



MIDDLE PENINSULA PLANNING DISTRICT COMMISSION

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COMMISSIONERS

Essex County

Mr. R. Gary Allen
Hon. Margaret H. Davis
Hon. Edwin E. Smith, Jr.
(Vice Chairman)

Town of Tappahannock

Hon. Roy M. Gladding

Gloucester County

Dr. Maurice P. Lynch
Hon. John Northstein
Hon. Louise D. Theberge

King and Queen County

Hon. Sherrin C. Alsop
(Chair)
Hon. James M. Milby, Jr.
Mr. Thomas J. Swartzwelder

King William County

Mr. Trenton Funkhouser
Hon. Travis J. Moskalski
Mr. Eugene J. Rivara
Hon. Otto O. Williams
(Treasurer)

Town of West Point

Mr. John B. Edwards, Jr.
Hon. Charles D. Gordon

Mathews County

Hon. O. J. Cole, Jr.
Mr. Thornton Hill
Hon. Charles E. Ingram
Ms. Melinda Moran

Middlesex County

Hon. Elizabeth Hurd
Hon. Wayne H. Jessie, Sr.
Mr. Matthew Walker
Mr. Kenneth W. Williams

Town of Urbanna

Hon. Donald Richwine

Secretary/Director

Mr. Lewis L. Lawrence

MEMORANDUM

TO: MPPDC Board of Commissioners

FROM: Lewis Lawrence, Executive Director 

DATE: December 12, 2012

RE: December Commission Meeting

The Middle Peninsula Planning District Commission will host its monthly meeting on Wednesday, December 19, 2012, in the Regional Board Room at the Middle Peninsula Planning District Commission office in Saluda at 7:00 p.m.

Enclosed are the agenda and supporting materials for your review prior to the meeting. The packet contains the Executive Summary of the Land and Water Quality in the Middle Peninsula Final Report. You can access the full report on the website at http://www.mppdc.com/articles/reports/FINAL_Land_and%20Water_Red.pdf

If you have any questions concerning your agenda packet, please give me a call at 804-758-2311 or email at LLawrence@mppdc.com.

I look forward to seeing you on December 19th!

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***Middle Peninsula Planning District Commission
Meeting***

7:00 P.M.

Wednesday, December 19, 2012

MPPDC Boardroom

Saluda, Virginia

- I. Welcome and Introductions
- II. Approval of November Minutes
- III. Approval of November Financial Reports
- IV. Executive Director's Report on Staff Activities for the Month of November
- V. Public Comment

AGENDA ITEMS FOR DISCUSSION:

- VI. Report on MPPDC Septic Heir Property Project - Remedies
- VII. Report on MPPDC Land & Water Quality Project – Septic Enforcement
- VIII. MPPDC Executive Committee Report
 - Adoption of Nonperforming Loans Write-off Policy
- IX. Other Business
- X. Adjournment

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MIDDLE PENINSULA PLANNING DISTRICT COMMISSION

November 14, 2012

Saluda, Virginia

The monthly meeting of the Middle Peninsula Planning District Commission was held in the Regional Board Room at the Middle Peninsula Planning District Commission office, 125 Bowden Street in Saluda, Virginia on Wednesday, November 14, 2012, at 7:00 p.m. MPPDC Chair Sherrin Alsop (**King and Queen County**) called the meeting to order and welcomed everyone in attendance. Chair Alsop thanked Delegate Keith Hodges for accepting the invitation to attend tonight's Board meeting.

Commissioners in attendance were:

(Essex County) Gary Allen and Edwin Smith, Jr.; **(Gloucester County)** Louise Theberge; **(King and Queen County)** Thomas Swartzwelder; **(King William County)** Trenton Funkhouser and Otto Williams; **(Mathews County)** Tim Hill and Melinda Moran; **(Middlesex County)** Elizabeth Hurd, Wayne Jessie, Sr., and Matthew Walker; and **(Town of West Point)** John Edwards, Jr. and Charles Gordon.

Delegate Keith Hodges, 98th District; Mr. Jason Perry, RCC Vice President of Workforce and Community Development; and citizens from the region were in attendance. Middle Peninsula Planning District Commission staff in attendance were Executive Director Lewis Lawrence, Administrative Assistant Beth Johnson, Secretary Rose Lewis, and Regional Economic Planner Harrison Bresee III.

Approval of October Minutes

Chair Alsop asked whether there were any corrections or changes to the October Minutes. There were no corrections or changes to the October Minutes. Chair Alsop requested a motion to approve the October Minutes as distributed. Charles Gordon moved that the October Minutes be approved. Louise Theberge seconded the motion; motion carried.

Approval of October Financial Report

Chair Alsop asked whether there were any questions regarding the October financial report before being approved subject to audit. There were no questions. Chair Alsop requested a motion to approve the October Financial Report subject to audit. Otto Williams moved to approve the October Financial Report subject to audit. Louise Theberge seconded the motion; motion carried.

Executive Director's Report on Staff Activities for the Month of November

Chair Alsop requested Lewis Lawrence, Middle Peninsula Planning District Commission Executive Director, to review the Executive Director's Report on Staff Activities for the month of November. The Executive Director's Report on Staff

Activities is developed at a monthly staff meeting, organized by PDC Service Centers, and the activities are used to report grant funding activities.

Mr. Lawrence reviewed the Executive Director's Report for November as follows:

- Discussed the Virginia Groundwater Management Act area expansion with Matt Sabo, *Daily Press*. Discussed possible implications to Gloucester, Mathews, King and Queen, Essex, Middlesex, and the Towns of Tappahannock and Urbanna. Discussed how a new regulatory blanket will complicate the permitting process for future economic growth within the Middle Peninsula. The Commission has previously indicated that the General Assembly should provide adequate staffing levels and adequate funding so that DEQ staff can issue timely water withdrawal permits. Without assurance of certainty, consistency and timeliness for permit issuance, future Middle Peninsula economic development projects that require significant groundwater withdrawal (over 300,000 gallons per month) may experience permit issuance delays of two years or more. DEQ must be provided with the resources necessary to study the existing groundwater within the Middle Peninsula and develop an approach that protects a limited resource without stifling future economic development initiatives at a time when job creation is most critical to the economic fabric of the region. **Public comment regarding this issue is open until January 11, 2013.** More information at www.townhall.virginia.gov/L/viewchapter.cfm?chapterid=1445 or contact Melissa Porterfield, Office of Regulatory Affairs, PO Box 1105, Richmond, VA 23218, (804)698-4238 Melissa.Porterfield@deq.virginia.gov
- Received a call from Daryl Fears, Reporter for the *Washington Post*, concerning storm surge and rural coastal local government readiness. Mr. Fears was interested in knowing more about how rural coastal Virginia would have responded had Hurricane Sandy made landfall in Virginia. Discussed the use of Reverse 911 and Tidewatch. Tidewatch is a system developed by VIMS Emeritus Professor John Boon that measures and forecasts the difference between the predicted astronomical tide and observed water levels at 10 locations within Chesapeake Bay and along Virginia's seaside Eastern Shore. Tidewatch charts provide an effective way to measure, visualize, and predict the magnitude and impacts of coastal flooding in a given location. The use of Tidewatch charts can help forecasters and coastal residents better prepare for storm tides and minimize their potential impacts. They are particularly useful for comparing storm tides in areas with different tidal ranges.
- Discussed regional and local tourism planning needs with Sandra Tanner, Community Tourism Specialist, Virginia Tourism Corporation. Arranged for Ms. Tanner to update the local government administrators on new planning and funding opportunities available from the Virginia Tourism Corporation.

- Provided an update on Stormwater project milestones and overall project design to all Middle Peninsula local government administrators, planners and codes compliance staff from the counties of Gloucester, Mathews, King and Queen, Essex, King William, Middlesex, and the Towns of West Point, Urbanna, and Tappahannock. Advised of a project kick-off meeting on **November 20th from 1PM -4 PM** at MPPDC. The purpose of the kick-off meeting is to confirm the scope, establish communication protocols, and discuss milestones/deliverables and items needed from the localities. Also advised of a second meeting scheduled on **December 7th from 1-4 PM** to discuss issues related to Budget & Staffing/ Draft Ordinance, etc.
- Corresponded with Sandie Terry with the Center for Innovative Technology (CIT). CIT is assisting the Middle Peninsula Broadband Authority with broadband infrastructure planning by formatting a recommendation for broadband development for the region. The Center for Innovative Technology (CIT) accelerates innovation, imagination and the next generation of technology and technology companies. Created in 1985, CIT is a state-chartered, non-profit organization to operate the functions of the Innovation and Entrepreneurship Investment Authority (IEIA), which was established to generate technology-based economic development strategies. Today, CIT is focused primarily on plugging gaps at the earliest stages of the Innovation Continuum – commercialization and seed funding – as it continues to assist entrepreneurs throughout the Commonwealth launch and grow high-growth technology companies and create high-paying jobs for the future. CIT carries out its mission through five service lines: CIT Entrepreneur, CIT R&D, CIT Connect, CIT Broadband and Commonwealth Support Programs. For more information about CIT please visit <http://www.cit.org>.
- Consulted with Martha Lowe, Brooks Law, regarding status of heir property situation clearing title action for Mathews County homeowner.
- Submitted a Community Resilience Innovation Challenge Grant application to FEMA. Proposal was titled: “Short Term Business Economic Recovery Plan” and is designed to develop a regional best practices guide to help businesses re-open faster after a regional disaster.

Public Comments

Chair Also opened the meeting for public comments. There were no public comments.

Legislative Discussion with Delegate Keith Hodges

- **General Legislative Issues**

Delegate Hodges thanked the MPPDC Board for inviting him to the meeting. He said he believes that there will be more regulatory issues brought forth in the General Assembly in the coming session.

- **Heir Property**

Chair Alsop said the MPPDC staff is taking requests from citizens to repair failing septic systems who are living on heir properties but grants or loans cannot be issued unless all heir property family members are willing to sign the necessary paperwork. Delegate Hodges said there should be a code section to address heir property with failing septic systems. Mr. Lawrence said there should be a septic repair model to make improvements to homes where payment can be embedded in their real estate property tax bill as is currently allowed for energy improvements such as solar retrofits.

Discussion was held regarding heir property, loan or grant repair payments incorporated into real estate tax bills, research and study of rights of heir property members, loan assistance from MPPDC to heir property members, and assistance from the General Assembly. Delegate Hodges was asked to introduce legislation to address this important water quality issue.

- **Aquaculture**

Discussion was held regarding a citizen who wants to raise oysters using an oyster barge on a body of water between King and Queen and Gloucester counties. VDH is considering a requirement for a port-a-potty and a sink for hand washing to be located on the barge. Discussion was held whether there is state code to support this request and how VDH might handle such issues in the future. Delegate Hodges said that he will contact Governor McDonnell and Senator Norment to discuss this issue with them.

- ***Public Comment Notice-Groundwater Management Area Amendment***

Discussion was held regarding the application process and delays of more than 2 years for DEQ to issue permits. Increasing the Groundwater Management Area will lead to even longer permit delays unless DEQ staffing and funding are increased. Delegate Hodges said that localities should keep communicating with the state for answers.

- ***Broadband Infrastructure***

Chair Alsop said that the Middle Peninsula would benefit from having increased broadband access. Delegate Hodges said that there are not funds for broadband at the present time. Discussion was held regarding the need for increased broadband access in the Middle Peninsula.

Mr. Charles Gordon said that a major problem in the Middle Peninsula is the Dominion Virginia power lines were installed when most trees were small, but over time these trees have grown and now pose a threat to the power distribution system when the wind blows. Localities need to take a serious look at replacing power lines before, during, and after disasters. Delegate Hodges said that he would take this concern to his meeting with the Governor and he would pass on all of the issues of concerns to the Governor.

Chair Alsop thanked Delegate Hodges for attending the MPPDC Board meeting and for attending the VACo Rural Caucus meeting.

Acceptance of MPPDC FY 12 Audit

Beth Johnson, MPPDC Administrative Assistant, gave a presentation on the Middle Peninsula Planning District Commission Audited Financial Statements Year Ended June 30, 2012 Report prepared by Dunham, Aukamp & Rhodes, PLC, Certified Public Accountants, Chantilly, Virginia. Copies were provided to each Board member in their October meeting packet.

Mrs. Johnson reviewed the Independent Auditors' Report. The Report states, "In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Commission as of June 30, 2012, and the respective changes in financial position and cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America." Also, "In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole."

Mrs. Johnson reviewed the MPPDC Management's Discussion and Analysis which provides a synopsis of the required financial statements and a comparison between the current and previous fiscal year and describes the required financial statements.

Mrs. Johnson reviewed the Financial Analysis-Summary Statements of Net Assets June 30, 2012 and June 30, 2011. The current assets increased during the year by \$109,000 and the current liabilities decreased during the year by approximately \$78,000 primarily due to a decrease in accounts payable and deferred revenue. Deferred revenue is money which the MPPDC has received for a project which was not completed in the current fiscal year and is retained to be expensed in the future. These funds are set aside as a liability and saved until next year to continue to fund the project or will be returned to the agency or locality if not needed. The long-term liabilities decreased by approximately \$1,875, as the Commission made scheduled principal payments on the 1997 VRA loan in the amount of \$12,500 and received proceeds of \$10,625 from the 2010 loan with VRA. Mrs. Johnson said that the total net assets increased by approximately \$179,000 this year due in large part to the transfer of the small business loan portfolio from the Middle Peninsula Business Development Partnership, Inc. (MPBDP) and the assumption of a smaller housing

loan portfolio associated with the completed Energy Efficiency and Conservation Block Grant project (EECBG).

Mrs. Johnson reviewed the Summary of Statements of Activities which includes revenues and expenses. The operating revenues increased by approximately \$236,000 and project expenses increased by approximately \$207,000 from the prior year. In FY 2012 actual revenues came in under budget revenues by approximately \$329,000 mainly because of the rescoping of a major federal program due to issues with the subcontractor who was responsible for project promotion and construction activity and because of the dissolution of MPBDP Inc. due to lack of funding. General Administration expenses decreased by \$72,000 and project costs increased by \$207,000 as staff reductions led the agency to utilize administrative personnel in direct program services and to continue to explore options to lower overall agency administrative costs. Long-term debt consists of two loans from the Virginia Water Facilities Revolving Fund. The first loan was received in 1997 and the second was received in 2011.

In the audit under Economic Factors and Future Outlook it states, "Presently, management of the Commission is well aware of the changing federal, state, regional, and local economic climate and is working to comprehensively understand, address and plan for the future security of the Commission consistent with the evolving new economic model."

Tom Swartzwelder, King and Queen County Administrator, congratulated MPPDC Executive Director Lewis Lawrence and Administrative Assistant Beth Johnson on a clean audit.

There being no questions from the Board, Chair Theberge requested a motion to accept the year ending June 30, 2012 audit report. Louise Theberge moved to accept the June 30, 2012 audit report. Otto Williams seconded the motion; motion carried.

Other Business

- (1) Chair Alsop thanked Edwin "Bud" Smith, Jr. for chairing the Board meeting and signing MPPDC checks last month. Chair Alsop and Treasurer Otto Williams were both in the hospital at the time of last month's meeting.

Adjourn

Chair Alsop requested a motion to adjourn. Otto Williams moved to adjourn. Louise Theberge seconded the motion; motion carried.

COPY TESTE:

(Secretary)

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Project Financial Report

Middle Peninsula Planning District Commission

Run Date: 12/10/2012
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Period Ending: 11/30/12

		Expenditures						
Code	Description	Budget	Curr Month	Project Total	Un/Over	% Budget	Revenues	Balance
30008	FY13 Local Programs	148,597.00	611.20	39,056.12	109,540.88	26.28%	125,491.83	86,435.71
30010	Local PAA Stewardship/	17,000.00	0.00	11,742.98	5,257.02	69.08%	17,000.00	5,257.02
30013	EE&CBG Project	3,889.00	49.62	831.03	3,057.97	21.37%	970.35	139.32
30170	MPBDP FY12 Staff Sup	13,825.00	321.38	4,989.20	8,835.80	36.09%	5,636.82	647.62
30208	Transportation Demand M	74,000.00	4,079.92	27,060.18	46,939.82	36.57%	22,447.00	-4,613.18
30310	FY13 Rural Transportati	72,500.00	4,878.51	30,526.51	41,973.49	42.11%	18,175.35	-12,351.16
30420	Onsite Loan Management	105,940.14	207.85	98,259.40	7,680.74	92.75%	107,653.54	9,394.14
30423	VCWRFR Onsite Fund	82,500.00	0.00	30,179.31	52,320.69	36.58%	41,671.50	11,492.19
30426	WQIF 2010	102,883.00	617.62	76,794.21	26,088.79	74.64%	60,849.97	-15,944.24
30427	Failing Septic Heir Proper	7,091.00	66.98	7,252.05	-161.05	102.27%	7,091.00	-161.05
30502	Water Supply Planning	107,526.97	0.00	107,526.97	0.00	100.00%	153,950.00	46,423.03
31002	GA Lobby FY09	0.00	0.00	18,247.75	-18,247.75	0.00%	24,000.00	5,752.25
31404	Dragon Run Day	5,791.62	0.00	5,791.62	0.00	100.00%	6,830.34	1,038.72
31410	FY11 Dragon SAMP	25,000.00	0.00	21,694.26	3,305.74	86.78%	21,694.27	0.01
32007	PAA Administration	102,356.84	1,984.30	90,900.99	11,455.85	88.81%	105,743.98	14,842.99
32118	FY12 Coastal TA	60,000.00	918.34	62,064.17	-2,064.17	103.44%	57,000.00	-5,064.17
32119	Land & Water Quality Pr	50,000.00	995.86	52,173.91	-2,173.91	104.35%	45,000.00	-7,173.91
32120	FY13 Coastal TA Task 44	60,000.00	9,150.11	16,295.06	43,704.94	27.16%	0.00	-16,295.06
32121	Land & Water Quality Pr	50,000.00	3,774.15	10,024.40	39,975.60	20.05%	0.00	-10,024.40
32122	Living Shorelines	49,858.00	391.65	391.65	49,466.35	0.79%	0.00	-391.65
32201	PAA Perrin River WW P	15,000.00	330.12	15,674.35	-674.35	104.50%	15,000.00	-674.35
32202	Working Waterfronts Co	43,118.00	3,366.42	16,289.65	26,828.35	37.78%	9,204.11	-7,085.54
32203	Working Waterfronts De	6,000.00	0.00	6,005.29	-5.29	100.09%	6,000.00	-5.29
33000	MP Comprehensive Econ	120,000.00	6,279.82	81,157.66	38,842.34	67.63%	59,226.07	-21,931.59
Totals:		<u>1,322,876.57</u>	<u>38,023.85</u>	<u>830,928.72</u>	<u>491,947.85</u>	<u>62.81%</u>	<u>910,636.13</u>	<u>79,707.41</u>

Balance Sheet by Category

Middle Peninsula Planning District Commission

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Period Ending: 11/30/12
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Assets:

Cash in Bank	647,758.34
Receivables	268,080.30
Property & Equipment	12,054.96

Total Assets:

\$927,893.60

Liabilities:

Accounts Payable	8,920.86
VRA Loan Payables	122,921.50
Payroll Withholdings	8,922.91
Accrued Leave	21,754.88
Cost Allocation Control	4,430.06

Total Liabilities:

\$166,950.21

Equity:

Local Initiatives/Information Resources	97,444.98
Economic Development	-18,951.04
Transportation Programs	-16,964.34
Onsite Repair & Pumpout	4,791.68
Housing	139.87
Coastal Community & Environmental	-30,731.07
Mandates	46,428.34
Temporarily Restricted	188,479.87
General Fund Balance	490,305.10

Total Equity:

\$760,943.39

Balance:

\$0.00

Agencywide R&E by Category

Middle Peninsula Planning District Commission

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Period Ending: 11/30/12

Format: 1 Agencywide R&E

With Indirect Cost Detail

Code & Description	Budget	Current	YTD	Un/Ovr	% Bud
Revenues					
Local Match	123,097.00	0.00	25,683.40	97,413.60	20.86%
Local Annual Dues	109,899.00	0.00	109,899.00	0.00	100.00%
Local Other Revenues	7,070.00	0.00	74,812.02	-67,742.02	1,058.16%
State Revenues	208,537.00	19,825.49	86,224.82	122,312.18	41.35%
Federal Revenues	220,359.00	38,503.41	78,687.76	141,671.24	35.71%
Miscellaneous Income	15,400.00	842.51	12,623.33	2,776.67	81.97%
Onsite Loan Program Income	10,150.00	777.81	13,205.24	-3,055.24	130.10%
PAA Program Income	1,000.00	175.00	975.00	25.00	97.50%
Revenues	695,512.00	60,124.22	402,110.57	293,401.43	57.82%
Expenses					
Personnel	376,566.00	32,017.50	161,240.30	215,325.70	42.82%
Facilities	30,164.00	2,137.73	12,457.00	17,707.00	41.30%
Communications	4,500.00	337.11	1,701.73	2,798.27	37.82%
Equipment & Supplies	7,263.00	338.89	2,453.57	4,809.43	33.78%
Travel	5,750.00	108.78	2,034.44	3,715.56	35.38%
Professional Development	12,610.00	155.99	8,260.53	4,349.47	65.51%
Contractual	107,200.00	8,554.30	83,798.05	23,401.95	78.17%
Miscellaneous	54,857.00	2,523.53	22,323.12	32,533.88	40.69%
Regional Share	123,097.00	0.00	25,683.40	97,413.60	20.86%
Expenses	722,007.00	46,173.83	319,952.14	402,054.86	44.31%
Agency Balance	-26,495.00	13,950.39	82,158.43		

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Middle Peninsula Planning District Commission



MPPDC General Fact Sheet

WHAT IS MPPDC?

The Middle Peninsula Planning District Commission (MPPDC) was established pursuant to the Virginia Area Development Act (Title 15.1, Chapter 34, Sections 15.1-1400, et seq., Code of Virginia (1950) as amended) and by joint resolutions of the governing bodies of its constituent member jurisdictions.

The "MPPDC" describes the geographic section of Virginia which encompasses the Counties of Essex, Gloucester, King and Queen, King William, Mathews and Middlesex and the Towns of Tappahannock, Urbanna and West Point.

BACKGROUND

The Agreement to organize a Planning District Commission was made on January 31, 1972, by and between the government subdivisions as authorized by the Virginia Area Development Act.

WHAT DOES MPPDC DO?

The purpose of the Commission is to promote the orderly and efficient development of the physical, social, and economic elements of the Planning District by planning and encouraging and assisting governmental subdivisions to plan for the future.

HOW ARE DECISIONS MADE AT MPPDC?

Decision-making occurs through the Middle Peninsula Planning District Commission, a governing body comprised of elected officials, citizens, and chief administrative officers representing the six counties and three towns in the region.

QUICK FACTS

Region at Glance

- Six Counties: Essex, Gloucester, King & Queen, King William, Mathews and Middlesex
- Three Towns: West Point, Urbanna, and Tappahannock
- 1,387 Square Miles
- 1,055 Miles of Shoreline

➤ 888,064 Acres of Land

➤ 90,826 People

By the Numbers

- 1.1% Total State Population
- \$50,001 Median Household Income



For More Information:

MPPDC
P.O. Box 286
125 Bowden Street
Saluda, Virginia 23149
Phone: 804-758-2311

www.pdcinfo@mppdc.com

Please visit the MPPDC website at:
www.mppdc.com

Regional Profile:

2000-2010 Demographic Information

All data is from Census 2000 and Census 2010 unless otherwise stated

Population Trends				Median Household Income and Unemployment Rate ¹			
Locality	Total Population		Population Growth from 2000-2010	Median Income		Unemployment Rate	
	2000	2010		2000	2005-2009	2000	2009
Essex	9,989	11,151	12%	\$46,589	\$46,678	2.7%	8.2%
Gloucester	34,780	36,858	6%	\$56,589	\$56,830	1.9%	5.9%
King & Queen	6,630	6,945	5%	\$44,778	\$43,766	2.5%	7.8%
King William	13,146	15,935	21%	\$62,139	\$64,682	1.9%	6.9%
Mathews	9,207	8,978	-2%	\$53,849	\$49,318	2.2%	5.4%
Middlesex	9,932	10,959	10%	\$45,941	\$50,181	2.1%	6.8%
Town of Tappahannock	2,138	2,375	11.1%	\$33,688	\$37,754	14.5%	12.1%
Town of Urbanna	543	476	-12.3%	\$42,054	\$42,788	4.7%	11.2%
Town of West Point	2,866	3,306	15.4%	\$49,655	\$64,948	2.8%	4.5%
Region Total	83,684	90,826	9%	\$49,837	\$50,001	8.5%	9.6%

Ethnicity in the Middle Peninsula						
Locality	Hispanic			Non-Hispanic		
	2000	2010	Percent Change	2000	2010	Percent Change
Essex	72	349	385%	9,917	10,802	9%
Gloucester	560	935	67%	34,220	35,923	5%
King and Queen	58	184	217%	6,572	6,761	3%
King William	120	324	170%	13,026	15,611	20%
Mathews	73	104	42%	9,134	8,874	-3%
Middlesex	55	166	202%	9,877	10,793	9%
Regional Total	938	2,062	120%	82,746	88,764	7%

Race in the Middle Peninsula												
Locality	White			Black			Asian			Other		
	2000	2010	Percent Change	2000	2010	Percent Change	2000	2010	Percent Change	2000	2010	Percent Change
Essex	5,790	6,370	10%	3,900	4,247	9%	81	86	6%	218	448	106%
Gloucester	30,148	32,149	7%	3,585	3,197	-11%	240	286	19%	807	1,226	52%
King and Queen	4,059	4,663	15%	2,365	1,975	-16%	18	17	-6%	188	290	54%
King William	9,703	12,297	27%	2,999	2,819	-6%	48	118	146%	396	701	77%
Mathews	8,038	7,898	-2%	1,036	823	-21%	17	31	82%	116	226	95%
Middlesex	7,797	8,680	11%	1,999	1,978	-1%	12	37	208%	124	264	113%
Regional Total	65,535	72,057	10%	15,884	15,039	-5%	416	575	38%	1,849	3,155	71%

¹ Data from the Bureau of Labor Statistics Local Area Unemployment data

MIDDLE PENINSULA PLANNING DISTRICT COMMISSION

Staff Activities Service Summary of Regional Progress

Core Services Administered by the MPPDC								
Localities	Information Resources/ Assistance	Coastal Community Development/ Environmental	Transportation	Onsite Repair and Pumpout	Economic Development	Local Initiatives	Housing	Other
Region-wide	✓	✓	✓	✓	✓	✓	✓	
Essex	✓			✓				
Gloucester		✓	✓		✓			
King and Queen		✓						
King William	✓	✓	✓					
Mathews	✓	✓		✓				
Middlesex	✓	✓	✓	✓				
Town of Tappahannock		✓	✓					
Town of West Point		✓						
Town of Urbanna		✓						
Other		✓	✓					

Report on Mandated Initiatives				
Localities	Water Supply Planning		Stormwater Management	
	<i>Support staff: Clara</i> <i>Start Date: 7/2008</i> <i>Completion Date: 11/2011</i>		<i>Support staff: Jackie</i> <i>Start Date: 12/1/2012</i> <i>Completion Date:</i>	
	Participating Localities	Current Status	Participating Localities	Current Status
Essex	✓	Awaiting Review by DEQ	✓	In progress
Gloucester	NA	NA	✓	In progress
King and Queen	✓	Awaiting Review by DEQ	✓	In progress
King William	✓	Awaiting Review by DEQ	✓	In progress
Mathews	✓	Awaiting Review by DEQ	✓	In progress
Middlesex	✓	Awaiting Review by DEQ	✓	In progress
Town of West Point	✓	Awaiting Review by DEQ	✓	In progress
Town of Urbanna	✓	Awaiting Review by DEQ	✓	In progress
Town of Tappahannock	✓	Awaiting Review by DEQ	✓	In progress

**Middle Peninsula Planning District Commission
Executive Director's Report of Regional Progress
December 10, 2012**

MPPDC: Membership, Appointments, Committee Assignments, and Networks

Coastal Policy Team (CPT) - The CPT, whose members and alternates represent the Virginia Coastal Zone Management Program's key partners and eight planning district commissions, provides a forum for discussion and resolution of cross-cutting coastal resource management issues. Members serve on the team at the discretion of their agency or planning district commission director. The CPT recommends funding levels to the DEQ Director for coastal zone management projects. (MPPDC Staff 10 years +)

Chesapeake Bay Licenses Plate Committee- The Chesapeake Bay Restoration Fund was created by Chapters 227 and 323 of the 1992 Acts of Assembly for use by the Commonwealth of Virginia for environmental education and restoration projects to the Chesapeake Bay and its tributaries (MPPDC Staff 7 years +)

Congressman Robert Wittman's Fisheries Advisory Committee and Environmental Advisory Committee (MPPDC Staff 3 years +)

Virginia Sea Grant Program External Advisory Committee (EAC): The EAC provides stakeholder input on the strategic planning process, the research proposal review process, and on Commonwealth-wide trends and needs. The EAC is a diverse group of end-users including representatives from state agencies, the education community, coastal planning and management, the private sector, and NGOs. (MPPDC Staff 4 years+)

General Assembly Directed Study Panel: Aquaculture production activities; authority of local governments (MPPDC Staff- current)

Citizens Planning Education Association of Virginia- (Regional 9 Director) Established to further public understanding and awareness throughout the Commonwealth of the need for excellent community planning as a means of making our localities better places in which to live, work, and do business (MPPDC Staff 5 year +)

The Association for Commuter Transportation (ACT) (Telework Council Secretary): ACT is the premier association for professionals and organizations whose focus is the delivery of commuting options and solutions for an efficient transportation system. The Telework Council is composed of employer representatives, regional transportation, air quality and planning officials, as well as state and local government officials concerned with promoting telework and providing telework information and technical assistance to employers (MPPDC Staff 4 years+)

The Chesapeake Chapter of ACT: (Chapter Treasurer) – The Chapter is comprised of ACT members and TDM professionals from the states of Virginia, Maryland, West Virginia and the District of Columbia (MPPDC Staff 3 years+)

Middle Peninsula Northern Neck Coordinated Human Services Mobility Committee: provides direction for a unified comprehensive strategy for transportation service delivery in the Middle Peninsula and Northern Neck Planning Districts focused on unmet transportation needs of seniors, people with disabilities, and people with low incomes. (MPPDC Staff 6 years)

MPPDC Staff and Contact Information

Executive Director: Lewis Lawrence

Contact Info: llawrence@mppdc.com (804) 758-2311x24 (804) 832-6747 (cell)

Programs: *Coastal Zone Technical Assistance, Local Initiatives, Public Access Authority*

Administrative Assistant: Beth Johnson

Contact Info: bjohnson@mppdc.com (804) 758-2311x22

Programs: *Commuter/ Employer Transportation Services, Septic Repair & Pumpout Assistance, Revolving Loan Programs Administration, PDC Finance & Grants Administration*

Planner 2: Clara Meier

Contact Info: cmeier@mppdc.com (804) 758-2311x28 (540) 908-5057 cell

Programs: *Rural Transportation Planning, Water Supply Plan*

Planner 2: Harrison Bresee

Contact Info: hbreesee@mppdc.com (804) 758-2311x26 (757) 871-2245 cell

Programs: *Comprehensive Economic Development Strategy, Public Access Authority, Working Waterfronts*

Planner 2: Jackie Rickards

Contact Info: jrickards@mppdc.com (804) 758-2311x23 (215) 264-6451 cell

Programs: *Stormwater Management*

Secretary: Rose Lewis

Contact Info: rlewis@mppdc.com (804) 758-2311x21

Programs: *Septic Pumpout Assistance, Facilities Scheduling*

MANDATES

Funding – VDEM, VDEQ, localities, MPPDC General Fund

Project 30502 Water Supply Planning

9 VAC 25-780 establishes a planning process and criteria that all local governments will use in the development of local or regional water plans. The plan will be reviewed by the Department of Environmental Quality and a determination will be made by the State Water Control Board on whether the plan complies with this regulation. Within five years of a compliance determination by the board, the plan will be reviewed to assess adequacy and any significant changes will require the submission of an amended plan and review by the board. All local programs will be reviewed, revised, and resubmitted to the Department of Environmental Quality every 10 years after the last approval. The jurisdictions of Essex, King and Queen, King William, Mathews, Middlesex, Tappahannock, Urbanna and West Point opted to prepare a regional plan with assistance from Middle Peninsula Planning District Commission staff and EEE Consulting, an environmental consulting firm. The Regional Plan was completed and submitted to the Virginia Department of Environmental Quality for compliance review by the November 2, 2011 deadline for Regional Plan submission.

Project 32123 DCR Stormwater Management

The Virginia General Assembly created a statewide, comprehensive stormwater management program related to construction and post-construction activities (HB1065 - Stormwater Integration). The Virginia Department of Conservation and Recreation requires stormwater management for projects with land disturbances of one acre or more. This new state mandate requires all Virginia communities to adopt and implement stormwater management programs by July 1, 2014 in conjunction with existing erosion and sediment control programs. Additionally, the communities within the MPPDC are required to address stormwater quality as stipulated by the Chesapeake Bay TMDL Phase II Watershed Implementation Plan and the Virginia Stormwater Regulations. The goal of the MPPDC Stormwater Program is to develop tools specific to the region necessary to respond to the state mandate requirement for the development of successful stormwater programs. The local governments need to develop programs either locally or regionally to assure compliance with regulations designed to reduce runoff from developed areas.

- Worked with Draper Aden Association to host meetings of the Regional Chesapeake Bay and Stormwater Program Development. The first meeting introduced the project to the localities while the second meeting included the following agenda items: overview of the Virginia Stormwater Regulation; an update of the upcoming US Environmental Protection Agency Stormwater Rule; existing staff and funding within MPPDC localities to support a stormwater program; and an overview of the draft Unified Stormwater Management Model Ordinance. The next meeting is tentatively scheduled for January 24, 2013.
- Organized a master contact list for the Regional Chesapeake Bay and Stormwater Program Development working group. Emailed this information to Carolyn Howard (Draper Aden Associates).
- Consulted with Tanya Denckla Cobb, Associate Director Institute Environmental Negotiations at the University of Virginia, concerning the National Fish and Wildlife Foundation scope of work award to assist Middle Peninsula local governments with addressing the mandate for local program compliance on issues related to stormwater regulations.
- Received a call from Scott Rae, Environmental Program Administrator in Gloucester County, concerning various stormwater regulations and local program development concerns.

Services to provide critical assessment and thinking.....

- Updated www.mppdc.com website – Requests for public comment, meeting notices, reports, new staff, new projects.
- Corresponded with Ms. Betty Brooks, King William County staff, about Geographic Information System (GIS) data for use when updating maps for the county’s current comprehensive plan update. The MPPDC is not a GIS data repository but can provide any GIS data that is available in when requested.
- The monthly official building reports for the month of November 2012 were filed for the counties of Essex, Mathews and Middlesex. Some Middle Peninsula localities submit reports of building activity to the Middle Peninsula Planning District Commission (MPPDC) each month with information such as the number of building permits and occupancy permits issued for dwelling units.

COASTAL COMMUNITY DEVELOPMENT/ ENVIRONMENTAL
Funding – VDEQ, local match from MPPDC General Fund, VIMS, VDCR

Projects 31410 Dragon Run SAMP

The project is a partnership between Middle Peninsula Planning District Commission’s Dragon Run Steering Committee and the Virginia Coastal Program. The project’s mission is to support and promote community-based efforts to preserve the cultural, historic, and natural character of the Dragon Run, while preserving property rights and traditional uses within the watershed. Remaining resources will be utilized to provide mechanisms to assist heir property owners the ability to access MPPDC Septic Repair Program resources.

- Submitted amended scope and budget for Heir Property component.
- Consulted with Beth Polak, Virginia Coastal Zone Management Program, concerning amending the scope of work to include an outreach component to promote the findings of the Heir Property study.
- Provided Delegate Keith Hodges with a draft frame work for a possible bill to allow Heir Property owners to finance septic system repairs and to pay for repairs as part of their real estate tax bill.

Projects 32007 Middle Peninsula Chesapeake Bay Public Access Authority

Middle Peninsula Chesapeake Bay Public Access Authority Special Project – Support of Executive Order 23, Goal 8 Coastal Management Coordination Public Access: Continue implementation of adopted annual work program, including identifying land, either owned by the Commonwealth or private holdings that can be secured for use by the general public as a public access site; researching and determining ownership of all identified sites; determining appropriate public use levels of identified access sites; developing appropriate mechanism for transferring title of Commonwealth or private holdings to the Authority; developing appropriate acquisition and site management plan. This Program allows the Authority to function by supporting the individual projects and operations of the Authority, as well as, by responding to daily requests for assistance from local government staff.

- Consulted with Prue Davis, PAA Director, concerning access to the King and Queen County portion of the Browne Tract for timber harvest.

- Contacted Mrs. Respress, a Mathews County resident, concerning the right of way to the Hall property owned by the Middle Peninsula Chesapeake Bay Public Access Authority. Discussed legal research findings as well as strategies for agreeing on right of way issues.
- Received a call from Tom Robinson, Mathews County Resident, advocating for the opening of the Hall property for public use.
- Consulted with John Kuriawa, NOAA Office of Coastal Resource Management, concerning the disposition of a 2 acre outparcel of land purchased with federal dollars as a method to secure a right of way to the Browne Tract for timber harvest.
- Met with Jim from Clearwater Forestry about timber thinning on the Haworth and Clay Tracts in King and Queen County as identified in the management plans. Reviewed and discussed the terms of the easements on the properties.
- Answered questions from 3 citizens interested in hunting on the Browne and Haworth Tracts.

1301 Mathews Heritage Park

Mathews Heritage Park was donated to the Middle Peninsula Chesapeake Bay Public Access Authority (PAA) in 2010 and is a 9.119 acre waterfront parcel located on Field Point Road in Moon, Mathews County, Virginia. As designated in the Deed of Gift with Declaration of Restrictions, the property can only be used as a nature park and waterfront center for the purpose of teaching about the history of the people of Mathews County, Virginia and the ecology of the land and the surrounding waters, including, but not limited to, teaching skills associated with the traditional trades and crafts of the people of Mathews County, Virginia including farming, fishing, boat building, seamanship, navigation, sailing and rowing. In 2011 a grant with the National Park Service Rivers, Trails and Conservation Assistance Program (RTCA) was awarded to the PAA to provide guidance in water access and park planning; facilitation of a planning process that merges the various ideas of community stakeholders, resolves past conflicts, and gains consensus on a vision, goals, and management approach for the site. The outcome of the grant is expected to be a management plan for the park.

Projects 32120 Virginia Coastal Zone Management Program

This project provides ongoing support to member localities of the Planning District Commission and other stakeholders committed to improving community development and coastal management within the coastal zone.

- Attended the Department of Conservation and Recreation (DCR) General Stormwater Management Training Course in Fishersville, VA on November 27, 2012. DCR staff provided a history and overview of Stormwater Management in Virginia and the Stormwater Management Act; an overview of the Stormwater regulations; design and implementation tools; Virginia Erosion and Sediment Control Program and Virginia Stormwater Management Program (VSMP) Authorities; and developing a VSMP Program.
- Consulted with various staff from the Virginia Department of Health, Virginia Marine Resource Commission, and Delegate Keith Hodges concerning permit issuance problems associated with the Anderson Neck Aquaculture project located principally in King and Queen County and secondarily in Gloucester County. Researched various permit obstacles and discussed ways to accelerate permit issuance. Issues discussed included handling of sewage; leasing of subaqueous bottoms, local zoning, local pump, and haul.
- Consulted with Laura McKay, Program Manager for the Virginia Coastal Zone Management Program, concerning the viewing of *Ocean Frontiers* movie. Discussed the utility of the movie as an example of

innovative Coastal Zone Management and consensus building to find solutions to complex coastal management issues.

- Attended the Gloucester County Board of Supervisors December meeting to present the Perrin River Working Waterfront Commercial Seafood Harbor Master Plan report. The Gloucester Board adopted the report and forwarded the report to the Planning Commission for technical review and consideration.
- Contacted Chris Carey, Executive Director for VACORP, concerning the vacancy left by outgoing VACORP Director Dave Whitlow. Discussed Middle Peninsula candidates for consideration.
- Convened December local government Administrators meeting. Agenda items included a discussion on issues related to Regional litter control; Regional Construction Standards; and VDOT Ditches.
- Attended the Lancaster County Planning Commission meeting to discuss the history of the Middle Peninsula Chesapeake Bay Public Access Authority as well as specific public access project examples.
- Attended the 2012 Virginia Coastal Zone Management Program Workshop. Served as a speaker for the workshop on topics including: Climate Change- Sea Level Rise, Heir property Ownership issues, Working Waterfronts, Public Access and Living Shoreline revolving loan project.
- Arranged for Sandra Tanner, Virginia Tourism Corporation- Tourism Development Specialist, to attend the February meeting of the PDC to discuss the need for Middle Peninsula Regional Tourism Plan and local tourism plans for Gloucester, Mathews, Essex, King and Queen and King William Counties as well as the Towns of Tappahannock, Urbanna, and West Point. The tourism Corporation has offered to develop such plans.
- Discussed the Joint Permit Application (JPA) process for the Anderson Neck Aquaculture project with Chip Neikirk, VMRC. Discussed various issues related to local notification of project concern when the JPA is delivered to the local wetlands board, but the Anderson Neck Aquaculture permit process does not involve the Wetlands Board. Discussed ways to ensure the permit packet reaches the appropriate locality department.
- Attended two viewings of the movie *Ocean Frontiers* shown at Watermen's Hall located at the Virginia Institute of Marine Science. Welcomed those who attended and briefly discussed the challenges facing local government related to Chesapeake Bay clean up. Approximately 100 citizens RSVPed to attend the viewing.
- Submitted the Final Report for the Coastal TA.

Project 32121 Land Water Quality Protection

In light of changing Federal and State regulations associated with Bay clean up-nutrient loading, nutrient goals, clean water, OSDS management, storm water management, TMDLs, etc, staff from the Middle Peninsula Planning District Commission (MPPDC) will develop a rural pilot project which aims to identify pressing coastal issue(s) of local concern related to Bay clean up and new federal and state legislation which ultimately will necessitate local action and local policy development. Staff has identified many cumulative and secondary impacts that have not been researched or discussed within a local public policy venue. Year 1-3 will include the identification of key concerns related to coastal land use management/water quality and Onsite Sewage Disposal System (OSDS) and community system deployment. Staff will focus on solution based approaches, such as the establishment of a regional sanitary sewer district to manage the temporal deployment of nutrient replacement technology for installed OSDS systems, assessment of land use classifications and taxation implications associated with new state regulations which make all coastal lands developable regardless of

environmental conditions; use of aquaculture and other innovative approaches such as nutrient loading offset strategies and economic development drivers.

- Issued a request to the local government administrators for ditches to be included in the upcoming legal research study being conducted by MPPDC staff. Received a request from Middlesex County for ditch nomination and inclusion in the report.

Project 32122 Living Shorelines

On April 29, 2011 legislation was approved directing The Virginia Marine Resource Commission (VMRC), in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science (VIMS), to establish and implement a general permit regulation that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. “Living shoreline” means a shoreline management practice that provides erosion control and water quality benefits; protects, restores or enhances natural shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials. VMRC, with assistance from VIMS, is developing a general permit which can expedite the permitting process as an incentive to encourage property owners to select the “preferred alternative” for stabilizing tidal shorelines in the Commonwealth. This proposal will serve as a feasibility study and offer a potential design for a publicly sponsored water quality improvement-living shoreline revolving loan construction program. MPPDC staff will work with the Virginia Resource Authority, Department of Environmental Quality, Federal Agencies as well as legal counsel to explore an administrative program design and options for capitalizing a revolving loan program within the Middle Peninsula to encourage living shoreline construction by Middle Peninsula homeowners.

- Prepared and executed contract for VIMS staff services to survey MP homeowners who have either installed or shown interest in installing living shorelines to assess potential for low interest revolving loan program assistance in encouraging this BMP.
- Received Statement of Work from National Sea Grant Law Center (NSGLC). NSGLC will undertake a review and assessment of existing revolving loan programs that incentivize coastal environmental protection projects around the country. The Law Center will produce a white paper examining authorizing legislation, sources of funding, programmatic criteria, loan participation and default rates, and other administrative issues/lessons learned to provide information on possible models the MPDDC may wish to consider.

Project 32202 Working Waterfronts Coalition

For many Virginia rural coastal communities, there is a strong need to maximize the potential of the waterfront as a driver for economic vitality. However, market forces, changing demographics, and increasing tax burdens on waterfront properties are increasingly driving a transition of waterfront properties toward residential or recreational uses. In addition, regulatory changes affecting marine fisheries management are impacting water dependent industries and working waterfronts. If access to the waterfront is limited or severed, commercial and recreational fishermen, researchers, and other water-dependent businesses will have fewer options to successfully make a living from the tidal waters of the Commonwealth, including the Seaside on the Eastern shore. As a result, many rural Chesapeake Bay and Seaside communities are challenged to maintain their identity and are shifting away from water-dependent employment, causing economic and cultural changes that can limit economic diversification opportunities and fundamentally alter the nature of the communities themselves. These challenges are particularly acute in both rural Chesapeake Bay and Seaside coastal communities. In response, Accomack-Northampton PDC, Northern Neck PDC Middle Peninsula PDC, Middle Peninsula Chesapeake Bay Public Access Authority, Northern Neck Chesapeake Bay Public Access Authority and Marine Advisory Services at VIMS collectively propose to form a Rural Chesapeake Bay-Seaside Working Waterfront Coalition.

- Consulted with Lewis Lawrence, MPPDC Executive Director, regarding budget for Working Waterfront Coalition Phase 2 grant.
- Participated in a National Working Waterfront Network case study review conference call. Discussed various land use and zoning issues related to promoting working waterfront solutions.
- Discussed tasks required to be performed for the working waterfront coalition project with MPPDC Executive Director Lewis Lawrence and Harrison Bresee, MPPDC staff. The project deliverables will include a report that tells the story of at least 3 working waterfront businesses that have closed in the Middle Peninsula Region to characterize the loss sustained that caused businesses to close and how that impacted the local working waterfront industry. The Northern Neck Planning District Commission and the Accomack-Northampton Planning District Commission are conducting this project in their regions and MPPDC staff will be compiling the reports from the other 2 PDCs into 1 document that will contain the information from all 3 regions. The first step will be to distribute a request for names of closed businesses to the Planning Directors of Essex County, Middlesex County, King and Queen County, King William County, Mathews County, Gloucester County, and the Towns of West Point, Tappahannock, and Urbanna.
- Met with Harrison Bresee, MPPDC Staff, to discuss which working waterfront businesses would be candidates for the case studies profiling those types of businesses that have closed in the Middle Peninsula Region. Developed a questionnaire for the closed businesses.
- Reviewed the draft questions prepared by Harrison Bresee, MPPDC Staff, for use when interviewing or surveying owners of working waterfront businesses that have closed in the Middle Peninsula Region.
- Communicating with county administrators, local planning staff, and local businesses to identify working waterfront businesses that have closed that may be candidates for the working waterfront coalition case study.
- Drafting a template for the working waterfront coalition case studies report that will be shared with the other Coastal Planning District Commissions participating in the project. All project participants utilizing the same report template will assist MPPDC staff when developing the final report that will include the case studies from all of Virginia's coastal regions.

TRANSPORTATION

Funding – VDRPT, VDOT, local match from MPPDC General Fund

Project 30208 Transportation Demand Management (TDM) Services

This program assists local commuters and employers with transportation issues. The main emphasis is on lowering the number of single occupancy vehicle commutes within and from the Middle Peninsula region through marketing and promotion of the program through local media and provision of ride matching services to commuters.

- Consulted with Mark Felton, Lamar Advertising, regarding billboards.
- Received online registration from Gloucester County resident commuting to Newport News. Provided match contact information.

- Consulted with Alex Eguiguren, NNPDC, and Tom Davis, WRAR Radio, regarding joint NASCAR sponsorship ad campaign. MMPPDC and NNPDC rideshare programs will partner on this campaign allowing us to promote both programs and split cost of \$4000 for 12 months of radio spots.
- Consulted with Emily Gibson, Gloucester County Planner, regarding official park and ride lots located in the county and the need for a park and ride lot in the Courthouse area.
- Reviewing the draft the Multimodal and Public Space Design Guidelines developed by the Virginia Department of Rail and Public Transportation (DRPT). DRPT developed this set of statewide guidelines for multimodal planning and public space design at the corridor, district and transit station area scales that expand upon the existing DRPT Transit Service Design Guidelines that were developed in November 2008. The guidelines were developed with the help of a steering committee, in which MPPDC staff participated and includes guidance on Transportation Demand Management (TDM) strategies and a discussion of multimodal planning approaches most relevant to the Virginia context. The deadline for steering committee members to provide comments on the draft guidelines is January 16, 2013.
- Reviewed the draft CHSM Plan for the Middle Peninsula Region and provided corrections and comments to Bob Baldwin, Bay Transit's Mobility Manager. Mr. Baldwin then incorporated the information provided by MPPDC staff into the draft Plan before sending it to the consultants assisting DRPT with updating the Plan.
- Provided copies of FY13 Audit and FY13 Indirect Cost Allocation Plan to Patrice Strachan, Department of Rail and Public Transportation (DRPT).
- Consulted with Chris Arabia regarding DRPT grantee webinars. Registered for both webinars but never received link to join. Reviewed recorded webinar via DRPT website.
- Processed registrations and invoices for ACT Chesapeake Chapter TDM & Planning Workshop held on 11/7/2012 in Maryland.
- Participated in ACT Chesapeake Chapter Board Meeting – Agenda items included Draft 2013 Work Program and Budget, TDM & Planning Workshop recap, Chesapeake Chapter Symposium following ACT Legislative Conference in April.

Project 30310 Rural Transportation Planning

This program provides rural transportation planning services through the Rural Transportation Planning Work Program which outlines specific tasks and goals to guide the rural planning of transportation services.

- Received phone call from Trish Cronin, Gloucester County, regarding RTP Technical Report posted on MPPDC website. Consulted with Clara Meier, MPPDC Planner, and posted updated report on website.
- Discussed enabling authority of the Middle Peninsula Broadband Authority as well as the process for joining the Authority with Matt Walker, Middlesex County Administrator. Advised Mr. Walker of steps for joining the Authority offered by Jeff Gore, Attorney for the Authority.
- Provided Middle Peninsula Broadband Authority documents to Matt Walker, Middlesex County Administrator, at the request of Carlton Revere, Middlesex County Board of Supervisors. Mr. Revere attended the October 12, 2012 meeting of the Broadband Authority and Middlesex County may be interested in joining the member jurisdictions of Essex County, Mathews County, King William County and Gloucester County on the Authority.

- Contacted Sean Trapani, Saluda Residency Administrator for the Virginia Department of Transportation (VDOT), to schedule a meeting to discuss information on pending road ending transfers and transportation project priorities. MPPDC staff has been working with VDOT staff to determine the appropriate way to transfer ownership of several road endings in the Middle Peninsula Region. Road ending transfers being considered include Prince Street in the Town of Tappahannock and Perrin Creek Road and Wharf in Gloucester County.
- Corresponded with Sandie Terry with the Center for Innovative Technology (CIT). CIT is assisting the Middle Peninsula Broadband Authority with broadband infrastructure planning by formatting a recommendation for broadband development for the region. The Center for Innovative Technology (CIT) accelerates innovation, imagination and the next generation of technology and technology companies. Created in 1985, CIT is a state-chartered, non-profit organization to operate the functions of the Innovation and Entrepreneurship Investment Authority (IEIA), which was established to generate technology-based economic development strategies. CIT carries out its mission through five service lines: CIT Entrepreneur, CIT R&D, CIT Connect, CIT Broadband and Commonwealth Support Programs. For more information about CIT please visit <http://www.cit.org>.
- Corresponded with Jean Plymale, Project Manager for eCorridors Accelerate Virginia, about the Middle Peninsula Region participating in their internet speed testing campaign that would help identify gaps in internet service over the region for use in the recommendation CIT is preparing for the MPPDC. If the MPPDC does participate in the speed testing campaign, eCorridors will provide some general analysis of the data generated from the region and/or will share the data with CIT or MPPDC if it is preferred to produce a separate analysis. That is all free as part of eCorridors outreach mission and as part of their obligation to the State and the Virginia Broadband Mapping initiative. For more information on eCorridors please go to: <http://www.ecorridors.vt.edu/>.
- Provided additional comments to Janit Llewellyn Allen, Department of Conservation and Recreation (DCR), on the Virginia Outdoors Plan (VOP) update. The VOP is the state's official document regarding land conservation, outdoor recreation and open space planning. It helps all levels of the public and private sectors meet needs pertaining to those issues. The plan provides guidance for the protection of lands through actions of the Virginia Land Conservation Foundation (VLCF), and the plan is required in order for Virginia to take part in the federal Land and Water Conservation Fund (LWCF) program. For the 2013 update of the VOP, from December 2011 through March 2012, planners with the Virginia Department of Conservation and Recreation (DCR) conducted 43 meetings across the state to gather public input. Approximately 480 citizens attended the meetings. Public input is being evaluated and integrated into the draft plan.
- Provided Middlesex County Administrator, Matt Walker, with the incorporation and bylaw documents of the Middle Peninsula Broadband Authority, along with some other supporting information. The Middle Peninsula Broadband Authority was formed in May 2010 by the counties of Essex, Gloucester, King William and Mathews to demonstrate a commitment to bringing broadband infrastructure to the Middle Peninsula Region. The documents provided to Middlesex at Mr. Walker's request may be utilized when Middlesex County is scheduled to hold a public hearing prior to consideration of joining the Middle Peninsula Broadband Authority at their December 18, 2012 Board of Supervisors meeting.
- Corresponded with Craig Van Dussen about coordinating and scheduling ride along events in the rural areas of Middle Peninsula jurisdictions that would include local staff, elected officials, VDOT staff and MPPDC staff. The ride along is a day to ride and inventory major roads. The purpose is to discuss problems and potential solutions. These field trips will help build working relationships and provide an opportunity to gain local/state perspective on transportation challenges.

- Participated in the Gloucester County Ride Along on November 19, 2012, conducted as part of a continued Board of Supervisors meeting. The ride along activity under the rural transportation planning program is a day to ride and inventory major roads. The purpose is to discuss problems and potential solutions. The field trip may help build working relationships and provide an opportunity to gain local/state perspective on transportation challenges.
- Continued drafting a contract and tentative schedule for MPPDC staff to assist the Town of Tappahannock with their comprehensive plan update. The Town contracted with MPPDC staff to complete their 2007 comprehensive plan update.
- Provided Trent Funkhouser, King William County Administrator, with Chesapeake Bay Resource Protection Areas maps from the County's previous comprehensive plans. King William County is in the process of updating their comprehensive plan.
- Submitted the Perrin Creek Road, Route 1101 in Gloucester County, ending transfer resolutions from the Gloucester County Board of Supervisors and the Middle Peninsula Chesapeake Bay Public Access Authority (MPCBPAA) to Sean Trapani, VDOT Saluda Residency Administrator, in order for him to review and send the request to the VDOT Maintenance Division for inclusion on a future Commonwealth Transportation Board (CTB) Agenda. The CTB may consider the request to transfer ownership of the end of Route 1101, Perrin Creek Road, and the Perrin Wharf from the Commonwealth of Virginia to the MPCBPAA at their January or February 2013 meeting. Transferring ownership of the end of Perrin Creek Road and the Perrin Wharf may help protect this important piece of working waterfront infrastructure for the use of commercial watermen and the public long into the future.
- Corresponded with Suzanne Ellison and Joseph Williams, VDOT Maintenance Division, about additional information needed for the transfer of the end of Route 1101 in Gloucester County, Perrin Creek Road, in order to get the request for transfer before the CTB as soon as possible.
- Met with Dr. Michael Chandler, Director of Education for PlanVirginia, and Mr. Jonah Fogel, Virginia Tech Extension, about establishing a stronger connection between Virginia Tech and PlanVirginia. Middle Peninsula Planning District Commission (MPPDC) staff has been serving on the PlanVirginia Board of Directors since 2007 as a task under the Rural Transportation Planning Program. PlanVirginia is a volunteer, nonprofit (501 (c)(3)) dedicated to furthering throughout the Commonwealth public understanding and awareness of the need for excellent community planning as a means of making our localities better places in which to live, work, and do business. PlanVirginia offers training for Virginia's citizen planners with the Certified Planning Commissioner Program, designed to provide a basic foundation of planning law, history, and to provide the technical expertise needed by planning commissioners to maximize their competency and ability to render legally defensible decisions and recommendations. This course is particularly important for planning commissioners whether they are newly appointed or are veteran commissioners who have never received formal training. For more information please visit www.planvirginia.com.
- Provided copy of FY13 MPPDC Audit to Craig VanDussen, VDOT.

ONSITE REPAIR & PUMPOUT

Funding – VDCR, VRA Loan Funds, local match from MPPDC General Fund, cost sharing

Project 30420, 30423, 30426 On-Site technical Guidance Assistance and Revolving Loan Program

The On-Site Technical Guidance Program aids the Middle Peninsula localities and residents in the technical understanding and implementation of approaches to address On-Site Disposal Systems and improve water

quality by assisting local homeowners with repairing failing septic systems through low-interest loans and/or grants.

- Sent certified letters to 2 Onsite loan clients declaring loans in default and requesting full payment. Received phone call from Essex County client regarding lack of payments. Client believed lien release she received from Bay Aging was for her septic repair loan and hence had stopped sending payments. Discussed options. Client agreed to authorize (ACH) direct loan payments from bank account. Emailed ACH paperwork.
- Received phone call from Sylvia Berry, HUD, regarding assistance available for disabled Essex couple without running water. Homeowners had running water in the past, but had it disconnected. Discussed assistance available for repairing septic system and provided application. Also provided information regarding Southeast Rural Community Assistance Project (SRCAP) well assistance.
- Consulted with Martha Lowe, Middlesex Title, regarding status of pending septic repair loan closings for Mathews and Middlesex counties repairs.
- Prepared reimbursement request for completed loans to DEQ for release of VRA loan funds and submitted to Boyd Wiley.
- Consulted with Stephanie Bush, VRA, regarding FY13 MPPDC Audit report and Certification of No Default report. Emailed copy of audit and mailed Certification of No Default.
- Consulted with Martha Lowe, Middlesex Title, regarding status of Middlesex County repair closing. Closing has been held up due to unreleased lien property from prior owners. Situation has been resolved and loan closing date set.
- Consulted with homeowner, Martha Lowe of Middlesex Title, and contractor regarding loan closing for Middlesex county septic repair.
- Executed ACH loan payments.
- Septic Pumpout as of December 10, 2012
 - Applications Mailed 97
 - Approved Vouchers 83
 - Completions 74

Pumpouts by County

Essex	13
Gloucester	25
King and Queen	07
King William	10
Mathews	10
Middlesex	18

30427 Onsite Heir Property

This project will expand and complement Section 309 Land and Water Quality Protection strategy by focusing legal tools needed to address failing septic systems associated with “heir property ownership”. Water quality degradation associated with heir property ownership from failing septic systems exists for decades with no public policy strategy to correct the source of impairment. MPPDC will partner with National Sea Grant Law Center to address legal research and education needs to address this ongoing problem.

ECONOMIC DEVELOPMENT

Funding – EDA, local match from MPPDC General Fund, BDP Loan Program Income

Project 301702 Small Business Revolving Loan Fund

MPPDC agreed to service Middle Peninsula Business Development Partnership's (MPBDP) Small Business Loan Portfolio after MPBDP's dissolution November 30, 2011. MPPDC established a revolving loan fund and staff initiate ACH loan payments from clients bank accounts and manage the accounts. Principal repaid will be held until the Commission determines the best use for these funds as allowed by the USDA (RBEG) original lending restrictions. Interest earned will be used to offset administration costs.

- Sent certified letter to loan client declaring loan in default and requesting full payment.
- Executed ACH loan payments for MPBDP loans.
- Received phone call from client requesting interest only payment for December.

Project 33000 Middle Peninsula Comprehensive Economic Development Strategy

The purpose of this project is to develop a Comprehensive Economic Development Strategy (CEDS) for the Middle Peninsula. The CEDS process will be extremely valuable for the region as a means to tie together the many activities and plans of 9 jurisdictions (6 counties and 3 towns) and also to identify and prioritize cross-region initiatives. The last Regional Economic Development Strategic Plan was completed in March 2002. The past ten years have witnessed significant changes in the region's demographics. The increase in population has also created demand for services and infrastructure development. There is also an interest in sustaining traditional trades such as fishing and agriculture.

- Met with Eileen Gedicke at Jellystone Campgrounds in Gloucester County to update her on the CEDS process and discuss her needs and solutions for broadband at her business.
- Held two Executive Committee meetings on November 19th and December 10th. Committee discussed further how to prioritize the CEDS project list that was developed in the Economic Committee and Public Meeting processes. To date the committee has reviewed over 50 conceptual projects and ranked them according to specific criteria. The next meeting will take place in January 2013 and will focus on finalizing the selection of the top projects.
- Participated in a webinar on the structure and growth of Community Development Banks in America on December 5, 2012.
- Received notification of funding availability (NOFA) from EDA for 2013. The CEDS program is reviewing the NOFA for applicability to the Middle Peninsula.
- Continued drafting the maps needed for the CEDS project report including a map of the Middle Peninsula Region, a map of existing infrastructure, a map of business clusters and others as appropriate. There will be at least one map for each chapter of the report.
- Consulted with Bob Gittler, EDA, regarding FY13 MPPDC Audit report. Emailed and mailed copies.

LOCAL INITIATIVES

Funding - local dues, PDC base-funding from VDHCD and/or MPPDC General Fund.

Funding for specific projects may come from locality requesting assistance.

Project 30008 Local & Regional Technical Assistance

This program responds to daily requests for technical assistance which other commission programs are unable to provide.

(See Coastal Community Development/Environmental- in a cost saving strategy, activities such as the monthly meeting of the local government administrators have been shifted away from using local funds)

- Prepared proposal to provide assistance to Middle Peninsula Regional Jail Authority for Capital Improvement Plan education and submitted to Tom Swartzwelder, MPRJA Chairman.
- Received a call from Kevin Byrd, Executive Director of New River Valley PDC, concerning the Department of Conservation and Recreation policy of not allowing PDC to collect indirect on DCR grants.

HOUSING

Funding –VDMME

Project 300132 Energy Efficiency and Conservation Block Grant (EECBG)

Summary: Governor Timothy Kaine announced on October 6, 2009 that \$9.7 million in Energy Efficiency and Conservation Block Grants (EECBG) would be distributed on a competitive basis to small local governments. Virginia's 21 Planning District Commissions administered the program and assisted localities in the development of proposals which were ranked and awarded by the Department of Mines, Minerals and Energy (DMME). The program emphasizes a community-based approach to help meet energy and climate protection goals. MPPDC was awarded a contract to provide weatherization renovations to 12 homeowners ineligible for LMI weatherization programs in each of the 6 counties. MPPDC subcontracted the promotion and construction portions of this project to Bay Aging but is tasked with administering the overall project. MPPDC is administering the revolving loan program per DMME.

- Received a letter of compliance from the Virginia Department of Mines, Minerals and Energy (DMME) for the Middle Peninsula Planning District Commission's Energy, Efficiency and Conservation Weatherization Expansion Program funded by a grant from 2010-2012 awarded by DMME's Energy, Efficiency and Conservation Block Grant Program (EECBG) that was a result of the 2008 American Recovery and Investment Act (ARRA). The project assisted 20 homeowners throughout the Middle Peninsula Region with retrofitting their houses to become more energy efficient and reduce the cost of their utility bills.
- Executed ACH loan payments for EECBG loans.

MPPDC Administration

Administrative services provided to MPPDC programs. Planned FY13 Indirect Cost rate =50%

- Convened MPPDC Executive Committee. Agenda items included new staff position, Dragon Run Steering Committee staffing, midyear budget amendment, possible new MPPDC service centers, loan write-off policy recommendations, CEDS update, employee compensation model.
- Prepared and submitted A-87 Certificate of Indirect Costs and FY13 Audit Report to U.S. Department of Commerce.
- Received log-in credentials from VRS for access to new online system. Reviewed employee information, corrected errors, input October & November contribution data.
- Participated in VRS webinar regarding use of VRS Navigator website.
- Prepared vouchers, processed A/P, processed payroll, processed deposits and balanced bank accounts. Prepared MPPDC monthly financial statements.

Draft

**FAILING SEPTIC SYSTEMS AND HEIRS' PROPERTY:
FINANCIAL LENDING CHALLENGES AND POSSIBLE SOLUTIONS**



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The Middle Peninsula Planning District Commission commissioned this white paper to assist the MPPDC in its efforts to address failing septic systems associated with heirs’ property. This research was funded by a grant from the Virginia Coastal Zone Management Program under award number NA09NOS4190163 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce with additional support provided by the National Sea Grant Law Center under award number NA09OAR4170200 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.



EXECUTIVE SUMMARY

Heirs' property is a little-known form of property ownership that arises when land is passed down through the generations without written wills. Heirs' property is a more common form of ownership in low-income families due to lack of knowledge regarding the importance of wills and lack of access to affordable legal assistance. Depending on the size of the family, there may be dozens or even hundreds of individuals with a legal interest in the property. Because of the lack of documentation regarding property transfers, it is difficult for individuals living on heirs' property to prove that they are the rightful owners.

An inability to document clear title to their property has prevented some homeowners in Virginia from participating in the Middle Peninsula Planning District Commission's Revolving Loan and Grant Program for onsite septic repair. The funds for this program come primarily from two sources. Loan funding originates from the Virginia Water Facilities Revolving Fund and must be repaid to the state. Grant funding originates from the Virginia Water Quality Improvement Fund and are not required to be repaid. The funds for this program come primarily from the Virginia Water Facilities Revolving Fund in the form of loans that the MPPDC must repaid to the state. To ensure that the MPPDC can repay its obligations to the state, loans over \$3,000 require the borrower to sign a deed of trust. Only the owner of the property can sign a deed of trust. If ownership is unclear, MPPDC cannot award the loan.

Many low- and middle-income homeowners cannot afford to repair septic systems without financial assistance. However, homeowners with failing septic systems living on heirs' property are often unable to qualify for the MPPDC's financing assistance because ownership of the property is unclear. As a result, the septic systems remain unrepaired and continue to pollute nearby waters.

Resolving an heirs' property situation to establish clear ownership is not easy, but there are a variety of options available to both homeowners and the MPPDC. Homeowners can take action to clear title to their land, either on their own or with the assistance of attorneys. After identifying all the individuals with an interest in the property, homeowners can obtain *quitclaim deeds* from those individuals transferring their interest in the property to the homeowner. If it is impossible to identify all the existing ownership interests or obtain quitclaim deeds, a homeowner can file formal legal action to *quiet title* to the property or *partition the property* among the co-owners.

Although all homeowners should be encouraged to establish clear title to their property, clearing title may not be an option for all homeowners as it is a time-consuming and expensive legal process. Fortunately, there are also steps that the MPPDC can take to help heirs' property homeowners obtain septic tank repair financing. Virginia law permits individuals who have inherited land from someone who died without a will to file an "*Heirship Affidavit*" with the county circuit court. In some situations, this documentation may be enough to establish that the homeowner is the true owner of the property. Another alternative, albeit one that would require additional study and legislative action, would be the modification of the onsite septic repair loan program to a *property tax assessed financing* program modeled after Virginia's Property Assessed Clean Energy (PACE) Program. These programmatic changes, in combination with education and outreach regarding the heirs' property problem, could lead to increased access to the MPPDC's funding and, ultimately, improved water quality in the region.

I. INTRODUCTION

Failing septic systems can contribute significant amounts of pollution to nearby waters, contributing to nutrient loading and spreading disease. Many low-to-moderate-income homeowners cannot afford to repair failing systems without financial assistance. The Middle Peninsula Planning District Commission's Revolving Loan and Grant Program provides financial assistance to homeowners in the Rappahannock, York, and Coastal watersheds with malfunctioning, failing, and absent on-site wastewater treatment systems. Most homeowners receive assistance through a combination of grants and loans. The MPPDC Onsite Septic Repair program is the only public program repairing failing septic systems across the Middle Peninsula PDC region (with 77 failed septic systems repaired/replaced as of November 2011).¹ The loans provided by the MPPDC have ranged from (\$500 - \$25,000) with repayment periods of 5 to 15 years. The average loan to date is just under \$5,000, although the total repair costs average \$9,200.²

Some residents have been unable to take advantage of the MPPDC Onsite Septic Repair Program because they are living on "heirs' property" – land held in common by the descendants (or heirs) of someone who has died without a probated will. An individual living in such a situation often cannot prove that they are the rightful owner of the property, an essential requirement for most government grant and loan programs. Without documentation of clear ownership and title to the land, the MPPDC cannot expend funding to fix the failing septic system. As a result, these properties continue to pose an ongoing threat to public health and the environment.

To raise awareness of heirs' property and assist residents in an heirs' property situation, the MPPDC partnered with the National Sea Grant Law Center to conduct legal research on heirs' property ownership, the methods of clearing title to heirs' property, and possible options for MPPDC to pursue to remedy failing septic systems on heirs' property. This white paper begins in Section II with an overview of what heirs' property is and how this form of ownership arises under the law. Next, in Sections III and IV, the paper examines the risks and challenges associated with heirs' property ownership, including the inability of property owners to document clear title. The legal process for clearing title is discussed in Section V. Because clearing title in heirs' property situations can be very expensive and take years to complete, alternative methods to address the financial lending challenges associated with failing septic tanks on heirs' property are presented in Section VI.

II. OVERVIEW OF HEIRS' PROPERTY

An heirs' property situation usually arises in one of two ways. First, land may have been passed down from one generation to the next without a will. A will is a legal document stating who will receive the property of someone who has died. During a survey conducted in 2000, the AARP found that three out of five adults age 50 and older (60%) report having a will.³ That percentage, however, decreases with income. Only 50% of surveyed adults with household income below \$15,000 reported having a will.⁴

¹ E-mail from Elizabeth G. Johnson, Administrative Assistant, Middle Peninsula Planning District Comm'n, to authors (Apr. 25, 2012) (on file with author).

² Personal Communication with Elizabeth G. Johnson (Sept. 18, 2012).

³ AARP, WHERE THERE IS A WILL ...: LEGAL DOCUMENTS AMONG THE 50+ POPULATION: FINDINGS FROM AN AARP SURVEY 2 (2000), available at <http://assets.aarp.org/rgcenter/econ/will.pdf>.

⁴ *Id.* at 3.

When a property owner dies without a will, ownership of the property automatically transfers upon death to the owner's living relatives or heirs in accordance with state law.⁵ This process is known as "intestate succession." All of the deceased's legitimate heirs inherit an undivided, equal share of ownership in the property. It does not matter whether the heirs live on the property or even know that the property exists. An heirs' property situation can also arise when a property owner dies with a will, but the estate is not properly probated or processed through the legal system. For example, the deceased's will may never have been presented to a court for filing. In such situations, the deceased landowner's name may remain on the title and tax roles. The transfer of property in either scenario creates a "tenancy in common," a form of property ownership in which each tenant (or heir) has an undivided interest in the property and each tenant is entitled to equal use and possession of the property.

Heirs' property is likely a significant issue in Virginia because of the Commonwealth's history as a southern slave state.

Between the close of the Civil War and 1920, African Americans obtained nearly 20 million acres of land in the United States. Collectively, these acquisitions represented an amazing achievement in a society largely hostile to African-American property ownership. These original purchasers used land ownership to participate in the economic and political life of the nation.⁶

Former slaves often hoped that land ownership would lead to self-sufficiency, economic opportunity, and political participation for their descendants.⁷ Much of this land was passed down through intestate succession as the result of verbal bequests, and therefore held as heirs' property. Heirs' property remains a common form of ownership in some African-American communities today, likely due to a combination of factors. In 2000, the AARP found that white adults (64%) were more likely to have wills than African Americans (27%), although these findings were based on a rather small sample size and might not be representative of all communities.⁸ Income is probably also a factor, as low-income individuals have limited ability to utilize the legal system to protect their property interest. In addition, misconceptions about the nature of heirs' property ownership are common. Some owners may believe that the property is protected from loss or development because it cannot be mortgaged or sold.⁹

Ownership interests in such property can quickly multiply exponentially. Consider the following situation. John Doe is a widower with five children who dies without a will. Upon his death, his five children each inherited an undivided one-fifth interest in the land as tenants in common.¹⁰ "Undivided" means that each legitimate heir owns and has the right to use and occupy the entire property. Returning to John Doe's situation, although each child only owns a one-fifth interest in the property, they each have the right to use and occupy the entirety (100%) of the property. Now assume each of

⁵ VA. CODE ANN. § 64.2-200.

⁶ *Heirs' Property and Land Loss Prevention*, Lawyers' Committee for Civil Rights Under Law, http://www.lawyerscommittee.org/projects/community_development/page?id=0029.

⁷ *What is Heirs' Property?*, Southern Coalition, <http://www.southerncoalition.org/hprc/?q=node/5>.

⁸ AARP, *supra* note 3, at 3.

⁹ Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 1, 30 (2007).

¹⁰ The Virginia intestate succession laws state "if there is no surviving spouse, then the estate descends and passes to the decedent's children and their descendants." VA. CODE ANN. § 64.2-200(2).

John Doe's children has three children of their own and die without wills. There are now fifteen individuals owning the property as tenants-in-common. As the generations pass, more and more people, sometimes hundreds, inherit interests in the property. The heirs living on the property may not even be aware of how many people own an interest in the property, as they may lose touch with relatives and some heirs may have sold their ownership interest to individuals outside the family.

This exponential increase in co-owners creates numerous problems for land management. For example, heirs living on the property may be unable to obtain financing to maintain or improve the property because banks and lending agencies require all owners to agree to mortgage the property and repay the loan. Heirs that do not live on or near the property may not consider the property's upkeep their problem or even know that they are a co-owner. Reaching consensus is therefore difficult even when all the heirs' are known.

III. RISKY FORM OF OWNERSHIP

Although some families and communities may consider heirs' property ownership as one of the best ways to own and keep family land, heirs' property is actually extremely vulnerable to loss. Informal tenancies in common are rather risky because any person who inherits or purchases an interest in the property can force a sale by filing a legal action requesting that the tenancy in common be dissolved and the land partitioned. It only takes one unscrupulous land developer to purchase one of the heirs' ownership interests and force a sale of the entire property for someone to lose a home or farm that has been in the family for generations. Additionally, even when a forced sale is not a concern, heirs' property ownership can make it impossible for the person who is living on the property to enjoy many of the benefits of land ownership.

One of the primary legal problems with heirs' property is that it does not provide a clear title to the land. A clear title is an expression reflecting that ownership of the property is free of all mortgages, liens, leases, or encumbrances and that there are no legal questions or ambiguities as to the property's ownership.¹¹ Title to heirs' property is often considered "clouded" because the chain of title, or sequence of property transfers, is unclear and there are often unknown or unaccounted for ownership interests. A property owner with clear title to his land can use that land as security to obtain a mortgage or loan. Banks and other financial lending institutions insist on clear title because they do not want any complications if they have to repossess or sell the property in the event of a default. Even with small loans for home improvements, like septic tank repair, lenders need to know that their investment is secure.

In addition to the financing challenges, management of heirs' property is difficult because legally, every single heir, no matter how small his or her fractional interest, must sign off before anything can be done with that property. "This includes selling the property, taking out repair loans, obtaining some kinds of insurance, or getting assistance after disasters like Hurricane Katrina."¹² Individuals living on heirs' property may be unable to use the land for certain income-generating activities, such as timber harvesting, because all the heirs have to agree to that use. In addition, because each heir has an interest

¹¹ See Black's Law Dictionary 1622 (9th ed.).

¹² MISSISSIPPI CENTER FOR JUSTICE, HEIRS' PROPERTY: WHAT IT IS AND WHAT TO DO ABOUT IT, http://www.lawyerscommittee.org/admin/community_development/documents/files/0003.pdf.

in the property, they share equally in the risk when property is put up as security for a loan and therefore should have a say in how the property is used.

Fractional ownership also increases the risk that an heir will try to force a partition sale in order to escape the responsibility of paying any unpaid taxes or making costly repairs. Heirs may simply lack the necessary funds to cover expenses associated with the property and view a forced sale as their only option out of the situation. In addition, fractional ownership increases the risk that someone from outside the family will acquire an ownership interest and force a partition sale in an attempt to acquire the entire property. Virginia's partition law,¹³ as discussed in more detail below, permits any one of the co-tenants, no matter how small their share and how recently they acquired it, to ask a court to dissolve the tenancy in common and divide the property. If an equal division of the property among the co-tenants is not an option, the court can order the entire property sold at public action.¹⁴

IV. IMPROPER TITLES - OUTSIDE THE "CHAIN OF TITLE" (THE MOST COMMON HEIRS' PROPERTY SCENARIO)

Verifying clear title to real estate that has been passed to multiple heirs can be problematic. Title searches and examinations are usually performed in association with real estate transactions to provide assurance to buyers that the seller is the rightful owner and there are no defects with the title. Virginia law requires that title to land be registered with the local government not only to provide a record for taxation and other purposes, but also to provide notice of clear ownership to others. Because property ownership can change multiple times in a single generation, a registered title is necessary to establish that a person or persons claiming ownership is truly the owner. In this way, title records act like a "paper trail" of ownership. A title record, which is filed in the county where the property is located, provides a clear record of ownership.

Virginia uses an antiquated system for recording title, called the Torrens System.¹⁵ The Torrens System is "A system for establishing title to real estate in which a claimant first acquires an abstract of title and then applies to a court for the issuance of a title certificate, which serves as conclusive evidence of ownership."¹⁶ In a Torrens system, a physical certificate of title is issued (similar to the title to a car) for each parcel of real estate that serves as proof of ownership. A title search that reveals an improper title document or a lack of information regarding a parcel of property may indicate an heirs' property situation.

Indexes of land records and deeds are maintained by the clerks of the county circuit courts.¹⁷ A deed is considered valid in Virginia if it meets the following requirements:

- It is in writing;
- Signed by the grantor;
- Identifies the grantor and grantee;
- Contains words of conveyance that indicate the grantor's intention to immediately convey title.

¹³ VA. CODE ANN. § 8.01-81 ("Tenants in common ... may compel partition ...").

¹⁴ *Id.* § 8.01-93.

¹⁵ Currently, only eleven states use the Torrens System.

¹⁶ Black's Law Dictionary (9th Ed. 2009).

¹⁷ See VA. CODE ANN. § 17.1-249.

- Words such as grant, convey, transfer, give, or deed over will suffice; and
- Describes the property in sufficient detail so as to distinguish the land from all other parcels. The traditional rule holds that a deed is void if there is an incomplete description; however, modern courts are more willing to admit extrinsic evidence to clarify an ambiguous description.¹⁸

Under Virginia law, title to real estate automatically vests in the beneficiary upon the death of the owner. As a result, those who die intestate (without a will) in Virginia do not have to execute deeds to memorialize the passing of title, as many other states require.¹⁹ Rather, heirs are permitted to file an affidavit, referred to as an Heirship Affidavit, with the clerk of the circuit court of the jurisdiction where the real estate is located.²⁰ The Heirship Affidavit is then sent to the commissioner of revenue within that jurisdiction, who upon receipt “may transfer the real estate upon the land books and assess the real estate in accordance therewith.”²¹ Although the Heirship Affidavit is legal documentation of the identity of the heirs in existence on the date of the decedent’s death, it does not change the nature of the property ownership or amend the deed.

Without a deed in their name, it can be difficult for individuals living on the land to prove they are the rightful owners of property. In addition, failure to execute and record a new deed and/or file an Heirship Affidavit prevents the property transfer from being identified using the standard title search process. Such transfers are deemed to be “outside” the chain of title, and do not provide notice of ownership. For example, suppose O dies without a will. Heirs A and B fail to file a list of heirs with the clerk of the circuit court where the property is located. The land records will continue to identify O as the property owner and there would be no way for someone searching the records to know that A and B are the legal owners of the property.

Even when the proper documentation has been filed, title may remain clouded. Returning to the previous example, supposed O dies without a will, but this time Heirs A and B file an Heirship Affidavit and execute a new deed in their names. In this case, a title examination would reveal that the original owner died without a will, but the legal heir(s) recorded the title in their names. This would provide sufficient notice to potential buyers and interested parties that A and B are the rightful owners. Ownership, however, may become more fragmented as A and B’s interests are passed to others through sales or upon death. As time passes, it becomes more difficult to account for all the fragments of interest especially if some of the transfers are not recorded in the land records. All possible fragments of interest must be accounted for to insure a clear title; although “in most cases, the list of heirs recorded in the county clerk’s office will allow the title examiner to follow and document these conveyances.”²²

V. CLEARING TITLE TO HEIR PROPERTY IN VIRGINIA

¹⁸ See generally, VA Code Ann. § 55-48 for the required form of deeds in Virginia.

¹⁹ See generally *Probate in Virginia*, Virginia Court Clerks’ Association, available at http://www.courts.state.va.us/courts/circuit/resources/probate_in_virginia.pdf (outlining intestacy rules in Virginia).

²⁰ VA. CODE ANN. § 64.2-510. See also section IV.B.

²¹ *Id.*

²² W. Wade Berryhill, Va. Prac. Real Estate § 3:19, Title Examinations (2011 ed.).

For property owners to fully enjoy the benefits of property ownership, clouds on the title must be removed. The process of removing clouds is referred to as “clearing title.” Once the title has been cleared, the current residents are able to document clear proof of ownership. Not only does this make it easier for the owners to obtain a mortgage or sell the property, but it also enables them to take advantage of state and federal grant and loan programs to ameliorate any deficiencies with the property itself such as a failing septic system.

Although the services of an attorney are not essential to clear title (as discussed below), legal assistance can be invaluable for a property owner. The process for clearing title usually starts with the lawyer reviewing the most recent deed for the property. A deed should contain a legal description of the property owned, identify the owner(s) of record and specify how the property is titled (i.e., joint tenancy,²³ tenants-in-common,²⁴ life estate,²⁵ etc.). Ideally, the client will be identified on the deed as the owner, either individually or jointly, of the property. In that situation, there is no problem with proving legal ownership. However, if the deed identifies someone other than the client as the owner of record, then the lawyer must retrace the chain of title to determine who holds legal title.

Because heirs’ property can potentially have a significant number of heir-owners, attorneys recommend that individuals start by discovering their family tree. “A lawyer will discover the family tree for two purposes: (1) to trace the chain of title [as discussed above] and (2) to identify the beneficiaries of the estate of a decedent who did not have a will.”²⁶ The most logical place to begin is with the owner of record, tracing all of the owner’s descendants.

A lawyer will also trace the chain of title by examining the local probate records in the county where the owner of record resided to determine if that person’s estate was probated. If so, the probate records will indicate whether the deceased had a will and, if so, how his or her assets were distributed. If the decedent did not have a will, Virginia’s law of intestate succession determines how a decedent’s assets will pass.²⁷

Once the all of the heirs have been identified and located (which can be a monumental task), the lawyer will first try to have them relinquish their property interest by executing a quitclaim deed. A quitclaim deed conveys a person’s present interest in the property, rather than the property itself.²⁸ If they can be obtained from all the heirs, quitclaim deeds can be used to consolidate the fragmented interests in the property into a single owner. Obtaining these releases of property interest, however, can be quite a

²³ “A tenancy with two or more co-owners who take identical interests simultaneously, having the same right of possession and a right of survivorship.” Black’s Law Dictionary 1505 (8th ed).

²⁴ “A tenancy by two or more persons, in equal or unequal undivided shares; each person has an equal right to possess the whole property but no right of survivorship.” *Id.* at 1506.

²⁵ “An estate held only for the duration of a specified person’s life, usually the possessor’s.” *Id.* at 588.

²⁶ GEORGIA APPLESEED, HEIRS PROPERTY IN GEORGIA ATTORNEY TRAINING MANUAL 3.2, available at http://www.gaappleseed.org/docs/heirproperty_attorney.pdf.

²⁷ The Code of Virginia has determined a line of succession for inheritance of the estate of a person that has died intestate. The surviving spouse of the deceased will inherit the estate, unless the deceased has children and descendants who are not the children of the surviving spouse. In this instance, one third of the estate will go to the surviving spouse and two thirds to the children or their descendants. If the deceased has no surviving spouse, the whole estate will be divided among the deceased’s children. From this specific code, a lawyer can determine whether a family member has a right to some of the property. See VA. CODE ANN. 64.2-200.

²⁸ See BLACK’S LAW DICTIONARY 446 (8th ed.).

difficult task. Heirs are often reluctant to sign away all of their interests in the property due to personal connections with the property, expectations of payment, or family strife.

If obtaining quitclaim deeds from all the heirs is not possible, the lawyer may proceed to bring a quiet title action in the circuit court of the county where the property is located. In the heir property situation, a quiet title action is a proceeding to establish the resident heir's title to the property by forcing the other heirs to establish a claim to ownership or be forever prevented from asserting such right.²⁹ Remember that familiar saying "possession is 9/10 of the law"? Possession of property is presumptive proof of ownership because individuals generally own the property that they possess. This common law presumption of ownership based on possession requires that the party not in possession of the disputed property produce evidence of a superior title. If the party not in possession is able to produce such evidence of superior title, the presumption of ownership in the possessor is defeated. However, if the party not in possession fails to establish superior title to the property, the presumption of ownership based on possession prevails and relieves a court from having to preside over "a historical goose chase."³⁰ Quiet title actions can be fairly complex depending on the number of potential clouds involved and the lawyer must establish the particular form the action will take from the beginning.³¹ At the end of a successful quiet title action, the heirs currently in possession of the property will have obtained clear title.

Another, albeit drastic, measure to clear title is called a partition sale. A partition is the process by which a court divides the property among co-owners of a particular parcel in accordance with their respective interests, either by a partition in kind (where the land is physically divided up between the co-owners), or a partition by sale (where the land is sold and the proceeds are divided between the co-owners). The law allows anyone with an interest in the property to file a partition action and there is no requirement to obtain the consent of the other owners. Although partition actions might seem attractive options due to their simplicity, it is often difficult for the heir in possession to hold onto the property. If the court determines that the property cannot be divided between the co-owners, the property will be put up for sale at a public auction. If the heir in possession is unable to outbid other people at the sale, he or she will lose his or her home. In addition, the proceeds of the sale at public auction are often a fraction of the value that the parties or the market would ascribe to the property.

Many low- and middle-class families unfortunately lack the funds to retain an attorney to represent them throughout these lengthy legal processes. Property owners, armed with the proper information, can take significant steps on their own to clear title. As a first step, heirs can begin the process of identifying all family members who may have an interest in the property by constructing a family tree. The family tree should begin with the person identified as the owner of record and trace all the descendants. Once this is complete, the owners can file an Affidavit of Heirship form.

²⁹ See *id.* at 32.

³⁰ See *Graves v. Mortg. Elec. Registration Systems, Inc.*, No. CL-2010-17101, 2011 WL 3681735 (Va. Cir. Ct. June 29, 2011.)

³¹ The two forms of quiet title actions are conventional *quia timet* and *quia timet* against all the world. A successful conventional *quia timet* cancels any particular instrument which casts a cloud over the client's title to the land or subjects the client to potential future liability. A successful *quia timet* against all the world conclusively establishes the title of the land in the client and removes any particular cloud upon title to the land.

Clearing title to heirs' property, whether through quitclaim deeds, a quiet title action, or a partition action, is complex. Each method is extremely time-consuming because heirs must be identified, located, and informed of their interests in the property and rights under the law. Quiet title and partition actions can take years to work their way through the courts. Meanwhile, the failing septic systems on the heirs' property continue to pollute the water system. Although property owners should be encouraged to take action to obtain clear title to their property, there are alternative solutions to reduce the financial lending barriers associated with MPPDC's onsite septic repair program and heirs' property.

VI. Alternatives to Clearing Title

A. Affidavit of Heirship

Depending on the level and type of funding, MPPDC requires approved applicants for the MPPDC's Regional On-Site Wastewater Treatment and Disposal Funding to sign and record a Landowner Easement and Agreement "specifying that the homeowner will be responsible for maintaining the system."³² Only the owner of the property can legally sign easements and similar documents placing encumbrances on the property. If the homeowner is not the owner of record, there will be doubts as to whether the homeowner actually has the authority to sign the required legal documents.

In situations where the homeowner is not the owner of record, the MPPDC could inquire as to whether an heirship affidavit has been filed with the circuit court. Although an Affidavit of Heirship is not as reliable as other forms of administration of an estate, it does provide important documentation as to who has ownership interests in the property. As mentioned above, an Affidavit of Heirship is a legal device for recording the intestate transfer of real estate. The Affidavit of Heirship includes (1) a description of the real estate owned by the decedent at the time of his death, (2) an acknowledgement that the decedent died intestate, and (3) the names and last known addresses of the decedent's heirs at law.³³

An Heirship Affidavit identifying the homeowner as one of the heirs could be accepted as evidence that the homeowner in possession has a legitimate ownership interest in the property. Depending on the number of heirs listed on the form and the amount of time that has passed, this may be sufficient to establish that the homeowner has the authority to sign the easement and other required forms. For instance, if the homeowner is the only heir listed, he or she is likely the owner of the property. Confidence regarding ownership might decrease as the number of heirs increases, although it may still be feasible for the MPPDC to provide the grant money to ameliorate the failing septic systems. In general, to grant an easement over property, all owners must sign the easement. In addition, each owner would have to agree to bind themselves to their ratable portion of the loan (based on their fractional ownership). If there are only a small number of heirs listed on the affidavit, the homeowner may be able to obtain the signatures of all the heirs in order to submit the required legal documentation.

³² Letter from Beth Johnson, MPPDC Onsite Program Manager, to homeowners announcing availability of funding (Jan. 2012) (on file with authors).

³³ VA. CODE ANN. § 64.2-510(A).

Of course, if there are numerous heirs, significant time has passed since the filing of the affidavit, or the heirs fail to agree, the MPPDC would not be able to provide financial assistance. Family mediation or arbitration might be a possible next step for a homeowner; however, this can be a lengthy, expensive process as well. In these situations, the homeowner's only option may be to initiate legal proceedings to clear title. Because clearing title can be quite time-consuming and expensive, this will not be an option for some homeowners. Grant programs that require recipients to submit documentation of clear title will continue to deny such homeowners access to the vital assistance that they so desperately need and would otherwise qualify for.

B. Property Tax Assessed Financing

Another possible method to address the MPPDC's financial lending challenges with respect to septic tank repair is to restructure the loan program as a property assessment-based financing program, similar to the Property Assessed Clean Energy (PACE) Program. PACE is a financing tool for local governments to encourage private property owners to invest in clean energy projects, such as solar panels and other energy efficiency home improvements.³⁴ PACE financing helps private property owners avoid the high upfront costs associated with these types of energy improvements.³⁵ To secure the loan, the local government places a lien against the property where the improvements are being installed. The loan is then repaid to the local government through an incremental increase on the participating owner's property tax bill, often at a very low interest rate.³⁶ "PACE financing allows the property owner to pay for the project through a long-term, fixed-cost financing option that is underwritten by the value of the property (and not the property owner's credit)."³⁷ An appurtenant, first-priority lien³⁸ guarantees repayment of the total loan cost.³⁹ If for instance, the owner fails to pay off the PACE tax assessment before selling the property, then the new owner can either assume the obligation or require the seller to pay it off in full as part of the sale terms.⁴⁰ As government tax assessments usually have senior lien property over mortgage liens, the structure of the program also insures that the PACE loan is paid before any non-tax claims in the event of foreclosure.⁴¹ The Virginia Tax Code states that "There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance."⁴²

³⁴ Jason R. Wiener & Christian Alexander, *On-Site Renewable Energy and Public Finance: How and Why Municipal Bond Financing is the Key to Propagating Access to On-Site Renewable Energy and Energy Efficiency*, 26 SANTA CLARA COMPUTER & HIGH TECHNOLOGY L.J. 559, 574 (2010).

³⁵ Joel B. Eisen, *Can Urban Solar Become A "Disruptive" Technology?: The Case for Solar Utilities*, 24 NOTRE DAME J.L. ETHICS & PUB. POL'Y 53, 84 (2010).

³⁶ Wiener & Alexander, *supra* note 34, at 574.

³⁷ Jonathan B. Wilson, Maura A. Marcheski, Elias B. Hinckley, *The Great Pace Controversy: Renewable Energy Financing Program Hits a Snag*, 25 PROBATE AND PROPERTY 38, 38-9 (2011).

³⁸ See *Natural Res. Def. Council, Inc. v. Fed. Hous. Fin. Agency*, 815 F.Supp.2d 630, 633 (S.D.N.Y. 2011). The court also noted: "Because first lien status is critical to the success of PACE programs, eliminating the priority lien status would make PACE programs effectively impossible to finance through the capital markets." *Id.*

³⁹ Wiener & Alexander, *supra* note 34, at 574-75.

⁴⁰ Eisen, *supra* note 35, at 85. A more detailed analysis of the economics of land-sales contracts is beyond the scope of this research.

⁴¹ Wiener & Alexander, *supra* note 34, at 575.

⁴² VA. CODE ANN. § 58.1-3340

States establish PACE programs by granting municipalities the authority to create special assessment districts (SADs),⁴³ to define qualified improvement projects, and to issue bonds to raise capital.⁴⁴ SADs typically overlay traditional assessment districts that finance local improvements such as schools, roads, and water retention facilities.⁴⁵ After establishing a PACE SAD, the municipality can then raise the needed funds by issuing tax-exempt bonds,⁴⁶ which are backed by first-priority liens.⁴⁷ These bonds can be an attractive investment option.⁴⁸ PACE financing is often seen as a win-win situation for everyone: the property owner receives the benefit of lowered energy costs with little or no upfront expense, the investor receives a guaranteed investment return, and the community benefits from an improved environment.

The Virginia Legislature authorized the use of PACE financing in 2009. Pursuant to § 15.2-958.3(A) of the Virginia Code, “Any locality may, by ordinance, authorize contracts to provide loans for the initial acquisition and installation of clean energy improvements with free and willing property owners of both existing properties and new construction.” Local governments are further authorized to combine loan payments “with billings for water or sewer charges, real property tax assessment ...”⁴⁹ The Virginia Legislature reenacted the legislation authorizing the program in 2010 providing additional authority to local governments to secure the PACE loans by placing “a lien equal in value to the loan against any property where such clean energy systems are being installed.”⁵⁰

PACE financing is a twist on local government “special assessments.” Special assessments are commonly used by local governments to finance infrastructure improvements, such as paving a road or installing street lighting, through the assessment of property specifically benefited by the improvement.⁵¹ Virginia localities, for example, are authorized to use special assessments to fund local stormwater management programs.⁵² Initial funding to cover the cost of infrastructure and equipment may be obtained through the issuance of general obligation or revenue bonds.⁵³ Administration, maintenance, and monitoring costs may be paid for or recovered through charges “assessed to property owners or occupants ... and shall be based upon an analysis that demonstrates the rational relationship between the amount charged and the services provided.”⁵⁴ Localities may combine the billings for stormwater charges with billings for water or sewer charges, real property tax assessments, or other billings.⁵⁵

⁴³ SAD is a general term. Some jurisdictions have chosen to give the districts a unique name. See Wiener & Alexander, note 34, at 577 (noting that the city of Berkeley, California’s district is called Sustainable Energy Financing District).

⁴⁴ Eisen, *supra* note 35, at 84.

⁴⁵ Wiener & Alexander, *supra* note 34, at 570.

⁴⁶ *Id.* at 572.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ VA. CODE ANN. § 15.2-958.3(B).

⁵⁰ An Act to amend and reenact § 15.2-958.3 of the Code of Virginia, relating to clean energy programs, S. 110 (approved Mar. 11, 2010).

⁵¹ OSBORNE M. REYNOLDS, JR., LOCAL GOVERNMENT LAW 350 (2nd ed. 2001).

⁵² See, VA. CODE ANN. § 15.2-2114.

⁵³ *Id.* § 15.2-2114(F).

⁵⁴ *Id.* § 15.2-2114(B).

⁵⁵ *Id.* § 15.2-2114(F).

The Virginia legislature has approved the use of special assessment to improve water quality through the implementation of local stormwater management programs. Although septic tank repair is not a “clean energy improvement,” the authorization of PACE financing is evidence of legislative support for property assessed tax financing. The MPPDC may wish to explore the feasibility of partnering with local governments within the District to provide public financing for septic tank installation and repair with repayment through special assessments on local government property taxes. This type of financing mechanism reduces the need to establish clear title as the loan is repaid as the taxes on the property are paid. In addition, in the event of a default, the repayment can be secured through normal processes for tax default enforcement including, in extreme cases, the sale of the property. This repayment mechanism provides additional security that the underlying loan will be repaid.

Because Virginia is a “Dillon Rule” state, legislative authorization may be required before local governments can impose a special assessment for septic tank improvements. Legislative language could be modeled after Va. Code Ann. § 15.2-2114 (stormwater regulation) or § 15.2-958.3 (clean energy programs). MPPDC already has a designated funding source for the septic tank repair program, so there may not currently be a need to issue bonds. There is no dedicated long-term funding source, however, so alternative funding sources might need to be explored in the future. Although PACE financing may only be used to provide loans for the initial acquisition and installation of clean energy improvements, stormwater special assessments may be used to cover the ongoing administrative and maintenance costs of the stormwater program. By combining elements of both programs, the MPPDC may be able to obtain long-term funding for personnel or other costs associated with septic tank repair.

VII. Conclusion

Water quality is an issue of significant concern in the Chesapeake Bay region and the Middle Peninsula Planning District Commission’s Revolving Loan and Grant Program was established to provide funding and incentives for water quality improvement projects. MPPDC’s ability to reduce water pollution from failing septic systems is currently hampered when homeowners live on heirs’ property. Heirs’ property poses a number of challenges for property owners and their lending institutions that, unfortunately, are not easily addressed or solved. Homeowners should be encouraged to take action to protect their property interests through the execution of wills and recordation of deeds and other real estate documents. In addition, when ownership is unclear, homeowners should institute legal action to clear title to their property.

Recognizing that clearing title will not be a feasible option for all homeowners, the MPPDC could modify its lending procedures and policies to make it easier for heirs’ property owners to access financial assistance. For example, as mentioned above, heirship affidavits could be accepted in some situations as evidence of ownership and clear title. In addition, the loan program could be restructured as a property assessment based financing program. This would require a simple legislative modification to 15.2-958.3(A). These programmatic changes, in combination with education and outreach regarding the heirs’ property problem, would lead to increased access to MPPDC’s funding and, ultimately, improved water quality for the region.

Executive Summary

In light of changing Federal and State regulations associated with Chesapeake Bay nutrient goals (ie. Total Maximum Daily Loads (TMDL), clean water, onsite sewage disposal system (OSDS)/ alternative onsite sewage system (AOSS) management, and storm water management, Middle Peninsula Planning District Commission (MPPDC) directed staff to develop a rural pilot project aimed at identifying pressing coastal issue(s) of local concern. MPPDC staff worked to develop, assess, and articulate enforceable policy tools necessary to assist localities with the reduction of nutrient loadings by evaluating and assessing a series of environmental factors anticipated to support, clarify, prepare, and maximize locality or regional participation proposed in the Chesapeake Bay TMDL Phase II Watershed Implementation Plan.

With the passing of HB 1065 in April 2012, the Erosion and Sediment Control Act integrated the Stormwater Management Act, and the Chesapeake Bay Preservation Act regulatory programs into one consistent regulation. The bill also eliminated the Chesapeake Bay Local Assistance Board and places its responsibilities with the Virginia Soil and Water Conservation Board. Thus with guidance from the State regarding many of the factors influencing water quality, the State provided limited guidance for failing onsite septic systems. As failing systems within the Middle Peninsula persist and continue to impact local water quality, year one of this project focused on understanding the failing septic system enforcement process; the mechanics of establishing a sanitation district or sanitary district to manage the temporal deployment of nutrient replacement technology for installed OSDS systems; and the impacts of Virginia Department of Health (VDH) Emergency Regulations on land use and reassessment.

Through the development of a project committee, MPPDC staff and consultants found communication gaps within the current failing system enforcement process that may hinder homeowners and VDH in fixing failing/leaking septic systems. As these gaps were specifically identified the Middle Peninsula Watershed Implementation Plan committee and MPPDC have recommended and implemented solutions to improve the current enforcement process. Additionally, year one of this project was devoted to positioning Middle Peninsula localities in order to respond comprehensively to recent water quality mandates (ie. Erosion and Sediment Control Act integrated the Stormwater Management Act). MPPDC applied for and was rewarded two grants from: (1) National Fish and Wildlife Foundation (NFWF) to develop a Regional TMDL and Stormwater Management Program (Up to \$150,000 in technical services) and (2) Department of Conservation and Recreation (DCR) to explore options and coordinate regional efforts when responding to the new stormwater regulations (\$99,857).

This project was funded by the Virginia Coastal Zone Management Program at the Department of Environmental Quality through Grant FY11NA11NOS4190122 Task 94.02 of the U.S Department of Commerce, National Oceanic and Atmospheric Administration, under the Coastal Zone Management Act of 1972, as amended.

The views expressed herein are those of the authors and do not necessarily reflect the views of the U.S. Department of Commerce, NOAA, or any of its sub-agencies.



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MPPDC Executive Committee Recommendation to Commission Regarding Nonperforming Loans

The MPPDC Executive Committee met on 11/14/2012 and recommended the Commission approve a Loan Write-off Policy.

As MPPDC's auditor recommended the Commission should have a policy in place for writing off nonperforming loans so as to not overinflate MPPDC's assets on balance sheet the MPPDC Executive Committee makes the following recommendations to the Commission:

Recommendations

- If there is a reasonable expectation that a loan will not be repaid it should be written off and expensed as bad debt.
- Loans 6 months in arrears with no positive communication will be declared in default
- 1 year after declaration of default – with no action – loan balance will be written off as bad debt
- Loans will be written off for bankruptcy after notice of discharge of debt is received

MPPDC staff can continue to attempt to collect on debts even after written off (except for bankruptcies)

MPPDC Loan Portfolios (as of 10/31/12)

- Onsite Program RLF- \$128,599
- Small Business RLF - \$100,035
- EECBG RLF - \$ 39,695

Total Loan Receivables =\$268,329 (30% PDC assets)

Onsite loans in default

- #0038 - \$4627 – 1087 days – last payment 10/15/09 – no collateral
- #0066 - \$354 – 661 days – last payment 12/15/10 – no collateral

Business loans in default

- #2017 - \$6521 – 845 days – last payment 4/15/10 (received in default from MPBDP) – collateral on fishing boat

EECBG – no loans in default

MPPDC Nonperforming Loan Write Off Policy

Loans 6 months or more in arrears with no positive action or communication on the part of the borrower will be declared to be in default and notice of such will be sent to the borrower by certified mail with request for full payment. One year after declaration of default and with no action taken on part of borrower, the loan balance will be written off as bad debt. In the case of bankruptcies, loans will be written off as notice of discharge of the debt is received. MPPDC staff should continue to attempt to collect on debts even after they have been written off (except in case of bankruptcies).