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*CONSERVING TREASURED LANDSCAPES IN  
THE CHESAPEAKE  
A Special Report*

*FRIENDS OF THE  
JOHN SMITH CHESAPEAKE TRAIL REPORT*

*Prepared by the  
Environmental Law Institute*

*November 2009*



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## The Friends of the John Smith Chesapeake Trail

The Friends of the John Smith Chesapeake Trail, a nonprofit organization, coordinates and advances conservation efforts across the watershed in support of the Captain John Smith Chesapeake National Historic Trail and Chesapeake Bay priorities. Our goal is to ensure conservation, stewardship, access, and enjoyment of the Chesapeake's iconic landscapes and waterways and its cultural and historic assets, highlighted by the Capt. John Smith National Historic Chesapeake Trail.

## The Environmental Law Institute

The Environmental Law Institute makes law work for people, places, and the planet. The Institute has played a pivotal role in shaping the fields of environmental law, policy, and management, domestically and abroad. Today ELI is an internationally recognized, non-partisan research and education center working to strengthen environmental protection by improving law and governance worldwide. ELI delivers insightful and impartial analysis to opinion makers, including government officials, environmental and business leaders, academics, members of the environmental bar, and journalists. ELI is a clearinghouse and a town hall, providing common ground for debate on important environmental issues.

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## Letter from the Friends

November 23, 2009

Dear Fellow Chesapeake Conservationist:

May 12, 2009 was a pivotal day in the effort to protect and restore the Chesapeake Bay. That morning President Barack Obama signed the Chesapeake Bay Protection and Restoration Executive Order, Order 13508, and set forth a renewed Federal commitment to

*...protect and restore the health, heritage, natural resources, and social and economic value of the Nation's largest estuarine ecosystem and the natural sustainability of its watershed.*

The President's order is the most powerful act a President has yet taken to protect and restore the Bay. It offers an opportunity we dare not waste — the opportunity to swing the trajectory of the restoration from a long, slow decline in the health of the Bay, upward toward success.

The order is remarkable for many reasons, but perhaps foremost in its declaration of the Chesapeake Bay as a "National Treasure," and its recognition of the indivisible link between healthy landscapes and ecosystems and healthy waters. Indeed, it is estimated that forests in the watershed fall at the rate of 100 acres per day. Between 1982 and 1997, the watershed lost over 750,000 acres, equivalent to the loss of 20 cities the size of Washington, D.C. If this pace continues, nitrogen loads to the Bay will increase by 1,300 pounds per day exacerbating today's pollution problems.

Though much of the Chesapeake region is developed, many of these important landscapes remain. Landscapes provide valuable natural habitats and are essential to the health, well-being and prosperity of our citizens. In 2007 alone, visitors to heritage and recreation sites pumped \$13.6 billion into Maryland's economy and generated \$18 billion in Virginia.

These critical landscapes, many of which are located on the Chesapeake's *great rivers*, are what Secretary of the Interior Ken Salazar has called "treasured landscapes." They are intact forests and marshes and long sweeps of undeveloped shorelines. They are working farms and watermen's communities. They are sites of historic and cultural significance.

This report provides a way toward conserving these landscapes; it proposes a Chesapeake Treasured Landscape Initiative and the establishment of new national units and designations that celebrate and protect the Chesapeake.

The initiative offers a framework for defining and focusing on significant landscapes along river corridors. It recommends a process to best target



land conservation investments and a course of action to expand and leverage available resources. A collaborative conservation strategy is the recurring theme in the report. A map produced by the National Geographic Society on the Chesapeake's Treasured Landscapes complements the report.

A definition for treasured landscapes and a matrix that can be used to apply the definition are included in the report. It also defines five action points that build from the definition to frame a new conservation strategy. A summary of those points are:

1. Building on the exceptional state conservation planning models, create a unified Bay-wide planning approach to coordinate existing information and to target future conservation investments.
2. Better coordinate resources from multiple conservation programs to conserve priority landscapes at a scale sufficient to protect significant ecological, historic, and cultural assets.
3. Increase funding, specifically full funding for the federal Land and Water Conservation Fund and establish a dedicated fund within the Land and Water Conservation Fund to conserve Chesapeake treasured landscapes.
4. Create and build partnerships to leverage public and private funding for landscape conservation.
5. Establish new units of the National Park and National Refuge systems, building upon the Captain John Smith Chesapeake National Historic Trail and the Chesapeake Gateways Network.

In preparing this study, the Environmental Law Institute carefully examined 28 federal and state programs at work in the Chesapeake region. The Institute worked with an eye toward building on the existing programs to create both a workable definition for treasured landscapes, and a new framework for Chesapeake conservation. We greatly appreciate their work.

We believe this framework will be helpful to the Department of the Interior and its partners as they define what constitutes a Treasured Landscape Initiative in the Chesapeake region and as they finalize and implement Executive Order strategies and recommendations, and we offer it in that spirit.

Sincerely,

David J. O'Neill  
President, Friends of the John Smith Chesapeake Trail

## Building a Next Generation Land Conservation Initiative

We need a new model for conservation, one comprehensive enough to encompass ecosystem protection and the preservation of cultural heritage. In the Chesapeake region, the two go together. Here intact ecosystems provide habitats that nurture the bay's living resources, and that protect and improve water quality. These intact systems lie next to productive forests and farms and traditional towns and historic places. Sometimes they overlap. Sometimes they stand alone. Always they are the landscapes, landmarks and places that define the region.

A new model must recognize the ecological value of conserving these lands and places as well as our needs as humans to relate to nature, history and



culture. We need a model that embraces the connection and importance of farms, forests, open spaces and coastlines to our economic, food and energy security, to public health and to the quality of life of our citizens. It needs to recognize how landscapes define a place and make it healthier, and how places define a region.

This next generation conservation strategy should incorporate the last decade's experience with landscape-level assessment and priority setting led by the states

and embrace improved planning, funding, coordination, and cooperative mechanisms. It should build on the successful programs we have.

More than 70 different federal and state authorities and programs contribute to land conservation in the Chesapeake Bay watershed. In addition there are local, non-profit, and private conservation efforts. To develop recommendations for a program to conserve the Chesapeake's "treasured landscapes," the Environmental Law Institute examined 28 of these federal and state programs, focusing primarily on those that directly acquire land or interests in land, or include planning and strategic approaches that could support broad-based land conservation.

The study primarily examined programs in Maryland, Virginia, and Pennsylvania, the states with the greatest land and water area in the watershed, while recognizing the importance of the District of Columbia, Delaware, West Virginia, and New York to the health of the Bay. It did not examine regulatory programs, nor did it address many programs primarily aimed at cost-sharing and technical assistance.

The study finds that certain existing programs offer good models for conservation land funding; others are particularly good at addressing specific landscapes and regions of interest; and some provide sufficient flexibility to take advantage of collaboration with local governments, conservation groups, and funding from other sources. These programs offer lessons that offer a suggested framework for action to build a new conservation strategy, and the basis for a definition to use to target treasured landscapes.

## Suggested Framework and Recommendations

Future conservation actions under a new strategy should be targeted, robust, and cost-effective in protecting the significant landscapes of the Chesapeake. Conservation priorities should take into account ecological and watershed protection and restoration priorities and reflect a commitment to preserving the cultural and historic assets that make the Chesapeake a special and distinct place. The following points frame the conservation strategy. The strategy should:

1 — Building on the model conservation planning tools developed by the states throughout the Bay region, create a plainly articulated and unified scheme of planning (including reliance on existing and combined planning tools) to address the significant ecological and cultural landscapes of the Bay and its river corridors and associated uplands, and to guide the use of federal technical, financial, and management resources. Given that the conservation planning schemes differ by jurisdiction across the Bay region, geospatial planning tools should be used to coordinate existing information and improve the efficiency and effectiveness of how land conservation funding is used.

2 — Use a coordinated planning scheme to draw effectively on new and existing resources from multiple programs in order to leverage public and private conservation and coordinate the capacity of federal, state and local governments and the non-profit and private sectors to respond effectively and efficiently to conservation priorities.

3 — Provide for robust new funding and seek to better coordinate existing federal, state, local and private investments in land conservation to drive the conservation framework and to attract new partners. New Land and Water Conservation Fund investments should be dedicated to the Chesapeake to establish and then drive a Chesapeake Treasured Landscape Initiative and expand public access to the Bay and its rivers. Such a commitment would engage other partners and ensure that funds are fully leveraged and rapidly coordinated. Furthermore, a Chesapeake Treasured Landscape initiative



*Cypress sunset, Morris Creek, VA: Captain John Smith passed this tidal tributary near the mouth of the Chickabominy River over 400 years ago on his way to trade with the Virginia Indians for corn. Today, it is a peaceful wild creek flowing past stands of bald cypress trees.*

should promote and support private sector stewardship and seek to extend existing and create new tax incentives for conservation.

4 — Use partnerships to fully leverage public and private funding and create a flexible and transparent system to attract and target funding for landscape conservation. Public-private partnerships supported by public policies, as demonstrated by models such as Great Outdoors Colorado, can help to maximize the effectiveness of government programs. The non-governmental community works closely with the public agencies to use federal, state and private funding programs, cost-share and tax provisions and voluntary conservation easements and other incentives to maximize the use of every government dollar.

5 — Establish new units of the National Park and National Refuge systems, including a new 21<sup>st</sup> Century prototype National Park for the Chesapeake region, building upon the Captain John Smith Chesapeake National Historic Trail and the Chesapeake Gateways Network. These new units can link together existing federal lands in the watershed, and enable strategic acquisitions, as well as partnerships with State and local governments. Such designations would not only help to protect significant landscapes and habitats in the watershed by providing new tools and resources for

conservation, but would also enhance public access, recreation, tourism and educational opportunity on the Bay and its tributaries



*Lotus bloom, Sassafras River, Maryland:  
Every summer, thousands of giant  
American lotus blossoms erupt from the  
tranquil tidal backwaters of the Sassafras  
River in Maryland near Turner Creek*

## Defining Treasured Landscapes

Decades of conservation work and numerous programs have provided ways to define categories of lands for protection. We reviewed many of these programs to determine whether it would be possible to build a new conservation strategy, using these existing programs and their sources of funds as the foundation. From this review, we derived a two-part working definition for significant or treasured landscapes:

***Significant or “treasured” landscapes in the Chesapeake Bay watershed (a) must have significant ecological or cultural value, and (b) must advance multiple values at a landscape scale.***

## A. Ecological or Cultural Value

1. **Significant ecological value** can include significant habitat value and/or significant watershed value.

**a. Habitat value criteria:** Significant landscapes provide habitat that is sufficient in size and provides the necessary functions to support sustainable populations of the Chesapeake's native species.

- Large areas of contiguous natural habitat with significant interior size and surrounding transition areas/buffers to maintain effective populations of native species and maintain ecosystem functions; and that are connected rather than fragmented (or consist of a matrix of habitat patches).
- Corridors with natural land cover that link protected high value habitats; corridors may follow prominent features such as streams or ridges, waterfronts.
- Streams or rivers, and associated riparian habitats, that provide habitat for native or rare species or anadromous fish, maintain flow important for Bay habitat quality and that connect ecological and cultural landscapes.
- Large areas of bottoms (especially Submerged Aquatic Vegetation beds), tidal wetlands (especially those connected to undeveloped uplands), coastal forests, mud flats, oyster reefs, dunes and beaches, and sanctuaries for sustainable reproduction of aquatic life.

*Note: Priority may be given to habitat areas that include rare and endangered species (including bird migration corridors), that include rare habitat types, are connected to or buffer existing conservation lands, and that include a diversity of habitat types, soil types, geological features.*

**b. Watershed value criteria:** Significant landscapes provide regionally meaningful watershed services such as flood control, stormwater management, base flow, and water quality treatment.

- Contiguous forests and high functioning wetlands that are in close proximity to main stem rivers, tributaries, and other water bodies.
- Areas within the 100-year floodplain including tidally influenced areas, where flood and storm damage can be ameliorated or avoided by native vegetation and plant communities.

*Note: Priority should be given to watersheds with low impervious cover and high stream density and areas with low nutrient load and high net primary productivity; and naturally vegetated areas in proximity to tributaries.*

2. **Significant cultural value** can be cultural/historic value, working natural landscape value, or recreation/access value.

**a. Cultural/Historic value criteria:** Significant landscapes provide a sense of place and a unique identity to the Chesapeake Bay watershed.

- Properties (landscapes, districts, buildings, structures, sites, objects) that are associated with historically significant events, people, ideals and that “possess exceptional value or quality in illustrating or interpreting the heritage” of the Chesapeake Bay, including especially uses of its waters and river corridors and the lands that depend upon them.
- Properties that characterize a significant way of life in the Chesapeake Bay region (i.e., have significance in the cultural, traditions, and ways of life characteristic of the watershed’s people through time).
- Archaeological sites with the potential to yield information through investigation.
- American Indian lands and sites (including cultural use of the natural environment)
- Designated scenic byways; water trails; historic trails; scenic rivers.

**b. Working Landscapes value criteria:** Significant landscapes connect to traditional uses of the Bay landscape while providing marketable goods and services, such as forest products, agricultural goods, fish, shellfish, and other services.

- Relatively unfragmented patches of productive, dense forest land located in areas compatible with economically viable timber management activities and where forest products operations maintain consistency with habitat conservation objectives; avoid operations on wetland and riparian areas and areas of high slope; and provide for special management in areas of natural heritage conservation concern.
- Historically productive working farmlands with prime agricultural soils that contribute to the agricultural economy while producing ancillary ecological and viewshed benefits.
- Traditional fishing areas including habitat that supports commercial/sport species at all life-stages (e.g., coastal wetlands, streams, estuaries, anadromous fish spawning areas) as well as areas that support the industry (docks, facilities, island communities).

**c. Recreation/Access value criteria:** Significant landscapes that provide access and recreation opportunities for the public to interact with/experience the significant landscapes of the Bay.

·Public beaches; public hunting areas; public boating access; federal, state and local parks; managed trails; water trails; scenic byways; birding and wildlife trails; heritage areas; and conserved lands provide access to the Bay and its adjacent lands and tributaries.

·Lands with convenient physical access to or extensive frontage on Chesapeake Bay Watershed's water resources (navigable waters, tidal waters, scenic rivers, water trails, public fishing lakes, refuges, trout streams).

·Viewsheds are areas along river corridors that have limited visible intrusions and high resource value. These areas may be evocative of what Captain John Smith may have encountered.

*Note: Priority may be given to places with significant habitat or cultural value that will be attractive to the public for recreational access.*

## B. Multiple Values at a Landscape Scale

A landscape that demonstrates ecological or cultural values as described above is a significant landscape for conservation (a "treasured landscape") if it either:

1. Meets *more than one of the above criteria directly* (e.g., an ecologically valuable waterfront area is also culturally important as a historic landscape or as an access point for watercraft seeking to explore the John Smith Chesapeake Trail; or
2. Is explicitly identified on *more than one federally- or state-approved adopted plan reflecting multiple goals* (e.g. a parcel is identified as part of a river conservation plan, and also as a heritage landscape site).

### **Existing Programs and Assessments Chiefly Relied Upon for Criteria**

- Chesapeake Bay Program Resource Lands Assessment
- Maryland's Green Infrastructure Assessment
- Virginia Conservation Lands Needs Assessment
- Maryland's Strategic Forest Lands Assessment
- Maryland's Critical Area Guidelines
- National Historic Landscapes
- Maryland Heritage Areas
- Maryland's Agricultural Lands Preservation Foundation
- Forest Legacy
- Coastal and Estuarine Land Conservation Program
- Pennsylvania Heritage Areas Program
- Chesapeake Gateways
- Federal Qualified Contribution Income Tax Credit
- Wetland Reserve Program

## Planning Approach

With a regional population reaching 17 million and growing fast, and with 90,000 acres of open space vanishing every year, a need for a regional and an integrated land conservation and priority setting plan for the Bay is essential. Currently, the Bay region has more than 70 federal and state land conservation programs in the watershed directed at different landscapes and objectives. Given these programs, effective plans must apply agreed definitions and criteria to identify treasured landscapes for priority protection – both watershed-wide and within smaller regions. Combining these efforts using new technologies that are readily available can make this strategic initiative possible today.

Establish a unified plan building on existing programs: The Chesapeake Bay Program Resource Lands Assessment, Virginia's Conservation Lands Needs Assessment, Maryland's Green Infrastructure Assessment, and other data-rich programs exemplify the existing informational support for a planning framework that can identify key treasured landscapes. These landscapes should be identified in the Bay-wide context, *and* in plans focused on regional sub-areas where these landscapes exist. To that end, a unified planning scheme that draws from these state and regional planning best practices would be beneficial to identify and target watershed scale landscape conservation priorities. In these regionally focused areas, it will be simpler to marshal resources and integrate conservation, technical assistance, and land protection programs, and create and maintain an identity, brand, and purpose.

### Successful Ecosystem and Regional Planning Strategies

Adopt a large-scale conservation strategy: Building on experience with the Chesapeake Bay Program, the New York-New Jersey Highlands, Lake Tahoe, and the Columbia Gorge, the states and their federal partners should endorse a system of "treasured landscapes" adding to the lands and waters already protected and conserved.

Special Area Management Plans: Special area management plans (SAMPs) under the federal Coastal Zone Management Act (CZMA) provide ways to coordinate planning, federal decisions, state and local decisions, funding and other activities in and around the coastal zone. SAMPs have been used effectively in Virginia to coordinate conservation on the Eastern Shore and Dragon Run. Additional SAMPs could be prepared for significant landscapes, or even a "regional" Chesapeake or upper and lower Chesapeake SAMP, to direct attention and funding resources to significant lands and waters.

River Conservation Plans: In many areas, conservation depends substantially upon multiple local jurisdictions and landowners as well as on state and federal agencies. Pennsylvania's robust River Conservation Plan offers a ready point of contact for conservation activities focused on particular stream reaches and tributaries. These plans already exist for many tributaries of the Bay and provide a way to rapidly coordinate with local governments that have adopted these plans with implementation strategies, and that could benefit from funding for acquisitions.

## Matrix: Significant Landscapes of the Chesapeake Bay

“ ‘Significant landscapes’ in the Chesapeake Bay Watershed have significant ecological or cultural value, *and* must advance multiple values at a landscape scale.”

### A. Ecological or Cultural Value – Criteria

<i>Ecological Value</i>		<i>Cultural Value</i>		
Habitat	Watershed	Cultural/ Historic	Working Landscapes	Recreation/ Access
<ul style="list-style-type: none"> <li>• Large, contiguous areas of natural habitat</li> <li>• Corridors with natural land cover that link high ranking habitats</li> <li>• Main stem rivers, tributaries, and streams that provide habitat for native species and maintain natural flows</li> <li>• Coastal areas such as tidal wetlands, dunes and beaches, and sanctuaries</li> </ul>	<ul style="list-style-type: none"> <li>• Forests and wetlands near main stem rivers, tributaries, and other waters</li> <li>• Natural vegetated areas within 100-year floodplain</li> <li>• Areas in close proximity to drinking water sources and/or headwater streams</li> </ul>	<ul style="list-style-type: none"> <li>• Properties associated with historically significant events, people, or ideals</li> <li>• Properties that characterize a significant way of life in the Chesapeake Bay</li> <li>• Archaeological sites</li> <li>• American Indian lands and sites</li> <li>• Designated scenic byways, water trails, historic trails and scenic rivers</li> </ul>	<ul style="list-style-type: none"> <li>• Unfragmented patches of productive forest located in areas compatible with timber management and conservation activities</li> <li>• Historically productive working farmlands with prime agricultural soils</li> <li>• Traditional fishing areas and areas that support the industry</li> </ul>	<ul style="list-style-type: none"> <li>• Public beaches, hunting areas, boat access, parks, trails, scenic byways, and heritage areas</li> <li>• Lands with convenient physical access to or extensive frontage on the Bay’s water resources</li> <li>• Viewsheds: areas along river corridors that have limited visible intrusions and high natural resource value. These areas may be evocative of what Capt. John Smith may have encountered.</li> </ul>

### B. Multiple Values at a Landscape Scale

A landscape with ecological or cultural values is a significant landscape for conservation if it either:

- Meets criteria reflecting both ecological and cultural values; or
- Is identified on more than one federally- or state-approved adopted plan reflecting multiple goals.

## Funding Approach

A new approach to funding that recognizes the importance of public-private partnerships and that directs funds to regional conservation priorities is needed. New conservation models are emerging, such as Great Outdoors Colorado that works to maximize every public investment in conservation by targeting conservation funding and leveraging federal, state, local and private sources. A new funding model that builds on lasting federal, state, local, and private partnerships and that reflects the challenges the Bay faces is an urgent need. A Chesapeake Treasured Landscape Initiative needs dedicated funding as well. The source of that funding could be found within the LWCF and/or derived from such sources as unallocated federal revenues from offshore uses including energy activities and revenues from future carbon tax revenues. Tax incentives are also a proven tool for land conservation. Programs that work effectively should be extended and new pilot programs tested in the Bay region for land conservation.

The following are several specific funding and tax incentive recommendations:

- The Land and Water Conservation Fund (LWCF) is an important source of conservation funding and has for decades been authorized at \$900 million per year nationwide, but the LWCF has not been funded at this level. In FY 2008 funding was \$255 million (with state side funding of only \$23 million nationwide) In many years the funding going to states has been low or missing altogether. The LWCF request for FY 2010 is \$420 million, which is a step in the right direction. Congress should increase both authorized and appropriated amounts.



Up to 10 percent of the LWCF funding can be allocated at the discretion of the Secretary of the Interior. While rarely used, Secretary Salazar and Congress could agree that 10 percent of LWCF should be directed to execute a National Treasured Landscape Initiative. If the appropriated level met the \$900 million per year that is authorized, the Secretary would have at his discretion \$90 million for this important program, of which a portion could be directed to the Chesapeake.

In addition, the Fund should provide priority, administratively or by legislation, for state grants and federal expenditures that advance *multi-jurisdictional* conservation targeting like those that support Bay watershed conservation. To be eligible to participate in the LWCF program, each state must have a current

Statewide Comprehensive Outdoor Recreation Plan (SCORP) on file with the National Park Service. Through the SCORP planning process, agencies and the public identify capital investment priorities for acquiring, developing, and protecting outdoor recreation resources. The LWCF should modify SCORP to require that states plan and identify large landscapes for conservation. This planning should be done cooperatively between states where watersheds and important landscapes transcend political jurisdictions.

- Extend Federal tax treatment of Qualified Conservation Contributions: Donations of conservation easements for qualified historic and conservation purposes are deductible up to 50 percent of a taxpayer's income (100 percent for qualified farmers and ranchers). At the end of 2009, the generous treatment of the deductibility of qualified contributions of conservation easements reverts to a lower amount and a shorter carryover period. Support extension of these benefits, either across the board or subject to findings of public benefit to a recognized multi-jurisdictional resource (like the Chesapeake) with a coordinated plan or set of plans. Further ensure that donations consistent with the Chesapeake land conservation strategy are deemed by the IRS to meet qualifications.
- Establish a Chesapeake Pilot Federal Tax Credit Program for Areas Designated as Nationally Significant. The Federal government should establish, as part of a Chesapeake Treasured Landscape Initiative, an income tax credit against federal income tax to property owners who donate land or easements to protect conservation values in nationally significant areas. The tax credit granted could be set as a percentage of the value of a qualifying conservation donation in the designated area. The Department of Interior, through the U.S. Fish and Wildlife Service and/or the National Park Service, would designate areas that are consistent with the Treasured Landscape Initiative program criteria. These agencies would also be in charge of certifying that a donated easement possessed conservation values consistent with the Treasured Landscape criteria. The tax credit program could include provisions that require those who receive a tax credit to protect specific sensitive resource areas, such as buffers and wetlands along streams and rivers. The transferability of tax credits provides a strong incentive for conservation gifts and broadens the audience of landowners who would participate in the program.
- Continue and enhance favorable state tax treatment of conservation donations: Both Virginia and Maryland provide income tax credits for conservation donations, and Virginia's program of transferable tax credits (\$100 million/year) is a major part of its statewide conservation effort, with results tracked by the Virginia Land Conservation Foundation board. Ensure that any future modifications and extensions of these programs place a priority on lands and waters that support a Bay treasured landscape conservation strategy.

- Dedicated state funding for conservation: Encourage the enactment of dedicated state funding to support land conservation in support of the Bay, and related conservation objectives in states partly within the Bay watershed. Many states have had non-recurring, appropriations-dependent programs, that have come and gone; or they have relied on small voluntary programs, license plates, and tax check-offs. In contrast, Maryland's real estate transfer tax and agricultural lands transfer tax have provided a more reliable long-term source of continued funding for conservation (although even these have been diverted in part in some bad financial years). A dedicated funding source (such as that used in Maryland, Missouri, Colorado, or Oregon) can provide stability and flexibility in carrying out a long-term conservation plan.
- Increase the utility of the Forest Legacy program in Bay landscape conservation: The Forest Legacy Program is a U.S. Forest Service program authorized under the Farm bill that provides funding to states for easement and acquisition of valuable forest lands. Add funding to the national program, and target the *additional funding increment* to projects in the Chesapeake Bay and similar multi-

jurisdictional/multi-resource efforts. Emphasize existing Forest Service criteria that prioritize projects where the Forest Legacy expenditure fits within a larger conservation plan or strategy and enhances previous conservation investments. Emulate and expand upon Virginia's successful use of watershed factors to prioritize its Forest Legacy areas.

#### Great Outdoors Colorado (GOCO)

GOCO program dedicates state lottery proceeds (including supporting bonds) to priority land conservation acquisitions. Funds are allocated to local and county governments for parks and open space and recreation, while state funds are used for acquisitions and improvement of state lands and water units. GOCO funding is awarded on a matching basis. The GOCO board also funds Legacy projects, in which funding is allocated to projects of regional or statewide significance that combine two or more of the funding categories of "outdoor recreation, wildlife, open space, and local government projects." A non-profit partner helps to leverage GOCO funding with private dollars and targets those funds to priority land conservation acquisitions.

- Significantly expand and enhance the Coastal and Estuarine Land Conservation Program: CELCP is a NOAA land conservation program focused on exactly the kinds of lands of interest and concern for the Bay. In Coastal Zone Management Act reauthorization, anticipated in the next year, build upon the rising interest in NOAA, climate change, and ecosystem-based management of marine and coastal waters to obtain an improved and expanded CELCP, with targeting toward funding for acquisition and implementation of Chesapeake Bay "significant" landscapes recognized as such.

## New National Units and Designations

The President's Executive Order declares the Chesapeake Bay a "national treasure constituting the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world." The Order further states that "restoration of the health of the Chesapeake Bay will require a renewed commitment to controlling pollution from all sources as well as **protecting and restoring habitat and living resources, conserving lands, and improving management of natural resources (emphasis added)**, all of which contribute to improved water quality and ecosystem health." The Section 202 (e) report, required under the Executive Order recommended exploring the creation of new or expanded federally designated areas as an important

### Harriet Tubman National Historical Park

In 2008, Congress introduced legislation to establish the Harriet Tubman National Historic Site (NHS) in the City of Auburn in the State of New York, and the Harriet Tubman National Historical Park (NHP) that is part of several mid-shore counties in the State of Maryland to commemorate one of the world's best known heroes of emancipation. In Maryland, the NHP would protect lands of her birth, youth and young adult life. The State of Maryland has committed to creating a Harriet Tubman Underground Railroad State Park in Dorchester County to complement the National Park.

The Tubman NHP will involve a unique partnership of the State of Maryland, the National Park Service, the U.S. Fish and Wildlife Service, nonprofit organizations, land trusts, and local county governments. As proposed, the park would include approximately 6,750 acres of farmland, forests, and wetlands of which approximately 1,980 acres are currently under easement. The proposed park boundaries are adjacent to or include lands already protected by federal, state, local, and private land protection agencies and organizations.

In an innovative approach to leveraged federal land acquisition, NPS would be authorized to provide up to 1:1 matching financial assistance grants to the State of Maryland, local governments, and nonprofit entities for fee or less than fee purchases of interests in properties from willing sellers within the boundaries of the NHP. The easements will maintain the integrity of the historic site, promote working forests and farms, and provide habitat and protection for endangered species and critical habitats.

means of conserving landscapes and enhancing public access in the Chesapeake region, including a new or expanded National Park and expanding existing National Wildlife Refuges or creating new ones.

Since the 1960's, many citizens and organizations have called for the establishment of a Chesapeake Bay National Park to help advance conservation, interpretation, public access and recreational opportunities on the Bay and its tributaries. Over the past two decades important steps

have been taken to enhance the role of the National Park Service in the Chesapeake Bay. In 1998, legislation was enacted to establish a Chesapeake Bay Gateways and Watertrails Program providing grants to State and local governments and non-profit organizations to help conserve, restore and interpret natural, recreational, historical and cultural resources within the watershed.

The Captain John Smith Chesapeake National Historic Trail Designation Act was signed into law in December 2006 to commemorate John Smith's momentous voyages of discovery and help highlight the Chesapeake Bay's remarkable maritime history, the diversity of its peoples, and its many recreational opportunities. Two Special Resources studies were completed by the National Park Service in 1993 and 2004, respectively to examine the potential for establishing a new unit of the National Park System focused on the Chesapeake Bay. The studies found that the Chesapeake Bay is a "national treasure" and that the National Park Service should play a key role in conservation, interpretation and recreation on the Chesapeake Bay.

### **The Rappahannock River Valley National Wildlife Refuge**

Located on Virginia's Northern Neck and Middle Peninsula, the Rappahannock River Valley National Wildlife Refuge was created to conserve and protect a critical ecosystem. Using an innovative approach, the U.S. Fish and Wildlife Service (USFWS) established a landscape boundary that incorporates priority areas for land protection where natural resources are concentrated.

The refuge is unusual both in geography and its approach to acquiring land because it has evolved in ways that are tailored to the local setting. Instead of maintaining one defined property, the Refuge targets a 270,000 acre "area of focus" along a 60 mile stretch of the river between the roughly parallel Routes 3 and 17. The current goal is to bring 20,000 acres under refuge protection. To date, the refuge owns 6,530 acres and holds easements on 1,661 acres. Refuge easements also serve to link existing protected lands, providing a larger contiguous landscape of protected working landscapes, wherein farming and other traditional lands uses can continue. This river-based conservation approach is a model for other rivers of the Chesapeake.

The proposed new unit would build upon the Captain John Smith Chesapeake National Historic Trail and the Chesapeake Gateways Network. It would link together existing federal lands in the watershed, and enable strategic acquisitions as well as partnerships with State and local governments. Such a designation would not only help to protect significant landscapes and habitats in the watershed by providing new tools and resources for conservation, but would also enhance public access, recreation, tourism and educational opportunity on the Bay and its tributaries .

## Targeting Programs & Coordinating Multiple Programs

There are many existing programs of conservation, including very large agricultural lands easement programs (especially in Maryland and Pennsylvania), many conservation cost-share and technical assistance programs under the federal Farm bill and other legislation, programs like the Wildlife Habitat Incentives Program, and numerous heritage programs focused on historic, cultural, and economic development objectives. These programs should be targeted upon significant landscapes identified in the strategic planning approach. Where there are regional area plans, SAMPs, river conservation plans, or federal units it becomes significantly easier to marshal resources from the wide variety of programs.

Target CELCP and Forest Legacy projects: Make use of targeted and expanded programs as described above.

Target mitigation using the watershed approach under §404 of the Clean Water Act: The Clean Water Act requires compensatory mitigation for permitted losses of waters of the United States including wetlands. The 2008 Compensatory Wetland Mitigation Rule creates a preference for wetland mitigation and stream mitigation banks, and in-lieu fee conservation (resulting in conservation and restoration of designated areas), over other forms of compensatory mitigation. It also establishes the principle of a “watershed approach” for compensatory mitigation, with mitigation in the same watershed as the impact – referencing adopted watershed plans and their equivalents where available. Site new in-lieu fee conservation sites and wetland and stream banks in “significant landscape” areas targeted for restoration, engage with the Corps of Engineers and state permitting authorities for approval and use of these sites, and enter into undertakings with large-scale repeat users of mitigation (state DOTs, regulated utilities) for use of the sites for anticipated and needed mitigation.

State Wildlife Grants: State wildlife action plans identifying species of conservation need and areas of conservation concern were prepared by the states and approved by the US Fish & Wildlife Service. Make sure that state wildlife grants filed by the states and funded by FWS support acquisition, and focus wherever feasible, on significant landscapes of the Bay. Expend Dingell-Johnson funds on Bay priorities identified in coordination with the other states and federal entities.

State and federal heritage area programs: These programs combine cultural values with economic development and access measures. Where they overlap with green infrastructure and ecological priorities, emphasize funding and coordination, including judicious use of acquisition funding where needed to improve access or appreciation of cultural resource areas.

Scenic Byways: Increase coordination of transportation expenditures with land conservation objectives throughout the Chesapeake Bay watershed, and especially improvements and maintenance of viewsheds and open space lands that encourage interaction with the waters of the Bay and its tributaries.

Transportation Enhancements: Consider expansion of transportation enhancements to include access and water trails and related facilities. Encourage state Departments of Transportation to propose enhancements that support projects in the identified "significant landscapes."

Focus enrollments in Conservation Reserve Enhancement Program: CREP provides substantial funding (along with certain other programs) for easements on agricultural land that can produce ecological values and services. Maintain support for the CREP and other programs (WRP, CRP, etc) that provide multi-year funding to protect lands that provide ecosystem and water quality services. Focus CREP offerings to the extent possible upon watersheds and lands that fit within a Bay strategy.

Coordinate technical assistance/capacity building and local government assistance in "significant landscape" areas: Local governments operate land conservation programs, sometimes with locally-generated tax or bond funding, and sometimes with combinations of state and federal aid and technical assistance. Technical assistance can also help local governments adopt nature-friendly ordinances protecting ecologically sensitive lands, and carrying out state mandates like the Maryland Critical Areas Program, the Virginia Chesapeake Bay Protection Act, or the recent Pennsylvania legislation directing local governments to adopt zoning language to protect the Appalachian Trail. In each case, technical assistance is critically important. Target federal and state support for technical assistance most directly on those jurisdictions where "significant landscapes" of the Chesapeake are identified.

Improve coordination with Defense Department buffer land acquisitions: Military installations have authority to acquire land and interests in land outside their borders in order to meet operational needs and for environmental purposes. Ensure that coordination of these expenditures and plans for buffer acquisitions and cooperative planning is coordinated with a strategic landscape protection strategy for the Bay watershed and its lands and waters. Build on collaborations like those at Fort A.P. Hill in Virginia with public agencies and nonprofit land conservation organizations.

## NEPA Provides Authority for Coordinating and Improving Chesapeake Conservation

The Chesapeake's treasured landscapes and ecosystems are part of the daily heritage of its 17 million current residents, millions of visitors, and many more that will make the watershed their home in the future, just as people have for thousands of years.

Conservation should reflect the importance of this landscape as a human habitation as well as an ecological treasure.

A new strategic framework for landscape conservation provides an opportunity to demonstrate on a specific landscape the vitality of the "continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance... *to create and maintain conditions under which [hu]man[s] and nature can exist in productive harmony.*" (National Environmental Policy Act §101). Chesapeake conservation can be a "model" for this mandate.

NEPA provides a policy direction to federal agencies that is "supplementary to" the policies and goals set forth in their existing statutory authorizations. (NEPA §105) It directs federal agencies to "interpret and administer" the policies, regulations, and laws of the United States in accordance with the policies and goals set forth in the law. (NEPA §102(1)) These include a duty to "improve and coordinate Federal plans, functions, programs, and resources" to:

- "Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources." (NEPA §101(B)(1)-(6))

The Chesapeake Bay watershed provides a key opportunity to *demonstrate* the capacity to achieve that "productive harmony" of humans and nature, through the identification of treasured landscapes that address these interests in an integrated way.

## Federal and State Conservation Programs Analyzed for Report

### **Federal Programs**

Land and Water Conservation Fund  
Forest Legacy Program [Case Study]  
Wetlands Reserve Program  
Coastal and Estuarine Land Conservation Program [Case Study]  
National Heritage Areas  
Dingell-Johnson Act  
Wildlife Action Plans and State Wildlife Grants  
Chesapeake Bay Gateways Network  
National Scenic Byways Program  
National Wildlife Refuge System  
National Trails System  
Qualified Conservation Contribution  
Wild and Scenic Rivers  
Defense Department Buffers Programs  
Clean Water Act §404 Compensatory Mitigation  
Conservation Reserve Enhancement Program  
Conservation Stewardship Program

### **State Programs**

Maryland's Lands Programs: Program Open Space, Rural Legacy, Heritage Conservation  
Maryland Agricultural Lands Preservation  
Maryland Conservation Easements Tax Credits  
Maryland Heritage Areas  
Pennsylvania Conservation Landscape Initiatives  
Pennsylvania Rivers Conservation Program  
Pennsylvania Heritage Areas Program  
Virginia Land Conservation Incentives Act  
Virginia Land Conservation Fund  
Delaware Land Protection Act & Land and Water Conservation Trust Fund  
Great Outdoors Colorado Program (for comparison)

### **Programs not described**

Many other programs support substantial conservation, but are not included in the summaries in this appendix. These include, among others, Wildlife Habitat Incentives Program; Farm and Ranch Lands Protection Program; Healthy Forests Reserve Program; Grasslands Reserve Program; Environmental Quality Incentives Program; Chesapeake Bay Watershed Initiative; National Park System; National Forest System; BLM Eastern Lands; National Historic Preservation Fund; USFWS Landowner Incentive Program; USFWS Partners for Fish and Wildlife; North American Wetlands Conservation Act; National Coastal Wetland Act; EPA's Healthy Watersheds Initiative; State Farmland Preservation Programs (PA, VA, DE); State Use Value taxation for farm and forest lands; state parks and forests and gamelands; Technical assistance programs; Transportation enhancements. Many state programs address or support local conservation investments, including grant programs, agricultural preservation programs, and local bond issues for conservation.