

Special Area Management Plan: DRAGON RUN WATERSHED

The Virginia Coastal Zone Management Program has funded a five year endeavor through the Dragon Run Watershed Special Area Management Plan that supported and promoted community-based efforts to preserve the cultural, historic and natural character of the Dragon Run, while preserving property rights and the traditional uses within the watershed.



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Executive Summary

The Dragon Run Special Area Management Plan (SAMP) mission is to preserve the watershed's cultural, historic, and natural character, while preserving property rights and the watershed's traditional uses (e.g. forestry, farming, recreation). Anticipating future growth pressures, the SAMP seeks to balance demands by improving the tools (i.e. comprehensive plans/zoning ordinances) available to manage the environmental, social, and economic resources of the watershed.

Previously, MPPDC staff focused on tools, such as conservation easements, as means for landowners to keep their land in the family, while continuing to farm/timber and receive tax benefits. Additionally easements as well as land holdings by tax exempt entities/political subdivisions support the goals of the SAMP – protecting water quality, supporting traditional uses (farming, forestry, etc), and preserving rural character – however there are unintended fiscal impacts to the localities. Therefore in recent years as the amount of land conserved has soared, and as these conserved lands have impacted local revenue this has led to opposition from some local governments. Because this opposition has the potential to jeopardize the tax benefit of the easement, it may decrease the desirability for private landowners to utilize this tool. The MPPDC adopted a resolution requesting the Dragon Run Steering Committee to study this issue further and to provide enforceable policy recommendations to address the conflict.

During this grant year MPPDC staff focused on four specific activities:

- 1) Providing technical assistance for each watershed county during its adoption cycle and assisting the implementation of the Dragon Run Comp Plan and/or Zoning Amendments;
- 2) Administering a technical assistance program that supports the implementation of the Watershed Management Plan and supporting of the Dragon Run Steering Committee;
- 3) Assessing the impact of conservation easements and conservation land holdings by tax exempt entities/political subdivisions on local revenues and land use patterns; and
- 4) Legislative and outreach efforts associated with NA09NOS419163 Task 95.01 Failing Septic Systems and Heir Properties

As this report reviews the activities that have occur through the FY2010 grant year, MPPDC staff also summarizes the outcomes and progress that has occurred over the last five years within the Dragon Run Watershed while being funded by the Virginia Coastal Zone Management (CZM) Program.

Introduction

As one of the Chesapeake Bay watershed's most pristine waterways, the Dragon Run flows forty miles along and through non-tidal and tidal cypress swamps situated in portions of Essex, King and Queen, Middlesex, and Gloucester Counties. Since it plays such a central role in the Middle Peninsula's cultural, historic, and ecologic significance, the Virginia Coastal Zone Management Program has funded efforts for the past five years to support the development and implementation of a Special Area Management Plan (SAMP) for the Dragon Run.

With a mission to support and promote community-based efforts to preserve the rich character, while preserving property rights and the traditional uses of the watershed, the Dragon Run SAMP has primary goals and objectives to meet their mission:

GOAL I: Establish a high level of cooperation and communication between the four counties within the Dragon Run Watershed to achieve consistency across county boundaries.

OBJECTIVE A - Develop a plan to address the inevitable future development pressure to change the traditional use of land in the Dragon Run Watershed.

OBJECTIVE B - Achieve consistency across county boundaries among land use plans and regulations in order to maintain farming and forestry and to preserve natural heritage areas by protecting plants, animals, natural communities, and aquatic systems.

OBJECTIVE C - Provide ongoing monitoring of existing plans and planning tools in order to assess traditional land uses and watershed health and take action necessary to preserve the watershed.

OBJECTIVE D - Comprehensively implement Best Management Practices (BMPs) for water quality, wildlife habitat, and soil conservation.

GOAL II: Foster educational partnerships and opportunities to establish the community's connection to and respect for the land and water of the Dragon Run.

OBJECTIVE A - Encourage experience-based education consistent with the Stewardship and Community Engagement goals of the Chesapeake 2000 Agreement.

OBJECTIVE B - Promote the community and economic benefits of the Dragon Run derived from its natural characteristics and traditional uses such as farming, forestry, hunting and fishing.

GOAL III: Promote the concept of landowner stewardship that has served to preserve the Dragon Run Watershed as a regional treasure.

OBJECTIVE A - Address the potential dilemma of preserving the watershed's sense of peace and serenity by protecting open space and reducing fragmentation of farms, forests, and wildlife habitat versus the landowner's rights in determining or influencing future land use.

OBJECTIVE B - Educate landowners about the regional importance of the Dragon Run

These goals and objectives have guided projects associated with the Dragon Run Watershed and have been met through regional partnerships that focused on developing tools to facilitate the long-term protection of the watershed.

Product #1: Land-Use Policy Adoption/Implementation Technical Assistance

In past years MPPDC staff, in partnership with the Dragon Run Steering Committee (DRSC) drafted language for watershed county comprehensive plans and zoning amendments focused on the long-term protection of the Dragon Run watershed and the way of life it supports. MPPDC staff consulted with representatives from the two watershed counties (ie. Essex and Gloucester Counties) in the process of updating comprehensive plans. Mr. Dave Whitlow, Essex County Administrator, reported that the recommended language is currently included in their draft and that their first Work Session is scheduled for April 19th. Anne Ducey-Ortiz, Gloucester County Planning Director, reported that many of the recommendations are in the draft Comprehensive Plan, which is anticipated to be considered for adoption in Summer 2011. Neither of the counties were in the process of updating zoning ordinances. Middlesex County Planning Director reported that the recommendations will be considered as the counties reviews its zoning ordinances over the next year or two. However, with the resignation of the MPPDC staff project manager in April 2011, the time and effort that MPPDC staff contributed to technical assistance was reduced. Regardless, there was no additional progress was made by watershed counties during the latter half FY10 grant cycle in the development of their comprehensive plans or zoning ordinances amendments .

Product #2: Dragon Run Steering Committee, Dragon Technical Assistance and Education

To provide logistical and technical support to the citizen-based Dragon Run Steering Committee, MPPDC staff organized and facilitated DRSC meeting in December 2010 (Appendix A) and February 2011 (Appendix B). However with the resignation of MPPDC staff project manager in April 2011, the supporting role of MPPDC staff was reduced. MPPDC staff support only consisted of supplying a meeting venue for the DRSC at the Saluda Professional Center as well as providing the funds to celebrate Dragon Run Day. Therefore DRSC used the funds to plan for and deliver a successful Dragon Run Day 2011. Preparations for the event included monthly meetings of the Dragon Run Day Subcommittee from May 2011 through August 2011 and, as the event approached, these meetings occurred on a weekly basis. Additionally, funding through the Virginia Coastal Zone Management program supported partnerships with Dragon Run Steering Committee of the Middle Peninsula Planning District Commission, Thousand Trails RV Resort, York River Charters and Gloucester County Parks, Recreation and Tourism, which created an event to increase public awareness Dragon Run watershed and to educate its residents and visitors about activities both helpful and harmful to its health. Including exhibits, displays and hands-on activities for kids, it was a learning experience for all that attended. These partnerships also facilitated an expansion of past Dragon Run Days, with the Gloucester County Department of Recreation and Tourism holding their annual "Ride the Dragon" Bike Ride on Dragon Run Day.

During this reporting period, MPPDC staff also distributed approximately 620 Dragon Run DVDs to watershed counties, Virginia State Agencies, as well as the general public. As this DVD highlights the natural and human characteristics of the watershed that make it unique and worth saving, it also provides information on initiatives currently underway to protect the watershed and the way of life it supports.

Finally to expand watershed education outreach efforts, MPPDC staff provided input through the development of Dragon Run Watershed curriculum by Chesapeake Bay NERRS. This curriculum is in its final stages of development and will be sent to schools within the region upon completion in late Spring 2012.

Product #3: Conservation Land-use and Assessment Policies

Although considered to be an accomplishment that supports SAMP goals, the large quantity of protected lands in the Dragon has caused some local government objection within the region. As the fiscal impacts of easements were clarified in the FY 2009 (NA09NOS4190163 Task 95 and 97.01) grant cycle, FY2010 was used to discuss relevant policy options.

To begin this year's project the Dragon Steering Committee asked the Middle Peninsula Planning District Commission to adopt resolution to support the development of policies to address land use impacts of conservation easements. Upon adoption of the resolution (Appendix C), MPPDC staff moved forward with this project. In coordination with the Conservation Corridor II project (NA10NOS4190205 Task 97.01), MPPDC staff hosted forums for local officials and Commissioners of Revenues (COR) from each county to discuss quantitative results derived in the FY 2009.

First in October 2011, MPPDC staff hosted Middle Peninsula CoR to present the findings (Appendix D). MPPDC staff reviewed VA Code associated with conservation easements (i.e. Virginia Open Space Land Act §10.1-1700 and Virginia Conservation Easement Act §10.1-1009) and the authority given to localities to adjust the fair market value of properties with conservation easements. MPPDC staff also reviewed the specific quantitative findings from each county; since each locality approached conservation easements differently, it prompted discussions about the VA Code and the professional responsibilities of the CoR. In particular, CoR shared ideas to improve the current process in handling conservation easements in their locality as well as within the region. To name a few, suggestions included (1) maintaining a list of eligible conservation easement holders within the State for CoR reference, (2) MPPDC staff could host educational seminars to share fiscal impacts from MPPDC localities, and (3) MPPDC staff could work with CoR to develop a template to track conservation easements (ie. Tax-map number, holder, fair market value, devaluation due to easement, etc). As this meeting was the first of its kind between Middle Peninsula CoR, it ultimately facilitated the development of professional relationships and the exchange of ideas and practices which assisted several localities in maximizing their fiscal benefits through the composite index.

A month following the CoR meeting, MPPDC staff convened a meeting with a more diverse group of local stakeholders, including Directors of County Planning within the Middle Peninsula, Hampton Roads Planning District Commission (HRPDC), The Nature Conservancy (TNC), Virginia Outdoor

Foundation (VOF), Middle Peninsula Land Trust (MPLT), Virginia Department of Forestry (DOF), as well as Virginia Department of Conservation and Recreation (DCR) (Appendix E). Although the meeting's topic of discussion was almost identical to the CoR meeting, the discussion ensued by these stakeholders was invariably different due to this group's professional experience in land use and public policy. Therefore as the MPPDC staff reviewed the findings from year 1, the stakeholders offered policy solutions and recommendations to improve how localities account for conservation easements within their jurisdiction.

As a result of these stakeholder meetings, challenges of accounting for conservation easements were identified. Challenges included (1) communication between the conservation community and localities, (2) disconnection between land use tools and current views of local officials, (3) Commissioners of Revenue and Planning Staff are unable to easily track/search for conservation easements once they are recorded, and (4) consistency in accounting for the reduction of fair market values of lands with conservation easements. Thus, to offer some solutions, MPPDC staff developed a matrix of Public Policy Options and Recommendation to improve local accountability of conservation easements within a given locality. As part of the matrix, a Memorandum of Understanding (MOU) template was created to establish a process agreement to encourage communication between these stakeholder groups upon the initiation of a conservation easement.

This Public Policy Options and Recommendation matrix was later incorporated into a Guidance Document (Appendix E) to assist counties participating within the Virginia Use Value Assessment Program (ie. land-use counties), and those counties that are not (ie. non-land use counties), by offering options to improve the accountability of conservation easements within a given jurisdiction. To facilitate interested localities in making recommended land use policy and administrative changes, MPPDC presented the matrix to county administrators and planning directors. Upon completion of this Guidance Document, MPPDC staff transmitted this information to Middle Peninsula Commissioners of Revenue as well as local elected official to consider adopting as enforceable policy.

In addition to developing a guidance document, MPPDC staff presented the fiscal findings from the FY2009 grant project at two state conferences, including Virginia's United Land Trust (VaULT) Conference and the Virginia Association of Assessing Officers (VAAO) Educational Seminar (Appendix F).

At the VaULT conference, the audience primarily included conservation entities, while the VAAO Seminar consisted of Commissioners of Revenue and Assessors throughout the State.

In any case, Middle Peninsula localities have become a case study for all other counties within the Commonwealth of Virginia, particularly as localities work within the same Virginia Code framework and strive to maximize their fiscal benefits through the composite index. MPPDC staff inquired about the usefulness of report from year 1 and how it may be used or is currently being used by conservation entities as well as counties:

“I am bringing together a Land Trust subcommittee under our Conservation Planning & Stakeholder Outreach Committee to talk about how we might use your study and other similar information to develop a presentation for County Administrators, Elected Officials, Planners and Commissioners of Revenue. The goal of the presentation will be to educate them about the value of conservation easements and the impacts to County revenues and state education funding.” – **Mr. John R. Eustis, Executive Director New River Land Trust (June 2011)**

“I have talked about and provided your well done study to officials and staff in the counties of Bland, Carroll, Floyd and Montgomery. This has included county administrators, board of supervisors and commissioners of revenue. What I need to do now is follow up with meetings specifically about the findings and how things are being done in these counties.” – **Mr. John R. Eustis, Executive Director New River Land Trust (November 2011)**

“We’re already using it [the Conservation Easement Report] in our advocacy work here the Piedmont Environmental Council.” –**Ms. Heather Richards, Director of Land Conservation Piedmont Environmental Council**

“I’ve read it [the Conservation Easement Report] and found the results both interesting and potentially helpful. I expect we [Land Trust of Virginia] will be using the study next time we hear a challenge from a member of the Board of Supervisors, member of the public, or legislative representative claiming that easements adversely affect the county’s tax base. Your report may be particularly helpful to other county tax assessor’s offices in properly assessing properties under easement.” – **Mr. Donald J. Owen, Executive Director Land Trust of Virginia (June 2011)**

Q: How has your organization utilized the report? Or how does your organization plan to use this report in the future?

A: "To incorporate this research and study as reference in the 2013 *Virginia Outdoors Plan*." - Ms. Janit Llewellyn, Virginia Department of Conservation & Recreation (June 2011)

Finally, as part of FY2009 MPPDC staff calculated a new true value of property for each county within the Middle Peninsula based on the guidance provided by the Virginia Conservation Easement Act. As the composite index is based on the true value of property (weighted 50%), adjusted gross income (weighted 40%) and the taxable retail sales (weighted 10%), MPPDC staff was interested in how these new values would impacts the composite index score for Middle Peninsula localities. Therefore, in the Spring of 2010 MPPDC staff sent these rough estimated numbers to the Virginia Department of Education (VDOE) to have them calculate an adjusted composite index score for the county. Unfortunately when the FY2009 closed there was no response from the VDOE, however just recently MPPDC staff received the requested information. Table 1 shows the adjusted true value of property calculated by MPPDC staff and the associated composite index score. DOE also included the DOE 2008-2010 composite index score which was the actual score used during that time period.

Div. Num.	Division	Adjusted-TRUE VALUE OF PROPERTY	DOE 2008-2010 Composite Index	2008-2010 Composite Index Calculated for Middle Peninsula Planning District Commission
28	ESSEX	\$1,327,363,969.00	0.4071	0.4035
36	GLOUCESTER	\$3,854,185,332.00	0.3456	0.3453
49	KING AND QUEEN	\$811,152,696.00	0.3868	0.3857
50	KING WILLIAM	\$1,079,225,138.00	0.2918	0.2911
57	MATHEWS	\$1,704,515,384.00	0.5337	0.5336
59	MIDDLESEX	\$2,401,682,167.00	0.6777	0.6752

The table also shows that in each county, the composite index score decreased which means that each county would receive more education funds from the Commonwealth. To review, the composite index score determines a school division's ability to pay education costs within their county. The score ultimately represents the percentage that each county is expected to contribute to funding their cost of education within their county. Thus as Essex County has a composite score of .4071, this means that Essex has to pay 40.71% of its educational cost.

With this information, MPPDC staff conducted further calculations to show how much additional revenue the county may receive from the Commonwealth, if County Commissioners of Revenue adjust the fair market values of lands with conservation easements according to the guidance in the VA Conservation Easement Act (Table 2). *Please note that the 2010 School Budget was used as this was the revenue needed to fund all education activities.* As one can see in Table 2, the composite index changes are quite small, however this small change may fiscally benefit Middle Peninsula localities by reducing the revenue and percentage they contribute to their education program. This is good news as the local government budgets remain tight.

County	2010 School Budget	DOE 2008-2010 Composite Index (CI)	2008-2010 Composite Index for MPPDC	Revenue needed by the County to cover educational costs based on...		Additional Funds Received from the State
				DOE's 2008-2010 CI	2008-2010 CI for the MPPDC	
Essex	\$29,289,038	0.4071	0.4035	\$11,923,567.36	\$11,818,126.83	\$105,440.53
Gloucester	\$50,282,833	0.3456	0.3453	\$17,377,747.08	\$17,362,662.23	\$15,084.84
King & Queen	\$10,498,673	0.3868	0.3857	\$4,060,886.71	\$4,049,338.171	\$11,548.54
King William	\$24,733,410	0.2918	0.2911	\$7,217,209.03	\$7,199,895.65	\$17,313.38
Mathews	\$7,753,717	0.5337	0.5336	\$4,138,158.76	\$4,137,383.39	\$775.37
Middlesex	\$13,276,477	0.6777	0.6752	\$8,997,468.46	\$8,964,277.27	\$33,191.19

Product #4: Legislative, Education & General Outreach on Heir Property Ownership Issues

Water quality degradation associated with heir property ownership from failing septic systems has existed for decades with no public policy strategy to correct the source of impairment. Therefore MPPDC staff, partnered with the National Sea Grant Law center to address legal tools, research, and education needs to address failing septic systems associated with “heir property ownership”. As a result, a report titled “FAILING SEPTIC SYSTEMS AND HEIRS’ PROPERTY: FINANCIAL LENDING CHALLENGES AND POSSIBLE SOLUTIONS” was developed (See Appendix I for the full report). This report recommended that:

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.

In response MPPDC staff worked with the MPPDC Commission, Legislative representatives, and local elected officials to advance this recommendations of this project (NA09NOS4190163 Task 95.01) with the development of House Bill 1448 (Appendix J). This bill amends the Code of Virginia by adding a section numbered §15.2-958.6, relating to the financing of repairs for failed septic systems. Currently, in February 2013, this bill has passed the House with a 100-Yes and 0-No Vote and has been referred to the Senate's Committee on Local Government.

Conclusions

MPPDC staff in partnership with the Dragon Run Steering Committee continued focusing on their mission to preserve the watershed's cultural, historic, and natural character, while preserving property rights and the Dragon Run watershed's traditional uses (e.g. forestry, farming, recreation) in FY2010. Through technical assistance as well as education and outreach efforts, MPPDC staff has been able assist the people who live in the communities within the Dragon Run to understand how a watershed works and how they can play a role in planning of the watershed's future.

Cumulative Goals and Outcomes (FY2005-FY2010)

Since 2001 the Virginia Coastal Zone Management program has invested in the Dragon Run watershed through a Special Area Management Plan (SAMP). Upon development of the Dragon Run Watershed Management Plan, this plan was originally adopted in 2003 by Essex, Gloucester and King and Queen Counties. The Special Area Management Plan process provided a unique opportunity to educate citizens about how the ways in which they live impact the watershed in which they live in. Through the last five years, MPPDC staff and the Dragon Run Steering Committee engaged many people who live in the communities within the Dragon Run to understand how a watershed works and how they can play a role in planning for the kinds of communities of which they dream. The SAMP has been a superb tool for integrating and coordinating activities that lead to a watershed vision. Please find a summary of the Dragon Run SAMP written by the Virginia Coastal Zone Management Program in Appendix H and a list of outcomes as a result of Virginia Coastal Zone Management (CZM) Program Section 309 funding (FY2006-FY2010) below:

Dragon Run Special Area Management Plan: Cumulative Goals and Outcomes (FY2005-FY2010)

GOAL I:

Establish a high level of cooperation and communication between the four counties within the Dragon Run Watershed to achieve consistency across county boundaries.

OBJECTIVE A - Develop a plan to address the inevitable future development pressure to change the traditional use of land in the Dragon Run Watershed; **OBJECTIVE B** - Achieve consistency across county boundaries among land use plans and regulations in order to maintain farming and forestry and to preserve natural heritage areas by protecting plants, animals, natural communities, and aquatic system; **OBJECTIVE C** - Provide ongoing monitoring of existing plans and planning tools in order to assess traditional land uses and watershed health and take action necessary to preserve the watershed; **OBJECTIVE D** - Comprehensively implement Best Management Practices (BMPs) for water quality, wildlife habitat, and soil conservation.

Outcomes

- 1. Provided technical assistance to King & Queen, Essex, Gloucester, and Middlesex Counties in consideration of the Dragon Run land-use planning recommendations for adoption. MPPDC staff engaged counties through county meetings, hearings as well as interviews to discuss the Special Area Management Plan (SAMP) and land use recommendations (FY2006).**
More specifically, MPPDC staff attended 2 Planning Commission and 1 Joint hearing meetings in King and Queen County; attended 1 Comprehensive Plan Steering Committee meeting in Gloucester County; continued communications regarding potential timeline for planning commission/board of supervisor consideration for Essex County; attended 1 meeting with newly hired Planning Director for Middlesex County to discuss SAMP and land-use recommendations, as well as a consideration timeline (FY2006).
- 2. Developed a Code of Conduct based on the Public Trust Doctrine as it pertains to the public's right to ingress and egress to waterways such as the Dragon Run. As this was integrated into a brochure it was conveyed to public access entities, such as the Middle Peninsula Chesapeake Bay Public Access Authority (FY2006).**
As public access opportunities increase throughout the Dragon Run Watershed, understanding the public and private rights for access becomes important reducing the potential for conflict between public resource users and private landowners.
- 3. Obtained funding from the Virginia Department of Conservation and Recreation to cover construction costs of a kiosk at the Dragon Run which displayed Dragon Run Public Access Information. Additionally site markers were distributed to the Middle Peninsula Public Access Authority to provide boundary markers for new land acquisitions within the Dragon Run Watershed (FY2006).**

MPPDC staff researched and developed information regarding the rights permitted by the Public Trust for riparian areas, such as the Dragon Run. This information was presented to the Middle Peninsula Chesapeake Bay Public Access Authority for adoption.

- 4. Collaborated with Middle Peninsula localities within the Dragon Run Watershed regarding Dragon Run land-use planning recommendations and discussed a timeline for incorporating and implementing these changes within the comprehensive plan and zoning ordinance. MPPDC staff also developed maps of the Dragon Run Watershed to supplement county (ie. Essex, Gloucester, King & Queen and Middlesex) comprehensive plans (FY2009).**

As a result:

- (1) King & Queen County revised its zoning ordinance language to reconfirm its commitment to recognize the Dragon Run as a special place (FY2010);**
- (2) Gloucester County included a significant section on the Dragon Run in its draft comprehensive plan based on the SAMP recommendations (this plan update is still being worked on) (FY2010);**
- (3) Essex County initiated the Comprehensive Plan update at end of the FY2008 grant period and the recommendations have been included in the working draft. In FY2010 Essex County reported that the recommended language is currently included in their draft and that they are aiming for adoption in Spring 2011; and**
- (4) Middlesex County adopted a Comprehensive plan that includes some of the Dragon Run land use recommendations and recognized the importance of other land-use tools recommended by the SAMP. Also in FY2010 Matt Walker, Middlesex County Planning Director, reported that many of the recommendations were included in the revised Comprehensive Plan that was adopted in January 2010, as were additional farming/forestry supportive tools. He also reported that the recommendations will be considered as the counties reviews its zoning ordinances over the next year or two.**
 - a. MPPDC staff provided guidance regarding conservation subdivisions for a Middlesex County Board of Supervisor presentation to community group. MPPDC staff consulted with new planning director at Middlesex County regarding Dragon Run land use recommendations.

GOAL II:

Foster educational partnerships and opportunities to establish the community's connection to and respect for the land and water of the Dragon Run.

OBJECTIVE A - Encourage experience-based education consistent with the Stewardship and Community Engagement goals of the Chesapeake 2000 Agreement; **OBJECTIVE B** - Promote the community and economic benefits of the Dragon Run derived from its natural characteristics and traditional uses such as farming, forestry, hunting and fishing.

Outcomes

1. MPPDC staff, with help from the Dragon Run Steering Committee, administered an education program targeting the watershed community. There were various approaches and materials used to implement this program:
 - a. DVDs were distributed which highlighted the natural and human characteristics of the watershed that make it unique and worth saving. It also provided information on initiatives that are currently underway to protect the watershed and the way of life it supports. Over the course of FY2006-FY2010 grant cycles over 3,000 DVDs were distributed.
 - b. Presented information about the Dragon Run Watershed at a variety of venues – including community forums in the watershed counties; Down on the Farm Planning (FY2008) Workshop; manned a table at the Urbanna Oyster Festival Education Day (FY2008); attended Middle Peninsula Chesapeake Bay Public Access Authority; manned a booth each year at Dragon Run Day (DRSC) booth
 - c. Developed comprehensive website (www.mppdc.com/dragon) to house information about the Dragon Run, DRSC as well as upcoming events in the watershed.
 - d. Informational brochures were created and distributed to watershed communities, local elected officials, and the general public throughout the FY2006-FY2010 grant cycles.
 - e. Dragon Run Day was another opportunity to increase public awareness of this ecologically critical watershed and helped to educate its residents and visitors about activities both helpful and harmful to its health. From exhibits and displays to hands-on activities, Dragon Run Day provided a fun learning experience for all participants. MPPDC staff and the Dragon Run Steering Committee made this festival possible annually, but was also sponsored by watershed groups (ie. Gloucester County Parks and Recreation (FY2010)) as well as the non-watershed groups (ie. Virginia Environmental Endowment (FY2005)).
2. The MPPDC provided staff support for the Dragon Run Steering Committee (DRSC), which is a stakeholder group comprised of 2 landowners, 1 Board of Supervisor member and 1 planning commission staff member from each county in the watershed. Through the coordination of quarterly meetings throughout the years, MPPDC staff provided DRSC with information regarding land use management tools as well as relevant regional initiatives to move toward meeting SAMP goals.
 - a. For instance (FY 2006) MPPDC staff provided support for the Dragon Run Day Planning Sub-Committee and attended relevant meetings, such as those of the Middle Peninsula

Chesapeake Bay Public Access Authority and the Coastal Planning District Commission, on its behalf. MPPDC staff support has also provided opportunities to share knowledge about watershed tools, such as purchase of development rights to the steering committee. MPPDC staff has also tracked a potential Naval Outlying Land Field in the watershed, provided input to the steering committee, developed a position statement and requested action from relevant project partners.

- b. In FY07, MPPDC staff represented DRSC at Public Access Authority (PAA) meetings; MPPDC staff co-coordinated Dragon Run Discovery Lab with the Chesapeake Bay National Estuarine Research Reserve; MPPDC staff represented the Dragon Run on Congressman Wittman's Environmental Advisory Committee.

3. **MPPDC staff participated in talks about acquiring land using funds from the Coastal and Estuarine Land Conservation Program (CELCP). MPPDC staff contributed to the CELCP 07 proposal submitted by Virginia Coastal Zone Management Program and assisted consultant with development of 309 Implementation Strategies. (FY2007)**
4. **MPPDC staff solicited for bids for an economic development consultant to perform follow-up work on the *Opportunities for Sustainable Natural Resource-Based in the Dragon Run Watershed* report in mid April (FY2006). MPPDC staff has provided copies of the report to interested members of local government on the DRSC and the general public upon request. MPPDC staff presented information on the report recommendations to the local planners at the monthly Local Planners Meeting and provided copies of the report in digital format. MPPDC staff worked with the DRSC to prioritize the sustainable economic development report recommendations to identify a primary item of which to pursue implementation – biodiesel partnerships. The purpose of this initiative was to provide a sustainable economic driver for traditional industries in the Dragon Run watershed. MPPDC staff worked with a consultant, Virginia Clean Cities, to present information about the concept to potential stakeholders and develop a stakeholder base through meetings, and other communications. Some of the key members integrated into this stakeholder base include representatives of the municipal school bus fleet management, the biodiesel supply chain and the local farmers in the Dragon Run watershed. These stakeholders will be involved in the pursuant feasibility study and pilot program. (FY2006)**

As this project continued partnerships identified the role of portions of the biodiesel chain, including the soybean farmers, fuel distributors, biodiesel refinery, private fleets and school bus fleets to support the mission of sustainability of agriculture. Substantial work was complete to garner the interest of the watershed school boards in using biodiesel in their fleets. The multiple prongs of the program include: a buydown program for the schools, a buydown program for the private industry, education regarding utilizing blend levels to manage cost and watershed education and market to expand the market. All of these aspects combined are aimed to provide both direct and indirect economic benefit to the traditional natural resource-based industries in the Dragon Run. Staff worked with the consultant to identify grant/loan opportunities to establish funding streams, such as the EPA Clean School Bus program to assist with the implementation of the partnership objectives. MPPDC staff presented a draft resolution for school board consideration to the four watershed county school superintendents in addition to one county adjacent to the watershed. MPPDC staff attended school board meetings in the

beginning of October (FY2007) during which adoption of the resolution may be considered. MPPDC staff coordinated with Virginia Clean Cities to work on implementing the biodiesel local government resolutions; MPPDC staff coordinated with Virginia Clean Cities to implement the biodiesel local government resolutions; MPPDC staff coordinated with Virginia Clean Cities to work on implementing the biodiesel local government resolutions; MPPDC staff co-hosted a meeting of the school bus fleets regarding the implementation of the project; MPPDC staff attended a Canola Biodiesel Field Day; MPPDC staff co-hosted a meeting with regional stakeholder regarding using canola or soybeans to produce biodiesel to fuel farm vehicles and to discuss potential large scale use of canola as a fuel crop. Currently, one county, Gloucester, has 100% of their school bus fleet using B5 (a 5% blend of biodiesel to regular diesel). King and Queen County has also just started using a B5 blend of biodiesel as well. Middlesex County's school board has suffered significant budget cuts, such that they are unable to afford the additional filters that will be required upon start up, even though the cost differential for the biodiesel would be covered through an US Environmental Protection Agency grant (Clean School Bus program). Essex County is relying on a single retailer who, according to the owner, is currently not able to convert to biodiesel due to issues with his brand.

- 5. Two action-oriented outcomes from this Task were the submission of a letter to the Virginia Department of Transportation regarding altering ditch cutting practices to reduce environmental impacts and the development of a resolution to study the fiscal and land-use impacts of conservation easements and land holdings by tax-exempt entities (FY 2008).**
- 6. Reviewed legislation that may impact the SAMP efforts. Some of these include: SB1276 (Alternative on-site sewage systems; no locality shall prohibit use thereof), HB 1699 (Biofuels; broadens Right to Farm Act to allow farmers to engage in small-scale production, and HB 1891 (Land preservation tax credit; reduces amount that may be claimed for taxable years 2009 and 2010) among others (FY2008).**
- 7. MPPDC staff drafted and submitted a letter from the DRSC regarding the potential Naval Outlying Landing Field site in the Dragon and requested that the MPPDC send a similar position statement (FY2009).**
- 8. MPPDC staff researched current efforts underway in Virginia to implement Transfer of Development Rights programs in continuing efforts to understand land management tools that could be implemented in the Dragon Run.**
- 9. MPPDC staff provided input during development of Dragon Run Watershed curriculum by Chesapeake Bay National Estuarine Research Reserve and provided information to the press about the Dragon Run, Dragon Run Steering Committee, SAMP and its partnerships. The curriculum is expected to be distributed to Middle Peninsula Localities in late Spring 2012. (FY2010)**

GOAL III:

Promote the concept of landowner stewardship that has served to preserve the Dragon Run Watershed as a regional treasure.

***OBJECTIVE A** - Address the potential dilemma of preserving the watershed's sense of peace and serenity by protecting open space and reducing fragmentation of farms, forests, and wildlife habitat versus the landowners rights in determining or influencing future land use; **OBJECTIVE B** - Educate landowners about the regional importance of the Dragon Run*

Outcomes

1. **As the public and non-governmental organization (NGO) entities acquiring conservation lands in Dragon Run Watershed have increased their numbers of acquisition, it has become a priority to assure that these entities are managing these lands in such a way that is consistent and compatible with the watershed management plan. Therefore, MPPDC staff, through coordination with managing entities and related partners, developed two management plans (Dragon Bridge – CBNERRs and Dragon Flats – TNC) utilizing Dragon Run Steering Committee conservation holding management recommendations. Recommendations in this report include protection of aquatic and wildlife habitat, water quality protection, maintenance of traditional land uses, compatible recreational uses, riparian buffers, establishment of management plans, conservation easements, etc. The public and NGO entities in the watershed were presented with these recommendations and implementation options were discussed.**
2. **MPPDC staff attended stakeholder visioning session for the Haworth Tract, a PAA land holding and; MPPDC staff consulted with representatives from TNC regarding final input for the Dragon Flats tract; MPPDC staff incorporated input from VIMS staff regarding Dragon Bridge tract and preparing final draft currently. As MPPDC staff drafted 2 management plans and submitted them to the managing entities for adoption. Adoption is pending and will likely occur before the final project report due date of November 15th. The two sites were Dragon Bridge Tract (CBNERRS) and Dragon Flats (TNC). These were all efforts to suggest integrating SAMP recommendations into the tract's management plans.**
3. **Finalize report for The Nature Conservancy and the Chesapeake Bay National Estuarine Research Reserve of Virginia that were substantially completed during the 2006 grant cycle and received adoption letters for these reports. MPPDC drafted management plans for the Middle Peninsula Chesapeake Bay Public Access Authority (PAA) and the Friends of Dragon Run. The Friends of Dragon Run adopted its plan in early October 2008 and it is anticipated that the PAA will adopt its plan in December 2008.**
1. **FY 2007 - MPPDC staff coordinated and chaired two forums to discuss the implementation the Dragon Run Estate Planning Network Initiative (DREPNI). The purpose of the partnership is to provide collaboration between estate planning stakeholders in order to create a conservation hub**

in the Dragon Run Watershed. The partnership with the Essex County Countryside Alliance (ECCA), Middle Peninsula Land Trust (MPLT), The Nature Conservancy (TNC), and Friends of Dragon Run (FODR), the Middle Peninsula consulted with local CPAs regarding hosting continuing education course for landowners and professionals is interested in co-hosting landowner education events and continuing education opportunities for professionals in the second year of this project. During this grant cycle (FY2010), two landowner education events on conservation estate planning, land protection and land asset management have been conducted with a total of 45 attendees. Additionally, eleven attorneys and CPAs received training to help increase the awareness of conservation easements as estate planning tools via two continuing education courses.

2. MPPDC staff: provided article for Essex County Countryside Alliance; facilitated a dialog about the tax base implications of conservation easements between Thomas Blackwell, Essex County Commissioner of the Revenue, and the Dragon Run Steering Committee; initiated the review of the number of conservation easements and conservation fee simple acquisitions that have been recorded in the Dragon Run since the Conservation Estate Planning Initiative began. (FY2008)
3. The DRSC requested that the Middle Peninsula Planning District Commission make conservation easements a priority to find resources and study further to understand the actual impacts, both positive and negative. The key finding of this study are that conservation easements and tax exempt land holdings fiscal impacts are actually a very small percentage of county budgets – mostly less than 0.5%. Commissioners of Revenue are in the process of implementing recommendations from this study to help capture the maximum benefits of tax exempt holdings. (FY 2009)
4. Developed a Resolution to Support the Development of Policies to Address Land Use Impacts of Conservation Easements for adoption consideration. On December 15, 2010 the resolution was reviewed at adopted by the Middle Peninsula Planning District Commission.
5. Identified fiscal benefits to the locality when county Commissioners of Revenue adjust the fair market value of land with conservation easements in accordance to the guidance within the VA Conservation Easement Act.

Appendix A:
Dragon Run Steering Committee Meeting: December 2010



DRAGON RUN STEERING COMMITTEE

Saluda Professional Center
125 Bowden Street
P.O. Box 286
Saluda, Virginia 23149-0286
Phone: (804) 758-2311
FAX: (804) 758-3221
Toll Free : 1-888-699-1733
Email : dragon@mppdc.com
Website : www.mppdc.com/dragon/

Secretary/Project Director
Mrs. Sara Stamp

MEMBERS

Essex County
Hon. Margaret H. Davis
(Vice Chairman)
Mr. Fred Hutson
Ms. Dorothy Miller
Mr. M. Scott Owen

Gloucester County
Mr. Larry Dame
Ms. Terry DuRose
Hon. John Northstein
Dr. William Reay

King and Queen County
Mr. Robert E. Gibson
Mr. William F. Herrin
(Chairman)
Hon. J. Lawrence Simpkins

Middlesex County
Mr. William Bagby
Mr. John England
Mr. R. D. Johnson
Hon. Pete W. Mansfield

MEMORANDUM

TO: Dragon Run Steering Committee and Interested Parties
FROM: Sara Stamp
DATE: January 27, 2011
SUBJECT: February Dragon Run Steering Committee Meeting

Good afternoon,

This letter is to serve as a notice that our winter quarterly Dragon Run Steering Committee Meeting is scheduled for Wednesday, **February 9th at 7pm at the Regional Boardroom at the Middle Peninsula Planning District Commission office in Saluda** I have attached an agenda for your review. Please let me know if you have any additions to the agenda. As always, if you have any questions, please feel free to contact me at 804-758-2311 or sstamp@mppdc.com.

Sincerely,

A handwritten signature in black ink that reads "Sara E. Stamp". The signature is written in a cursive style.

Sara

Enclosure



Dragon Run Steering Committee Winter Quarterly Meeting February 9th, 2011

Regional Boardroom
MPPDC office, Saluda

7:00 PM

AGENDA

1. Welcome and Introductions
2. Election of Officers
3. Review and Approval of November Minutes
4. Adopt Work Plan 2011
5. Adopt Meeting Schedule for 2011
6. Dragon Run Day 2011 Sub-committee formation
7. Dragon Run Stewardship Award Nominations Review
8. Continued Discussion of Consumer Supported Agriculture (CSA)
9. Public Comment
10. Other Business
11. Adjourn

Dragon Run Steering Committee Meeting
December 1, 2010
MINUTES

1. Welcome and Introductions - Committee members in attendance included Frank Herrin, Robert Gibson, Larry Dame, John England, Dorothy Miller, Willy Reay, and Terry DuRose. Others in attendance included Sara Stamp, Jackie Rickards, Charlie Maloney, Kory Erv, and David Whitehurst.
2. Approval of Minutes - Mr. Herrin requested a motion to approve the minutes from the August DRSC meeting. Ms. Miller made a motion; Ms. DuRose seconded. Motion carried.
3. Dragon Run Day 2010 - Recap and Next Year - Ms. Stamp provided a photo presentation on Dragon Run Day 2010. She reported that there were about 1200 people in attendance at the event. The Dragon Run Steering Committee discussed that they would like to continue to host the event in 2011. Ms. DuRose agreed that Thousand Trails is also interested in continuing the event. Ms. Stamp noted that the event should be scheduled for October 8th. She reminded the DRSC that the Dragon Run Stewardship Award was presented at the event. The DRSC discussed that the venue was not entirely satisfactory for the presentation of the award as it was difficult to maintain people's attention and was noisy. The DRSC discussed moving the presentation of the award to its May picnic and decided that this was the best option. Ms. Stamp reported that she would issue a request for nominations immediately so that the DRSC could review nominations at its February meeting.
4. Charlie Maloney - Dayspring Farm - What is Consumer Supported Agriculture (CSA) ? - Mr. Maloney and his intern, Korey Erv, from Dayspring Farm in Cologne provided information to the Dragon Run Steering Committee on his Consumer Supported Agriculture business.

Community Supported Agriculture (CSA) has become a popular way for consumers to buy local, seasonal food directly from a farmer. With a CSA, a farmer offers a certain number of "shares" to the public. Typically the share consists of a box of vegetables, but other farm products may be included. Interested consumers purchase a share (aka a "membership" or a "subscription") and in return receive a box (bag, basket) of seasonal produce each week throughout the farming season.

This arrangement creates several rewards for both the farmer and the consumer. In brief...

- **Advantages for farmers:**
 - i. Get to spend time marketing the food early in the year, before their 16 hour days in the field begin

- ii. Receive payment early in the season, which helps with the farm's cash flow
 - iii. Have an opportunity to get to know the people who eat the food they grow
- **Advantages for consumers:**
 - i. Eat ultra-fresh food, with all the flavor and vitamin benefits
 - ii. Get exposed to new vegetables and new ways of cooking
 - iii. Usually get to visit the farm at least once a season
 - iv. Find that kids typically favor food from "their" farm - even veggies they've never been known to eat
 - v. Develop a relationship with the farmer who grows their food and learn more about how food is grown
- Dayspring Farm's main customers are in the Williamsburg area (approximately 2/3); although there were more local customers this year than in previous years. They drop off 1 time per week in Williamsburg and 1 day a week in the Middle Peninsula. Their produce is ecologically grown, but not certified organic. They currently have 185 subscribers with a waiting list and an 80% retention rate.
- A significant benefit is that they can make a reasonably good living off of 10 acres of fruits, vegetables, herbs and flowers.
- Mr. Maloney teaches a course on sustainable agriculture at William and Mary. He also has been able to get interns from William and Mary to come learn and work on the farm.
- One of the biggest obstacles for farmers trying to get into CSAs for the next generation is purchasing land.

5. David Whitehurst - Department of Environmental Quality - Exceptional Waters Program

- The Exceptional Waters Program is based upon EPA federal regulation that states: **Where high quality waters constitute an Outstanding National Resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected**
- EPA requires states have process in WQS whereby eligible waters can be designated as Outstanding National Resource Waters (ONRW)
- VA established Exceptional State Waters category and designation process in 1992
- EPA approved VA's Exceptional State Waters as equivalent to ONRWs
- Sometimes referred to as Tier 3 waters
- To be eligible, the waterway must be an Exceptional Environmental Setting, and either Exceptional Aquatic Communities, or Exceptional Recreational Opportunities
- The Purpose of the designation is to:
 - i. Protect high quality or ecologically significant waters that constitute exceptional state resources

- ii. **Maintain water body at current quality**
 - iii. **Protect from future degradation for benefit of future generations**
 - iv. **Provide protection from pollutants beyond WQS numerical and narrative criteria**
 - **Protection provided by designation:**
 - i. **Allow existing permitted discharges - no expansions**
 - ii. **Prohibit new discharges, including:**
 - 1. **wastewater treatment plant discharges**
 - 2. **industrial waste treatment discharges**
 - 3. **water treatment plant backwash filter discharges**
 - 4. **permanent storm water discharges**
 - 5. **general permits for sewage discharges less than 1,000 GPD such as single family homes**
 - 6. **MS4 storm water discharges**
 - iii. **Prohibit new mixing zones**
 - iv. **Allow on a case-by-case basis temporary limited effect activities, such as:**
 - 1. **storm water permits for construction activities of one acre or greater**
 - 2. **repairs to docks & piers**
 - 3. **bridge & road repairs**
 - 4. **outfall pipe repairs**
 - v. **Allow existing permitted discharges**
 - vi. **Allow new discharges if mixing zone will not extend into Exceptional State Water segment**
 - **Does not mandate that states establish control of nonpoint sources**
 - **Best Management Practices (BMPs) for nonpoint sources are encouraged for the protection of all waters**
 - **Land Use**
 - i. **No impacts to National Forests on forest management activities (timber sales, prescribed burning, road management, developed and dispersed recreation, and mitigation systems for acidified streams)**
 - ii. **Does not restrict instream watering of livestock & does not require installation of fences**
 - **Landowner Issues**
 - i. **Riparian landowner restrictions limited to prohibition on point source discharges**
 - ii. **SWCB does not have jurisdiction over property rights**
 - **Regulatory Adoption of Amendments to the Water Quality Standards Regulation Takes ~ 18 - 24 Months**
 - **Very arduous process with many checkpoints on the way**
6. **Approval of Conservation Impact Report and DRSC Recommendations - Terry DuRose made a motion to adopt the Resolution to Support the Development**

of Policies to Address Land Use Impacts of Conservation Easements; Dorothy Miller seconded. Motion carried.

7. Public Comment - none
8. Other Business - none
9. Adjourn - Next meeting is scheduled for February 9, 2011.

DRAGON RUN STEERING COMMITTEE
DRAFT OVERALL PROGRAM DESIGN

2011: January 1, 2011 – December 31, 2011

PROGRAMS WILL BE OPERATED IN THE FOLLOWING GENERAL AREAS:

- (1) DRSC ADMINISTRATION and DRAGON RUN WATERSHED TECHNICAL ASSISTANCE
- (2) LAND USE PLANNING (COMP PLANS AND ZONING ORDINANCES)
- (3) CONSERVATION EASEMENTS – FISCAL AND LAND USE IMPACTS
- (4) DRAGON RUN DAY 2011

MEETING SCHEDULE 2011

February 9, 7pm

May 4, 6pm * Annual Picnic

August 10, 7pm

November 9, 7pm

All meetings will be held at the Regional Boardroom at the Middle Peninsula Planning District Commission office in Saluda, unless otherwise determined.

(1) Program: General DRSC Administration and Watershed Technical Assistance \$2,500
(CZMP FY10- \$2500)

Description: This program allows the Overall Program to function by supporting the individual projects and operation of the Dragon Run Steering Committee, as well as by responding to daily requests for assistance from watershed government staff and the general public interested in the Dragon Run. In order to properly manage the workload, requests should be channeled through Steering Committee members to DRSC staff.

Activities: SAMP program and project administration; financial management; administrative grant reporting; and other general functions. Consultation on Dragon Run related issues; review of watershed projects; GIS and other watershed technical assistance provision as necessary.

Responsibility: SAMP Director

Support: DEQ Coastal Zone Management Program

(2) Program: Land Use Planning (Comp Plans and Zoning Ordinances) \$5000
(CZMP FY10 - \$5000)

Description: This program continues the effort to assist the watershed localities in adopting and implementing comprehensive plan and zoning ordinance language to protect the natural, cultural and historic values of the Dragon Run watershed.

Activities:

- a. Essex County Comprehensive Plan and Zoning Ordinance update
- b. Gloucester County Comprehensive Plan and Zoning Ordinance update
- c. Middlesex County Comprehensive Plan and Zoning Ordinance update
- d. King and Queen County assistance as requested

Responsibility: SAMP Director

Support: DEQ Coastal Zone Management Program

(3) Program: Conservation Easements – Fiscal and Land Use Impacts \$ 14,500
(CZMP FY10 - \$14,500)

Description: Although considered to be an accomplishment that supports SAMP goals, the large quantity of protected lands in the Dragon has caused significant local government concern. The fiscal impacts of easements were clarified in the FY 2009 (NA09NOS4190163 Task 95) grant cycle and that data is being used in the FY 2010 policy dialog. The goal of this dialog is to identify policies that may be adopted by localities and/or stakeholders to help ensure the viability of continued conservation easement practices (ie by helping to make the localities fiscally whole or better fit with goals of comprehensive plans, etc)..

Additionally, during the previous grant cycles [FY2007 (NA07NOS4190178 Task 95) and FY2008 (NA08NOS4190466 Task 95)], MPPDC staff consulted with county Commissioners of Revenue and discovered that there are some differences in the methods that counties use to assess conserved lands and utilize conserved land value in their composite index. The MPPDC resolution also requested that guidance be developed to outline a consistent approach to assessing eased lands in both counties with and without land-use. The goal is for this guidance to be adopted as an enforceable policy by the Commissioners of Revenue.

MPPDC staff will also engage in a dialog with localities and conservation entities to address the apparent disconnect between what our local officials are expressing (we don't want conservation easements), what our comprehensive plans provide (conservation easements are a good thing generally) and what our conservation community is doing.

Activities:

- a. MPPDC staff will host a forum for local officials and Commissioners of Revenues from each county to discuss quantitative results derived in the FY 2009 grant year and provide feedback on the revenue impacts identified.
- b. MPPDC staff will then develop a guidance document capturing policy outcomes of the facilitated discussion to identify state requirements and process to consistently and correctly assess eased lands in both counties with land-use and without and the process by which to calculate the composite index. MPPDC staff will seek the adoption of this guidance document as an enforceable policy in the form of a MOA from each county's Commissioners of Revenue and/or local officials.
- c. MPPDC staff will engage in a facilitated discussion between conservation easement holding entities, tax exempt organizations and political subdivisions, and local government officials identifying policies, goals and objectives for each entity and identifying the conflicts and impact of conservation efforts on local government policies (ie comprehensive plans).

- d. Following this dialog, MPPDC staff will research what other Virginia localities are doing to address revenue shortfalls due to easements/tax-exempt holdings and develop a preliminary matrix of policy options.
- e. These policy options will be presented by to the stakeholder/local government group for refining and vetting.
- f. Once the policy options are refined, they will be presented for adoption consideration by the stakeholder groups and/or localities.

This project will be working as a coordinated effort with the Conservation Corridor project – the next year of the CZMP grant number NA09NOS4190163 task 97.01. The SAMP will target King and Queen, Middlesex and Essex Counties and the Conservation Corridor project will Gloucester, Mathews and King William Counties.

Responsibility: SAMP Director

Support: DEQ Coastal Zone Management Program

(4) Program: Dragon Run Day 2011 \$4,500

Description: Dragon Run Day is the community festival celebrating the natural, cultural and historic aspects of the Dragon Run Watershed. It is an opportunity to provide education to the public.

Activities:

- a. Materials/logistical costs associated with hosting Dragon Run Day

Responsibility: Dragon Run Steering Committee

Support: Local and/or state sponsorship

Appendix B:
Dragon Run Steering Committee Meeting: February 2011

Dragon Run Steering Committee
Meeting Minutes
February 9, 2011

1. Welcome and Introductions - Committee members in attendance included Frank Herrin, Fred Hutson, John Northstein, Robert Gibson, Prue Davis, Dorothy Miller, Terry Durose, RD Johnson, Scott Owens, and Lawrence Simpkins. Other in attendance included Ellis Walton, Pat Tyrell, Tripp Little and Sara Stamp.
2. Election of Officers - Mr. Herrin opened the floor to nominations for chair. Ms. Miller made a motion for Mr. Herrin to remain as chair; Ms. Durose seconded. Motion carried. Mr. Herrin requested a motion to close nominations for chair. Mr. Hutson made a motion to close nominations. Ms. Davis seconded. Motion carried. Mr. Herrin opened the floor to nominations for vice chair. Ms. Durose made a motion for Ms. Davis to remain as vice chair; Mr. Hutson seconded. Motion carried. Mr. Herrin requested a motion to close nominations for chair. Ms. Miller made a motion to close nominations. Mr. Hutson seconded. Motion carried.

Mr. Herrin shall serve as chair and Ms. Davis will serve as vice chair for 2011.

3. Review and Approval of December Minutes - Mr. Herrin requested a motion to approve the meeting minutes from the December DRSC meeting. Ms. Durose made a motion to approve the meeting minutes. Ms. Miller seconded. Motion carried.
4. Adopt Work Plan 2011 - Mr. Herrin requested that Ms. Stamp provide an overview of the annual work plan for 2011. (see attached). Mr. Herrin requested a motion to adopt the 2011 work plan. Mr. Hutson made a motion to adopt the work plan. Ms. Miller seconded. Motion carried.
5. Adopt Meeting Schedule for 2011 - Mr. Herrin requested that Ms. Stamp provide an overview of the meeting schedule for 2011. Mr. Herrin requested a motion to adopt the 2011 schedule. Mr. Johnson made a motion to adopt the work plan. Mr. Hutson seconded. Motion carried.
6. Dragon Run Day 2011 Sub-committee formation - Mr. Herrin reminded the DRSC that Dragon Run Day 2011 is scheduled for Saturday, October 8 from 10am to 3pm. He appointed Terry Durose as chair of the Dragon Run Day planning sub-committee. He also appointed himself, Mr. Johnson, Mr. Reay, Mr. Gibson, Ms. Miller, and Mr. Hutson to the planning sub-committee as well. The first meeting of the planning committee will be April 13 at 6pm.

7. Dragon Run Stewardship Award Nominations Review - Mr. Herrin requested that Ms. Stamp provide an update on the DRSA nominations. Ms. Stamp reported that the deadline had been extended to February 18th. Mr. Herrin appointed Ms. Davis as chair of the DRSA sub-committee. Also appointed to the sub-committee were Mr. Simpkins, Mr. Johnson and Mr. Northstein. A meeting of the sub-committee will be called to review nomination and select an award recipient. The award will be presented at the annual Dragon Run Steering Committee picnic in May.
8. Continued Discussion of Consumer Supported Agriculture (CSA) - Ms. Stamp reported that she distributed copies of the *Producing and Selling Organic Products in the Dragon Run Watershed* section of the Yellow Wood natural resource-based economic development study conducted in 2005. She also displayed web resources of other entities in Virginia such as the Local Food Hub and Sprout that support CSAs and similar businesses.
9. Public Comment - Mr. Walton, a King and Queen County farmer and member of the Farm Bureau, reported that Middlesex County is holding a public hearing on February 15th at 7pm to discuss rescinding its Land Use Assessment Program. He requested that the Dragon Run Steering Committee provide support in opposition to the repeal of the program. Mr. Johnson, as a Middlesex representative to the DRSC, supported the attendance of DRSC members at the meeting and a letter in opposition to the repeal of the program. Mr. Herrin, Mr. Hutson and Mr. Johnson all volunteered to attend. Mr. Herrin requested that Ms. Stamp contact Mr. England, Mr. Mansfield and Mr. Bagby regarding the issue to seek their input.

Ms. Tyrell, Tidewater RC&D reported that the Northern Neck Farm Museum is hosting a one day expo at Stratford Hall in March. She noted that much of the agenda may be in line with the DRSC's goal of supporting local agriculture.

10. Other Business - None
11. Adjourn

Appendix C:
**Resolution to Support the Development of Policies to Address Land Use Impacts of
Conservation Easements**



MIDDLE PENINSULA PLANNING DISTRICT COMMISSION

Saluda Professional Center, 125 Bowden Street, P.O. Box 286, Saluda, VA 23149-0286
Phone: (804) 758-2311 FAX: (804) 758-3221
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COMMISSIONERS

Essex County

Hon. Margaret H. Davis
Hon. Edwin E. Smith
(Treasurer)
Mr. David S. Whitlow

Town of Tappahannock

Hon. Roy M. Gladding

Gloucester County

Ms. Brenda Garton
Dr. Maurice P. Lynch
Hon. John Northstein
Hon. Louise D. Theberge
(Chair)

King and Queen County

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

King William County

Mr. William C. Porter, Jr.
Mr. Eugene J. Rivara
Hon. Cecil L. Schools
Hon. Otto O. Williams

Town of West Point

Hon. Charles D. Gordon

Mathews County

Hon. Janine F. Burns
Hon. O. J. Cole, Jr.
Mr. Thornton Hill

Middlesex County

Hon. Wayne H. Jessie, Sr.
Hon. Carlton Revere
Mr. Kenneth W. Williams

Town of Urbanna

Mr. Lewis Filling
Hon. Donald Richwine

Secretary/Director

Mr. Dan Kavanagh

December 15, 2010

Resolution to Support the Development of Policies to Address Land Use Impacts of Conservation Easements

WHEREAS the Middle Peninsula Planning District Commission created the Dragon Run Steering Committee to provide policy recommendations to support and promote community-based efforts to preserve the cultural, historic, and natural character of the Dragon Run, while preserving property rights and the traditional uses within the watershed (including agriculture, forestry, and wildlife habitat); and

WHEREAS the Dragon Run Steering Committee has facilitated discussion between stakeholder groups including local governments, on various policy issues, including the fiscal impact of conservation easements and tax exempt land holdings; and

WHEREAS the resultant report, *Conservation Easements: Fiscal Impacts to Localities in the Middle Peninsula*, quantifies fiscal impacts of conservation easements and tax exempt land holdings and recommends policy changes to improve the assessment process by county Commissioners of Revenue; and


WHEREAS MPPDC staff will use this report as a foundation to identify the land use impacts of conservation easements and tax exempt land holdings by engaging in a dialog with representatives from the state to interpret relevant statutes; and

WHEREAS MPPDC staff will consult with local government representatives to assess current county policies as they relate to conservation easements, while researching policies instituted by other Virginia localities to address land use impacts of conservation easements; and

NOW THEREFORE BE IT RESOLVED the Middle Peninsula Planning District Commission adopt the report, *Conservation Easements: Fiscal Impacts to Localities in the Middle Peninsula*; and recommends that Middle Peninsula localities implement its recommendations; and

NOW THEREFORE BE IT FURTHER RESOLVED that the Middle Peninsula Planning District Commission provide input as staff develop a set of policies guiding the placement of conservation easements that is consistent with the Virginia Open-Space Land Act and the Virginia Conservation Easement Act.

COPY TESTE:


(Secretary)

Appendix D:
Commissioner of Revenue Round Table Meeting – Agenda and Minutes

Commissioner of Revenue Roundtable

November 17, 2010

AGENDA

1. Overview of relevant Virginia Code
2. Discussion on composite index
3. Needs identified by CORs
4. Overview of impacts for each county
5. Idea sharing to improve the process by

Commissioner of Revenue Roundtable

November 17, 2010

MINUTES

Welcome and Introductions

Middle Peninsula Planning District Commission Staff held a meeting with the Commissioners of Revenue from Middle Peninsula localities and the Virginia Department of Taxation in the Middle Peninsula Planning District Commission Board Room in Saluda, Virginia, at 11 a.m. on November 17, 2010 to discuss the findings of the Conservation Easement Initiative.

Ms. Sara Stamp, Regional Projects Planner II, welcomed those in attendance. Commissioners of Revenue in attendance included Mr. Kevin Wilson, Gloucester County; Ms. Sally Pearson, King William County; Ms. Helen Longest, King and Queen County; Ms. Bonnie Davenport, Middlesex County; and Mr. Thomas Blackwell, Essex County. Also present were Mr. Reese Milligan, Gloucester County Assessor; Mr. Jason Hughes, Virginia Department of Taxation; and Ms. Jackie Rickards, Regional Projects Planner I.

Overview of relevant Virginia Code

Ms. Stamp introduced the initiative to understand the fiscal impacts of conservation easements within the Middle Peninsula. She shared that over the last six-months, MPPDC staff have been working with each Commissioners of Revenue (CoR) from each locality to understand the process/method in which counties currently handle conservation easements. MPPDC staff explained that to start this project, legislation relevant to conservation easements and tax code was reviewed. In VA Code, Section 10.1 Conservation, CoR may find information relevant to conservation easements and how to value them. MPPDC staff acknowledged that this is not included within the VA Taxation Code (Section 58.1) that CoR typically work with. According to Section 10.1, properties with conservation easements shall be reduced in fair market value due to the inability of the owner of the fee to use such property for uses terminated by the easement. In land use-counties the property with an easement shall be devalued based on the land use rates that have been adopted by the county, while the CoR or the assessor in non-land use counties shall value the property based only on uses of the land that are permitted under the terms of the easement and not those values attributable to the uses or potential uses of the land that have been terminated by the easement.

Discussion on composite index

MPPDC staff reviewed how conservation easements impact local State aid received for education through the composite index. As the fair market value of properties with conservation easements are reduced based on the encumbrances placed on the property, CoR are to report a reduced total land book value to the Department of Taxation rather than the original fair market value of the land. As the reduced fair market value is recorded this will reduce the total land book value of the county which will then increase the State aid received by the county for education. Through MPPDC staff research it was found that Commissioners of Revenue are not currently maximizing fiscal benefit of conservation easements.

Overview of impacts for each county

Over the last six months, MPPDC staff have worked with CoR, researched county records, and connected with entities affiliated with conservation easements to gain a comprehensive list of

properties with easements. From this list, MPPDC staff worked with CoR and reviewed property cards to conduct a quantitative analysis of the conservation easements and tax exempt land holdings for conservation purposes within each county. With this information MPPDC staff assessed the fiscal impacts of conservation easements to each locality. In particular, MPPDC staff shared that while working with Essex County, the county was able to reduce their total land book value by an additional \$18 million which will increase the amount of state aid they will receive from the State for education.

Idea sharing to improve the process by CORs

Following the overview of the project and the outcomes, Commissioners of Revenue were able to provide feedback and ideas with regards to the report and how to improve the current process in dealing with conservation easements within their locality:

- Having a list of eligible conservation easement holders within the State would inform the CoR of legitimate transactions;
- Education seminars statewide to clarify conservation easement and their fiscal impacts to localities; present at the VAAO (Virginia Association of Assessing Officers) in July 2011;
- Make a template available for keeping track of conservation easements (ie. parcel, holder, value, devaluation due to easement) to Commissioners of Revenue;
- Have Virginia Outdoor Foundation (VOF) and other conservation groups include localities earlier in the conservation easement process. According to CoR, VOF will inform the county of an easement only days before the easement is approved by the board;
- Historic Easements - how are they Valued?
- Suggest to adding tax exempt properties to sales study – is this even possible?

Questions that arose through conversations...

1. What are the elements impacting the composite index?
2. What numbers are TAX submitting to the US Department of Education?
3. What is the impact of tax exempt properties to localities and their ability to collect federal funding?
4. Does a county specifically need to adopt open space land use in order to devalue an open space property with a conservation easement?
5. If a land is placed in conservation easement prior to the county's adoption of a land use program, do that property get devalued using the land use rates?

The Commissioners of Revenue agreed to have another meeting at the end of the project to continue discussions with regards to this project.

**Appendix E:
Conservation Stakeholder Meeting – Agenda and Minutes**

Conservation Easements – Where do you want ‘em?

December 17, 2010

1 – 3pm

Regional Boardroom, MPPDC Office, Saluda

AGENDA

1. Welcome and Introductions
2. Background of the Project
3. Fiscal Findings from the Conservation Initiative Report
4. Virginia Open-Space Land Act and Virginia Conservation Easement Act
5. Currently in the Middle Peninsula...
5. What is the perceived land use impact of conservation easements in the Middle Peninsula? Your thoughts??
6. Next Steps

Conservation Easements – Where do you want ‘em?

December 17, 2010

1 – 3pm

Regional Boardroom, MPPDC Office, Saluda

MINUTES

The Middle Peninsula Planning District Commission Staff held its meeting in the Middle Peninsula Planning District Commission Board Room in Saluda, Virginia, at 1 p.m. on December 17, 2010. Ms. Sara Stamped welcomed those in attendance including Frank Herrin, Friends of Dragon Run; Hank Hartz, Virginia Outdoors Foundation (VOF); Bob Lee, VOF; Sarah Richardson, DCR; Scott Lucchesi, King William Planning Department; Andy Lacatell, The Nature Conservancy (TNC); Ben McFarlane, Hampton Road Planning District Commission; Rob Suydam, Virginia Department of Forestry; Sarah Richardson, Virginia Department of Conservation and Recreation; Neal Barber, Middle Peninsula Land Trust (MPLT); and Jackie Rickards, Middle Peninsula Planning District Commission.

Ms. Sara Stamp provided a presentation that reviewed the background of this project, the fiscal finding of the report as well as Virginia Open-Space Land Act and Virginia Conservation Easement Act. This project began in April 2010 to look at the fiscal impacts of conservation easements and tax exempt land holdings by conservation groups on the local county budget. Initiated by the Dragon Run Steering Committee, and then strongly supported by the Middle Peninsula Planning District Commission, MPPDC staff worked closely with the Commissioners of Revenue from each county to understand how conservation easements are considered. Through MPPDC staff research, there were several findings from the first year of this project including:

1. The tax revenue impact of conservation easements is less than about 0.5% of any given Middle Peninsula locality's annual budget.
2. Easements lower land value and help the composite index.
3. Schools receive more state aid funding because of easements.
4. Commissioners of Revenue are inconsistent when addressing conservation easements.
5. Commissioners of Revenue have changed reporting practices because of this work.

Besides providing an overview of the project, the group discussed the land use impact of conservation easement in the Middle Peninsula. Currently with no guidance as to where to place easements, conservation easements are placed “randomly” throughout the localities landscape. However through the Open Space Act as well as the Virginia Conservation Easement Act authority is given to local governments to adjust their comprehensive plan to provide placement guidance for conservation entities. According to Scott Lucchesi counties may benefit with a few changes to how conservation easements are tracked. For example with parcels that have conservation easements a CE could be added to the tax map number.

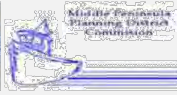
Additionally, Mr. Lee explained the process in which VOF takes to inform localities of conservation easements within their jurisdiction. In the early stages of easement process VOF will contact the county to verify if the conservation easement is consistent with the comprehensive plan. VOF will allow some

time for the county to respond and provide feedback. Therefore if such a process is standardized for the other conservation entities, this may help improve partnerships with local governments.

To continue dialog a meeting will be scheduled in March 2011 to try to gain more local support in the discussion of land use implications and policies.

Appendix F:
**A Guidance Document: Consistently Accounting for Conservation Easements within
Your Jurisdiction**

A Guidance Document: Consistently Accounting for Conservation Easements within Your Jurisdiction



Virginia Coastal Zone
MANAGEMENT PROGRAM

This report was funded in whole by the Virginia Coastal Zone Management Program at the Department of Environmental Quality through Grant # NA10NOS4190205 Task 97.01 and Task 95 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 are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Commerce, NOAA, or any of its subagencies.

As a legal agreement made between a landowner (grantor) and a public body (grantee), conservation easements place restrictions on both the present and the future use of a property, which helps to preserve the rural quality of the region in perpetuity. However as conservation easements become a more popular land use tool in the Middle Peninsula, there are fiscal impacts to localities. In order to reduce these fiscal impacts, the Middle Peninsula Planning District Commission (MPPDC), funded through the Virginia Coastal Zone Management Program, has been working with local Commissioners of Revenue, Conservation Entities, and County Planners to understand the fiscal impacts, while at the same time taking advantage of the composite index benefits (ie. receiving the proper amount of State aid for county education).

This document will assist counties participating within the Virginia Use Value Assessment Program (ie. land-use counties), and those counties that are not (ie. non-land use counties), in accounting for conservation easements within their jurisdiction – connecting the Commonwealth’s legislative requirements to the County’s role in meeting those requirements.

As the Virginia Conservation Easement Act, Section §10.1-1011 Taxation, provides legislative guidance to properly assess conservation easements within the Commonwealth of Virginia, below is a simplified outline of how one may approach adjusting the fair market value of conservation easements which is authorized by VA Conservation Easement Act.

NON LAND-USE counties-

1. **The Commissioner of Revenue, or a qualified assessor, may reduce the fair market value of conservation easements based on the encumbrances placed on the property.** According to Code (Section §10.1-1011 Part B), *Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open Space Land Act shall reflect their reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement.*
2. Specifically, **reduce the fair market value of lands with conservation easements based on only the uses of the land remaining after the easement and not on the uses or potential uses of the land that have been terminated by the easement.** Directly from the Code, *the fair market value of such land [lands with conservation easements] (i) shall be based only on uses of the land that are permitted under the terms of the easement and (ii) shall not include any value attributable to the uses or potential uses of the land that have been terminated by the easement.*
3. With the reduced fair market value, the Commissioner of Revenue is to **record the reduced value of the property with the conservation easement in the County Landbook and therefore report this reduced value to the Virginia Department of Taxation.** Reporting the reduced value will ultimately lower the total landbook value and benefit the county through the composite index.
4. The County may tax the reduced fair market value of the land with the conservation easement. As conservation easements are take exempt, the County may only tax those property right that remain.

LAND-USE counties-

1. **The Commissioner of Revenue, or a qualified assessor, may reduce the fair market value of conservation easements based on the encumbrances placed on the property.** According to Code (Section §10.1-1011 Part B), *Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open Space Land Act shall reflect their reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement.*
2. As VA Code provides direct guidance as to how conservation easements are to be addressed. In short, **conservation easements may be valued using the county's adopted land-use values.** According to the legislation, *land which is (i) subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.), (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to § 58.1-3231 or § 58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.*
3. With the reduced fair market value, the Commissioner of Revenue is to **record the reduced value of the property with the conservation easement in the County Landbook and therefore report this reduced value to the Virginia Department of Taxation.** Reporting the reduced value will ultimately lower the total landbook value and benefit the county through the composite index.
4. The County may tax the land-use value of the land with the conservation easement.

FOR THOSE LAND-USE COUNTIES THAT ARE CONCERNED.....

If your locality has adopted a use value assessment program that does not cover forest or open space uses, would land under such easement that is used for forest or open-space purposes qualify for open-space use assessment?

According to a Attorney General opinion (November 13, 1993):

If a locality has a use value program that does not cover forest and open-space uses, land under conservation or open-space easement used for forest and open space still will qualify for the open space use value assessment. Land encumbered by such a perpetual easement meets the definition requires in §58.1-323- being "preserved for...conservation of land other natural resources...or scenic purposes." Section §10.1-1011 reflects the General Assembly's conclusion that this tax treatment is appropriate, because the owners of land that is subject to such open space or conservation easements permanently have protected open space and thus permanently have given up part of their land's value.

ADDITIONAL PUBLIC POLICY OPTIONS AND RECOMMENDATIONS:

Through a series of meetings with local Conservation entities, County Commissioners of Revenue, as well as County Planning Staff, a list of challenges associated with conservation easements were identified. Therefore to assist localities in dealing with these challenges, MPPDC staff developed a public policy matrix that provides solutions to improve accounting for conservation easements within your jurisdiction.

**Accounting for Conservation Easements within your Locality:
Public Policy Options and Recommendations**

Challenge	Public Policy Recommendation and Description	Components of Public Policy Strategy	Supporting Material	Thoughts/Comments
<p>1 Communication between Conservation Community and Locality</p>	<p>Develop a MOU between conservation entity and locality to provide the locality an opportunity to respond to the placement of conservation easements and its consistency with local land use tools, including the comprehensive plan as well as other county adopted land management plans (ie. Dragon Run Management Plan).</p>	<ol style="list-style-type: none"> 1. Reference to Article XI of Constitution 2. Reference to the Open Space Land Act of 1966 (Chapter 461 of the Assembly (Chapter 17, Title 10.1 Sections 10.1-1700 et seq. of the Code of Virginia, as amended) 3. Reference to Virginia Conservation Easement Act (Section 10.1-1010) 4. A space for citations from the County's Comprehensive Plan indicating consistency with the plan and/or other county adopted land management plans 5. An agreement between the conservation entity and the County/Town 	<p>Please see last page of this document for the MOU template</p>	
<p>2 Disconnect between land use tools and current views of local officials</p>	<p>A. Educate and discuss current local and state policy associated with conservation easements with local elected officials.</p> <p>B. Update/change land use planning tools to match perceptions or policy need of local elected officials.</p>	<p>Develop outreach material (ie. pamphlets, presentations, etc) about policies associated with conservation easements (ie. VA Conservation Act, etc) and facilitate discussions.</p> <p>Update comprehensive plan to denote where CE's are consistent and where they are not consistent; Zoning Ordinances with CE overlay districts; designate areas on future land maps within the Comprehensive Plan or an "Official Map"; or establish location criteria for conservation easements to provide to private property owners as well as conservation entities.</p>		<p>Designating areas to receive conservation easements may help comply with water quality requirements through the TMDL program, (ie. RPA's may be identified as locations for Conservation Easements). Such areas would act as buffers to the waterways and assist in reducing nutrient loads into the Bay.</p> <p>If conservation easements are not consistent at the time of recordation/donation with the comprehensive plan, the easement is not "valid and enforceable" therefore the county has the availability to: (1) Tax land at 100% value and (2) Send a letter to the VA Department of Taxation identifying an inconsistency with the comprehensive plan, to determine the property owners legibility for receiving tax credits.</p>

Challenge	Public Policy Recommendation and Description	Components of Public Policy Strategy	Supporting Material	Thoughts/Comments
<p>3 Commissioners of Revenue and Planning Staff are unable to easily track/search for easements once recorded</p>	<p>A. Recommend the clerk take action to add deed type code to the land transaction list from Supreme Court used in recordation of the conservation easement;</p>	<p>A. The CoR and/or the clerk may submit a Service Request Form to the Supreme Court to add a deed type code to the land transaction list specific to conservation easements.</p>	<p>As an internal document of the VA Supreme Court, the Service Request Form may be obtained from the Department of Accounts. For more information, please contact Ms. Norma Gates, Circuit Court Services Manager at Supreme Court of Virginia, at (804) 786-6455</p>	
	<p>B. Have clerks flag conservation easements on monthly transaction sheets from the Clerk’s office to inform CoR of a recorded conservation easement. The CoR may then improve the searchable of conservation easement within the county database (ie. Either through adding CE at the end of a parcel number or adding CE in the legal description); and</p>	<p>B. For those counties with a CAMA (computer-assisted mass appraisal) system – the “legal description can be search by conservation easement which may also be used by the planning department; the sub lot field is also searchable.</p>		
	<p>C. Localities may identify a staff person responsible to keep an ongoing list of conservation easements within its jurisdiction as well as associated GIS data.</p>	<p>C. MPPDC staff may provide current GIS data to all localities that will be a starting point to identify the location of conservation easements. However updating this data will be the responsibility of county staff.</p>		
<p>4 Consistency in accounting for the reduction of fair market values with conservation easements</p>	<p>Establish a method in which conservation easements are valued within the county that provides consistency.</p>	<p>The Contract may consist of verbiage to: A. Have the assessor reduce the fair market value of the property with conservation easement based on the encumbrances placed on the land; or B. Have the assessor assess lands with conservation easements as if they do have an easement. The assessor will provide a fair market value to CoR, and then the CoR will reduce the fair market value based on the encumbrances placed on the land due to the easement.</p>		

MEMORANDUM OF UNDERSTANDING AND PROCESS AGREEMENT BETWEEN
[insert name of conservation entity] Authorized Representative AND COUNTY ADMINISTRATOR/TOWN
MANAGER/ COUNTY LIASON FOR [insert name of locality/town], VIRGINIA

WHEREAS, Article XI of the Constitution of Virginia states in pertinent part:

Section 1. Natural resources and historical sites of the Commonwealth

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Section 2. Conservation and development of natural resources and historical sites.

In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations. Notwithstanding the time limitations of the provisions of Article X, Section 7, of this Constitution, the Commonwealth may participate for any period of years in the cost of projects which shall be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

WHEREAS, The Open Space Land Act of 1966, Chapter 461 of the 1996 Acts of the Assembly, (Chapter 17, Title 10.1, Sections 10.1-1700 *et seq.* of the Code of Virginia, as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, the Virginia Conservation Easement Act declares that conservation easements should be designed for the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

WHEREAS, the Open Space Land Act of 1966 states the use of the real property for open-space land shall conform to the official comprehensive plan for the area in which the property is located and the Virginia Conservation Easement Act, Section 10.1-1010 of the Code of Virginia declares that no conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located; and

WHEREAS, [citations from the Comprehensive Plan of the locality indicating that preserving property in open-space/cultural heritage use is consistent with said Plan]; and


WHEREAS, land under open-space or conservation easement typically require fewer public service dollars than land that is fully developed as authorized by the county's zoning ordinance and other planning documents; and

WHEREAS, land under open-space or conservation easement benefits the [insert locality/town name] Composite Index formula by reducing the proportionate fair market value of property in the county.

NOW, THEREFORE, BE IT UNDERSTOOD AND AGREED, by the Authorized Representative of the [insert name of conservation entity] and the planning director or other county assigned liaison of County/Town of [insert locality name], Virginia, in recognition of the aforesaid, and in consideration of the mutual covenants and benefits hereinabove stated, that the Authorized Representative of the [insert name of conservation entity] and the planning director or other county assigned liaison of the County/Town [insert locality name], Virginia, do hereby adopt collaborative understandings and process agreements, as follows:

- It shall be the responsibility of the Authorized Representative [insert name of conservation entity] to notify the planning director, or other county assigned liaison, of all [insert name of conservation entity] proposed easements in [insert locality/town name] at an early stage in the easement process, preferably prior to the landowner making a significant financial investment in the process to allow the locality adequate time to review consistency of the easement with the county comprehensive plan.
- It shall be the responsibility of the planning director to advise the [insert name of conservation entity] Authorized Representative of the open-space or conservation easements' consistency, or inconsistency, with the county's comprehensive plan, as per Section 10.1-1010 of the Virginia Conservation Easement Act.


Appendix G:
**Conservation Easement Presentation given at the VaULT Conference (6/1/2011) as well
as the Virginia Association of Assessing Officers Educational Seminar (7/13/2011)**



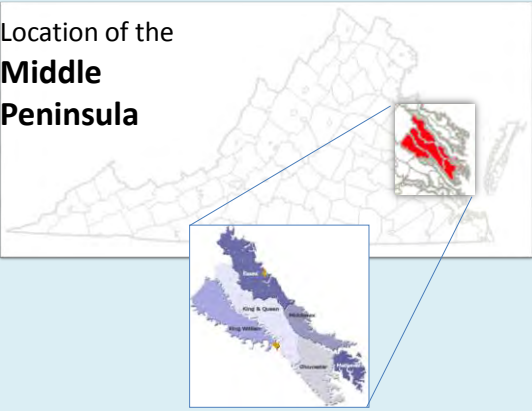
CONSERVATION EASEMENTS:

Fiscal Impacts to Localities in the Middle Peninsula

Jackie Rickards
Middle Peninsula Planning District Commission
VaULT - June 1, 2011




Location of the Middle Peninsula




Middle Peninsula Landscape


Coastal





Forestal/Silviculture




Agriculture




Dragon Run, King & Queen County 3



Background

- Dragon Run Steering Committee (DRSC) promotes conservation easements
- Significant focus on conservation easements and land holding
- Difficult economic times
- Localities' concern over fiscal impacts of conservation easements and land holdings
- DRSC and MPPDC resolutions to study and help promote land-use policy changes


4



Phase 1- Project Goals

1. Understand the impact of conservation easements and tax exempt land holdings on local tax revenue
2. Understand the cost of public services in open lands compared to developed lands
3. Understand the process by which easements are valued
4. Identify policy changes to help Commissioners of Revenue improve consistency
5. Maximize county fiscal benefit from composite index

5




Rules of the Road

Open-Space Land Act 1966
Public Bodies
10.1-1700 – 10.1-1705

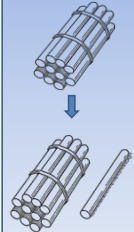
Virginia Conservation Easement Act 1988
Non-Profits
10.1-1009 – 10.1-1016

6



Bundle of Sticks Theory

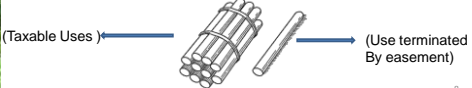
1. The bundle of sticks represents all rights of fee simple ownership
2. With conservation easements, one stick is removed from the bundle. This represents the rights limited by the easement. This stick is given to an eligible conservation easement holder.



7

Virginia Conservation Easement Act: 10.1-1011 Taxation

B. Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act shall reflect the **reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement.**

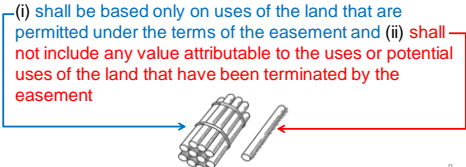


8

10.1-1011 Taxation Guidance for Non-Land Use Localities

B. ...shall reflect the reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement. To ensure that the owner of the fee is not taxed on the value of the interest of the holder of the easement, the fair market value of such land

(i) shall be based only on uses of the land that are permitted under the terms of the easement and (ii) shall not include any value attributable to the uses or potential uses of the land that have been terminated by the easement

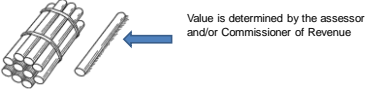


9

This means.....

Establishing a fair market value for properties with conservation easements in Non Land Use Counties:

1. Value is determined may be determined by a qualified assessor, which is then accepted by the locale as the assessed value.
2. Value is established by the assessor but the Commissioner of Revenue would then have the final word as to the fair market value

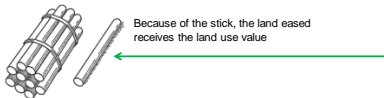


Total value of property may go up, down or stay neutral depending on real estate market dynamics

10

10.1-1011 Taxation Guidance for Land Use Localities

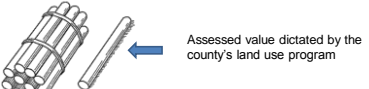
C. ...in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to [58.1-3231](#) or [58.1-3232](#), shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.



11

This means.....

In Land Use Counties, the Commissioner of Revenue must determine the use value under the land use program and shall be assessed and taxed as such



Total value of property may go up, down or stay neutral depending on real estate market dynamics

12

PROPERTY ASSESSMENT, TOTAL LAND BOOK VALUE, COMPOSITE INDEX and their CONNECTION

13

Flow of information :

Commissioner of Revenue's objective is to maintain a land book and generate a total land book value. This value is ultimately used as a factor in the composite index

The VaTAX sends the Department of Education a copy of the annual sales ratio study and the Total Land Book Value.

Department of Education will generate the composite index which reflects a county's ability to pay education cost.

14

Non Land Use Program

King & Queen, Mathews

Scenario #1: Assessment Value	Scenario #2: Conservation Easements
<p>1. Ms. Smith owns 100 acres.</p> <p>Her land is assessed at \$150,000</p>	<p>2. Ms. Smith now wants to put all 100 acres in a conservation easement.</p> <p>If a CoR chooses to reduce the FMV by 25% then....</p> <p>1. Tax exempt rights with easement will be valued at \$37,500</p> <p>2. The taxable rights, the remaining bundle of sticks, will have a value of \$112,500</p>
<p>The assessment value is taxed. Thus, with a tax Levy of \$0.57/\$100...</p> $\left(\frac{\$150,000}{\$100} \right) \times \$0.57 =$ <p>\$855.00 is due</p>	<p>Mr. Jones's will be taxed based on the land use value of the land. With a tax Levy of \$0.57/\$100...</p> $\left(\frac{\$112,500}{\$100} \right) \times \$0.57 = \641.25 is due
<p>The Commissioner of Revenue will record \$150,000 in the Land Book</p>	<p>The Commissioner of Revenue will record \$112,500 in the Land Book</p>

15

Non Land Use Program

King & Queen, Mathews

Scenario #1: Assessment Value	Scenario #2: Conservation Easements
<p>1. Ms. Smith owns 100 acres.</p> <p>Her land is assessed at \$150,000</p>	<p>2. Ms. Smith now wants to put all 100 acres in a conservation easement.</p> <p>If a CoR chooses to reduce the FMV by 25% then....</p> <p>1. Tax exempt rights with easement will be valued at \$37,500</p> <p>2. The taxable rights, the remaining bundle of sticks, will have a value of \$112,500</p>
<p>The assessment value is taxed. Thus, with a tax Levy of \$0.57/\$100...</p> $\left(\frac{\$150,000}{\$100} \right) \times \$0.57 =$ <p>\$855.00 is due</p>	<p>Mr. Jones's will be taxed based on the land use value of the land. With a tax Levy of \$0.57/\$100...</p> $\left(\frac{\$112,500}{\$100} \right) \times \$0.57 = \641.25 is due
<p>The Commissioner of Revenue will record \$150,000 in the Land Book</p>	<p>The Commissioner of Revenue will record \$112,500 in the Land Book</p>

16

Land Use Program

Essex, King William, Gloucester, Middlesex

Scenario #1: Land Use Value	Scenario #2: Conservation Easements
<p>1. Mr. Jones owns 100 acres.</p> <p>His land is assessed at \$150,000</p> <p>But, the Land use rate for agriculture land is \$550/acre</p> <p>Therefore, the land use value of the land is \$55,000</p>	<p>2. Mr. Jones now wants to put all 100 acres in a conservation easement.</p> <p>One stick removed from the bundle represents the rights limited by the easement.</p> <p>Tax exempt rights with easement</p> <p>Taxable rights</p> <p>In accordance with VA Tax Code 10.1-1011, Mr. Jones's land under easement will have a fair market value equal to the land use value of \$55,000</p>
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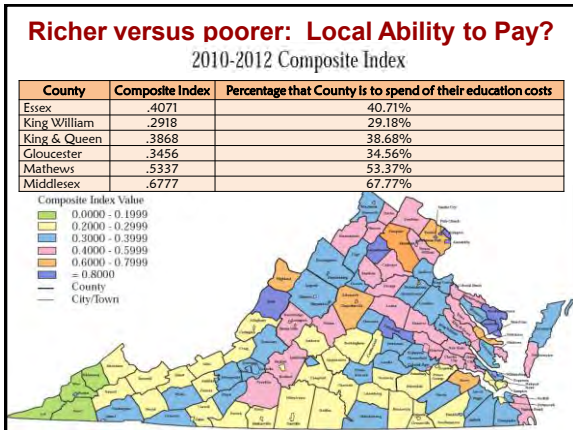
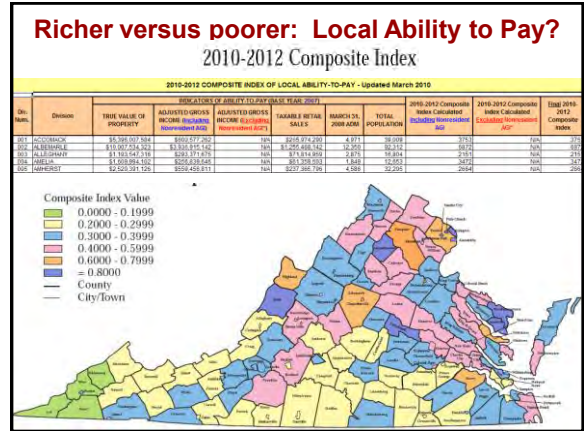
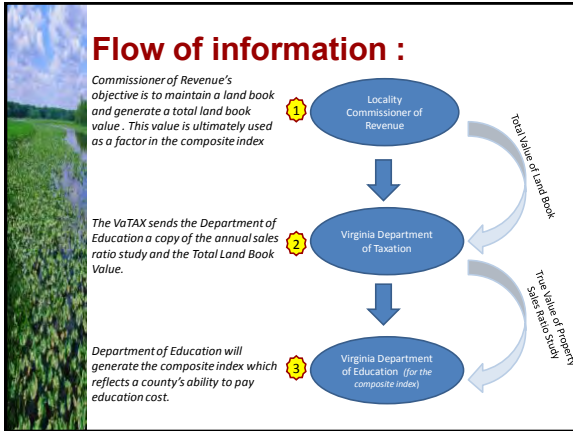
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18



What's the problem....

The Commissioners of Revenue may be over reporting the total land book value

↓

Not maximizing localities' state aid under the Composite Index

Composite Index Factors

- True value of real property (weighted 50%)
- Adjusted gross income (weighted 40%)
- Taxable retail sales (weighted 10%)

Example 1 – Middlesex County (LU)

Owner: NORSH DND, 52308 AC (L&CA), 1018 AMBURY/470-787-04-983, 0299-40674-24475-424

Address: 1172 NORTH END RD, DELTAVILLE, VA 23048

Assessment Values (Map#- 40 BC)

No Building	0
Land Value	\$1,133,200
Other Improvements	0
Total Value:	\$1,133,200

Average Description (Map#- 40 BC)

Size In Acres	Description	Loop Sum of Per Acre	Unit Value	Adj. %	Units Value	Average Value
1.00	Business	Loop Sum	800,000	0.00	800,000	\$800,000
2.00	Per Acre	Per Acre	100,000	0.00	\$200,000	\$200,000
2.00	Per Acre	Per Acre	10,000	0.00	\$20,000	\$20,000
86.358	Per Acre	Per Acre	2,300	0.00	\$196,200	\$196,200
Total Value:						\$1,133,200

Example 2 – Essex County (LU)

Property Address: SPANISH RD (OFF), 15 WHEATSTONE X, 23057

Owner Name/Address: FORD HILL LLC, C/O TOM MORGAN, 16 HILL WINDS Pkwy, FREDERICKSBURG VA 23051

Legal Description: CEDAR GROVE (PART)

Assessment Values (Map#- 40 BC)

No Building	0
Land Value	\$1,133,200
Other Improvements	0
Total Value:	\$1,133,200

Average Description (Map#- 40 BC)

Size In Acres	Description	Loop Sum of Per Acre	Unit Value	Adj. %	Units Value	Average Value
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86.358	Per Acre	Per Acre	2,300	0.00	\$196,200	\$196,200
Total Value:						\$1,133,200

Example 2 – Essex County (LU)

Property Address # PASSING RD (OFF)		Owner Name/Address PINE HILL LLC C/O TOM BISHAZO # HOLLOWOOD FARM RD PINEBURKSURRING VA 22445	
Mag# 9.40 Acres 60.3		Legal Description: CEDAR GROVE (PART)	
Ownership: VACANT		Map# 07 0 (00P 00)	
Drilling Type: None		Plat Map# 3482	
Use/Class: INCL FARM RES - SUBURBAN		Average: 19.100	
Year Assessed: 2009		Year Built: -	
		Land Use #	
-----Land Valuation-----			
Math Class	Desc	Grd Size	Depth Rate FV/Pct Value
A	19 WOOD/OFFRD	E	19.330 2400.00 36727- 9665
Total Land Value		19.330 9700	
-----Comments-----			
2007: FR ROBERT G & HARILYN G FOGG (DBS 01-1209)			
2008: 19.33 AC CHANGE (PB 24-65)			
2008: CONSERVATION EASEMSNET (DE 08-1418)			
2009: ECON DEPR -25% (CONSERVATION EASEMENT)			
2009: LAND USE			
2010: ECON DEPR -36.727 (CONSERVATION EASEMENT)			
2010: REMOVED FROM LAND USE (CONSERVATION EASEMENT)			
Total Property Value		9700	

Phase I: Findings

Regional Summary

	Acres under Conservation Easements	Acres held by Tax-exempt Conservation Entities	Acres Conserved Total	Tax Revenue Loss due to Conservation Easements	Tax Revenue Loss due to Tax-exempt Conservation Land Holdings	Total Tax Revenue Loss	Percentage of the County's Budget
Middlesex	4,291	521	4,812	\$37,778	\$5,428	\$43,206	.18%
Gloucester	1,010.02	3,114.95	4,124.97	\$32,406	\$16,779	\$49,185	.0005%
Essex	12,343.81	1,170.18	13,514	\$115,288	\$14,790	\$130,078	.44%
King William	6,729.3	2,630.09	9,359.39	\$59,893	\$53,500	\$113,393	.54%
King and Queen	14,156.45	12,971.25	27,127.70	\$14,953	\$64,007	\$78,960	.39%
Mathews	341	257.97	598.97	\$1,107	\$1,836	\$2,942	.01%
Regional Total	38,872	20,665	59,537	\$262,974	\$156,340	\$419,313	-

Capturing Conservation Easements: additional fiscal benefits

	Additional Devaluation due to easements	VaTax Sales Ratio Study	True Value of Property over reported
Middlesex	\$10,793,682	79.53%	\$13,571,837
Gloucester	\$5,587,222	85.11%	\$6,564,707
Essex	\$18,594,806	95.23%	\$19,526,206
King and Queen	\$3,115,224	70.00%	\$4,450,320
King William	\$7,394,152	89.89%	\$8,225,778
Mathews	\$197,600	62.56%	\$315,857

Virginia Department of Taxation Sales Ratio Study – Determines the relationship between the assessed value of real estate and what properties have actually sold for during the past year.

Phase 1- Identified Problems

- 10.1 (Conservation) vs 58.1 (Taxation)
- No standard administrative mechanism to "capture" the recordation of conservation easements
- The Commissioners of Revenue are provided limited or no guidance on valuing easements or reporting for the purposes of maximizing composite index aid
- Different approaches to valuing easements depending on the locality
- Some data does not transfer between reassessments
- Not maximizing composite index return for state aid for schools

Phase 1- Key Findings

- Conservation easement impacts are a very small percentage of a county's budget – Less than 0.5%
- Easements lower land value and thereby should help increase state aid from the composite index

Phase I – Outcomes

- Changing assessment process (land use counties especially) to capture additional state aid through composite index
- Updated lists of conservation easements for reassessments
- Changing internal process to stay abreast of conservation easements
- Applying a generally more consistent approach to assessing eased lands

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Phase II: Land Use Impacts

Is there a disconnect between what our planning tools encourage and what our elected officials value currently and what our conservation community is accomplishing?



33

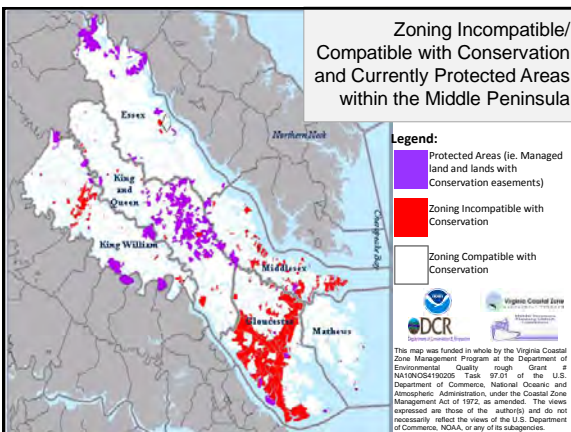
Where do you want 'em?

- Understanding if there is, in fact, an “issue”

Everywhere ? Nowhere

Our county planning tools generally seem to encourage conservation without specifying WHERE

34




VCEA 10.1-1010. Creation, acceptance and duration

- E. No conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located.

PROBLEM: No formal approval or enforcement process

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Enhancing accountability of Conservation Easements

- Stakeholder engagement
- Development of MOU
- Policy Recommendations
- Administrative Recommendations


37



Contact:

Jackie Rickards
Regional Projects Planner II
Middle Peninsula Planning District Commission
Phone: 804-758-2311
Email: jrickards@mppdc.com


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CONSERVATION EASEMENTS:

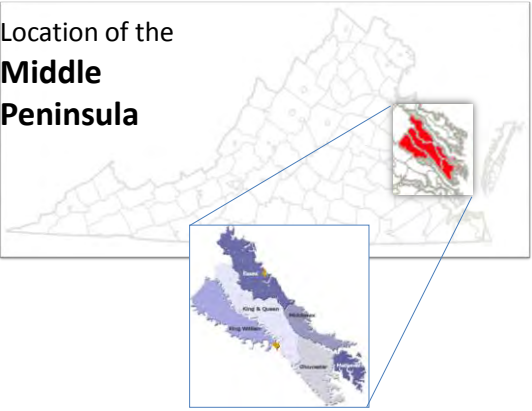
Fiscal Impacts to Localities in the Middle Peninsula

Jackie Rickards
Middle Peninsula Planning District Commission
VAAO - July 13, 2011




Virginia Coastal Zone
This map was created in whole or in part by the Virginia Coastal Zone Management Program at the Department of Environmental Quality under State of Virginia Act 1972-10000, 1972-10001, and 1972-10002, and the Federal Coastal Zone Management Act of 1972, as amended. The areas depicted are those of the subject(s) and do not necessarily reflect the views of the U.S. Department of Commerce, NOAA, or any of its subsidiaries.

Location of the Middle Peninsula




Middle Peninsula Landscape


Coastal





Forestal/Silviculture




Agriculture




Dragon Run, King & Queen County 3



Background

- Dragon Run Steering Committee (DRSC) promotes conservation easements
- Significant focus on conservation easements and land holding
- Difficult economic times
- Localities' concern over fiscal impacts of conservation easements and land holdings
- DRSC and MPPDC resolutions to study and help promote policy changes


4



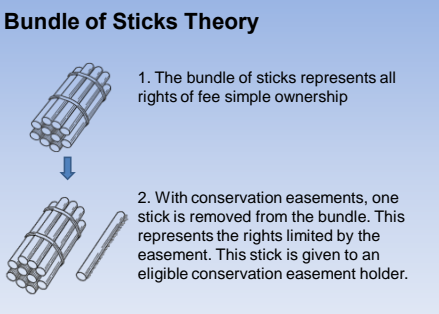
Phase 1- Project Goals

1. Understand the impact of conservation easements and tax exempt land holdings on local tax revenue
2. Understand the cost of public services in open lands compared to developed lands
3. Understand the process by which easements are valued
4. Identify policy changes to help Commissioners of Revenue improve consistency
5. Maximize county fiscal benefit from composite index

5



Bundle of Sticks Theory



1. The bundle of sticks represents all rights of fee simple ownership
2. With conservation easements, one stick is removed from the bundle. This represents the rights limited by the easement. This stick is given to an eligible conservation easement holder.

6

Rules of the Road

Open-Space Land Act 1966
Public Bodies
10.1-1700 – 10.1-1705
Virginia Conservation Easement Act 1988
Non-Profits
10.1-1009 – 10.1-1016

7

Virginia Conservation Easement Act: 10.1-1011 Taxation

*B. Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act shall reflect the **reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement.***

8

10.1-1011 Taxation Guidance for Non-Land Use Localities

B. ...shall reflect the reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement. To ensure that the owner of the fee is not taxed on the value of the interest of the holder of the easement, the fair market value of such land

(i) shall be based only on uses of the land that are permitted under the terms of the easement and (ii) shall not include any value attributable to the uses or potential uses of the land that have been terminated by the easement

9

This means.....

Establishing a fair market value for properties with conservation easements in Non Land Use Counties:

- Value is determined may be determined by a qualified assessor, which is then accepted by the locale as the assessed value.
- Value is established by the assessor but the Commissioner of Revenue would then have the final word as to the fair market value

10

Total value of property may go up, down or stay neutral depending on real estate market dynamics

Non Land Use Program King & Queen, Mathews

Scenario #1: Assessment Value	Scenario #2: Conservation Easements
<p>1. Ms. Smith owns 100 acres.</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Her land is assessed at \$150,000</p>	<p>2. Ms. Smith now wants to put all 100 acres in a conservation easement.</p> <p>If a CoR chooses to reduce the FMV by 25% then....</p> <ol style="list-style-type: none"> Tax exempt rights with easement will be valued at \$37,500 The taxable rights, the remaining bundle of sticks, will have a value of \$112,500
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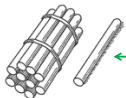
Non Land Use Program King & Queen, Mathews

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12

10.1-1011 Taxation Guidance for Land Use Localities

C. ...in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to 58.1-3231 or 58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.

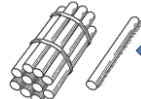


Because of the stick, the land eased receives the land use value

13

This means.....

In Land Use Counties, the Commissioner of Revenue must determine the use value under the land use program and shall be assessed and taxed as such



Assessed value dictated by the county's land use program

Total value of property may go up, down or stay neutral depending on real estate market dynamics

14

Attorney General's Opinion November 19, 1993

to the honorable Joyce L. Clark, Commissioner of Revenue for Orange County, VA



Question 3: if a locality has adopted a use value assessment program that does not cover forest or open space uses, would land under such easement that is used for forest or open-space purposes qualify for open-space use assessment?

Answer: if a locality has a use value program that does not cover forest and open-space uses, land under conservation or open-space easement used for forest or open-space still will qualify for the open-space use value assessment. Land encumbered by such a perpetual easement meets the definition requirements in 58.1-3230 being "preserved for...conservation of land or other natural resources...or scenic purposes." Section 10.1-1011, reflects the General Assembly's conclusion that this tax treatment is appropriate, because the owners of land that is subject to such open-space or conservation easements permanently have protected open space and thus permanently have given up part of their land's value.

15

Land Use Program



Essex, King William, Gloucester, Middlesex

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Land Use Program

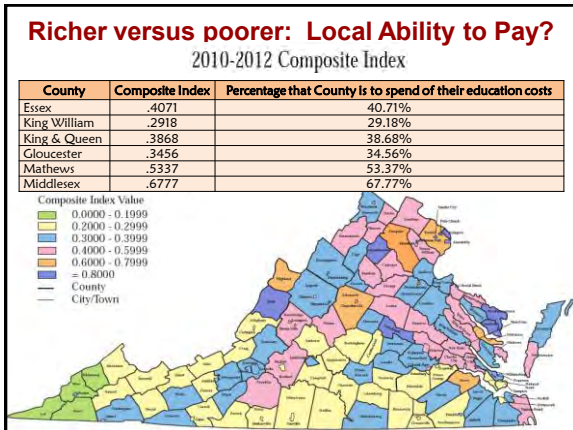
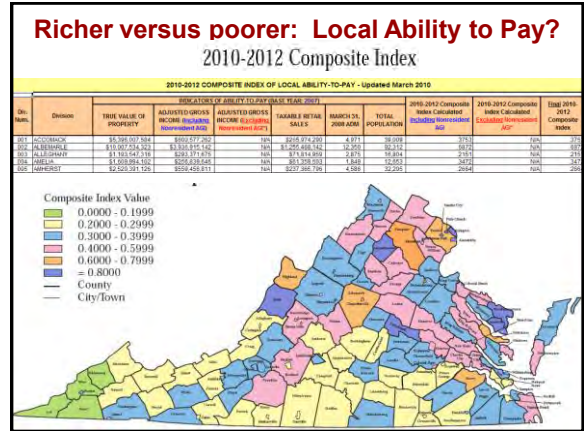
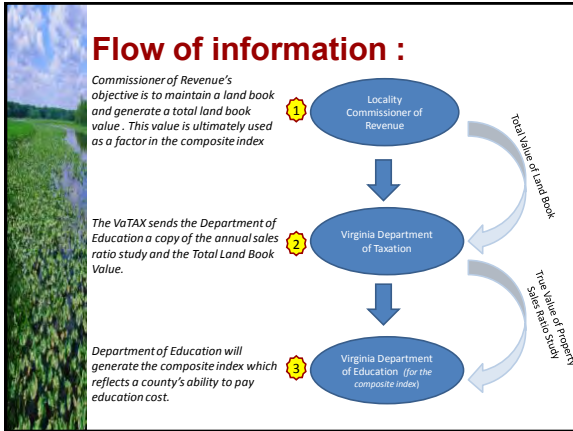
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17

PROPERTY ASSESSMENT, TOTAL LAND BOOK VALUE, COMPOSITE INDEX and their CONNECTION

18



What's the problem....

The Commissioners of Revenue may be over reporting the total land book value

↓

Not maximizing localities' state aid under the Composite Index

Composite Index Factors

- True value of real property (weighted 50%)
- Adjusted gross income (weighted 40%)
- Taxable retail sales (weighted 10%)

Example 1 – Middlesex County (LU)

Owner: NORSH DIV, 52.308 AC (L&CA), 1018 AHS 0407 071200 707-04-583, 0299-406714-24475-454

Owner Address: DELTAVILLE VA, 22843

Total Land Area: 52.308 Acres

***Land Use Value*:** \$497,200

Property Address: 1172 NORTH END RD, DELTAVILLE, VA 22843

Assessment Values (Map# 40 BC)

No Building	0
Land Value	\$1,133,200
Other Improvements	0
Total Value:	\$1,133,200

Average Description (Map# 40 BC)

Size In Acres	Description	Loop Sum of Per Acre	Unit Value	Adj. %	Units Value	Average Value
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86.338	Per Acre	Per Acre	2,300	0.00		\$196,200
						Total Value: \$1,133,200

Example 2 – Essex County (LU)

Property Address: SPANISH RD (OFF), NAH 3 40 (OFF), 605

Owner Name/Address: FORD HILL LLC, C/O TOM MORGAN, 16 HILL WINDS Pkwy, FREDERICKSBURG VA 22405

Legal Description: CEDAR GROVE (PART)

Ownership: VACANT

Building Type: UNCLASD INCL FARM BLDG - SUBURBAN

Year Assessed: 2008

Zoning: AGRICULTURAL

Map# 40 BC: 0299-406714-24475-454

Assessment Values (Map# 40 BC)

Land Value	\$1,133,200
Other Improvements	0
Total Value:	\$1,133,200

Example 2 – Essex County (LU)

Property Address # PASSING RD (OFF) Mag# 5 40 Acct# 603		Owner Name/Address PINE HILL LLC 600 YONGE BURGADO 16 HOLLOWOOD FARM RD FREDERICKSBURG VA 22405			
Legal Description: CEDAR GROVE (PART)					
Ownership: VACANT Dwelling Type: Single-Fam Res - Suburban Year Assessed: 2009		Map#: 07 0 (009 00) Plat Name/ID#: Average: 18.100 Year Built:			
-----Land Valuation-----					
Math Class	Desc	Grd Size	Depth	Rate	FV/Pct Value
A	19 WOOD/OFFRD	E	19.330	2400.00	36727- 9665
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Regional Summary

	Acres under Conservation Easements	Acres held by Tax-exempt Conservation Entities	Acres Conserved Total	Tax Revenue Loss due to Conservation Easements	Tax Revenue Loss due to Tax-exempt Conservation Land Holdings	Total Tax Revenue Loss	Percentage of the County's Budget
Middlesex	4,291	521	4,812	\$37,778	\$5,428	\$43,206	.18%
Gloucester	1,010.02	3,114.95	4,124.97	\$32,406	\$16,779	\$49,185	.0005%
Essex	12,343.81	1,170.18	13,514	\$115,288	\$14,790	\$130,078	.44%
King William	6,729.3	2,630.09	9,359.39	\$59,893	\$53,500	\$113,393	.54%
King and Queen	14,156.45	12,971.25	27,127.70	\$14,953	\$64,007	\$78,960	.39%
Mathews	341	257.97	598.97	\$1,107	\$1,836	\$2,942	.01%
Regional Total	38,872	20,665	59,537	\$262,974	\$156,340	\$419,313	-

Capturing Conservation Easements: additional fiscal benefits

	Additional Devaluation due to easements	VaTax Sales Ratio Study	True Value of Property over reported
Middlesex	\$10,793,682	79.53%	\$13,571,837
Gloucester	\$5,587,222	85.11%	\$6,564,707
Essex	\$18,594,806	95.23%	\$19,526,206
King and Queen	\$3,115,224	70.00%	\$4,450,320
King William	\$7,394,152	89.89%	\$8,225,778
Mathews	\$197,600	62.56%	\$315,857

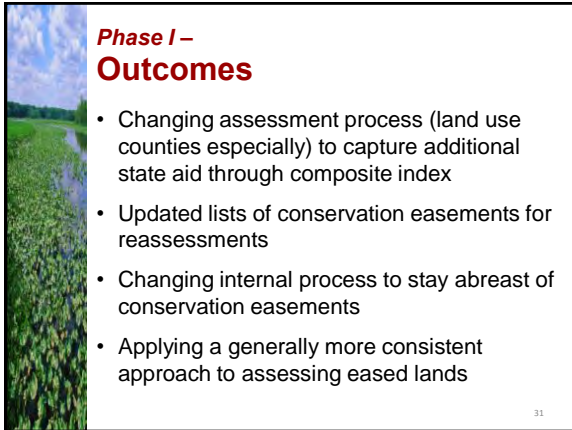
Virginia Department of Taxation Sales Ratio Study – Determines the relationship between the assessed value of real estate and what properties have actually sold for during the past year.

Phase 1- Identified Problems

- 10.1 (Conservation) vs 58.1 (Taxation)
- No standard administrative mechanism to "capture" the recordation of conservation easements
- The Commissioners of Revenue are provided limited or no guidance on valuing easements or reporting for the purposes of maximizing composite index aid
- Different approaches to valuing easements depending on the locality
- Some data does not transfer between reassessments
- Not maximizing composite index return for state aid for schools

Phase 1- Key Findings

- Conservation easement impacts are a very small percentage of a county's budget – Less than 0.5%
- Easements lower land value and thereby should help increase state aid from the composite index



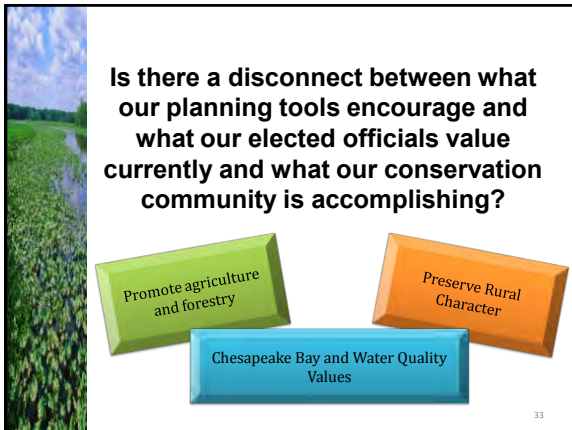
Phase I – Outcomes

- Changing assessment process (land use counties especially) to capture additional state aid through composite index
- Updated lists of conservation easements for reassessments
- Changing internal process to stay abreast of conservation easements
- Applying a generally more consistent approach to assessing eased lands

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Phase II: Land Use Impacts



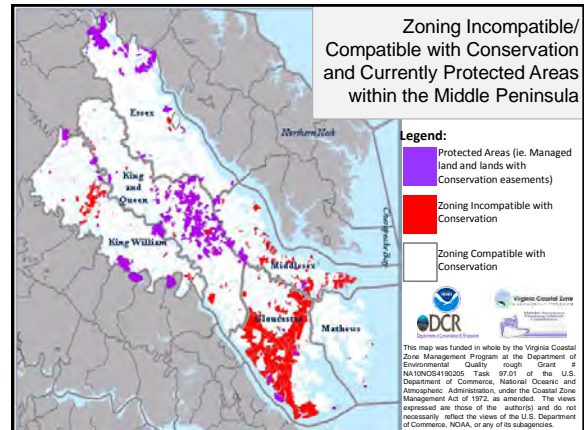
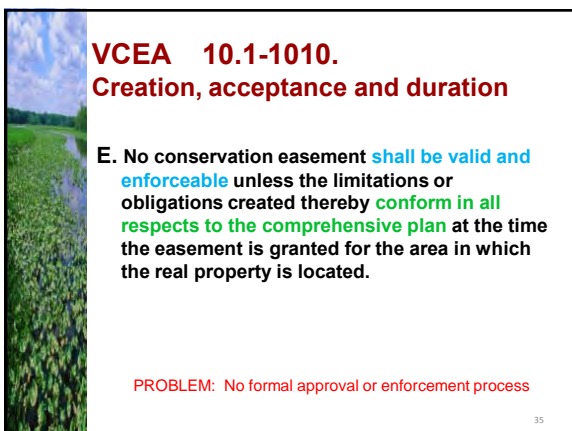
Is there a disconnect between what our planning tools encourage and what our elected officials value currently and what our conservation community is accomplishing?

Promote agriculture and forestry

Preserve Rural Character

Chesapeake Bay and Water Quality Values

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VCEA 10.1-1010. Creation, acceptance and duration

E. No conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located.

PROBLEM: No formal approval or enforcement process

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Enhancing accountability of Conservation Easements

- Stakeholder engagement
- Development of MOU
- Policy Recommendations
- Administrative Recommendations

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Middle Peninsula Planning District Commission
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**Appendix H:
Summary of Competed 309 Efforts 2006-2010 – Dragon Run Excerpt**

II. SUMMARY OF COMPLETED 309 EFFORTS (2006-2010)

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	FY 06	FY 07	FY 08	FY 09	FY10	
Program Implementation (Administrative Actions)	\$20,000	\$67,898	\$70,000	\$62,344	\$30,000	\$250,242
CSI: Intergovernmental Decision-Making	\$158,000	\$70,000	\$50,000	\$38,350	\$98,000	\$414,350
CSI: Shoreline Management	\$150,000	\$150,000	\$150,000	\$191,590	\$150,000	\$791,590
CSI: Conservation Corridors			\$71,000	\$93,716	\$153,000	\$317,716
SAMP: Dragon Run	\$69,000	\$56,000	\$50,000	\$14,000	\$25,000	\$214,000
SAMP Seaside		\$52,102	\$75,000	\$80,000	\$80,000	\$287,102
Aquaculture & BMPs	\$139,000	\$140,000	\$70,000	\$56,000		\$405,000
TOTAL	\$536,000	\$536,000	\$536,000	\$536,000	\$536,000	\$2,680,000

Program Implementation

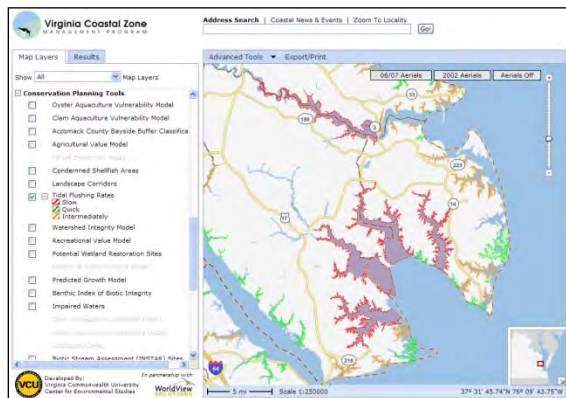
This portion of Section 309 funds, although not a separate strategy, was used to support administrative actions related to Virginia's Section 309 Needs Assessment and Strategy. A portion of the funds were used for contractual services from the Environmental Law Institute (ELI) to analyze past routine program changes regarding fisheries, sand dunes and beaches, wetlands, and state implementation of Clean Water Act and Clean Air Act provisions, and to prepare program change packages for submission to NOAA. NOAA approved Virginia's submission in June, 2010. Other funds were used for additional contractual services from ELI for a special study of potential impacts to Virginia's coastal environment from offshore energy development activities and the possible need for program changes related to these activities. In addition, funding was provided in years two and three to support one half of a Virginia CZM program staff position to manage the shoreline and conservation corridor portions of the Section 309 Strategy. In year four, funds were allocated to the Institute for Environmental Negotiation at the University of Virginia to assist in developing the 2010 Section 309 Needs Assessment.

Cumulative and Secondary Impacts

STRATEGY: Intergovernmental Decision-making

This strategy focused on identifying and minimizing coastal resource use conflicts, and creating stronger linkages between local land use plans and state and federal water use policies by exploring intergovernmental agreements to proactively consult the Coastal Geospatial and Educational Mapping System (Coastal GEMS), a tool-based Web resource, to view and analyze the state of Virginia's coastal resources in the face of increasing coastal development. Additionally, by providing the most up-to-date data to all stakeholders in the coastal zone through Coastal GEMS, all interested parties could help identify additional information (i.e. gaps) needed to better manage our coastal resources which could lead to modifications of the current regulatory structure.

During this 309 funding cycle the following actions toward Coastal GEMS expansion enhancement and promotion were undertaken:



The Coastal GIS Coordinator met with VCU and WorldView Solutions to facilitate workflow involved in maintaining, enhancing, and marketing Coastal GEMS. Over 20 data layers were either updated or added to Coastal GEMS during FY2007-2008. These data include: *Conservation Lands, Important Bird Areas, Essential Wildlife Habitat, Condemned Shellfish Areas, Private Oyster Leases, Constructed Oyster Reefs, Clam Aquaculture Vulnerability Model, Oyster Aquaculture Vulnerability Model, Tidal Flushing Rates and*

layers associated with the VCLNA (Recreational Value Model, Watershed Integrity Model, Agricultural Value Model, Forest Economics Model). Data layers were processed for effective display on Coastal GEMS and then uploaded to a test IMS site where CZM staff could review symbology before they were added to the Coastal GEMS application.

Instead of developing a separate Coastal GEMS Advisory Committee, it was decided that the Coastal GIS Coordinator would utilize the existing coastal policy team and other ad-hoc advisors to identify and prioritize geospatial projects.

Additionally, a Coastal GEMS training program was created and implemented. This program included a presentation about Coastal GEMS and why/how it was created, a live demonstration of the Coastal GEMS site tailored to the specific needs of the audience, and a handout with information about Coastal GEMS and available data layers. Information regarding GEMS training was posted to the GEMS website and publicized to CZM partners. Nine formal GEMS training sessions were also conducted during FY2007-2008.

Finally for Coastal GEMS, the development of MOU's and official data sharing agreements was explored, but ultimately deemed unnecessary due to existing willingness and support of partners to provide data and promote Coastal GEMS. The Coastal GIS Coordinator produced coastal resource maps and made GIS based calculations for CZM staff to utilize in meetings and presentations and for articles in the CZM magazine and produced maps as requested for CZM partners.

In addition to the enhancements to Coastal GEMS, this strategy included a two-year pilot project (FY06 & FY07) with the Middle Peninsula Planning District Commission (MPPDC) for applying GEMS as a tool to manage use conflicts. From this, the York River Use Conflict Roundtable was established among a cross section of representatives of varying, and often conflicting, uses of the York River. The Committee worked in small groups to analyze a York River study reach that consisted of comprehensive maps of the existing uses, demographics, and designations of the York River waterfront. This resulted in creation of a matrix of all identified use conflicts in preparation for the next phase of the project to frame the public policy question "Who should manage use conflict?" A York River Use Conflict Policy Recommendation

Committee was established, comprised of Roundtable members as well as state agency representatives to develop appropriate tools and policies. The Committee addressed known issues and conflicts affecting the study area to ensure that a comprehensive analysis of the issues had been achieved. The Committee arrived at seven recommendations for consideration by the Gloucester County Board of Supervisors:

Recommendation 1 –Develop and adopt a Coastal Living Policy to educate and inform County residents.

Recommendation 2 –Denote the County’s Land, Air and Water territorial boundaries in the County’s Comprehensive Plan and supporting maps.

Recommendation 3 –Take no action for now regarding aquaculture within the County’s jurisdiction.

Recommendation 4 –Develop and adopt a policy for the protection of working waterfronts.

Recommendation 5 –Develop and adopt a Waterfront Outdoor Lighting Ordinance.

Recommendation 6 –Develop and adopt a policy restricting floating homes within the County.

Recommendation 7 –Develop and implement a master plan for public access infrastructure to ensure safe and equal water access for all user groups to the waterways within the County.

All recommendations were adopted by Gloucester’s Board of Supervisors, and the county has established a “Coastal Community Committee” to address implementation. Currently, the Board is considering adoption of a draft Coastal Living Policy to pave the way for further action. Technical work and other products from the York River Use Conflict Committee are being incorporated in the comprehensive plan as it is updated. Examples include denotation of county’s land, air and water territorial boundary.

STRATEGY: Shoreline Management

Waterfront development has altered Virginia's shoreline, often in ways that can be detrimental to habitats and water quality. In particular, many low energy shorelines have been hardened with revetments and bulkheads where less damaging techniques for managing shoreline erosion could have been employed. In many of these cases shoreline erosion could have been managed through a "living shoreline" approach that maintains, or even expands, the habitat and water quality protection benefits of natural shorelines.



This strategy built on progress made during the previous 309 Strategy to integrate riparian and near-shore management objectives and improve shoreline management practices. As a result of this strategy, the various agencies involved in shoreline management are now better able to promote living shoreline techniques and reduce the cumulative and secondary environmental impacts of waterfront development on shorelines. The strategy included a number of components:

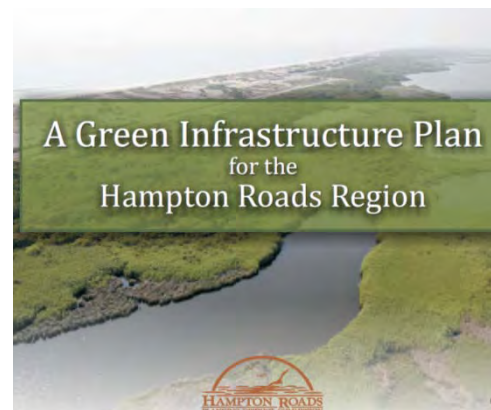
- A "Living Shoreline Summit," (held December, 2006) with peer reviewed proceedings, to advance the use of this management technique
- Revised "Wetlands Guidelines" to be used by the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, local wetlands boards and others to guide decisions about shoreline and tidal wetlands management.

- Improved data in the form of local shoreline inventories and evolution reports to support more informed shoreline management decisions and provide background for local shoreline plans to be developed in the future
- Research to document the habitat value of living shorelines and to improve their design
- Guidance for local governments to use in shoreline management planning
- Outreach materials for land use decision-makers, landowners and contractors on living shoreline advantages and design principles
- A training program for contractors and local government staff on living shoreline practices
- A report on improving management of Virginia's dune and beach resources, including proposed revisions to the Coastal Primary Sand Dunes and Beaches Act
- Changes to the Coastal Primary Sand Dunes and Beaches Act by the Virginia General Assembly to expand the legislation to cover the entire coastal zone (submitted to and approved by NOAA as a Routine Program Change)
- Revisions to the Coastal Primary Sand Dunes and Beaches Guidelines
- A peer-reviewed manuscript *Using Science to Create Dune and Beach Protection Policy in Virginia* published in the Journal of Coastal Research.

STRATEGY: Conservation Corridors

Population growth and development in many urban and suburban areas of Virginia's coastal zone has resulted in significant habitat fragmentation and the loss of many wetlands and riparian buffers that help protect water quality. For this reason, the Virginia CZM Program has invested in the development of conservation corridors throughout the coastal zone beginning with a model system created in the Hampton Roads planning district which prioritizes areas for preservation and restoration based on a number of data layers and local input.

During this 309 funding cycle additional work was conducted to update the Hampton Roads conservation corridor network. The original green infrastructure network (FY2004 Task 51) was updated by incorporating more current data into the geographic information systems (GIS) model. There were also several discussions with a diverse group of stakeholders that led to improvements in the green infrastructure plan. The change between the original green infrastructure network and the update that was finalized in this project was also analyzed. A *Vulnerability to Development* model was also created in order to predict where future growth will occur in the region and how the green infrastructure network will be impacted. This gives planners a tool to prioritize land acquisitions in the face of limited funding. The project also analyzed the potential impact of sea level rise on the green infrastructure network. Additionally, an updated parks and recreation database was created in GIS.



To expand this system to a network of identified and locally accepted conservation corridors for Virginia's entire coastal zone, additional 309 projects were contracted for FY2009 and FY2010. Focused in Northern Virginia (Task 97.02) and Middle Peninsula (Task 97.01), these projects are

designed to identify green infrastructure and develop public policy recommendations. Anticipated outcomes for these grants include: mapped conservation corridors, analysis on the benefits of corridors for pollutant removal and carbon sequestration, an educational fact sheet on the practical uses and benefits of green infrastructure, public policy recommendations and their endorsement, an analysis on the economic impacts of conservation easements, and possible routes for the Potomac Heritage National Scenic Trail.

Finally, in FY08, the Middle Peninsula Planning District Commission conducted a project to analyze the effects that a change in Virginia Department of Health (VDH) Sewage Handling and Disposal Regulations in 2000 has had on development patterns within many Virginia localities. The regulations allowed new engineered onsite sewage disposal system (OSDS) technologies to be installed on “marginal lands,” or land that that would not normally support a traditional gravity fed septic systems. This change has resulted in erratic development patterns inconsistent with comprehensive planning goals of the affected localities.

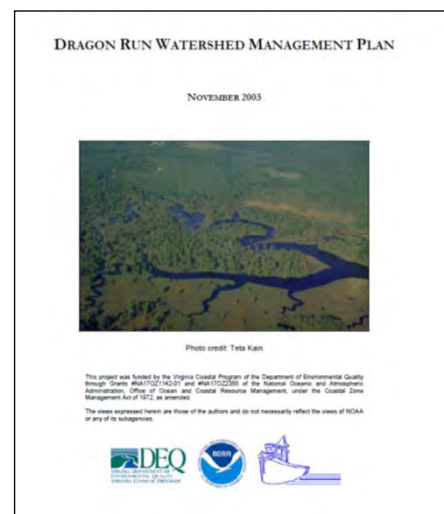
To inform local elected officials and local planning staff of various consequences of existing land use planning and to encourage the need for additional or amended public policy as it relates to land development and OSDS, this project inventoried and mapped permitted engineered OSDS across the Middle Peninsula. MPPDC staff worked closely with VDH to collect spatial data of engineered OSDS permitted from 2004-2008. This project was a continuation of a previous CZMA grant (NA17OZ2335 Task 84), where OSDS installed and permitted from 2000-2004 were inventoried and mapped. Therefore, data from the previous project was combined with data collected in this year’s project in order to generate both county and town maps of OSDS proliferation from 2000-2008 within the Middle Peninsula.

Through an assessment of the maps, MPPDC staff found that within the Middle Peninsula [from 2000-2008] there were 1,208 installed OSDS and 2,006 permitted OSDS awaiting installation; this infrastructure equates to approximately \$57,852,000.00 in total private sector investments. From this analysis MPPDC staff can work with local elected official and local planning staff to convey the implications of these land use development issues and policies.

Special Area Management Plans (SAMPs)

STRATEGY: Dragon Run

The Virginia CZM program has been investing in the Dragon Run watershed through a Special Area Management Plan (SAMP) since 2001. The Dragon Run SAMP mission has been to support and promote community-based efforts to preserve the cultural, historic and natural character of the Dragon Run, while preserving property rights and the traditional uses within the watershed. The Dragon Run Watershed Management Plan developed through this effort was originally adopted in 2003 by Essex, Gloucester and King and Queen Counties.



During the 2006-2010 grant cycle, the SAMP focused on three areas of implementation: 1) new zoning and comprehensive plans, 2) public access/conservation lands management and 3) sustainable economic development practices.

Land-use planning has been an instrumental component of the Dragon Run SAMP. Assisting the watershed localities with developing tools to facilitate the long-term protection of the watershed through compatible and consistent comprehensive plan and zoning ordinance language has been integral to SAMP goals. During this grant cycle, the SAMP has focused on working with county planning staff, planning commissions, boards of supervisors and comprehensive plan steering committees to integrate language recommendations into planning tools. Based on Dragon Run SAMP recommendations, King and Queen County adopted revised zoning ordinance language to reconfirm its commitment to recognize the Dragon Run as a significant area. Gloucester County has included a substantial section on the Dragon Run in its draft comprehensive plan based on the SAMP recommendations and is hoping for plan adoption in the summer 2011. Essex County has included Dragon Run recommendations in the working draft of their update to the comprehensive plan and hopes to adopt the plan in Spring 2011. Middlesex County adopted a comprehensive plan that includes some of the Dragon Run land-use recommendations, and has recognized the importance of other land-use tools recommended by the SAMP, including Agricultural and Forestal Districts, Purchase of Development Rights (PDR), Transfer of Development Rights and the use of conservation easements by private landowners.

As public access opportunities have increased throughout the Dragon Run watershed, understanding public and private rights for access and reducing the potential for conflict between public resource users and private landowners is becoming increasingly important. MPPDC staff developed a code of conduct that is based on the Public Trust Doctrine as it pertains to the public's right for ingress and egress of waterways such as the Dragon Run. This guidance was integrated into a brochure and its principles were conveyed to public access entities, such as the Middle Peninsula Chesapeake Bay Public Access Authority. Additionally, these entities were asked to apply the code of conduct to their holdings in the watershed. Specifically, four of these entities adopted site specific management plans that included the code of conduct in 2008 and early 2009 (see next section).

Public and non-governmental organizations (NGOs) acquiring conservation lands in the Dragon Run Watershed have become increasingly successful. It has since become a priority to assure that these entities are managing their acquired lands in such a way that is consistent and compatible with the Dragon Run watershed management plan. Therefore, the SAMP, via coordination with managing entities and related partners, developed four management plans (Dragon Bridge – CBNERRs and Dragon Flats – TNC) utilizing Dragon Run Steering Committee conservation holding management recommendations both of which were accepted. MPPDC also drafted management plans for the Middle Peninsula Chesapeake Bay Public Access Authority (PAA) and the Friends of Dragon Run. The Friends of Dragon Run adopted its plan in early October 2008 and the PAA adopted in February 2009.

To promote the sustainability of traditional industries, such as farming and forestry, the Dragon Run SAMP identified a biodiesel partnership as a feasible watershed program. This partnership includes the role of portions of the biodiesel chain, including the soybean farmers, fuel distributors, biodiesel refinery, private fleets and school bus fleets to support the mission of sustainability of agriculture. Substantial work has been completed on the partnership, particularly gaining the commitment of the watershed school boards in using biodiesel in their fleets. The multiple prongs of the program include: 1) a purchase program for the schools and private industry, 2) education regarding utilizing blend levels to manage cost and 3) watershed education and market to expand the market. All of these aspects combined are aimed to provide both direct and indirect economic benefit to the watershed farming community.

The SAMP also initiated development of the Dragon Run Estate Planning Network Initiative (DREPNI). The purpose of the initiative is to provide collaboration between estate planning stakeholders to create a conservation hub in the Dragon Run watershed. Currently, 20,645 acres (or 23% of the Dragon Run Watershed) have been protected during this initiative. The majority of that acreage has been protected since the DRSC/SAMP started focusing on conservation planning in early 2006.

Finally, research through the Dragon Run SAMP, focused on gaining a quantitative understanding of conservation easements and their current fiscal impacts on Middle Peninsula localities, has clarified information on potential benefits that conservation easements provide to localities through their local composite index. In clarifying composite index calculations, the SAMP has identified a path for increased state funding for local schools based on the total value of land held within a county, less the easement value. This establishes quantitative proof that the locality is not as wealthy as it would be without the easement designation on land values, thus making the locality eligible for additional support for local schools. This information will supplement upcoming discussions among stakeholders in the Dragon Run watershed as well as within the Middle Peninsula region aimed at development of policy options and recommendations to address land conservation and its local fiscal impacts.

To date, all six Middle Peninsula commissioners of revenue have significantly increased their comprehension of the impact of conservation easements to their local tax base and its impact on the aid received from the state via the Composite Index. At least five have updated their valuation process to adequately and consistently account for the impact of the conservation easements. At least one of the commissioners of revenue has already had a dialog with the firm preparing the county's reassessment to discuss the assessment of conservation easements. At least one has changed administrative policies to better coordinate between the clerk's office and the commissioner's office due to this project.

Essentially, as a result of the SAMP governances have changed to be more efficient.

Additionally, interest in the model is being observed statewide. Lead conservation entities, like Piedmont Environmental Council, are starting to try to implement some of the recommendations from this project in other parts of the state. MPPDC staff has been invited to regional and statewide events to make presentations on the findings and recommendations.

STRATEGY: Seaside Special Area Management Plan

The Seaside SAMP strategy began in Year 2 (FY 2007) with two land-based projects and one water-based project. In the first land-based project Accomack County (Task 96.03) took the bold step of developing and adopting an Atlantic Preservation Area Ordinance that mirrors the protections afforded by the Chesapeake Bay Preservation Act. This protection now extends down the entire Seaside length of the Eastern Shore. The second project was establishment of CommunityViz software in both counties (Accomack and Northampton) that allowed them to project build-out of all lots give current zoning conditions. Results showed that current zoning would allow for nearly a tripling of current population – a concept that shocked many county planners however the Boards of Supervisors have still not acted on this information. The first water-based project was a grant to the Virginia Institute of Marine Science (VIMS) (Task 96.01) to assess high priority estuarine areas (blue infrastructure) on the Seaside where multiple resources (e.g. oysters, SAV) were co-located or closely grouped.

In Year 3 (FY 2008), the Seaside SAMP Project Team was established consisting of the CZM Manager, The Nature Conservancy (TNC), VIMS, the Marine Resources Commission

(MRC), representatives of the shellfish cultivation industry, and the Eastern ShoreKeeper. The overriding goal of the team is to design a management strategy that will maximize ecological and economic productivity of this extremely dynamic barrier island lagoon system. As barrier islands roll over on themselves and each new storm changes the bathymetry of this shallow area, conditions for bird nesting and foraging, shellfish and SAV growth change. Through grants to TNC, VIMS, and the ShoreKeeper (Tasks 96.01, 96.02 and 93.04 respectively), the Seaside SAMP Team is reviewing and analyzing existing spatial data to map current and potential future conditions as well as possible. Spatial analyses were conducted for bird nesting, foraging and resting areas; current and potential shellfish grounds and SAV beds; and heavily used recreation areas. Important bird habitats were widely distributed across the barrier island lagoon system with highest concentrations on edges of barrier islands and marshes. Maps are available in the final report. For shellfish and SAV, current distributions were mapped in relation to public (Baylor) shellfish grounds. Map analysis revealed that only 63 percent of the public grounds on the seaside are appropriate for wild clams and oysters and only 32 percent is appropriate for SAV restoration. It also revealed that while the current extent of SAV is only 20 km², the potential area is 131 km². Recreational use was more difficult to determine scientifically and to map definitively. However, results did reveal a pattern of use on the barrier island beaches, especially those places where beaches have washed over the islands completely or where they wrap around the tips of the islands to provide easy boat access from the western side of the island. Most boaters stayed close to channels near major launch sites. On the southern end of the system, there was a slight trend toward more divergent use of the marshes as boaters have less defined options for getting out to the inlets. Rather clear patterns were noted for fisherman departing from the E. Shore National Wildlife Refuge and Wachapreague and recreational boaters departing from Chincoteague tended to remain within that Bay.

In Year 4 (FY 2009), which was not underway until June 2010, the Seaside SAMP Team is targeting three representative areas for more in-depth spatial analyses of bird, shellfish and SAV data. The three areas are Central Hog Island Bay, South & Magothy Bays and Chincoteague Bay. The team will develop spatially explicit draft conservation and restoration objectives for oyster and eelgrass habitats. VIMS will conduct a statistical comparison between current use designations and those suggested by habitat suitability assessments with tin the three target study areas.

As the spatial data emerges, it has become clear that a large proportion of the public Baylor grounds (37%) are no longer productive for public shell fishing and that, at times, shellfish growers may be underutilizing their leased areas and would benefit from leasing other areas if we had a more nimble, flexible leasing system. What is needed is a dynamic management system that matches the dynamics of this ecological system. The Seaside SAMP has evolved into a complex “marine spatial planning” effort that could serve as a pilot for larger geographic areas.

In Year 5 (FY 2010) which will begin in winter 2010/11, the Project Team will seek to broaden its representation and begin to bring information to the public and solicit public response to various management options as they are developed.. The Seaside SAMP will extend for two additional years into FY 2011 and 2012.

Aquaculture

Strategy #1: Aquaculture BMP Provisions in Permits

This strategy was originally planned as a two-year, \$50,000 effort in years 3 and 4 (FY 08 and 09). Instead it was a two-year \$28,000 effort in years 1 and 2 (FY 06 Task 92.03 and 07 Task 92.03). Through grants to the Virginia Institute of Marine Science, this strategy completed development of a set of Best Management Practices for shellfish farming (including clams, oysters and any other shellfish that are likely to be cultivated in Virginia in the near future) for all of Virginia's waters. The shellfish aquaculture industry in Virginia continues to grow and shellfish farmers recognize their responsibilities to be good stewards of the environmental resources upon which their industry depends. At the same time, increasing coastal development and water-related activities contribute to user conflicts and misunderstandings surrounding the industry. In an effort to reduce these conflicts and better explain the shellfish cultivation process, an environmental code of practices (ECP) and best management practices (BMP) for the industry were developed by VIMS staff with input from industry and other interested individuals.

After two years in development, with public input sessions and draft documents mailed to industry participants, two separate documents were created. The first, "Environmental Code of Practices for the Virginia Shellfish Culture Industry," lays out the basic principles upon which all shellfish aquaculture should be based. It also served as the base from which the second document was developed. The second document is the "Best Management Practices for the Virginia Shellfish Culture Industry." This document identifies area of concern and offers suggested best management practices designed to minimize environmental or societal impacts by the culture industry. In addition, both the ECP and BMP received official endorsements from the Virginia Department of Agriculture and Consumer Services (VDACS), the VDACS governor-appointed Aquaculture Advisory Board, and the Virginia Farm Bureau Federation Aquaculture Advisory Committee. Both of these final documents were mailed to over 125 shellfish growers, along with a cover letter encouraging the voluntary adoption of the ECP and BMP principles. The industry and legislators were not receptive to including these BMPs as permit or lease conditions. Since these BMPs were developed and distributed to industry, they have been generally well-followed. In addition, on the Eastern Shore where shellfish cultivation is most extensive, the Eastern ShoreKeeper continues to monitor cultivation practices and work with growers to ensure the BMPs are followed.

Strategy #2: Re-evaluation of Public Use of Baylor Grounds & Creation of Aquaculture Enterprise Zones

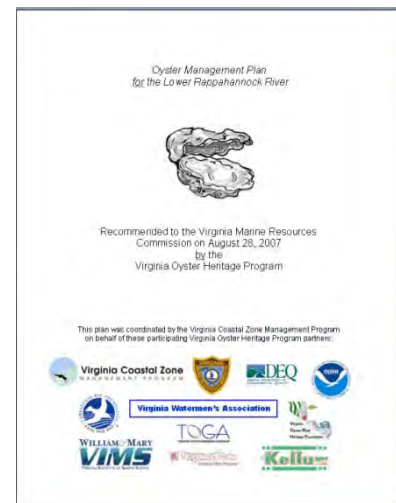
This strategy sought to identify and develop options to ensure adequate space for shellfish aquaculture and continue the development of information necessary to manage aquaculture activities in order to avoid conflicts with other permissible uses of state waters and State-owned submerged lands. This included re-enactment of the water column leasing legislation (which had lapsed due to the failure of the General Assembly to appropriate funds for its implementation) and the consideration of opportunities for the public use of Baylor Grounds and "unassigned grounds" for aquaculture activities. Unfortunately, given the current economic recession the GA has never funded the water column leasing program. Finally it sought to develop options for

local ordinances designed to manage land use adjacent to areas designated for aquaculture and stimulate the creation of aquaculture enterprise zones.

The first step, taken in Year 1 (FY 2006 Task 92.01), was for VIMS to make adjustments to the “Aquaculture Use Suitability Model” developed under the previous Section 309 strategy. VIMS used GIS software to map high medium and low risk areas for shellfish aquaculture in Gloucester, Accomack and Northampton Counties. The original model considered basic physical and biological conditions necessary for aquaculture such as water depth, salinity, shellfish condemnation areas, and the presence of submerged aquatic vegetation. This new model includes the potential impacts from current land use by incorporating the local zoning that is adjacent to growing areas. Final products included a set of easy to understand maps and GIS shape files now available on the Virginia CZM Program’s “Coastal GEMS” site. Also in Year 1, VIMS developed a report summarizing potential management options for promoting shellfish aquaculture. Key among them was the concept of developing “aquaculture enterprise zones.”

With pervasive difficulty in the restoration of wild oysters, it became important to provide adequate opportunity for the production of cultivated shellfish. In response to the VIMS options report and the dire situation of wild shellfish, Delegate Albert Pollard (D – Lively) introduced legislation authorizing the Marine Resources Commission to establish aquaculture enterprise zones for the propagation of commercial shellfish. This law was fully enacted in March 2010. Under this law the Commission may set a single fee for the application and use of the zones.

In addition to the work above, the Virginia CZM Program reconvened the Oyster Heritage Program partners to resolve shellfish conflict issues on the lower Rappahannock River. Since the Baylor Grounds were surveyed and established in the late 1800’s the management of these areas has historically included harvest restrictions and the transplantation of shell and seed. Recent management efforts under the Oyster Heritage Program included the establishment of brood stock reefs and designation of adjacent harvest areas. Watermen began to argue arduously for the opening of those sanctuary areas to harvest. In response, the OHP partners developed a new management plan that incorporates a 3-year rotational harvest of 3 areas below the Route 3 bridge and 3 areas above the bridge. It also created a 4 inch maximum size limit on oysters and a buy-back program for those larger oysters so that they could be placed back on sanctuary reefs. The plan was adopted by the Marine Resources Commission and remains in effect. Part of the rationale for this plan was derived from the work completed in FY 2001 Task 92.04, Economic Analysis of Rappahannock Oyster Plan



Although this Section 309 strategy proposed identification of suitable areas within the Baylor grounds (as well as in “unassigned” subaqueous bottom), the conversion of public Baylor grounds to any other uses coastal zone-wide was deemed too politically charged. Thus the decision was made to test this concept in a smaller geographic area where support for shellfish cultivation was strong. The chosen area was the Seaside of Virginia’s Eastern Shore. So this

**Appendix I:
Failing Septic Systems and Heirs' Property: Financial Lending Challenges and Possible
Solutions**

**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.

Appendix J:
House Bill No. 1448

HOUSE BILL NO. 1448

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns

on February 1, 2013)

(Patron Prior to Substitute--Delegate Hodges)

A BILL to amend the Code of Virginia by adding a section numbered [15.2-958.6](#), relating to the financing of repairs for failed septic systems.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [15.2-958.6](#) as follows:

§ [15.2-958.6](#). *Financing the repair of failed septic systems.*

A. Any locality may, by ordinance, authorize contracts with property owners to provide loans for the repair of septic systems. Such an ordinance shall state:

1. The kinds of septic system repairs for which loans may be offered;

2. The proposed arrangement for such loan program, including (i) the interest rate and time period during which contracting property owners shall repay the loan; (ii) the method of apportioning all or any portion of the costs incidental to financing, administration, and collection of the arrangement among the consenting property owners and the locality; and (iii) the possibility that the locality may partner with a planning district commission (PDC) to coordinate and provide financing for the repairs, including the locality's obligation to reimburse the PDC as the loan is repaid;

3. A minimum and maximum aggregate dollar amount that may be financed;

4. A method for setting requests from property owners for financing in priority order in the event that requests appear likely to exceed the authorization amount of the loan program. Priority shall be given to those requests from property owners who meet established income or assessed property value eligibility requirements;

5. Identification of a local official authorized to enter into contracts on behalf of the locality; and

6. A draft contract specifying the terms and conditions proposed by the locality or by a PDC acting on behalf of the locality.

B. The locality may combine the loan payments required by the contracts with billings for water or sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish the order in which loan payments will be applied to the different charges. The locality may not combine its billings for loan payments required by a contract authorized pursuant to this section with billings of another locality or political subdivision, including an authority operating pursuant to Chapter 51 (§ [15.2-5100](#) et seq.), unless such locality or political subdivision has given its consent by duly adopted resolution or ordinance.

C. In cases in which local property records fail to identify all of the individuals having an ownership interest in a property containing a failing septic system, the locality may set a minimum total ownership interest that it will require a property owner or owners to prove before it will allow the owner or owners to participate in the program.

D. The locality or PDC acting on behalf of the locality shall offer private lending institutions the opportunity to participate in local loan programs established pursuant to this section.

E. In order to secure the loan authorized pursuant to this section, the locality is authorized to place a lien equal in value to the loan against any property where such septic system repair is being undertaken. Such liens shall be subordinate to all liens on the property as of the date loans authorized pursuant to this section are made, except that with the prior written consent of the holders of all liens on the property as of the date loans authorized pursuant to this section are made, the liens securing loans authorized pursuant to this section shall be liens on the property ranking on a parity with liens for unpaid local taxes. The locality may bundle or package such loans for transfer to private lenders in such a manner that would allow the liens to remain in full force to secure the loans.

F. Prior to the enactment of an ordinance pursuant to this section, a public hearing shall be held at which interested persons may object to or inquire about the proposed loan program or any of its particulars. The public hearing shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.