Comprehensive (Tidal & Non-Tidal)
- Screening vs Conclusive Mapping (Non-Static)
- Field Criteria-Based Delineations
- Streamlined Permitting Process(es)
- Prohibited activities in state wetlands:
 - TBD?
- Exempt activities in state wetlands:
 - TBD?
- Appropriate Fee Revenue
- Appropriate State Funding
- Appropriate Federal Funding





Thank you

Wetlands and Waterways Section

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<https://dnrec.alpha.delaware.gov/water/wetlands-subaqueous/>

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