

OPEN SPACE COUNCIL
June 3, 2015
9:00 a.m.
Legislative Hall
Senate Hearing Room, Second Floor
Dover, Delaware

ATTENDANCE

Council Members:

Mr. John R. Schroeder, Chairperson
Senator Bruce Ennis
Representative Gerald Brady
Mr. Wayne Holden
Mr. David Humes
Paul Boswell, Esq.
Mrs. Lorraine Fleming (by telephone)
Mr. Porter Schutt III

Ex-Officio:

Raymond Bivens, State Liaison Officer, LWCF, DNREC

Advisory To:

David Small, Cabinet Secretary, DNREC, State of Delaware (present)

Staff:

Ralph K. Durstein III, Esq., DOJ
William Kassab, Esq., DOJ
David Saveikis, DNREC
Ron Vickers, Parks & Recreation, DNREC
Elena Stewart, Parks & Recreation, DNREC
Richard Phifer, Fish & Wildlife, DNREC
Michael Valenti, PhD, DDA
Patrick Emory, DNREC
Verity Watson, Division of Research, Legislative Council
Thomas Vinci, DNREC

Visitors:

David Carter, Audubon Society
Molly Murray, News Journal
Marlene Mervine, Nanticoke River Watershed Conservancy
David Eichelberger
John Still
Bernadette Curtis, M.D.

I. Call to Order/Introductions/Announcements

Mr. Schroeder, Chairperson, called the June 3, 2015 Open Space Council meeting to order at 9:05 a.m. He welcomed Council members, staff, and visitors and recognized Mr. Durstein and Mr. Kassab from the Department of Justice.

II. Approval of March 4, 2015 Meeting Minutes

Mr. Schroeder asked the Council to review the minutes and noted that Andrew Manus, prior to the March 4, 2015 meeting, sent an email/letter to Secretary Small and copied all Council members requesting it be added to the minutes. Mr. Schroeder asked for a motion to approve the March 4, 2015 minutes, including Mr. Manus correspondence. Motion was made, seconded and carried.

III. Financial Report

Mr. Vickers noted that Council member Lorraine Fleming is joining the discussion by telephone, but will not be voting on any action.

Mr. Vickers presented the Financial Report:

- Realty Transfer Tax (FY13, 14, & 15): \$ 9,907,500.11
- Previously Approved Projects (11): (\$ 7,245,000.00)
- Anticipated Reimbursements (3 projects): \$ 2,528,600.00
- Balance Available through December 15, 2015: \$ 5,191,100.11
- Governor's Proposed Budget FY16 \$ 3,150,000.00

IV. Old Business

A. Completed Projects since March 3, 2015

- Alapocas Run State Park – The Nemours Foundation: donation of 45.935 acres on 4/30/15
- Auburn Heights Preserve – Center for Creative Arts: 1.49 acres purchased with \$98,630.40 of Open Space funds on 4/28/15
- Auburn Heights Preserve – Center for the Creative Arts: 3.83 acre conservation easement purchased with \$77,595.12 of Open Space funds on 4/28/15
- James Branch Preserve – Rogers/Moyer: 14.20 acres purchased with \$60,000 of Open Space funds on 4/30/15
- James Branch Preserve – Rogers/Moyer: 27.54 acre conservation easement purchased with \$45,000 of Open Space funds on 4/30/15
- Little Creek Wildlife Area – Reed: 1.04 acres purchased with \$5,300 of Open Space funds on 3/25/15
- Wilder Wildlife Area – Tofts: 11.382 acres purchased with \$50,000 of Open Space funds on 3/19/15
- Augustine Wildlife Area – Bennett: 142.32 acres purchased with \$204,500 of Open Space funds, \$698,5000 of federal Coastal Wetlands Act funds, \$35,000 of The Nature Conservancy funds, \$20,000 of Delmarva Ornithological Society funds, and \$1,000 of Delaware Wild Lands funds

Mr. Vickers reported that since the beginning of the Open Space Program in 1990 it completed **386 projects**, protecting **56,438.6088 acres**, using **\$258,718,727.63** of Open Space Program funds plus **\$75,712,690.29** of other funds for a total of **\$334,431,417.92**.

Mr. Vickers provided a report on the Open Space Program divided into fee simple projects and conservation easement projects from July 1990 through April 2015. This was put together based on a request from the Joint Sunset Committee Chair Senator Poore. Of the 385 projects, 344 were fee simple acquisitions at an average cost of \$6,300.25 per acre and 41 were conservation easements at an average cost of \$3,564.49 per acre. See handout.

Mr. Schroeder asked about the status of the Joint Sunset Committee proceedings.

Mr. Vickers said there was a follow-up with the Joint Sunset Committee in March. The Committee recommended six items for the Council to address.

1. The Council is held over until 2016 and is to present progress on addressing criteria for delineation and dedication of open space; on reviewing and recommending state resource area maps; and reviewing and recommending lands for permanent protection according to the state resource area maps. The Council and staff are moving forward on this with updates at each Council meeting.
2. The Council is held over until 2016 to review the twenty five year old Land Protection Act for any changes or amendments. This process is in the early stages.
3. The Council is to do an op-ed article on the success of the Land Protection Act and address future goals. The op-ed was published in the News Journal on May 4, 2015.
4. The Joint Sunset Committee is to send a letter to the Governor requesting consideration of appointing a member of the minority community to the Council. The letter is being prepared.
5. The Joint Sunset Committee drafted legislation to amend the Land Protection Act to allow for the removal of Council members with cause. Senate Bill 64 and Senate Amendment 2 to SB 64 were introduced and passed the Senate.
6. The Joint Sunset Committee included in the same legislation the provision to remove any county requirements for Council members.

B. Agency Presentation – State Resource Areas Update

Mr. Schroeder asked for an update on the State Resource Areas.

Mr. Vickers noted that Mr. Holden and Mrs. Fleming are Council representatives to the Interagency Working Group and are leading the discussion going forward on the State Resource Areas.

Mrs. Fleming said the May 20, 2015 Interagency Working Group meeting was well attended and covered many science related items and still allowed time for open discussion. With Mr. Holden's concurrence she wanted Mr. Vickers to go through his presentation and then discuss more specifics.

Mr. Vickers did a presentation reviewing some aspects of the Land Protection Act and progress to date. The presentation is attached. He reviewed definitions and process according to the law. He began presenting a reworked list of items that the land managing agencies consider when selecting properties for protection. The broad categories are inholdings, contiguous property, connectors, specific stand-alone sites, specific habitats, specific geographic regions/watersheds, sea level rise issues, water resource conservation, overlapping transportation concerns, recreational opportunities, and management capacity.

Mrs. Fleming stated she thought there should be a workshop to cover water issues in more detail. This led to further discussion about the timing of upcoming meetings. Mr. Holden emphasized that we need to meet as soon as possible to comply with the Joint Sunset Committee's timeline. Mr. Schroeder noted that this discussion would take place in executive session since it also relates to a lawsuit concerning the State Resource Areas.

Mr. Vickers then presented the next item discussed at the Interagency Working Group meeting (attached). This was the Delaware Ecological Network (DEN), which is a scientific tool that identifies significant natural resource lands through field data, geographic information system data layers, aerial maps, and ecological modeling. The DEN may help in guiding SRA development. The DEN was devised by The Conservation Fund, which was under contract to develop this for Delaware using state-specific information. DEN identifies core forests, core wetlands, and core aquatic areas and quality habitat corridors connecting the core areas. The process also ranked the quality of the core areas. Many of the best-ranked core areas are already protected. It was emphasized that the DEN map is not the SRA map. It is a tool to help understand standards and criteria and to help develop the SRA map.

Mr. Bivens noted that many of the core areas were very similar to Mrs. Fleming's *Delaware's Outstanding Natural Areas* book from 1978.

Mrs. Fleming said this is an excellent tool and is a good foundation for identifying natural lands of concern.

Mr. Vickers agreed and said the DEN does not address recreational and cultural sites. The Division of Historical and Cultural Affairs looks at properties proposed for or already on the National Register of Historic Places.

Mr. Holden asked for a map that would be understood by the general public that shows the DEN, lands protected in the DEN core areas, and land not protected.

Mr. Vickers said he did not have that map with him, but would provide one. He said the DEN core areas as shown are 346,000 acres. Forty four percent of this is already protected in fee simple ownership or conservation easement by public entities or private conservation organizations.

Mrs. Fleming stated that we need to be aware of what stands out on the maps in terms of important lands and how to represent this in a way that is transparent and that does not create takings issues, and is understandable by the general public.

Mr. Holden noted that the DEN acreage is large, but we should not be afraid to say what should be protected and to show the sensitive areas and to be transparent about it. Sensitive areas are not threatening. Landowners of sensitive areas should be happy about that. We should move forward in an open manner.

Mr. Schroeder said as we go through the public workshops that he would rely on Mrs. Fleming and Mr. Holden to make sure transparency is quite prevalent. He also noted that what has been done for twenty five years is an incredible story. Where we are headed will be challenging for many reasons, but transparency has to be there.

Mr. Holden presented his layperson's view of the process over the years. When the law was written twenty five years ago, it was a different legal environment with different attitudes. Now times have changed and you hear about taking of private property rights. The State typically avoided direct intervention in zoning and let the counties deal with that. Yet, the Land Protection Act says the Council is to prepare criteria and maps down to level of individual parcels. He said this is the only incidence he is aware of where the State is so deeply into the use of private property. The SRA maps are to be updated every five years and the counties are to update their comprehensive plans and include the SRAs. When the SRAs were being updated in 2006-2007, there was uproar from the public about possible restrictions on what could be done with private property. The Secretary of DNREC at the time said we are going to back off and let the dust settle. It's been eight years, so the dust has settled, the data is there and the SRAs need to be updated. He viewed the Land Protection Act as having a "stick" that required the counties to enforce environmental standards on land in the SRAs. This "stick" resulted in a lawsuit that the State lost based on the Council not being involved enough in the process. He believes there would have been more lawsuits. He suggested removing from the law items that the Council or State would lose and instead focus on a "carrot" or incentives for land protection. He suggested working with Mike Parkowski, a well-respected and proven environmental attorney, to help create a new approach. This approach should create a process to protect SRAs on a voluntary basis.

Mr. Schroeder said the program does work on a voluntary basis and has worked well for 25 years. He did agree that there are some things that need to be addressed such as how the counties use the SRA maps, what is mapped and does it need to be to the individual property line.

Mr. Boswell said the Chancery Court case was brought based on due process. He remembers the Council laboring over what was required and how to notice certain items. The Chancery Court's decision just dealt with how the criteria were created and did not address any due process issues.

Mr. Schroeder said the onus for creating standards and criteria falls to the Council. However, the Council has limited expertise and must rely on the Department, with Council involvement, to create them.

Mrs. Fleming said that she and Mr. Holden, with legal assistance, would continue to direct the process with the staff and communicate with the full Council. She believes whatever is devised should not be complicated and should be generally understandable by the general public. There should be a strong scientific foundation for the standards and criteria. She also believes there is a need to revise the law at the same time.

Mr. Schroeder said the staff should continue to work with Mrs. Fleming and Mr. Holden in moving this whole process forward in a timely manner.

C. Conversion of Use – Epworth Church

This agenda item is for addressing any change in use or change in ownership of land purchased through the Open Space Program. The Land Protection Act (7 Del. Code, Chapter 75) details the purposes for acquiring land through this Program. The Act also states that one of the duties of the Open Space Council is to advise and consult regarding any change from permanently protected status of open space lands acquired or protected through the Program.

Mr. Schroeder said the Epworth Church – State land exchange was discussed at the last meeting. At this time it appears that the idea of using the land at the end of Holland Glade Road is not being considered. The State and Church are waiting for appraisals on the Church-owned part of the Little League complex and the small piece of state-owned land adjacent to the Church.

Mr. Holden asked why these lands are being appraised. He suggested a resolution to not approve any transfer of preserved land unless there is a majority vote of the Council and there are extraordinary circumstances.

Mr. Schroeder said it does require a Council vote and ultimately would require an act of the legislature.

Mr. Boswell noted that the Council does not approve; it only recommends on this issue.

There was a quick review of the properties being appraised and the use restrictions that would apply. The appraisals and any action would be discussed at the next Council meeting.

Mr. Holden suggested that the Council let the Department Secretary know its feelings regarding land transfers. Referring to the wind turbine in Lewes, he said he did not want to read about something the day after the General Assembly approves epilogue language in the Bond Bill.

Mr. Schroeder noted that unfortunately that it is a long-standing process of the General Assembly to put items in the epilogue.

V. New Business

A. Council Open Discussion

General discussion continued on how items get pushed through at the end of the legislative session.

Mr. Holden referred to the University of Delaware lands in Lewes and in Newark and how it was proposed to swap them. He objects to the process.

Representative Brady mentioned he did have concern about a past land experience in Wilmington. He suggested that he and Senator Ennis notify the Council members if they hear of any land issues that may be of concern to the Council.

Mr. Schroeder believes the relationship with the current Secretary is good and that if there is any item of concern coming up in the legislature that he would be notified.

Secretary Small pledged he would so notify the Council.

B. Public Comments

Mr. Schroeder asked for any comments from the public.

Mr. Carter from the Delaware Chapter of the Audubon Society made comments. He wanted to enter into the public record his op-ed piece that was in response to Mr. Schroeder's article. (Both are attached.) He stressed the need to actively involve the public in an open and transparent process to develop new standards and criteria and to update the SRA maps. Public policy dictates that science and public values both should be part of the process. He believes DNREC is working in a closed-door, elitist manner and needs to have public input to help garner overall public support for land conservation. He noted that the major emphasis for the current litigation brought forth by Audubon is the lack of a detailed plan on how and when to come into compliance with the Land Protection Act. Depending on the outcome of the litigation, he would like to work more closely with the Council to help move the process forward. He believes the most ethical way to approach it is by opening up the process early on to the public. If this is not worked out through a settlement of the litigation, he said Audubon would move forward on the process itself. He restated his idea that the restrictions for protected lands should be available online. This would allow the public to know if protected lands are the subject of any changes such as the land exchange discussed earlier.

Mrs. Fleming asked how she and Mr. Holden could involve the public in the standards and criteria discussion.

Mr. Carter said he would be glad to talk about it if it was cleared by his attorney. He understands it takes a lot of time and effort to run public workshops. But it is necessary to get the public involved.

Mr. Schroeder said they should speak directly, if approved by his legal counsel.

Ms. Curtis, a resident of The Glade residential community, spoke about the Epworth Church – State land exchange. She stated that a majority of the community's landowners are adamant and whole-heartedly against any land exchange that allows the development of land at the end of Holland Glade Road. She was encouraged by what was said at today's meeting regarding the potential for this area no longer being considered. However, she said the residents will still follow this closely and that they do not like the idea of this land being used as a trading card. She read comments from Ann Cyr, a Glade resident, stating that there already is too much development and that the area is losing its charm and character. She concluded by noting the

residents do not like closed door deals and that the Sussex County Open Space Coalition will continue to follow this issue to make sure any action is transparent.

Mr. Schroeder noted there was no other discussion and entertained a motion to go into executive session.

VI. Executive Session - Discussion of Site Acquisition Contracts

The Council adjourned to Executive Session at 10:30 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 12:05 a.m.

VII. Project Recommendations

Based on discussion in Executive Session, the Council recommended the following:

Division of Parks & Recreation

- Faulkner – Trap Pond State Park, Sussex County; purchase of 2.0 acres of forestland with small house and camp store; protects habitat of conservation concern and historic viewshed; provides cost-efficient staff housing and potential to improve amenities for park users through the acquisition of the camp store; will receive a \$10,000 endowment for the property; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee simple the Faulkner property for \$300,000.

Division of Fish & Wildlife

- Eastburn Farm – Blackbird Reserve Wildlife Area, New Castle County; purchase of 202 acres of forest land and farm land as a potential connector to other state land; contains coastal plain ponds and expands public hunting lands; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee simple the Eastburn Farm property for \$1,484,000, using federal Pittman-Robertson funds and donated funds from the National Wild Turkey Federation for the purchase price and up to \$20,000 of Open Space funds for closing costs.
- Safran – Little Creek Wildlife Area, Kent County; donation of 0.36 acre marsh land as infill to the management area; Council moved, seconded and unanimously agreed to recommend to the Secretary to receive as a donation the Safran property, using up to \$5,000 of Open Space funds for closing costs.
- Lowe – James Branch Preserve, Sussex County; purchase of 2.56 acres of forested upland and riparian corridor adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee simple the Lowe property for \$74,000.

Mr. Holden said the opportunity to work with landowners in the Great Marsh area is an incredible opportunity for the whole ecology of the area. There is an urgency to move forward with protection in this area due to increasing development pressure from national homebuilding companies.

VIII. Next Meeting/Adjournment

The next meeting of the Open Space Council is August 5, 2015 at the Legislative Hall, Second Floor, Senate Hearing Room, Dover, DE 19901, starting at 9:00 a.m.

Mr. Schroeder asked for a motion to adjourn. The meeting adjourned at 12:10 p.m.

OPEN SPACE PROGRAM
JULY 1990 – APRIL 2015

PROJECTS

Total	385
Fee Simple	344
Conservation Easement	41

ACRES

Total	56,258
Fee Simple	48,633
Conservation Easement	7,595

TOTAL MONEY

Total Money = Open Money + Other Money

Total	\$333,472,417.82
Fee Simple	306,400,097.02
Conservation Easement	27,072,320.80

OPEN MONEY

Open Money = Open Space funds (state sources)

Total	\$257,759,727.53
Fee Simple	236,505,349.73
Conservation Easement	21,254,377.80

OTHER MONEY

Other Money = federal and private sources

Total	\$75,712,690.29
Fee Simple	69,894,747.29
Conservation Easement	5,817,943

AVERAGE COST PER ACRE

Total	\$5,927.55
Fee Simple	6,300.25
Conservation Easement	3,564.49

The Open Space Program protects land by means of fee simple purchases and conservation easements. A conservation easement is a voluntary agreement that protects resources of concern on a property by limiting the type or amount of development on the property, while the landowner retains ownership of the land. A recorded document details the permitted and restricted uses and runs with the title to the land. The property is monitored annually for compliance with the easement conditions. A conservation easement is a widely used method of land protection, particularly in times of limited funding.

The 41 conservation easement projects under the Open Space Program represent 8% of total expenditures, protecting 13% of the total acres. Of the 41 projects, 14 were at no cost (678 acres) and 16 allow for some type of public access; typically, trails and/or hunting (6,102 acres).

Agency Presentation

State Resource Area Update



State Resource Areas

- "State resource area" means those open space lands duly identified by the Council and adopted by the Department for protection.



Open Space definition

- "Open space" means any open lands characterized by (i) great natural scenic beauty, or (ii) whose existing openness, natural condition or present state of use, if retained, would maintain important recreational areas and wildlife habitat, and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources, including environmentally sensitive areas. For the purposes of this chapter, "open space" shall include significant cultural, historical or archaeological sites as determined by state plans and policies adopted by the Bureau of Historic and Cultural Affairs.



SRA Process

Open Space Council

- Review and recommend to the Department for adoption, after a public hearing, criteria for delineation, and dedication of open space
- Review and recommend to the Department for adoption, after public hearing, state resource area maps
- In conjunction with the Interagency Working Group develop and forward to the Department for adoption standards and criteria consistent with the purposes of the law for evaluating the lands and waters of the state for inclusion as state resource areas



HOW DO LAND MANAGING AGENCIES SELECT PROPERTIES TO PROTECT?

Compilation From Previous
Interagency Working Group Meeting

- Inholding to existing fee holdings/CEs
- Contiguous property/buffer/expansion to existing fee holdings/CEs
- Connector/corridor to existing fee holdings/CEs
- Stand Alone sites: rare species locations, State Natural Areas, rare wetland communities, state or nationally significant cultural resource sites
- Habitat: key wildlife habitat, regional plan targets, large forest blocks



Selection Continued:

- **Specific geographic regions or watersheds: Forest Legacy areas, DNERR areas, Nanticoke River corridor, Blackbird corridor, Delaware Bayshore**
- **Critical to accommodate sea level rise/ strategic retreat/ landward migration of coastal marshes**
- **Water Resource Conservation: Excellent Groundwater Recharge Areas, Wellhead Protection Areas, Source Water Protection Areas**
- **Transportation Concerns: Scenic Byways, Scenic Easements, Corridor Capacity Preservation**
- **Recreational Opportunities**
- **Capacity for Management**

Agency Presentation

Delaware Ecological Network

*An existing scientific tool that identifies
significant natural resource lands*

May help in guiding SRA development

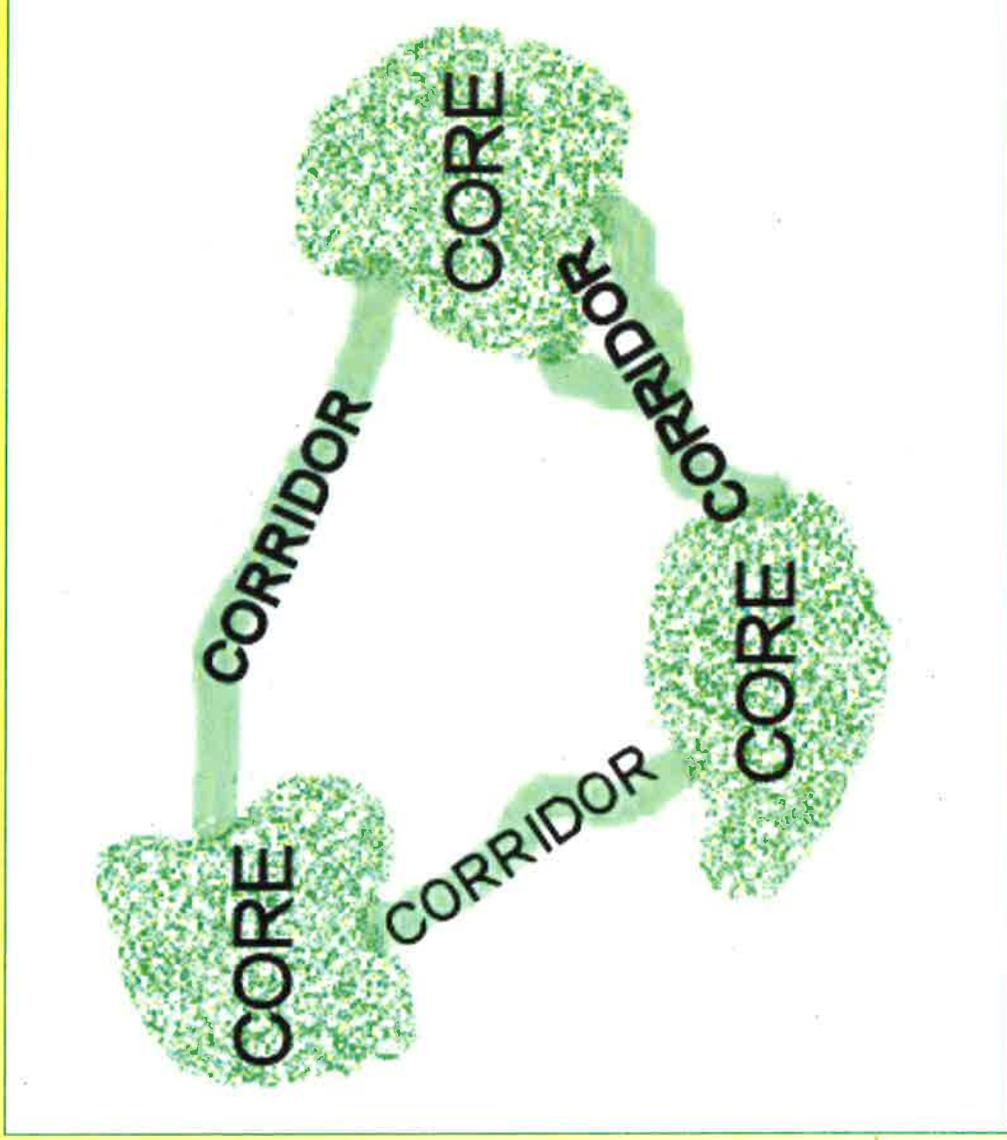
The Delaware Ecological Network

THE
CONSERVATION FUND



Delaware Ecological Network Concept

THE
CONSERVATION FUND



Core Areas:

- Contain fully functional natural ecosystems
- Provide high-quality habitat for native plants and animals

Corridors:

- Link core areas together
- Allow animal movement and seed and pollen transfer between core areas

Core Forest

Blocks of relatively undisturbed forest

(1) at least 40 ha (100 ac)

(2) contain forest Habitats of Conservation Concern from the DE Wildlife Action Plan

(3) contain documented occurrences of forest-dependent state rare species.

45% of total forest area

72% of forest-dependent rare species fell within core forest.

Core Wetlands

- Natural condition (relatively undisturbed since at least 1930's)
- Upland buffers at least 30 meters wide
- Be away from water table drawdown from ditches or channelized streams.
- Fall within contiguous natural areas containing at least 7 acres of wetlands.
- Add wetlands if in Habitats of Conservation Concern
- Add wetlands with wetland-dependent rare species
- Added adjacent natural land and open water (wetland supporting landscapes)

Core Wetlands

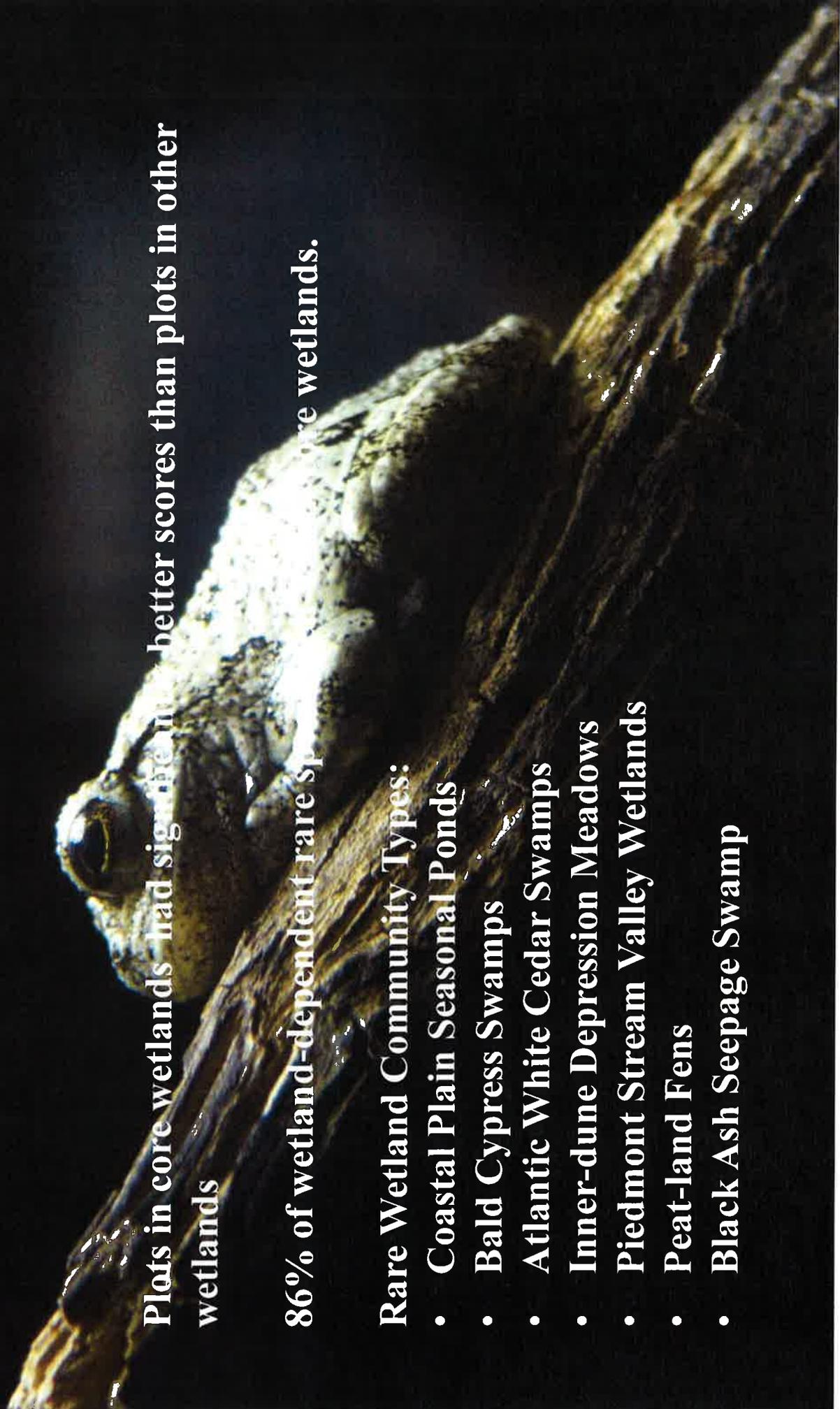
About half of total wetland area

Plots in core wetlands had significantly better scores than plots in other wetlands

86% of wetland-dependent rare species were found in core wetlands.

Rare Wetland Community Types:

- Coastal Plain Seasonal Ponds
- Bald Cypress Swamps
- Atlantic White Cedar Swamps
- Inner-dune Depression Meadows
- Piedmont Stream Valley Wetlands
- Peat-land Fens
- Black Ash Seepage Swamp



Core Aquatic Areas

Criteria for core rivers and streams:

- Natural morphology (e.g., not ditched, channelized, impounded, or entrenched)
- Perennial flow
- <10% impervious surface in catchment
- ≥ 30 m forest or wetland on both sides of the bank
- No dams, road crossings (except for bridges), or other stream blockages
- At least 1 km with the above conditions

Criteria for core lakes and ponds:

- Add lakes and ponds with state rare fish or mussels

Added natural land adjacent to core streams and water bodies (aquatic supporting landscapes)

Combine Core Areas

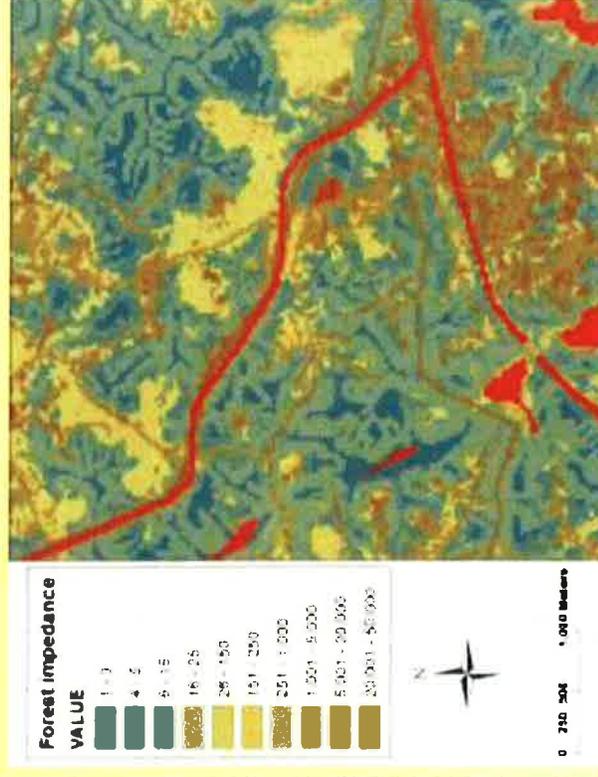
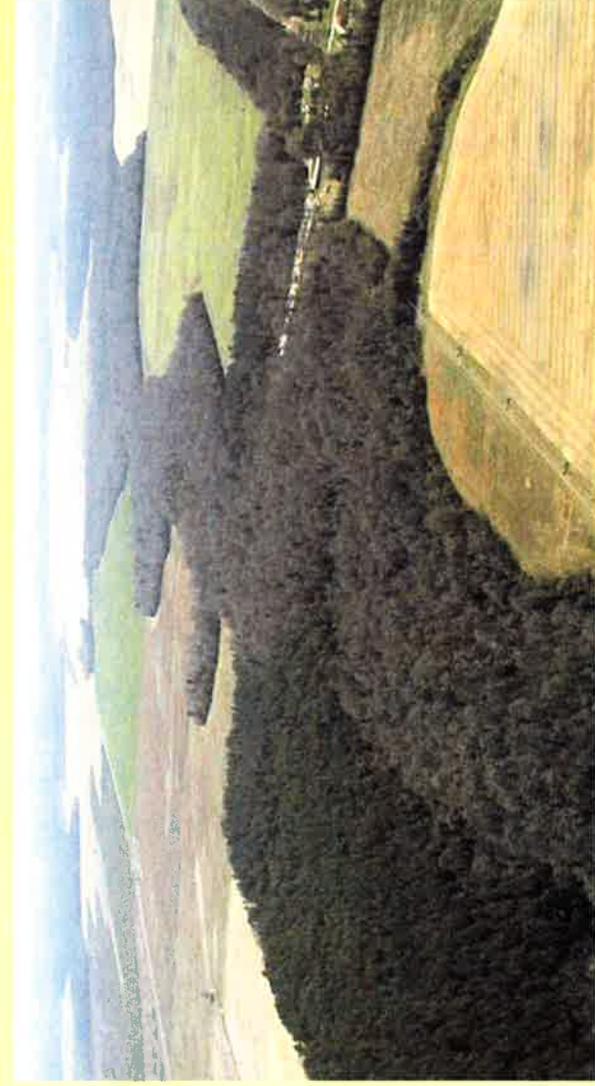
Combine the following:

- Core forest
- Core wetlands
- Core aquatic areas
- Habitats of Conservation Concern that don't fit the above types (e.g., beaches)

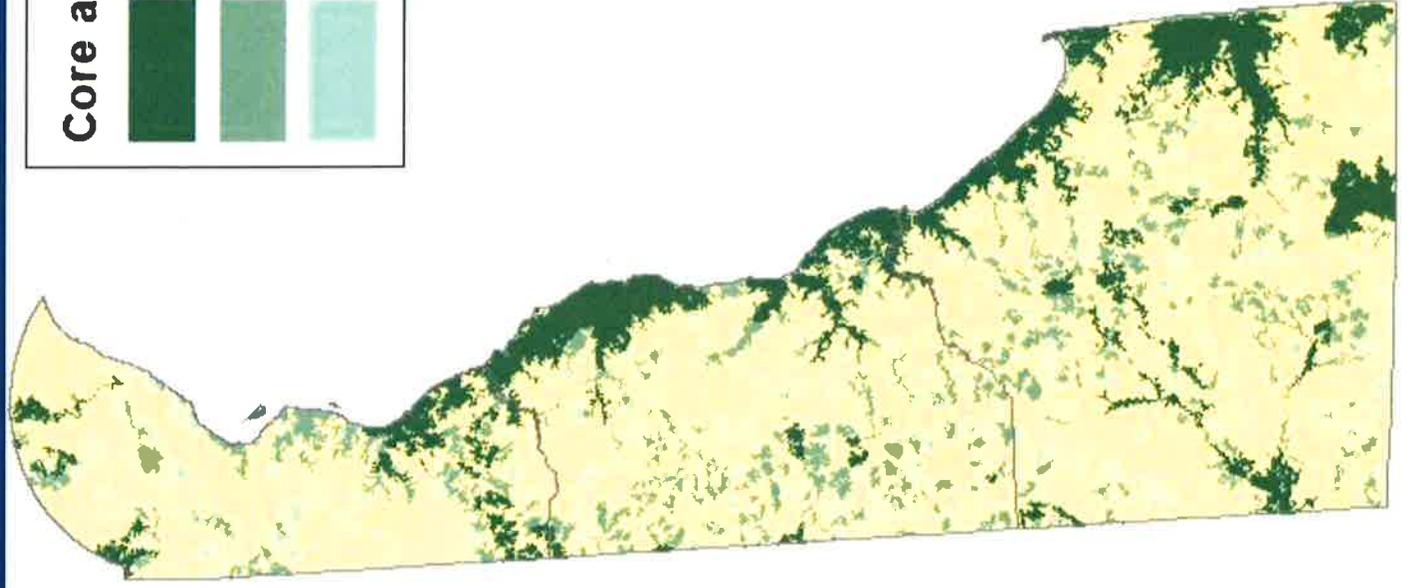


Corridors/Connectivity

- Corridors link core habitat areas.
- Both context and species dependent.
- Link similar types.
- Identified paths of least resistance by simulating movement of organisms through the landscape.
- Common dispersal conduits include forest, riparian areas, wetlands, and streams.
- Common dispersal barriers include busy roads, urban areas, or dams and other stream blockages.



Core Area Ranks



Core area ranks



Best



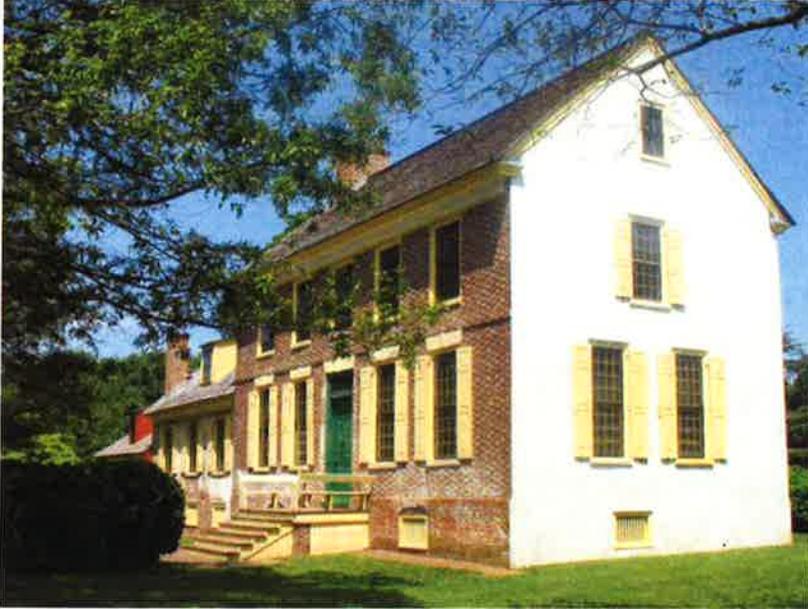
Very Good



Good

The beach plum and other wonders of Delaware

John Schroeder, Delaware Voice 6:41 p.m. EDT May 4, 2015



When you visit places like the John Dickinson Plantation, remember the visions of Edmund Warner and William Penn. (Photo: Submitted)

1 CONNECT 5 TWEETLINKEDINCOMMENTEMAILMORE

Delaware's tradition of setting aside lands for public use might well be traced to Edmund Warner's appetite for beach plums – those sweet, purple fruits that are well known for their use in jams and jellies. It was 1682 when William Penn granted Warner lands now known as Lewes Beach and the Great Marsh to allow the public to pick beach plums and to fish and collect oysters. The Warner Land Grant, and numerous subsequent actions under various oversight bodies, now allow all Delawareans and millions of visitors to enjoy some of the most diverse, unique and beloved landscapes in the state.

Without question, the tool that has proven most effective in preserving Delaware's special natural lands is the Land Protection Act, which celebrates its 25th anniversary this year. The Act was passed by the General Assembly and was sponsored by then-Sen. Ruth Ann Minner. The legislation established a framework and funding mechanism that has led to the permanent preservation of more than 56,000 acres of forests, beaches, wetlands, meadows and fields that are now managed as state forests, historical sites, state parks and fish and wildlife areas. All in, the state now holds more than 100,000 acres of lands for public recreation.

The coalition that formed in support of this seminal action, and still remains active today, was comprised of a wide range of individuals, groups and interests; hunters, anglers, birdwatchers, hikers, campers and environmental advocates. Organizations such as the

Delaware Nature Society, League of Women Voters, Audubon, Sierra Club, United Auto Workers, The Nature Conservancy and Delaware Wild Lands, lobbied the General Assembly to use a portion of the state's realty transfer tax annually to support land acquisition.

Today, Delaware's public open spaces provide a respite and haven for more than 60 percent of the state's population that use them. These places also help drive our conservation economy that generates approximately \$4 billion annually in spending, helping to sustain nearly 40,000 jobs and more than \$300 million in local and state tax revenue. Beyond the recreational benefit that these lands provide, they also create intrinsic financial value through ecological services such as wetlands that help filter contaminants from runoff and serve as natural sponges to collect stormwater. Forests capture carbon emissions and help keep streams cooler and cleaner while absorbing excess nutrients such as nitrogen and phosphorous.

Like any successful program, our open space efforts require a sound process – in this case, one that relies on science, management priorities and public need. The investment of these funds comes after much scrutiny and consideration of conservation priorities, evaluation of the natural characteristics of a parcel such as habitat for rare or endangered species and water features, its proximity to other protected lands and potential recreational uses for hunting, hiking or history. An extremely dedicated and professional staff from the four agencies who manage public lands evaluate parcels and then bring them to the Open Space Council for consideration. The council then makes recommendations to the DNREC Secretary for potential acquisitions. The Council offers a variety of opinion and perspectives, often challenging staff assumptions, holding agencies and itself accountable, and always assuring that taxpayers are getting maximum value for their investments.

The list of properties protected under the program is impressive and includes notable acquisitions such as forest lands in central Sussex County, lands along the Lewes and Rehoboth Canal that buffer Cape Henlopen State Park, expansion of our parks system in Northern New Castle County and the Morris tract in Kent County that connects major fish and wildlife properties along the Delaware Bay. There are dozens of other smaller, less well-known parcels that have been protected but add to the value and experience for those users – both people and wildlife.

As we celebrate this milestone of an unequivocal and uniquely Delaware success, it is appropriate to appreciate and inventory our public lands in Delaware, the contributions to our quality of life and their importance to our natural heritage. It is also important the Open Space Council look to the future as we evaluate program objectives while managing limited resources. Some have asked whether we already have enough public land. The question is not easily answered. The Delaware Bayshore, the Nanticoke Watershed, Appoquinimink and Blackbird Creek areas remain ecosystems of great natural resource value and should be targeted for additional protection. That is not to say these are the only areas where we should make investments. We believe the future years of the program should focus on enhancing the core conservation and historical

areas already protected through acquisition of inholdings, buffering key assets and connecting existing state lands. Finally, it is important to remember this program has and always will be voluntary. It works on the principal of willing seller and willing buyer – not eminent domain or condemnation.

So, the next time you enjoy a bike ride on the Junction and Breakwater Trail near Lewes, hunker down in a duck blind off Port Mahon, explore the history of the John Dickinson Plantation or enjoy a concert on the lawn at Bellevue Hall, remember the vision of Penn and Warner. Think too of the humble beach plum and our other natural wonders and the passion that they sparked in our citizens and elected leaders who had the foresight to preserve access to special places – for all of us.

John Schroeder is a former member of the House of Representatives from the Lewes area and currently serves as the chair of the Open Space Council.

COMMENT

Past land protection success is not enough

DELAWARE VOICE
DAVID CARTER

I write to acknowledge John Schroeder's Delaware Voice article "Beach plums and wonders of Delaware" published recently and his commitment to open up the dialogue on the future of land protection in the state. As Mr. Schroeder notes, there is much to celebrate on this the 25th anniversary of the Land Protection Act that established the state's Open Space Program. His article thoughtfully highlights a number of the Land Protection Act's successes and responsibly asks the question about the future of the Open Space Program and how much state land is enough.

The Land Protection Act was visionary. It thoughtfully outlined how the very question raised by Chairman Schroeder might be addressed and the process DNREC should take to engage the public in this dialogue. Unfortunately, DNREC has failed to follow the law and has willfully ignored implementation of specific legal requirements to update the State Resource Areas maps every five years. As a result, the state is operating under an outdated 1990's plan that does not reflect the state's current land protection needs as

they relate to clean water, freshwater wetland habitat protection; clean air and the protection of forest habitats; the leveraging of private landowner stewardship through protection incentives; and the threats of increased coastal storms and rising sea levels. It also ignores the new realities of tighter budgets and whether full market value acquisition is the best way to protect land using taxpayer money.

DNREC has been aware of this failure for many years. In 1999, an Environmental Law Institute report recognized and praised Delaware's Land Protection Act and called for DNREC to move forward with the implementation of SRAs. ELI included this call for action as one of their 22 key policy recommendations in its final report. In 2013, The Nature Conservancy produced a Biodiversity Scorecard that evaluated these 22 key policy recommendations by ELI and found DNREC failed to meet its legal obligation under the act. A review of the Open Space Council meeting minutes over the past 15 years clearly documents Open Space Council members' concern about DNREC's failure to follow the law. Is it too much to expect our public agencies to simply follow their own laws?

DNREC's continued disregard of the law is troubling. It is the reason the Delaware Audubon Society has sued the department. As part of the original coali-

tion that worked hard to establish this program, Audubon believes following the law is critically important to realizing success by this program into the future.

We believe that rather than ignoring the law and running away from the process it outlines – a process Open Space Council members repeatedly encouraged DNREC to embrace – DNREC has chosen to stonewall the process through inaction. This inaction has squandered an opportunity the law provides to have a conversation on conservation and land protection in Delaware – where we currently are and where the program needs to be in the future. Ignoring the law allows the program to often operate out of public view, reduces public involvement to nothing more than tokenism and opens the door to wasteful expenditures of limited public funds. It also can allow political interference and sweetheart deal-making as part of "The Delaware Way."

The Delaware Audubon Society is hopeful Open Space Chair John Schroeder can continue his good work and get DNREC to comply with the law. Tip of the hat to you, Chairman Schroeder, for asking the important question about the future of the program. Let's hope DNREC is listening.

David Carter is conservation chair of the Delaware Audubon Society.