2022-2023 Maryland Gubernatorial Conservation Action Plan

Submitted by
EASTERN SHORE LAND CONSERVANCY
EASTON, MARYLAND

Dear Governor-Elect Moore,

As Maryland's leading regional land trust and a voice for natural resources conservation, Eastern Shore Land Conservancy (ESLC) congratulates you on your recent election to the office of Governor. Across our operating region, which includes Caroline, Cecil, Dorchester, Kent, Queen Anne's, and Talbot counties, ESLC holds perpetual conservation easements on more than 64,000 acres on 300 properties. Our team of professionals work each day to preserve the rural quality of life of the Eastern Shore, to ensure a thriving agricultural economy, and to conserve the iconic wildlife of this special region. We do this through our traditional easement work, active ecological restoration, and through local and state-level policy initiatives. Our work is non-partisan and guided by science.

We are especially pleased to present our Conservation Action Plan, an outline of ESLC's biggest priorities, for your consideration. Our hope is that the succeeding pages prove helpful as you and your policy and transition teams gather information and set your administration's natural resources priorities over the coming months.

There is some urgency to these recommendations. From substantial habitat loss to life-threatening storm events, no region in Maryland has seen, or will see, the impacts of climate change at a rate, scope, or scale similar to the Eastern Shore. Maryland has been a climate leader to this point, but there remains much more to be done to build ecological resilience and protect our landscape. Virtually all of the recommendations contained herein will have a positive impact on our ability to mitigate climate impacts through active on-the-ground conservation.

Congratulations, again, on your election victory. As you know, Maryland's governors have a strong and bipartisan track record of natural resources conservation and for the past 31 years, the Eastern Shore Land Conservancy has worked with each of them to protect the future of this special place. The work continues and we very much look forward to working with you and your team to make additional progress on the most challenging natural resource issues facing Maryland's Eastern Shore.

Sincerely,

Steven K. Kline
President

State Agency Capacity

Over the past decade, staffing levels within the "Bay Cabinet" departments have decreased, in some cases dramatically. This loss of staff capacity continues to have a substantial impact on mission delivery. With fewer staff, project review takes longer, agencies are less nimble, slower to react to changes, and miss opportunities for expanded success. State employees are dedicated civil servants who play an absolutely critical role in all matter of conservation deployment, there simply are not enough of them to achieve the visionary goals Maryland expects to meet. Eastern Shore Land Conservancy urges the Moore-Miller administration to empower agency leadership to identify the most urgent capacity needs and prioritize the funding necessary for adequate agency staffing.

Department of Natural Resources

Budget and staffing records indicate the Department of Natural Resources (DNR) has been understaffed for the better part of a decade. The decrease in staff has deleterious impacts across the entire DNR mission, but perhaps nowhere is the impact more obvious than on our public lands. With insufficient staff levels the user experience at our state parks, state forests, and state wildlife management areas declines. At some of our state's most rural public land complexes, parcels are completely unstaffed and in many cases, habitat management goals are trimmed, deferred, or put off entirely. The Maryland Great Outdoors Act, passed by the state legislature in 2022, will increase park service staffing, and Eastern Shore Land Conservancy supports the legislation's full implementation.

The decrease of staff also delays Program Open Space (POS) and Rural Legacy conservation project reviews. ESLC encourages additional legal staff to help decrease engagement timelines. DNR could also explore the potential for contracting with third party appraisals for land projects, which could serve to reduce the burden on DNR staff.

Department of the Environment

The Department of the Environment (MDE) has fewer staff than it did 10-years ago (958 authorized and 44.5 contractual staff in 2010 versus 880 authorized and 75 contractual staff in 2022). This has led to lack of oversight and capacity in managing the health of Maryland's land, air, and water. MDE has an enormous role to play in Chesapeake Bay water quality and environmental health, with a complex array of permit application review, implementation, and enforcement. Without sufficient technical staff, MDE simply cannot thoroughly fulfill its statutory obligations. There are an array of issues on the horizon that require the full-engagement of an empowered Department of the Environment, from wastewater challenges to forever chemicals and climate change. As it stands, MDE is not capable of adequately meeting this demand now, or in the future, as is apparent in development projects and enforcement needs across the Eastern Shore.

In 2022, Maryland passed legislation (Environment – Discharge Permits – Inspections and Administrative Continuations Act) requiring MDE to report to the Governor and the General Assembly on the number of additional employees necessary to clear the backlog of discharge permits and process discharge permit renewals. ESLC encourages the state hire the staff needed to meet not only the demand for permit review, but to add sufficient capacity across MDE's critical mission areas.

Department of Planning

The Department of Planning (MDP) provides significant planning assistance to rural towns and counties who lack the tax base to hire and retain professional planners. Services provided by MDP include, but are not limited to, review of comprehensive plans, water and sewer plans, plan amendments, annexations, priority funding areas, and rezoning. Some offices help jurisdictions understand Maryland's critical area laws, and assist in grant writing and reviews for municipal and county projects related to planning.

Ten years ago, regional planning offices had five full-time planning staff and three full time critical area circuit riders serving the Eastern Shore. Today there are three full time planning staff and one critical area intern serving not only the Eastern Shore, but Western Shore jurisdictions as well. The decrease in the amount of staff and the increase in the area they are required to cover comes at the cost of smart growth planning capabilities of the rural communities that need it most and negatively impacts our ability to adapt to a changing climate and build resiliency.

As of 2022, a majority of Eastern Shore municipalities have outdated comprehensive plans. The last major round of comp plan updates, done in response to a change in state law related to annexations in 2009/10, were funded by state funding streams that either no longer exist or are much more competitive. In the absence of meaningful state support, comprehensive plan updates simply do not get done.

Our rural communities need consistent MDP resources to determine how best to shape the future. They need help ensuring that their zoning ordinances, sewer and water plans, and comprehensive plans are both consistent and consistently applied. Many need assistance meeting various state-mandated planning requirements. ESLC encourages the Moore-Miller administration to fully restore and even expand staffing levels at MDP's regional planning offices.

Maryland the Beautiful Act and Program Open Space & Rural Legacy

During the 2022 Maryland General Assembly session, Eastern Shore Land Conservancy supported passage of the Maryland the Beautiful Act. The legislation was not successful, and we support revisiting the legislation in the future with some suggested modifications.

Nearly all of the Eastern Shore counties served by ESLC have essentially met the goal of 30 percent protection. A renewed vision of permanently protecting 40 percent of the state's natural lands, working farms, forests, and open space is a laudable goal fully supported by ESLC. Such an effort clearly requires a substantial new investment in the state's highly successful land conservation programs, including Program Open Space easements, Rural Legacy, and Maryland Agricultural Land Preservation Foundation (MALPF), funding levels not previously considered under the Maryland the Beautiful legislation. Such welcomed commitments to future land preservation also require additional, and expanded, Rural Legacy area boundaries. ESLC looks forward to working with the Moore-Miller administration, and legislative leaders, to craft a path forward for Maryland to lead the nation in conservation protections.

In the more near term, ESLC urges the Moore-Miller administration to fully fund Program Open Space as part of the FY24 state budget and thoroughly reject any effort to divert POS funds to any other uses.

Living Shorelines

In the fall of 2021, Eastern Shore Land Conservancy surveyed more than 300 of our easement landowners to see what resource concerns were top of mind as they sought to make land management decisions for the future. Far and away the most frequent response from these conservation-minded landowners was shoreline loss. Persistent wave action and storm surge are sending thousands of acres of Eastern Shore marshland, farmland, and forests into the streams, creeks, and rivers of the Chesapeake Bay, turning valuable land into polluting sediment.

In the face of erosion, sea-level rise, and subsidence, many landowners are opting for a traditionally hardened, or armored, shoreline, using stone riprap and/or bulkhead construction to maximize property protection. While hardened shorelines are popular for their comparative affordability, they are less-than-ideal solutions, as they destroy shoreline habitat, and increase the risk of catastrophic storm surge and land loss over time.

Much preferred over traditionally hardened shorelines are so-called "living shorelines," which use plants and other natural elements, including oyster reefs, to effectively stabilize coasts and shorelines. While initial costs of living shorelines can be dramatically higher than traditional shoreline protection measures, their effectiveness over time and their well-documented ecological benefit make them an excellent investment in natural solutions. However, the funding available to landowners and restoration specialists for living shoreline construction falls well short of meeting either demand or need. Eastern Shore Land Conservancy strongly urges the Moore-Miller administration to prioritize identifying increased funding for blue infrastructure, including living shorelines. This effort should also include full implementation of the tools included in the Conservation Finance Act, and the exploration of additional dedicated innovative financing mechanisms.

The Moore-Miller administration should also look to reduce, and where possible remove, permitting barriers for living shoreline, natural infrastructure, and other ecological restoration projects. Often, permit delays can be related to insufficient agency capacity. In other cases, different agencies, or differing programs within the same agency, can work at cross-purposes during permit review, slowing approvals and increasing the duration of project timelines dramatically. Addressing the issue of natural infrastructure permitting could include the creation of an interagency task force meant to identify opportunities for permit review streamlining, or the empowerment of the state's Chief Resilience Officer to craft a strategy for expedited permit review under certain predictable circumstance.

Renewable Energy Siting and Impact Fee

A series of bills passed by the General Assembly since 2009 created goals of reducing Maryland's greenhouse gas emission by 60% by 2031 and to become carbon neutral by 2045. These represent some of the most ambitious renewable energy goals of any state in the country.

These climate goals have created immense pressure to increase the state's solar energy production, which in turn puts extraordinary conversion pressure on the productive agricultural lands of the Eastern Shore Currently, 70% of all proposed solar developments in the state of Maryland are located on the Eastern Shore despite the fact that the Eastern Shore accounts for 7.5% of the population of the state.

Several Eastern Shore jurisdictions have attempted to right-size solar development through the normal planning and zoning process, however, these locally-led efforts to ensure solar development fits within the desires of the community have been summarily overruled by the Public Services Commission (PSC). ESLC supports the aggressive transition to renewables, but we do have concerns about the outsized impact of industrial-scale solar development on the farms, forests, and open spaces of the Eastern Shore. We are especially alarmed about the conversion of some of the highest quality agricultural soils in the United States being taken out of production and the impact this will have on the overall agricultural economy.

A 2020 governor's report cites the challenge that solar development poses to agriculture and forests. Page 11 of the report states:

> *For utility-scale solar developers, Maryland's prime agricultural land is a convenient option for siting generation plants and projects. More than 30 solar generation facilities are currently under construction or review by the state, and a vast majority will be located on agricultural lands. From a developer's perspective, the availability of large tracts of open land, which is more common in rural communities, is ideal as it generally does not require extensive site work (e.g., grading, or clearing), particularly if located within proximity to a power substation.*

The report also cites how important agriculture is for the Maryland economy on pages 11 - 12:

> *The overall impact to Maryland's economy resulting directly from agricultural production constitutes approximately $3.3 billion when counting the indirect and induced benefits from that activity, and pushes the job figure up to nearly 24,000. . . Counties with the highest amount of prime farmland are found either in the upper part of the Eastern Shore, including Kent, Caroline, Queen Anne's and Talbot counties or along the Pennsylvania border such as Washington, Carroll and Cecil counties.*

Conversion of farmland (for any reason) risks the Eastern Shore agricultural economy and the state's ability to grow food. As the governor's report states on pages 12 – 13:

> *There are also concerns that continuing to allow farmland to be converted into other land uses would, at some point, reduce acreage below a critical mass of farmland needed to sustain a viable agricultural economy. . . According to the 2016 report, "The Future of Sustainable Farming and Forestry in Maryland," (commissioned by the Harry R. Hughes Center for Agro-Ecology), there is a correlation with loss of farmland and the decrease in a county's agricultural economic rank. Specifically, the report sets forth the following: 'Since the 1940s, counties that experienced greater reductions in farm acres primarily due to development*

tended to also experience greater decreases in agricultural economic rank, based on comparative total sales of agricultural products among counties.

Given the ongoing impacts of global climate change on food growing regions around the world, the importance of Eastern Shore agriculture will only increase. Closer to home, climate change itself is leading to losses of productive farmland from sea level rise and saltwater intrusion, making our prime farmland even more vital and worthy of long-term protection.

Several counties have implemented, or are considering, policies aimed at managing the scope of solar development on prime agricultural lands, establishing development fee structures, and ensuring strong requirements for site management and decommissioning. However, these policies meant to exert the typical level of local control over land use decisions exist at the whim of the Public Service Commission. ESLC encourages the Moore-Miller administration to enact state-level policies on solar siting to include an impact fee structure on industrial-scale solar development, revenues from which could mitigate agricultural land loss by funding Maryland Agricultural Land Preservation Foundation (MALPF) and/or Rural Legacy easements. We also believe that the strongest state-level protections for topsoil retention and storm water management should be in place on industrial-scale solar projects, as well as bonding requirements associated with strong decommissioning provisions.

Bay Crossing Study

Maryland is in the early stages of a tier 2 environmental study (required under the National Environmental Policy Act - NEPA) of a potential new crossing of the Chesapeake Bay. ESLC has deep reservations about the impacts of any new crossing of the Chesapeake Bay on the Eastern Shore.

Like the spans before it, a new Bay Bridge would add extraordinary development pressure along the routes 50, 301, and 404 corridors. This includes likely loss of farmland, natural habitat, and public parks. We can measure the impacts the two existing spans had on the Eastern Shore by looking at the increase in development post-bridge construction from the 1950s and 1970s. These trends are well documented and there is no reason to assume a new span would be any different unless specific steps were taken.

Induced demand (the concept that building more roads leads to more cars traveling those roads) would obviate in the long-run any traffic reductions associated with new construction in the short-run. But traffic, especially local traffic, is most certainly a legitimate concern for decision makers. In 2019, ESLC hosted a planning conference with industry leaders and stakeholders to discuss short and long-term solutions to Bay Bridge congestion. At the conference, we learned that traffic is so bad on local roads between Kent Island and Grasonville that first responders often had difficulty reaching emergencies and residents have trouble simply leaving their homes. This sadly normalized congestion comes from beach traffic looking for ways to by-pass Route 50/301 congestion via local roads.

ESLC encourages the serious exploration of traffic solutions that could alleviate traffic on the existing spans along a much more reasonable timeframe than new construction, those solutions could include:

- Real-time monitoring and management
- Additional contra flow lanes
- Increased commuter bus and regional public transit ridership
- Congestion Pricing
- Off-peak toll reductions
- Explore the feasibility of:
    - Commuter rideshare apps and incentives for high occupancy vehicles
    - Robust congestion predictors
    - Bay crossing reservation systems
    - Ocean City rideshare apps

Additionally, in order to make the tier 2 analysis as complete as possible, ESLC asks for a comprehensive analysis of the impacts a new bay crossing would bring to the entire Eastern Shore region, including loss of agricultural and forest lands to increased development pressure and the effect of increased thru-traffic on communities like Easton and Cambridge, many of which already regularly experience serious traffic stress unrelated to the Bay Bridge. And to compare that development pressure and increased traffic with an analysis of existing growth areas and capacity in the counties and towns of the Eastern Shore.

Wastewater Reform

Across the Eastern Shore, counties and municipalities struggle to durably address wastewater. For all the statewide emphasis placed on water quality and smart growth, wastewater treatment represents arguably the biggest countervailing force to improving the health of our waterways and implementing comprehensive plans. The state simply must do more to ensure a predictable stream of funding for wastewater treatment.

Whether faced with the need for treatment plant upgrades for necessary compliance with improved water quality or plant expansions to accommodate new commercial and residential growth, wastewater presents the single biggest challenge to the fiscal health of Maryland's incorporated communities, the water quality of the Chesapeake Bay, and the value of comprehensive planning. However, both the levels of funding available, and the process whereby jurisdictions receive those funds is complicated, unpredictable, and subject to varying levels of state and federal largesse. Numerous examples exist where municipalities made wastewater decisions they could not afford in the long-run, private developers made wastewater promises they could not keep, and jurisdictions were forced to mortgage the future for wastewater upgrades. The status quo is untenable and unsustainable.

Maryland's Bay Restoration Fund (BRF), administered by the Maryland Department of the Environment (MDE), is a vital resource for rural governments needing to upgrade their waste water treatment plants. However, as local governments work with MDE in the planning phase of an upgrade to an existing plant or for a new plant, it is unknown how much the BRF will cover until well into the process. This can often leave local governments justifying new development simply to defray the cost of wastewater upgrade, a counterintuitive reality we see again and again. This

dynamic often leaves local jurisdictions attempting to cobble funding sources together, without a full picture of the finances, a recipe for environmental disaster and fiscal crisis.

With a consistent emphasis on improving water quality across all levels of government, the state's wastewater funding posture remains a substantial weakness. MDE must work to increase both the funding available for wastewater treatment upgrades and expansions, and the predictability of this process over the long-term. Wastewater needs can often be anticipated years in advance, providing MDE and the Maryland Department of Planning ample opportunity to work with local governments to identify funding opportunities and establish budgeting protocol for necessary improvements.

As part of a more aggressive state wastewater funding effort, Maryland should require local jurisdictions to steward allocation fees for new connections in a dedicated infrastructure trust fund, to ensure that local governments are not using hookup fees to reduce system operation costs and keep utility bills artificially low, and rather are using those funds for system improvements. Such a policy would ensure that jurisdictions can contribute to their own wastewater needs.