

## Middle Peninsula Planning District Commission

# Special Area Management Plan: DRAGON RUN WATERSHED

*The Virginia Coastal Zone Management Program has funded a ten 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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The views expressed herein are those of the authors and do not reflect the views of the U.S. Department of Commerce, NOAA, or any of its subagencies.

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## **HISTORY**

The Dragon Run Special Area Management Plan has been a ten year endeavor supported by the Virginia Coastal Zone Management Program (CZM) and in partnership with the Middle Peninsula Planning District Commission and the Dragon Run Steering Committee (DRSC). Officially beginning in January 2002, the Special Area Management Plan (SAMP) was a comprehensive approach to 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 its watershed.

Through 309 funds from the CZM program, the SAMP aimed to create new enforceable policies that would preserve the unique nature the Dragon Run Watershed across four counties (ie. Essex, Gloucester, King and Queen and Middlesex Counties). Therefore through regional coordination, public engagement, and partnerships with state agencies, universities and consultants, the SAMP has become a champion of long-term watershed management.

In 2002 the four watershed counties and the Middle peninsula Planning District Commission signed a Memorandum of Agreement (Appendix A) to participate in the Dragon Run Watershed Special Area Management Plan. By signing the MOA, all parties agreed to participate in the SAMP to promote the distinctive treatment deserving of the Dragon Run watershed through the support and efforts of local government, the fostering of educational partnerships and grassroots support and the involvement of landowners whose stewardship has served to preserve the wonder of the Dragon. The signatories would consider recommendations of the DRSC's SAMP Advisory Group. With a signed MOA, a Comprehensive Watershed Management Plan was developed that recommended specific actions to support the goals and objectives within the MOA. Therefore to highlight the successes of the SAMP, below are a list and brief description of outcomes from FY2002 to FY 2005):

1. **Draft Amendments to Land Use Regulations and Policies (Appendix B)**: This deliverable was a Technical Memorandum that summarized key implementation issues for adopting the recommendations contained in the Preservation and Progress in the Dragon Run report for all watershed counties. The four basic parts of the Memorandum included:
  - i. The Dragon Run as addressed in the Current County Comprehensive Plan (and Zoning Ordinance)
  - ii. Key recommendations from the Preservation and Progress report
  - iii. Compatibility issues with the existing County Comprehensive Plan (and Zoning Ordinance)
  - iv. Considerations for implementing the recommendations

2. **Invasive Species Initiative:** Invasive species in the Dragon Run are relatively sparse, but some examples (ie. *Phragmites*, blue catfish, Asiatic dayflower, and Japanese stiltgrass) do occur in limited quantities. The Dragon Run Invasive Species Initiative was a loose-knit group of scientists and professionals dedicated to minimizing the impact and introduction of invasive species in the Dragon Run. This initiative resulted in a strategy to monitor and control invasive species and to educate the public about the threat they pose to the watershed.
3. **Dragon Run SAMP Education Program and Resource Library:** MPPDC staff developed an education and outreach program that consisted of brochures, factsheets, presentations as well as workshops. The workshops were entitled “Classroom Activities using GIS: the Dragon Run watershed” and encouraged the public, county staff and elected official to visit the Dragon Run and participate in hands on biological and water sampling as well as mapping activities.
4. **Dragon Run SAMP Technical Assistance Program:** This was an ongoing effort to provide watershed localities and the general public with technical assistance on an as-need basis. MPPDC staff: coordinated an erosion assessment with Virginia Department of Conservation and Recreation’s Shoreline Erosion Advisory Service; attended committee meetings (ie. Farmland Preservation Steering Committee, Tidewater Resource Conservation and Development Council); coordinated kayak trips for county officials, Virginia Coastal Zone Management Partners, and the staff of U.S. Representative Davis; co-sponsored a watershed open house with Friends of Dragon Run; coordinated field visits and gathered information for Brown Tract acquisition; provided cost information for a watershed build out analysis to Goochland County; and provided watershed information to citizens.
5. **Living Resource Inventory Report:** In contracting with Virginia Commonwealth University’s Center for Environmental Studies (VCU/CES) a field and laboratory inventory of living resources was completed of the Dragon Run. This deliverable helped to establish baseline information about fish, insects, freshwater mussels, natural communities, and rare species within the watershed which could be considered when land use policies were developed within the watershed.
6. **Final Model Comprehensive Plan and comprehensive zoning ordinances** (<http://www.mppdc.com/dragon/docs/ModelCompPlanDistrictZoningOptions.pdf>): This deliverable focuses on two recommendations:
  - a. A model Comprehensive Plan District for the Dragon Run; and
  - b. A recommended “Zoning Framework,” consisting of optional zoning provisions for implementing the policies of the model Comprehensive Plan District

These two components of the recommendations are intended to give each county that adopts them a consistent set of policies for conserving the Dragon Run and protecting its rural economy, while suggesting a variety of implementation mechanisms for incorporation into their respective zoning ordinances. While the model comprehensive plan district is general in nature, and is intended to apply to all four counties, the zoning recommendations are intended to be selected,

modified and customized by each county to best fit their particular zoning and subdivision ordinance frameworks.

Following FY2002-FY2005 funding, the SAMP had continued support from the Coastal Zone management Program through FY2010. Therefore from FY2005-FY2010, MPPDC staff and the DRSC continued to engage citizens within the Dragon Run Watershed to understand how a watershed works and how they can play a role in planning. The SAMP has been a superb tool for integrating and coordinating activities that lead to a watershed vision. Some of the major highlights from this grant period include:

1. **Code of Conduct:** MPPDC staff and the Dragon Run Steering Committee developed a code of conducted based on the public trust doctrine that pertains to the public’s right to ingress and egress to waterways such as the Dragon Run. This was integrated into educational brochures and was transmitted to the Middle Peninsula Chesapeake Bay Public Access Authority.
2. **Educational and Outreach Programs:** MPPDC staff with the help of the Dragon Run Steering Committee administered an education program targeting the watershed community. Efforts included:
  - i. Over the course of FY2006-FY2010 grant cycles over 3,000 DVDs were distributed which highlighted the natural and human characteristics of the watershed that make it unique and worth saving.
  - ii. 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
  - iii. Developed comprehensive website ([www.mppdc.com/dragon](http://www.mppdc.com/dragon)) to house information about the Dragon Run, DRSC as well as upcoming events in the watershed.
  - iv. Informational brochures were created and distributed to watershed communities, local elected officials, and the general public throughout the FY2006-FY2010 grant cycles.
  - v. Dragon Run Day provided an 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.

3. **Economic Development:** MPPDC staff contracted with an economic development consultant that developed a report titled, *Opportunities for Sustainable Natural Resource-Based Development in the Dragon Run* ([http://www.mppdc.com/dragon/docs/Final%20Report\\_YellowWood.pdf](http://www.mppdc.com/dragon/docs/Final%20Report_YellowWood.pdf)) . The report reviewed background information pertaining to the Dragon Run Watershed and its natural resource-based economy and prepared a customized set of opportunity maps describing potential natural resource-based activities that could promote sustainability
4. **Conservation Easements:** The Dragon Run Steering Committee requested that the MPPDC 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.
5. **Heir Properties:** For decades water quality degradation associated with heir property ownership from failing septic systems has existed. However with no public policy strategy to correct the source of impairment 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. From the recommendations within the report, MPPDC staff worked with the MPPDC, Legislative representatives, and local elected officials to draft House Bill 1448 (Appendix M). 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. In February 2013, this bill passed the House and the Senate and was signed by the Governor in March 2013.

For a written summary of the Dragon Run SAMP written by the Virginia Coastal Zone Management Program please see Appendix C and a for list of outcomes as a result of Virginia Coastal Zone Management (CZM) Program Section 309 funding (FY2006-FY2010) in Appendix D.

## **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 5-year SAMP cycle for the Dragon Run, 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 ten 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 rural character, while preserving property rights and the traditional uses of the watershed, the Dragon Run SAMP has operated under the following primary goals and objectives to meet its 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 is under review. This plan is expected to be adopted by 2014. 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 by the end of 2013. 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 county reviews its zoning ordinances. 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.

## **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 E) and February 2011 (Appendix F). 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, the Middle Peninsula Planning District Commission, Thousand Oaks Trails RV Resort, York River Charters and Gloucester County Parks, Recreation and Tourism, which created an event to increase public awareness of the Dragon Run watershed and to educate its residents and visitors about activities both helpful and harmful to watershed health. Including exhibits, displays and hands-on activities for kids, Dragon Run Day was a learning experience for all who 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, FY10 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 ecological and human characteristics of the watershed that make it unique and worth protecting, 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 to the Chesapeake Bay National Estuarine Research Reserve as they developed a new curriculum focused on the Dragon Run Watershed. This curriculum is in its final stages of development and will be sent to schools upon completion in summer 2013. The curriculum is for middle school so grades 6-8, and therefore will be sent to Peasley Middle School, Page Middle School, St. Clare Walker Middle School,

Lawson Marriott Elementary (grade 6 and 7), King and Queen Elementary (grade 6 and 7), Central High School (grade 8), Essex Intermediate School, and Thomas Hunter Middle School.

### **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 scrutiny 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 and develop relevant policy options.

To begin this year's project the Dragon Run Steering Committee asked the Middle Peninsula Planning District Commission to adopt a resolution to support the development of policies to address land use impacts of conservation easements. Upon adoption of the resolution (Appendix G), 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 FY 2009.

First in October 2011, MPPDC staff hosted Middle Peninsula CoR to present the findings (Appendix H). 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 I). 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 Recommendations 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 J) 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 officials 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 K). 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 impact 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	<b>\$105,440.53</b>
Gloucester	\$50,282,833	0.3456	0.3453	\$17,377,747.08	\$17,362,662.23	<b>\$15,084.84</b>
King & Queen	\$10,498,673	0.3868	0.3857	\$4,060,886.71	\$4,049,338.171	<b>\$11,548.54</b>
King William	\$24,733,410	0.2918	0.2911	\$7,217,209.03	\$7,199,895.65	<b>\$17,313.38</b>
Mathews	\$7,753,717	0.5337	0.5336	\$4,138,158.76	\$4,137,383.39	<b>\$775.37</b>
Middlesex	\$13,276,477	0.6777	0.6752	\$8,997,468.46	\$8,964,277.27	<b>\$33,191.19</b>

**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 L 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 M). 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. In February 2013, this bill passed the House and the Senate and was signed by the Governor in March 2013.

### **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 Watershed to expand understanding of the watershed's characteristics and functions, as well as how they can play a role in planning of the watershed's future.



**Appendix A:  
Memorandum of Agreement**

MEMORANDUM OF AGREEMENT

BETWEEN

MIDDLE PENINSULA  
PLANNING DISTRICT COMMISSION

COUNTY OF ESSEX, VIRGINIA

COUNTY OF GLOUCESTER, VIRGINIA

COUNTY OF KING AND QUEEN, VIRGINIA

COUNTY OF MIDDLESEX, VIRGINIA

TO PARTICIPATE IN THE

DRAGON RUN WATERSHED  
SPECIAL AREA MANAGEMENT PLAN

# **Memorandum of Agreement**

**Between**

**Middle Peninsula Planning District Commission  
County of Essex, Virginia  
County of Gloucester, Virginia  
County of King and Queen, Virginia  
County of Middlesex, Virginia**

**To Participate in the  
Dragon Run Watershed Special Area Management Plan**

## **1. PARTIES TO THE AGREEMENT**

This Memorandum of Agreement (MOA) is between the following entities:

- Middle Peninsula Planning District Commission
- County of Essex, Virginia
- County of Gloucester, Virginia
- County of King and Queen, Virginia
- County of Middlesex, Virginia

## **2. ENABLING AUTHORITY**

**Counties of Essex, Gloucester, King and Queen, and Middlesex**

Section 15.2-1300 of the Code of Virginia enables local governments to enter into cooperative agreements to exercise those powers that each may be enabled to exercise.

**Middle Peninsula Planning District Commission**

Section 15.2-4205 of the Code of Virginia enables the Middle Peninsula Planning District Commission to enter into cooperative agreements with local governments to exercise those powers that each may be enabled to exercise.

## **3. CONTEXT**

The Dragon Run is a brackish water stream that flows forty miles through the Virginia Middle Peninsula counties of Essex, King and Queen, Middlesex, and Gloucester and eventually empties into the Piankatank River. The Dragon Run Watershed has been defined for the purposes of this Agreement as the Commonwealth Hydrologic Unit ID

'CO2' described by the Virginia Department of Conservation and Recreation from the streams' headwaters down to and including Meggs Bay (see Appendix).

The Dragon Run's pristine nature can, in large part, be attributed to exemplary landowner stewardship and difficult access and is a central part of the region's culture and identity. Ecologically unique, the Dragon Run was ranked second of 232 ecologically significant areas throughout the Chesapeake Bay region by the Smithsonian Institution and is characterized by extensive tidal and nontidal cypress swamp, which is otherwise rare this far north. Furthermore, the Virginia Division of Natural Heritage recognizes the importance of the Dragon Run due to occurrences of one endangered animal species, five rare animal species, eight rare plant species, and five rare natural communities. Moreover, the Dragon Run Watershed supports a high quality of life for its residents. For example, recreational activities, such as hunting, fishing, and paddling, are popular in the Dragon Run.

The Middle Peninsula Planning District Commission, advised by the Dragon Run Steering Committee, obtained a Virginia Coastal Resources Management Program grant for the development of the Dragon Run Watershed Special Area Management Plan (SAMP). Each county in the watershed makes three appointments – one elected official and two landowners along the Dragon Run – to the Dragon Run Steering Committee. The SAMP Advisory Group, which reports to the Steering Committee, represents a cross-section of the community, including: Steering Committee members; local government elected officials and planning staff; landowners; state agencies; farming; forestry; education; non-profit organizations; and ecotourism.

#### **4. PURPOSE AND TERMS OF THE AGREEMENT**

The project's mission, as recommended by the SAMP Advisory Group to the Dragon Run Steering Committee, is to support and promote community-based efforts to preserve the cultural, historic, and natural character of the Dragon Run, while preserving property rights and the traditional uses within the watershed.

Each of the signatory entities in this Memorandum of Agreement agrees to participate in the Special Area Management Plan to promote the distinctive treatment deserving of the Dragon Run Watershed through the support and efforts of local government, the fostering of educational partnerships and grassroots support and the involvement of landowners whose stewardship has served to preserve the wonder of the Dragon. The signatories will consider the recommendations of the Dragon Run Steering Committee's SAMP Advisory Group to achieve the following goals and objectives that it developed by consensus:

## **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 landowners rights in determining or influencing future land use.

#### **OBJECTIVE B**

Educate landowners about the regional importance of the Dragon Run.

The Advisory Group's recommendations to achieve the goals and objectives will be delivered by the Dragon Run Steering Committee to the signatory entities for their consideration.

### **5. MODIFICATIONS**

Modifications to this Memorandum of Agreement must be submitted in writing and approved by all parties to the Memorandum of Agreement.

### **6. EFFECTIVE DATE**

The effective date of the Memorandum of Agreement shall be the date of the signing of the Memorandum of Agreement by the Counties of Essex, Gloucester, King and Queen, and Middlesex and the Middle Peninsula Planning District Commission.

### **7. DURATION AND TERMINATION OF THE AGREEMENT**

The duration of this Memorandum of Agreement will be until such time as it is terminated upon agreement of all parties; however, any party to the Memorandum of Agreement may terminate its participation by written notice to all other parties.

### **8. MANNER OF FINANCING**

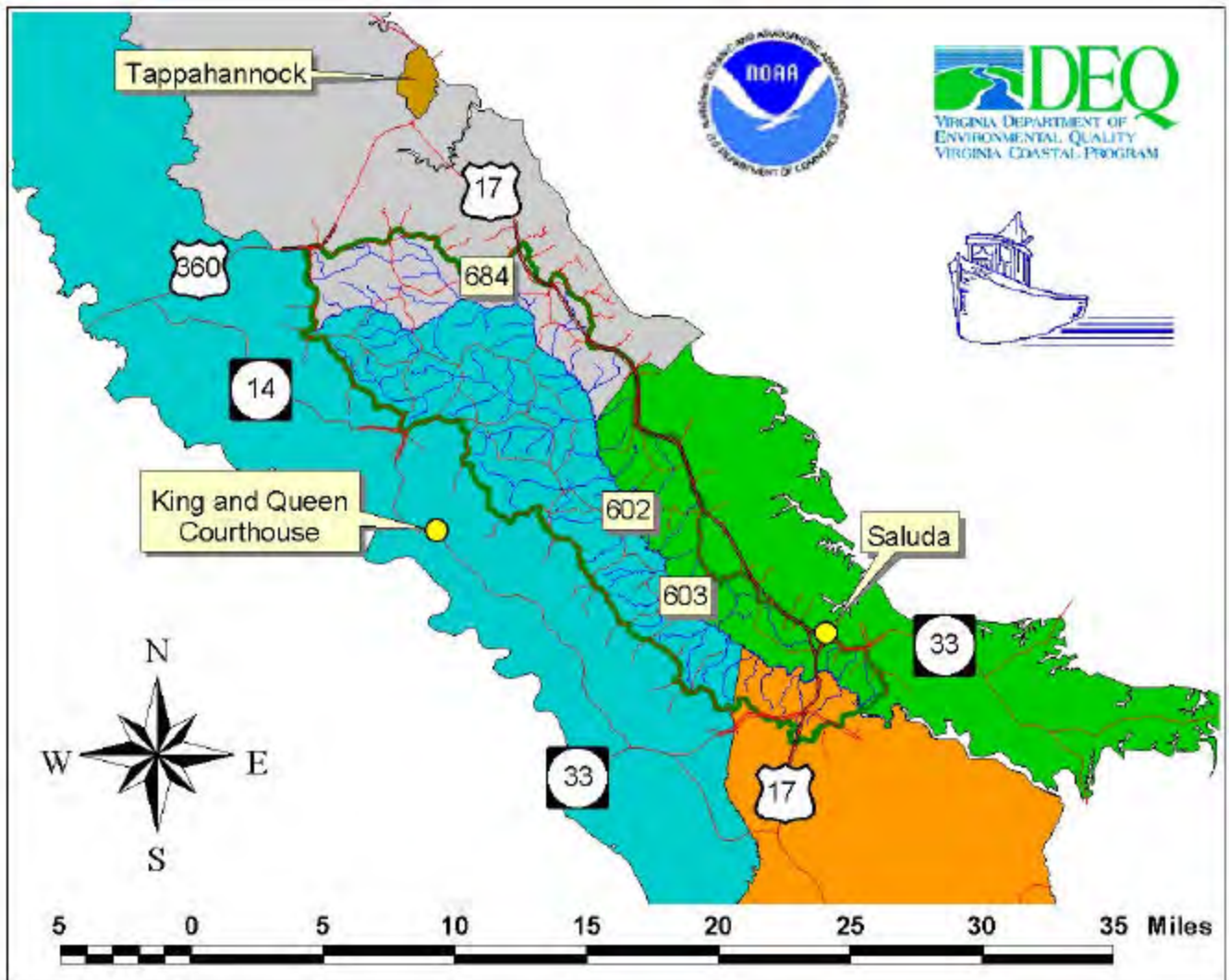
This Memorandum of Agreement will not require financing or budgeting from or by the signatory agencies; however, this clause will not preclude, under a separate document or agreement, grant funding or other financial assistance from one signatory to another for the purpose of carrying out the purposes of the Memorandum of Agreement.

**9. OWNERSHIP OF PROPERTY**

It is not the intent of the signatory parties that this Memorandum of Agreement will result in the purchase, ownership, holding or conveying of any real or personal property.

**10. APPENDIX**

Map of the Dragon Run Watershed - defined as Commonwealth Hydrologic Unit ID 'CO2' described by the Virginia Department of Conservation and Recreation from the streams' headwaters down to and including Meggs Bay.



**LIST OF SIGNATORIES**

**Middle Peninsula Planning District Commission**

**County of Essex, Virginia**

**County of Gloucester, Virginia**

**County of King and Queen, Virginia**

**County of Middlesex, Virginia**



**SIGNATURE PAGE FOR THE MIDDLE PENINSULA  
PLANNING DISTRICT COMMISSION**

IN WITNESS WHEREOF, the following individuals execute this agreement

Chairman, Middle Peninsula Planning District Commission

County Administrator, County of Essex, Virginia

County Administrator, County of Gloucester, Virginia

County Administrator, County of King and Queen, Virginia

County Administrator, County of Middlesex, Virginia

MIDDLE PENINSULA PLANNING DISTRICT COMMISSION

By: Chadwick E. Ingram

Date: 8-1-2002

Attest: [Signature]

Date: 8/1/02

**SIGNATURE PAGE FOR THE COUNTY OF ESSEX, VIRGINIA**

IN WITNESS WHEREOF, the following individuals execute this agreement

Chairman, Middle Peninsula Planning District Commission

✓ County Administrator, County of Essex, Virginia

County Administrator, County of Gloucester, Virginia

County Administrator, County of King and Queen, Virginia

County Administrator, County of Middlesex, Virginia

COUNTY OF ESSEX, VIRGINIA

By: Margaret Dorris

Date: AUGUST 20, 2002

Attest: Linda E. Dempster

Date: AUGUST 20, 2002

**SIGNATURE PAGE FOR THE COUNTY OF GLOUCESTER, VIRGINIA**

IN WITNESS WHEREOF, the following individuals execute this agreement

Chairman, Middle Peninsula Planning District Commission

County Administrator, County of Essex, Virginia

County Administrator, County of Gloucester, Virginia

County Administrator, County of King and Queen, Virginia

County Administrator, County of Middlesex, Virginia

COUNTY OF GLOUCESTER, VIRGINIA

By: Will H

Date: 10-3-02

Attest: \_\_\_\_\_

Date: \_\_\_\_\_



**SIGNATURE PAGE FOR THE COUNTY OF KING AND QUEEN, VIRGINIA**

IN WITNESS WHEREOF, the following individuals execute this agreement

Chairman, Middle Peninsula Planning District Commission

County Administrator, County of Essex, Virginia

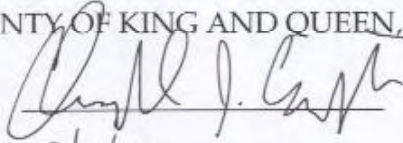
County Administrator, County of Gloucester, Virginia

County Administrator, County of King and Queen, Virginia

County Administrator, County of Middlesex, Virginia

COUNTY OF KING AND QUEEN, VIRGINIA

By:



Date:

9/9/02

Attest:



Date:

9-9-02

**SIGNATURE PAGE FOR THE COUNTY OF MIDDLESEX, VIRGINIA**

IN WITNESS WHEREOF, the following individuals execute this agreement

Chairman, Middle Peninsula Planning District Commission

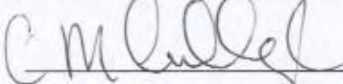
County Administrator, County of Essex, Virginia

County Administrator, County of Gloucester, Virginia

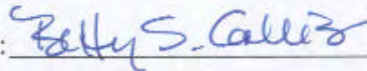
County Administrator, County of King and Queen, Virginia

County Administrator, County of Middlesex, Virginia

COUNTY OF MIDDLESEX, VIRGINIA

By: 

Date: 10-2-02

Attest: 

Date: 10-2-02

**Appendix B:**  
**Draft Amendments to Land Use Regulations and Policies**

## PRESERVATION AND PROGRESS IN THE DRAGON RUN

### TECHNICAL MEMORANDUM: Implementation Recommendations

For Essex County, Virginia

September 20, 2005



*This report was funded, in part, by the Virginia Coastal Resources Management Program at the Department of Environmental Quality through Grants #NA17OZ2355 and #NA04NOS4190060 of the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, under the Coastal Zone Management Act of 1972, as amended. The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its subagencies.*

**Prepared by: PARADIGM DESIGN**  
Reston, Virginia

## **C O N T E N T S**

### *BACKGROUND*

#### **I. THE MODEL COMPREHENSIVE PLAN DISTRICT RECOMMENDATIONS**

- A. The Dragon Run in the Current County Comprehensive Plan**
- B. Key Recommendations from the Preservation and Progress Report**
- C. Compatibility of Recommendations with the Current Comprehensive Plan**
- D. Considerations for Implementing the Recommendations**

#### **II. THE ZONING RECOMMENDATIONS**

- A. The Dragon Run in the Current County Zoning Ordinance**
- B. Key Recommendations from the Preservation and Progress Report**
- C. Compatibility of Recommendations with the Current Zoning Framework**
- D. Considerations for Implementing the Recommendations**



## **BACKGROUND**

The following Technical Memorandum summarizes key implementation issues for adopting the recommendations contained in the Preservation and Progress in the Dragon Run report for Essex County. This memorandum is intended as a companion document to the “Preservation and Progress” report, and should only be understood in conjunction with the larger report.

The recommendations in this memorandum and the larger report are both intended to respond to each county’s long-range goal of conserving the important natural resources and traditional rural economy and small businesses of the Dragon Run area.

There are four basic parts to this memorandum:

1. The Dragon Run as addressed in the Current County Comprehensive Plan (and Zoning Ordinance)
2. Key recommendations from the Preservation and Progress report
3. Compatibility issues with the existing County Comprehensive Plan (and Zoning Ordinance)
4. Considerations for implementing the recommendations

This basic outline will be applied to both the County Comprehensive Plan and Zoning Ordinance, as described below.

### **I. THE MODEL COMPREHENSIVE PLAN DISTRICT**

#### **A. The Dragon Run in the Current Comprehensive Plan (Essex County Comprehensive Plan, dated April 1998 and adopted June 16, 1998, updated through April 2003)**

The text of the Essex County Comprehensive Plan does not specifically address the Dragon Run Swamp except to identify it as one of several tidal marshes in the County. The future land use policies included in the plan designate approximately 98% of the Dragon Run Watershed within the County as being in the Countryside District and the remaining area, located at the very northern tip of the watershed,

near Route 684, is designated Rural Residential. The planned land uses in these districts can be summarized as follows:

- **Countryside District:** This area is planned for rural residential development with a minimum one-acre lot size. However, development intensity is limited to one unit per 5 acres of land owned. The text of the Comprehensive Plan also references clustering new residential development to preserve open space.
- **Rural Residential:** This designation generally recognizes existing development patterns and is planned for one acre lots. As noted above, the Rural Residential area of the Dragon Run Watershed is very small.

It is interesting to note that the County's Comprehensive Plan includes an Agricultural Preservation District which limits development to one unit per 20 acres with a minimum lot size of one acre. None of the land in the Dragon Run watershed is included in this district.

The Essex County Comprehensive Plan does include goals, objectives and policies that emphasize the County's desire to protect natural resources and open space, while allowing for moderate growth. Although there are specific policies that address the Chesapeake Bay Preservation Area, and an objective that states that the County should "Protect important tidal and non-tidal wetland resources within the County," there is no specific guidance to accomplish this goal relative to the Dragon Run.

In addition, the following points are important, relative to the Dragon Run in the Essex County Comprehensive Plan:

- The comprehensive plan does not map or identify the Dragon Run drainage area as a distinct geographic planning area subject to a separate set of planning policies.
- There is minimal discussion of the Dragon Run in the current comprehensive plan and very little specific policy guidance for the Dragon Run.
- The adopted comprehensive plan does not place particular emphasis on the Dragon Run as a regional resource.

In general, the existing Comprehensive Plan policies and maps for Essex County do not give significant mention of the Dragon Run and its drainage system, nor do they give adequate policy direction for conservation efforts to preserve the future character and quality of the Dragon Run area as a unique environmental resource.

In addition, it should be noted that the Essex County Board of Supervisors adopted, in 2005, the Dragon Run Watershed Management Plan as an addendum to its Comprehensive Plan. The Model Comprehensive Plan district, as recommended for adoption herein, would serve to fully implement the land use recommendations in the adopted Watershed Management Plan.

## **B. Key Recommendations from the “Preservation and Progress” Report**

The recommendations in the “Preservation and Progress” report are intended to conserve the important natural resources and traditional rural economy and small businesses of the Dragon Run area, as described in the Dragon Run Memorandum of Agreement of 2002.

The “Preservation and Progress” report describes a model Comprehensive Plan district that is summarized below:

- The overall intent of **Dragon Run Compatible Economic Development and Preservation District** is for the area to remain largely rural, with low intensity uses, and to preserve its key natural areas and its water quality. Specifically, to:
  - maintain the health and quality of the Dragon Run stream system and associated natural areas,
  - achieve the objectives of the Memorandum of Agreement and reinforce the existing shared values for preserving the Dragon Run,
  - support the traditional economic base of the Dragon Run area and its rural industries such as farming and forestry that are compatible with preserving the natural health of the stream system, and
  - support new rural economic development and industries that are compatible with the traditional pattern of rural land uses in the Dragon Run area
- The boundaries of the district are generally defined as the boundaries of the drainage area or watershed – it is not necessary that these be mapped in order to establish the district.
- The intent of the policies for the District is not to prevent development of those areas, but, through policies and standards, to ensure that they are developed in ways that are compatible with the basic intent of preserving the Dragon Run’s natural resources and low intensity rural character. Specific policies include:

- **Rural Character**
  - The Dragon Run District should maintain its rural character into the future.
  - It should continue to adapt to changing times, but new development in the District should integrate harmoniously with the existing rural economy and settlement patterns.
  
- **Land Use**
  - Low intensity rural land uses, that are consistent with the preservation of the area's natural resources should be the dominant land uses in the District.
  - New residential development in the District should generally be of a very low intensity rural character, incorporating standards to ensure compatibility with the natural resources and rural surroundings.
  - New non-residential development in the District should also be low intensity, compatible with surrounding rural areas and incorporate development standards and management practices that ensure preservation of the area's natural resources.
  
- **Water and Wastewater**
  - The extension of central sewer and water is not considered consistent with preserving the area's rural character and land uses
  
- **Compatible Economic Development**
  - Support the cornerstone rural industries of the area, such as farming and forestry, and enact policies and ordinances that help protect the long-term viability of these industries, while ensuring that they are practiced in ways that are compatible with the health of the natural resources on which they depend.
  - Encourage compatible new supportive industries such as value-added farming and timber products, local specialties and handicrafts and small-scale workshops and craft industries, and others that integrate well with the existing rural economy.
  
- **Natural Resource Protection**
  - Protect the key natural resources in the District, including the ground and surface water quality, wetlands and sensitive environmental features, native plant and animal species and their natural habitats and the productive soils that support farming and forestry uses.

- **Recreation and Tourism**
  - Discourage the extensive use and exploitation of the area for public recreation and large-scale tourism.

It is important to note that this is generally in concert with Essex County's existing policies for most of the area around the Dragon Run already.

### **C. Compatibility of Recommendations with the Existing County Comprehensive Plan**

The Future Land Use Map in the Essex County Comprehensive Plan designates the overwhelming majority of the Dragon Run drainage system as Countryside. The plan's goals and objectives seek preservation of important natural resources, farm and forestry lands and overall rural character. The plan text also promotes clustering as a means of preserving

The recommended policies in the proposed **Dragon Run Compatible Economic Development and Preservation District** are in concert with these policies and the overall intent of the Comprehensive Plan for its rural areas. The proposed model District does not discourage residential development, but urges that it be done with densities and development patterns that serve to protect the overall rural character of the area. Thus the proposed District is compatible with the intent of the current County Comprehensive Plan.

### **D. Proposed Strategy for Implementing the Comprehensive Plan Recommendations**

In general, the **Dragon Run Compatible Economic Development and Preservation District** can be adopted by the County as an amendment to its current Comprehensive Plan without any major change in policy direction from the current Comprehensive Plan. One measure that would strengthen measures to protect the Dragon Run would be to consider designating the watershed as an Agricultural Preservation Area on the County's future land use map. However, that action is not required to implement the **Dragon Run Compatible Economic Development and Preservation District**.

## **II. ADOPTION OF THE ZONING RECOMMENDATIONS**

## **A. The Dragon Run in the Current County Zoning Ordinance**

The County Zoning Ordinance is very relevant to the recommendations in the Preservation and Progress report. The current Zoning Ordinance standards, as pertains to the Dragon Run watershed Essex County, are as follows:

- The vast majority of the watershed is zoned A-2, Limited Agricultural. There are also negligible amounts of R-2, Limited Residential, and MH-1, Mobile Home Park, zoning in the watershed area.
- The purpose of the A-2 district is to protect existing and future farming operations and at the same time allow for low density residential uses. This district generally corresponds to areas of the County represented as the Countryside District and Rural Residential District in the County Comprehensive Plan. Generally, this district covers certain portions of the County now devoted entirely or predominantly to various open uses, such as farms, forests, parks or lakes, into which residential or other types of development could reasonably be expected to expand in the foreseeable future.
- The Essex County Zoning Ordinance includes a Chesapeake Bay Preservation Overlay District that is applicable to the immediate shoreline of the Dragon Run. While this district provides "streamside" protection measures, it does not address protection of the Dragon Run Watershed.

## **B. Key Recommendations from the "Preservation and Progress" Report**

In general, the Zoning Recommendations are intended as options for Essex County to adopt in whole or in part, as is, or customized for the county policy and zoning framework.

There are three basic types of recommendations contained in the report:

1. Watershed-based (Drainage Area Zone)
2. Streamside (Stream Buffer Zone)
3. Conservation Subdivision Option

### Drainage Area Zone:

- The proposed district is an Overlay Zone (it modifies, but doesn't eliminate the base zoning)

- The proposed District extends over the whole Drainage Area or watershed of the Dragon Run
- The District includes a Table of Uses to modify some uses in the Base Zone. This provision is intended to protect traditional rural industries in the area and can be customized to best fit with the County's existing zoning provisions.

Stream Buffer Zone:

- The proposed district is an Overlay Zone (it modifies, but doesn't eliminate the base zoning)
- It extends 200' landward from the Chesapeake Bay Resource Protection Area
- It allows only certain conservation & passive recreational uses as specified
- The District is primarily intended to protect stream ecology
- It generally permits Farming & Forestry with BMP's

Conservation Subdivision Option:

- The Conservation Subdivision Option is a voluntary (optional) development type with a built-in incentive for conserving natural areas and prime forest or farmland.
- The general incentive mechanism is Ministerial Approval for 10 lot subdivisions
- Development is permitted as a conservation-based cluster option with permanent easement over 75% of a tract
- There is no common ownership of the open space required and all the land can remain in individual private ownership
- Required easements for the open space may be held by the County or a qualified Conservation Organization

### **C. Compatibility of Recommendations with the Existing County Zoning Framework**

Specific issues of compatibility between the proposed zoning recommendations and the County's zoning framework are as follows:

- A number of uses that are listed as permitted in the A-2 Agricultural Zoning District may be incompatible with the purpose of the Drainage Area Zone. Among Permitted Uses these include Public Landfills and Public Airports. Conditional Uses that may be incompatible include Auto Graveyards, Sand and Gravel Mining.
- The proposed Conservation Subdivision Option is generally compatible with the current County zoning and subdivision ordinances. Currently, the A-2 District allows up to five lots to be developed as a Minor Subdivision, with ministerial (non-legislative) approval. The Conservation Subdivision option would increase this type of approval to 10 lots, in exchange for clustering lots and permanent protection of open space.

### **D. Proposed Strategy for Implementing the Zoning Recommendations**

In general, the zoning recommendations can be adopted by the County as amendments to its current zoning and subdivision ordinances without major disruption to the structure or intent of either ordinance. It is recommended, however, that the following issues be addressed at the time that the actual ordinance amendments are drafted:

#### Drainage Area Zone:

The list of permitted and conditional uses currently in the Dragon Run area should be carefully reviewed and only those uses that are clearly incompatible with the intent of the proposed Drainage Area Zone should be eliminated as part of a new Use Table.

Specific permitted or conditional uses that should be considered for prohibition in the Drainage Area Zone include the following. Note that, since this is an overlay zone, it would only modify the uses in those underlying zoning districts in which these uses are already permitted:

- Airport, public
- Auto Graveyard



- Auto/Truck Sales (new and used)
- Auto Racetrack
- Communication Facility/Tower/TV Station
- Hospital
- Landfill, public (county)
- Marina

Specific Permitted uses that should be considered for change to a conditional use include the following. Note that, since this is an overlay zone, it would only modify the uses in those underlying zoning districts in which these uses are already permitted:

- Country/General Store
- Church/Place of Worship
- Child Care Center
- Intensive Livestock
- Kennel, commercial
- Manufacturing
- Mining, Sand and Gravel
- Post Office
- Public Utilities
- Travel Trailer

#### Stream Buffer Zone:

The proposed Stream Buffer Zone supplements and extends the range of protection of the current Chesapeake Bay Protection Ordinance. It extends protection to an additional 200 feet beyond the current Resource Protection Area. It is compatible with the county's Chesapeake Bay provisions and could be adopted as an overlay zone within the watershed of the Dragon Run.

#### Conservation Subdivision Zone:

In general, the Conservation Subdivision Ordinance can be adopted as an option within a new Dragon Run overlay zone in the County code. However, the Conservation Subdivision Ordinance, as well as all the new zoning provisions, should have a thorough legal review by county staff or outside legal experts to ensure that they conform fully to the State Code and they are not in conflict with any of the other provisions of the County Code.

## PRESERVATION AND PROGRESS IN THE DRAGON RUN

### TECHNICAL MEMORANDUM: Implementation Recommendations

For Gloucester County, Virginia

September 20, 2005



*This report was funded, in part, by the Virginia Coastal Resources Management Program at the Department of Environmental Quality through Grants #NA17OZ2355 and #NA04NOS4190060 of the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, under the Coastal Zone Management Act of 1972, as amended. The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its subagencies.*

**Prepared by: PARADIGM DESIGN**  
Reston, Virginia

## **C O N T E N T S**

### *BACKGROUND*

#### **I. THE MODEL COMPREHENSIVE PLAN DISTRICT RECOMMENDATIONS**

- A. The Dragon Run in the Current County Comprehensive Plan**
- B. Key Recommendations from the Preservation and Progress Report**
- C. Compatibility of Recommendations with the Current Comprehensive Plan**
- D. Considerations for Implementing the Recommendations**

#### **II. THE ZONING RECOMMENDATIONS**

- A. The Dragon Run in the Current County Zoning Ordinance**
- B. Key Recommendations from the Preservation and Progress Report**
- C. Compatibility of Recommendations with the Current Zoning Framework**
- D. Considerations for Implementing the Recommendations**

## **BACKGROUND**

The following Technical Memorandum summarizes key implementation issues for adopting the recommendations contained in the Preservation and Progress in the Dragon Run report for Gloucester County. This memorandum is intended as a companion document to the “Preservation and Progress” report, and should only be understood in conjunction with the larger report.

The recommendations in this memorandum and the larger report are both intended to respond to each county’s long-range goal of conserving the important natural resources and traditional rural economy and small businesses of the Dragon Run area.

There are four basic parts to this memorandum:

1. The Dragon Run as addressed in the Current County Comprehensive Plan (and Zoning Ordinance)
2. Key recommendations from the Preservation and Progress report
3. Compatibility issues with the existing County Comprehensive Plan (and Zoning Ordinance)
4. Considerations for implementing the recommendations

This basic outline will be applied to both the County Comprehensive Plan and Zoning Ordinance, as described below.

### **I. THE MODEL COMPREHENSIVE PLAN DISTRICT**

#### **A. The Dragon Run in the Current County Comprehensive Plan (Adopted November, 2001)**

The land area within the watershed, or natural drainage area of the Dragon Run in Gloucester County falls within three separate plan districts in the County comprehensive plan:

Rural Countryside District:

The majority of the watershed located in Gloucester County falls within this district which is intended to encourage farming and maintain rural character. Rural residential development is permitted, but is intended to be secondary to agricultural uses. A five-acre minimum lot size is recommended and clustering is encouraged.

Rural Service Area:

The area known as Glens is designated a Rural Service Area. Generally these are existing settlements or crossroads that include service uses such as country stores, post offices, and fire stations as well as houses. Residential development at a one-acre minimum lot size is appropriate and clustering is encouraged. The plan mentions that some light industrial or transportation-oriented uses may be appropriate at Glens because of Route 17 frontage.

Resource Conservation District:

Land areas, including wetlands and floodplains, along shorelines and all tributary streams are included in the Resource Conservation District. Generally only passive recreation and low density residential uses are considered appropriate in these areas.

In addition, the following points are important, relative to the Dragon Run in the Gloucester County Comprehensive Plan:

- The comprehensive plan does not map or identify the Dragon Run drainage area as a distinct geographic planning area subject to a separate set of planning policies.
- There is minimal discussion of the Dragon Run in the current comprehensive plan and very little specific policy guidance for the Dragon Run.
- The adopted comprehensive plan does not place particular emphasis on the Dragon Run as a regional resource.

The Gloucester County plan amply addresses general natural resource protection and water quality issues. It also addresses the design and siting of new structures in the rural landscape. Generally, these policies are not as specific or well defined as policies relating to water quality. This may be because there is more subjectivity involved in implementing, measuring and mitigating the impacts associated with the loss of some of these resources. Additionally, developing specific policies for

protection of many of these resources requires balancing public rights and private rights.

In summary, the existing Comprehensive Plan policies and maps for Gloucester County do not give significant mention of the Dragon Run and its drainage system, nor do they give adequate policy direction for conservation efforts to preserve the future character and quality of the Dragon Run area.

In addition, it should be noted that the Gloucester County Board of Supervisors adopted, in 2005, the Dragon Run Watershed Management Plan as an addendum to its Comprehensive Plan. The Model Comprehensive Plan district, as recommended for adoption herein, would serve to fully implement the land use recommendations in the adopted Watershed Management Plan.

## **B. Key Recommendations from the “Preservation and Progress” Report**

The recommendations in the “Preservation and Progress” report are intended to conserve the important natural resources and traditional rural economy and small businesses of the Dragon Run area, as described in the Dragon Run Memorandum of Agreement of 2002.

The “Preservation and Progress” report describes a model Comprehensive Plan district that is summarized below:

- The overall intent of **Dragon Run Compatible Economic Development and Preservation District** is for the area to remain largely rural, with low intensity uses, and to preserve its key natural areas and its water quality. Specifically, to:
  - maintain the health and quality of the Dragon Run stream system and associated natural areas,
  - achieve the objectives of the Memorandum of Agreement and reinforce the existing shared values for preserving the Dragon Run,
  - support the traditional economic base of the Dragon Run area and its rural industries such as farming and forestry that are compatible with preserving the natural health of the stream system, and
  - support new rural economic development and industries that are compatible with the traditional pattern of rural land uses in the Dragon Run area

- The boundaries of the district are generally defined as the boundaries of the drainage area or watershed – it is not necessary that these be mapped in order to establish the district.
- The intent of the policies for the District is not to prevent development of those areas, but, through policies and standards, to ensure that they are developed in ways that are compatible with the basic intent of preserving the Dragon Run’s natural resources and low intensity rural character. Specific policies include:
  - **Rural Character**
    - The Dragon Run District should maintain its rural character into the future.
    - It should continue to adapt to changing times, but new development in the District should integrate harmoniously with the existing rural economy and settlement patterns.
  - **Land Use**
    - Low intensity rural land uses, that are consistent with the preservation of the area’s natural resources should be the dominant land uses in the District.
    - New residential development in the District should generally be of a very low intensity rural character, incorporating standards to ensure compatibility with the natural resources and rural surroundings.
    - New non-residential development in the District should also be low intensity, compatible with surrounding rural areas and incorporate development standards and management practices that ensure preservation of the area’s natural resources.
  - **Water and Wastewater**
    - The extension of central sewer and water is not considered consistent with preserving the area’s rural character and land uses
  - **Compatible Economic Development**
    - Support the cornerstone rural industries of the area, such as farming and forestry, and enact policies and ordinances that help protect the long-term viability of these industries, while ensuring that they are practiced in ways that are compatible with the health of the natural resources on which they depend.

- Encourage compatible new supportive industries such as value-added farming and timber products, local specialties and handicrafts and small-scale workshops and craft industries, and others that integrate well with the existing rural economy.
- **Natural Resource Protection**
  - Protect the key natural resources in the District, including the ground and surface water quality, wetlands and sensitive environmental features, native plant and animal species and their natural habitats and the productive soils that support farming and forestry uses.
- **Recreation and Tourism**
  - Discourage the extensive use and exploitation of the area for public recreation and large-scale tourism.

It is important to note that this is generally in concert with Gloucester County's existing policies for most of the area around the Dragon Run already.

### **C. Compatibility of Recommendations with the Existing County Comprehensive Plan**

The Future Land Use Map in the Gloucester County Comprehensive Plan designates the overwhelming majority of the Dragon Run drainage system as Rural Countryside district. Other portions along the Dragon Run stream itself are designated Resource Conservation district. In addition, numerous policies throughout the Comprehensive Plan urge the preservation of important natural resources, farm and forestry lands and overall rural character.

The recommended policies in the proposed **Dragon Run Compatible Economic Development and Preservation District** are in concert with these policies and the overall intent of the Comprehensive Plan for its rural areas. The proposed Model District does not discourage residential development, but urges that it be done with densities and development patterns that protect the overall rural character of the area. Thus the proposed District is compatible with the intent of the current County Comprehensive Plan.

The primary aspect of conflict, however, is in the area along Route 17 known as Glens, that is designated Rural Service Area. The goals of this district are not compatible with the goals of the model Dragon Run district, especially in recommending residential development of one-acre lot sizes. As discussed below, it is recommended that the Model district language be modified to fix this inconsistency prior to adoption of the new district.



## **D. Considerations for Implementing the Recommendations**

In general, the **Dragon Run Compatible Economic Development and Preservation District** can be adopted by the County as an amendment to its current Comprehensive Plan, without any major change in policy direction from the current Comprehensive Plan. It is recommended, however, that the following language be added to the Model district in order to address the issue of compatibility with the Rural Service Area district:

Recommended revised language for Section 3.0, DISTRICT DEFINITION:

### **3.0 DISTRICT DEFINITION**

*The boundaries of the **Dragon Run Compatible Economic Development and Preservation District** are generally defined as the boundaries of the watershed, or natural drainage area of the Dragon Run. The watershed for the Dragon Run is the area where precipitation collects and funnels to end up in the Dragon Run stream. It is the primary area that affects the water quality of the Dragon Run. It is also the area where compatible rural land uses have predominated and maintained the quality and health of the stream system.*

*The following policies are generally intended to apply to the entire watershed of the Dragon Run. However, recognizing that the Gloucester County Comprehensive Plan has previously identified the Glens area within the watershed as a Rural Service district, the following District policies do not apply to that area.*

*It is the intent of the policies for this District not to prevent development of any areas, but, through policies and standards, to ensure that they are developed in ways that are compatible with the basic intent of preserving the Dragon Run's natural resources and low intensity rural character.*

## **II. THE ZONING RECOMMENDATIONS**

### **A. The Dragon Run in the Current County Zoning Ordinance**

In general, the County Zoning Ordinance has several areas which are important, relative to the recommendations in the Preservation and Progress report:

- There is a considerable variety of zoning districts, including business and industrial zones within the watershed or drainage area of the Dragon Run.
- More intense zones such as higher density residential and non-residential zones are present but only over a relatively small portion of the drainage area.
- The list of permitted uses includes a few uses that are incompatible with the goals of maintaining the rural character of the Dragon Run area.
- The County's cluster ordinance is different in scope and intent from the recommended Conservation Subdivision option.

## **B. Key Recommendations from the "Preservation and Progress" Report**

In general, the Zoning Recommendations are intended as options for Gloucester County to adopt in whole or in part, as is, or customized for the county policy and zoning framework.

There are three basic types of recommendations contained in the report:

1. Watershed-based (Drainage Area Zone)
2. Streamside (Stream Buffer Zone)
3. Conservation Subdivision Option

### Drainage Area Zone:

- The proposed district is an Overlay Zone (it modifies, but doesn't eliminate the base zoning)
- The proposed District extends over the whole Drainage Area or watershed of the Dragon Run
- The District includes a Table of Uses to modify some uses in the Base Zone. This provision is intended to protect traditional rural industries in the area and can be customized to best fit with the County's existing zoning provisions.

### Stream Buffer Zone:

- The proposed district is an Overlay Zone (it modifies, but doesn't eliminate the base zoning)
- It extends 200' landward from the Chesapeake Bay Resource Protection Area
- It allows only certain conservation & passive recreational uses as specified
- The District is primarily intended to protect stream ecology
- It generally permits Farming & Forestry with BMP's

Conservation Subdivision Option:

- The Conservation Subdivision Option is a voluntary (optional) development type with a built-in incentive for conserving natural areas and prime forest or farm land.
- The general incentive mechanism is Ministerial Approval for 10 lot subdivisions
- Development is permitted as a conservation-based cluster option with permanent easement over 75% of a tract
- There is no common ownership of the open space required and all the land can remain in individual private ownership
- Required easements for the open space may be held by the County or a qualified Conservation Organization

**C. Compatibility of Recommendations with the Existing County Zoning Framework**

Specific issues of compatibility between the proposed zoning recommendations and the County's zoning framework are as follows:

- A number of uses that are listed as permitted in the current Table of Uses may be incompatible with the purpose of the Drainage Area Zone. These include Auto/Truck Sales (new) and Public Airport.

- The proposed Conservation Subdivision Option is generally compatible with the current County zoning and subdivision ordinances. Currently, the RC-1 Resource Conservation zone allows up to 3 lots to be developed as a Minor Subdivision. The Conservation Subdivision option would increase this type of approval to 10 lots, in exchange for clustering lots and permanent protection of open space.

#### **D. Considerations for Implementing the Recommendations**

In general, the zoning recommendations can be adopted by the County as amendments to its current zoning and subdivision ordinances without major disruption to the structure or intent of either ordinance. It is recommended, however, that the following issues be addressed at the time that the actual ordinance amendments are drafted:

##### Drainage Area Zone:

The list of permitted and conditional uses currently in the Dragon Run area should be carefully reviewed and only those uses that are clearly incompatible with the intent of the proposed Drainage Area Zone should be eliminated as part of a new Use Table.

Specific permitted or conditional uses that should be considered for prohibition in the Drainage Area Zone include the following. Note that, since this is an overlay zone, it would only modify the uses in those underlying zoning districts in which these uses are already permitted:

- Adult Bookstore, theater
- Airport, public
- Auto/Truck Sales (new)
- Auto/Truck Sales (used)
- Communication facility, radio or Television stations or towers
- Eating Establishments with drive-in
- Hotel, Motel, Motor Lodge
- Landfill, public (county)
- Racetrack, Commercial
- Seafood Processing Plant
- Truck and Freight Terminal

Specific Permitted uses that should be considered for change to a conditional use include the following. Note that, since this is an overlay zone, it would only modify the uses in those underlying zoning districts in which these uses are already permitted:

- Auto Service Station
- Contractor's Storage Yard/Office
- Convenience Store
- Eating Establishments/Restaurant
- Financial Institution, Bank
- Lawnmower/Equipment, sales, rental, repair
- Library
- Livestock, Intensive Dairy, Poultry
- Manufactured Home and trailer sales
- Manufacturing
- Microbrewery
- Monument Works
- Museum
- Nursing Home/Home for Elderly
- Office, Business, Professional, Administrative
- Office, Medical/Dental
- Office, Public/Governmental
- Post Office
- Public Utilities
- Retail Sales Establishment
- Sawmill
- Sawmill, Portable or Temporary
- Service business
- Veterinary Clinic or Hospital
- Wholesale Businesses

Stream Buffer Zone:

The proposed Stream Buffer Zone supplements and extends the range of protection of the current Chesapeake Bay Protection Ordinance. It extends protection to an additional 200 feet beyond the current Resource Protection Area. It is compatible with the county's Chesapeake Bay provisions and could be adopted as an overlay zone within the watershed of the Dragon Run.

Conservation Subdivision Zone:

In general, the Conservation Subdivision Ordinance can be adopted as an option within a new Dragon Run overlay zone in the County code. However, the incentive for this development option, in Gloucester County's case, should be that Minor Subdivisions of up to 10 lots can be approved under the Conservation Subdivision option, without requiring rezoning to a Residential zone. Moreover, the Conservation Subdivision Ordinance, as well as all the new zoning provisions, should have a thorough legal review by county staff or outside legal experts to ensure that they conform fully to the State Code and they are not in conflict with any of the other provisions of the County Code.

## PRESERVATION AND PROGRESS IN THE DRAGON RUN

### TECHNICAL MEMORANDUM: Implementation Recommendations

For King & Queen County, Virginia

September 20, 2005



*This report was funded, in part, by the Virginia Coastal Resources Management Program at the Department of Environmental Quality through Grants #NA17OZ2355 and #NA04NOS4190060 of the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, under the Coastal Zone Management Act of 1972, as amended. The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its subagencies.*

**Prepared by: PARADIGM DESIGN**  
Reston, Virginia

## **C O N T E N T S**

### *BACKGROUND*

#### **I. THE MODEL COMPREHENSIVE PLAN DISTRICT RECOMMENDATIONS**

- A. The Dragon Run in the Current County Comprehensive Plan**
- B. Key Recommendations from the Preservation and Progress Report**
- C. Compatibility of Recommendations with the Current Comprehensive Plan**
- D. Considerations for Implementing the Recommendations**

#### **II. THE ZONING RECOMMENDATIONS**

- A. The Dragon Run in the Current County Zoning Ordinance**
- B. Key Recommendations from the Preservation and Progress Report**
- C. Compatibility of Recommendations with the Current Zoning Framework**
- D. Considerations for Implementing the Recommendations**



## **BACKGROUND**

The following Technical Memorandum summarizes key implementation issues for adopting the recommendations contained in the Preservation and Progress in the Dragon Run report for King and Queen County. This memorandum is intended as a companion document to the “Preservation and Progress” report, and should only be understood in conjunction with the larger report.

The recommendations in this memorandum and the larger report are both intended to respond to each county’s long-range goal of conserving the important natural resources and traditional rural economy and small businesses of the Dragon Run area.

There are four basic parts to this memorandum:

1. The Dragon Run as addressed in the Current County Comprehensive Plan (and Zoning Ordinance)
2. Key recommendations from the Preservation and Progress report
3. Compatibility issues with the existing County Comprehensive Plan (and Zoning Ordinance)
4. Considerations for implementing the recommendations

This basic outline will be applied to both the County Comprehensive Plan and Zoning Ordinance, as described below.

### **I. THE MODEL COMPREHENSIVE PLAN DISTRICT**

#### **A. The Dragon Run in the Current Comprehensive Plan (Adopted June 13, 1994; Planning Commission Review, July 2, 2001)**

It should be noted that the King and Queen County Planning Commission is working on a new update of the current Comprehensive Plan. A draft of the update has not yet been released, so the following comments refer to the current adopted version of the Plan.

The text of the King and Queen County Comprehensive Plan addresses the “Dragon Run Swamp Preservation Area” as a component of its Middle and Lower

County Planning Districts, but the plan does not provide a map to identify the extent of the watershed within these planning districts or describe how the preservation area designation is applied. Approximately two-thirds of the drainage area of the Dragon Run in King & Queen County is located in the County's Lower County Planning Area. The remaining third is part of the Middle County Planning Area, but is also deemed subject to the Lower County Planning Area policies. Therefore, the drainage area is planned as follows:

- **Rural Development Area:**  
The land use designation applies to both the land in the Dragon Run watershed and property adjacent to the watershed. Rural Development Areas are planned for forestry, agricultural and rural residential subdivision uses (pp. 4:9). An existing landfill is indicated in the watershed area on Route 614.
- **Dragon Run Swamp Preservation Area:**  
This area is not mapped but the plan's description suggests that it borders the Dragon Run Swamp. The Comprehensive Plan text acknowledges that the area will continue to require protection as wetlands because of its unique characteristics, but also states that "because of the Chesapeake Bay Protection Area, there should be no need for additional land use policies covering this feature" (p. 4:11, f.).

While it is true that the environmental regulations that have been put into place as part of the Chesapeake Bay Protection Act do apply to the Dragon Run, the protections afforded by these regulations focus on the role of the Dragon Run as a tributary to the Chesapeake Bay. These regulations were not designed to address the unique characteristics of the Dragon Run as an economic, cultural, recreational and environmental resource. The following points are also important, relative to the Dragon Run in the King & Queen County Comprehensive Plan:

- The Comprehensive Plan does not map or identify the Dragon Run drainage area as a distinct geographic planning area subject to a separate set of planning policies.
- There is minimal discussion of the Dragon Run in the current comprehensive plan and very little specific policy guidance for the Dragon Run.
- The adopted comprehensive plan does not place particular emphasis on the Dragon Run as a regional resource.

In summary, the existing Comprehensive Plan policies and maps for King & Queen County do not give significant attention to the Dragon Run and its drainage system,

nor do they give adequate policy direction for conservation efforts to preserve the future character and quality of the Dragon Run area.

In addition, it should be noted that the King and Queen County Board of Supervisors adopted, in 2005, the Dragon Run Watershed Management Plan as an addendum to its Comprehensive Plan. The Model Comprehensive Plan district, as recommended for adoption herein, would serve to fully implement the land use recommendations in the adopted Watershed Management Plan.

## **B. Key Recommendations from the “Preservation and Progress” Report**

The recommendations in the “Preservation and Progress” report are intended to conserve the important natural resources and traditional rural economy and small businesses of the Dragon Run area, as described in the Dragon Run Memorandum of Agreement of 2002.

The “Preservation and Progress” report describes a model Comprehensive Plan district that is summarized below:

- The overall intent of **Dragon Run Compatible Economic Development and Preservation District** is for the area to remain largely rural, with low intensity uses, and to preserve its key natural areas and its water quality. Specifically, to:
  - maintain the health and quality of the Dragon Run stream system and associated natural areas,
  - achieve the objectives of the Memorandum of Agreement and reinforce the existing shared values for preserving the Dragon Run,
  - support the traditional economic base of the Dragon Run area and its rural industries such as farming and forestry that are compatible with preserving the natural health of the stream system, and
  - support new rural economic development and industries that are compatible with the traditional pattern of rural land uses in the Dragon Run area
- The boundaries of the district are generally defined as the boundaries of the drainage area or watershed – it is not necessary that these be mapped in order to establish the district.
- The intent of the policies for the District is not to prevent development of those areas, but, through policies and standards, to ensure that they are developed in ways that are compatible with the basic intent of preserving the

Dragon Run's natural resources and low intensity rural character. Specific policies include:

- **Rural Character**
  - The Dragon Run District should maintain its rural character into the future.
  - It should continue to adapt to changing times, but new development in the District should integrate harmoniously with the existing rural economy and settlement patterns.
- **Land Use**
  - Low intensity rural land uses, that are consistent with the preservation of the area's natural resources should be the dominant land uses in the District.
  - New residential development in the District should generally be of a very low intensity rural character, incorporating standards to ensure compatibility with the natural resources and rural surroundings.
  - New non-residential development in the District should also be low intensity, compatible with surrounding rural areas and incorporate development standards and management practices that ensure preservation of the area's natural resources.
- **Water and Wastewater**
  - The extension of central sewer and water is not considered consistent with preserving the area's rural character and land uses
- **Compatible Economic Development**
  - Support the cornerstone rural industries of the area, such as farming and forestry, and enact policies and ordinances that help protect the long-term viability of these industries, while ensuring that they are practiced in ways that are compatible with the health of the natural resources on which they depend.
  - Encourage compatible new supportive industries such as value-added farming and timber products, local specialties and handicrafts and small-scale workshops and craft industries, and others that integrate well with the existing rural economy.

- **Natural Resource Protection**
  - Protect the key natural resources in the District, including the ground and surface water quality, wetlands and sensitive environmental features, native plant and animal species and their natural habitats and the productive soils that support farming and forestry uses.
- **Recreation and Tourism**
  - Discourage the extensive use and exploitation of the area for public recreation and large-scale tourism.

It is important to note that this is generally in concert with King and Queen County's existing policies for most of the area around the Dragon Run already.

### **C. Compatibility of Recommendations with the Existing County Comprehensive Plan**

The Future Land Use Map in the King & Queen County Comprehensive Plan designates all of the land surrounding the Dragon Run drainage system for rural land uses. In addition, numerous policies throughout the Comprehensive Plan urge the preservation of important natural resources, farm and forestry lands and overall rural character.

The recommended policies in the proposed **Dragon Run Compatible Economic Development and Preservation District** are in concert with these policies and the overall intent of the Comprehensive Plan for its rural areas. The proposed model District does not discourage residential development, but urges that it occur with densities and development patterns that serve to protect the overall rural character of the area. Thus the proposed District is compatible with the intent of the current County Comprehensive Plan.

There is a conflict, however, with the existing landfill located on Route 614 in the Dragon Run Watershed. The presence of the landfill within the Dragon Run watershed raises concerns about the potential for non-point source pollution to infiltrate the clean waters of the Dragon Run Swamp. Careful management of the existing landfill will be imperative and any future expansion should be discouraged. Therefore it is recommended that the Model district language address future landfill expansion and maintenance prior to its adoption. Additionally, language in the existing Comprehensive Plan that states that no additional land use policies are required because the Dragon Run is subject to the Chesapeake Bay Protection Area is also inconsistent with the Model District language and should be deleted.

## **D. Considerations for Implementing the Recommendations**

In general, the **Dragon Run Compatible Economic Development and Preservation District** can be adopted by the County as an amendment to its current Comprehensive Plan without any major change in policy direction from the current Comprehensive Plan. It is recommended, however, that Policy f, p. 4:11 and the language pertaining the Dragon Run Swam Area, p. 4:13 be revised to reflect the addition of the new Model district.

To address the issue of compatibility with the existing landfill, an addition to Section 4.0 would be advisable. Such an addition might read as follows:

Recommended additional language for Section 4.0, POLICIES:

### **Solid Waste Management**

1. The existing landfill shall be carefully monitored to ensure that negative impacts to the Dragon Run are minimized.
2. Future expansions of the existing landfill will be strongly discouraged. In the event an expansion is necessary to address an urgent public need, such expansion will only be permitted if it can be demonstrated that there will be no adverse impact on the Dragon Run.

## **II. THE ZONING RECOMMENDATIONS**

### **A. The Dragon Run in the Current County Zoning Ordinance**

The County Zoning Ordinance is very relevant to the recommendations in the Preservation and Progress report. The current Zoning Ordinance standards, as pertain to the Dragon Run watershed, are as follows:

- Only two zoning categories, Agricultural (A) and Industrial (I), are present in the Dragon Run Watershed in King & Queen County; both allow a wide range of uses by-right and through conditional approval.
- Several of the uses permitted in the Industrial District are incompatible with the goals of maintaining the rural character of the Dragon Run area. Approximately 411 acres are zoned industrial in King & Queen County in the Dragon Run watershed; this is the landfill property.

- King & Queen County has a Dragon Run Conservation District (DRCD) overlay zone to protect the natural resources along the Dragon Run watercourse. Permitted uses are strictly limited to recreation, maintenance and agriculture and forestry using Best Management Practices. No residential or other private buildings are permitted to be constructed in the District. The DRCD has not been mapped in King & Queen County, however, it is defined by soil type.
- The DRCD addresses "streamside" protection measures but does not address protection of the Dragon Run Watershed.
- The Chesapeake Bay Protection Ordinance generally supercedes the provisions of the Dragon Run Conservation District.

## **B. Key Recommendations from the “Preservation and Progress” Report**

In general, the Zoning Recommendations are intended as options for King & Queen County to adopt in whole or in part, as is, or customized for the county policy and zoning framework.

There are three basic types of recommendations contained in the report:

1. Watershed-based (Drainage Area Zone)
2. Streamside (Stream Buffer Zone)
3. Conservation Subdivision Option

### Drainage Area Zone:

- The proposed district is an Overlay Zone (it modifies, but doesn't eliminate the base zoning)
- The proposed District extends over the whole Drainage Area or watershed of the Dragon Run
- The District includes a Table of Uses to modify some uses in the Base Zone. This provision is intended to protect traditional rural industries in the area and can be customized to best fit with the County's existing zoning provisions.

### Stream Buffer Zone:

- The proposed district is an Overlay Zone (it modifies, but doesn't eliminate the base zoning)
- It extends 200' landward from the Chesapeake Bay Resource Protection Area
- It allows only certain conservation & passive recreational uses as specified
- The District is primarily intended to protect stream ecology
- It generally permits Farming & Forestry with BMP's

Conservation Subdivision Option:

- The Conservation Subdivision Option is a voluntary (optional) development type with a built-in incentive for conserving natural areas and prime forest or farm land.
- The general incentive mechanism is Ministerial Approval for 10 lot subdivisions
- Development is permitted as a conservation-based cluster option with permanent easement over 75% of a tract
- There is no common ownership of the open space required and all the land can remain in individual private ownership
- Required easements for the open space may be held by the County or a qualified Conservation Organization

**C. Compatibility of Recommendations with the Existing County Zoning Framework**

- Specific issues of compatibility between the proposed zoning recommendations and the County's zoning framework are as follows:
- A number of uses that are listed as permitted in the current Table of Uses for the Industrial District and Agricultural District may be incompatible with the purpose of the Drainage Area Zone. These include golf courses, manufacturing uses, airport, dirt dragways and several others, primarily in the Industrial Zoning District.



- The current Dragon Run Conservation District (DRCD) is generally superseded by the existing Chesapeake Bay ordinance and the proposed Stream Buffer Zone. The DRCD is based on soil types, and is both more complicated to administer, and provides less overall protection than the 200 foot buffer of the Stream Buffer Zone. If the new zoning recommendations are adopted, it may be advisable to repeal the existing DRCD.
- The proposed Conservation Subdivision Option is generally compatible with the current County zoning and subdivision ordinances. Currently, the Agricultural zone allows up to 5 lots to be developed as a Minor Subdivision, with ministerial (non-legislative) approval. The Conservation Subdivision option would increase this type of approval to 10 lots, in exchange for clustering lots and permanent protection of open space.

#### **D. Proposed Strategy for Implementing the Zoning Recommendations**

In general, the zoning recommendations can be adopted by the County as amendments to its current zoning and subdivision ordinances without major disruption to the structure or intent of either ordinance. It is recommended, however, that the following issues be addressed at the time that the actual ordinance amendments are drafted:

##### Drainage Area Zone:

The list of permitted and conditional uses currently in the Dragon Run area should be carefully reviewed and only those uses that are clearly incompatible with the intent of the proposed Drainage Area Zone should be eliminated as part of a new Use Table.

Specific permitted or conditional uses that should be considered for prohibition in the Drainage Area Zone include the following. Note that, since this is an overlay zone, it would only modify the uses in those underlying zoning districts in which these uses are already permitted:

- Airport, public
- Auto/Truck Sales (new)
- Auto/Truck Sales (used)
- Marina

Specific Permitted uses that should be considered for change to a conditional use include the following. Note that, since this is an overlay zone, it would only modify

the uses in those underlying zoning districts in which these uses are already permitted:

- Auto/Truck Service, Repair
- Animal Raising, Poultry
- Boat Docks, private
- Contractor's Storage Yard, Office
- Livestock, Intensive
- Lumber & Building Supply
- Manufacturing
- Office
- Public Utilities
- Repair Service Establishment
- Sawmill
- Service Business
- Veterinary Clinic/Hospital

Stream Buffer Zone:

The Stream Buffer Zone should be adopted in concert with the repeal of the current Dragon Run Conservation District, since the new district replaces the former one.

Conservation Subdivision Zone:

In general, the Conservation Subdivision Ordinance can be adopted in as an option within a new Dragon Run overlay zone in the County code. However, the Conservation Subdivision Ordinance, as well as all the new zoning provisions, should have a thorough legal review by county staff or outside legal experts to ensure that they conform fully to the State Code and they are not in conflict with any of the other provisions of the County Code.

## PRESERVATION AND PROGRESS IN THE DRAGON RUN

### TECHNICAL MEMORANDUM: Implementation Recommendations

For Middlesex County, Virginia

September 20, 2005



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Reston, Virginia

## **C O N T E N T S**

### *BACKGROUND*

#### **I. THE MODEL COMPREHENSIVE PLAN DISTRICT RECOMMENDATIONS**

- A. The Dragon Run in the Current County Comprehensive Plan**
- B. Key Recommendations from the Preservation and Progress Report**
- C. Compatibility of Recommendations with the Current Comprehensive Plan**
- D. Considerations for Implementing the Recommendations**

#### **II. THE ZONING RECOMMENDATIONS**

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- B. Key Recommendations from the Preservation and Progress Report**
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## **BACKGROUND**

The following Technical Memorandum summarizes key implementation issues for adopting the recommendations contained in the Preservation and Progress in the Dragon Run report for Middlesex County. This memorandum is intended as a companion document to the “Preservation and Progress” report, and should only be understood in conjunction with the larger report.

The recommendations in this memorandum and the larger report are both intended to respond to each county’s long-range goal of conserving the important natural resources and traditional rural economy and small businesses of the Dragon Run area.

There are four basic parts to this memorandum:

1. The Dragon Run as addressed in the Current County Comprehensive Plan (and Zoning Ordinance)
2. Key recommendations from the Preservation and Progress report
3. Compatibility issues with the existing County Comprehensive Plan (and Zoning Ordinance)
4. Considerations for implementing the recommendations

This basic outline will be applied to both the County Comprehensive Plan and Zoning Ordinance, as described below.

### **I. THE MODEL COMPREHENSIVE PLAN DISTRICT**

#### **A. The Dragon Run in the Current County Comprehensive Plan**

The land area within the watershed, or natural drainage area of the Dragon Run in Middlesex County falls within three separate plan districts in the County comprehensive plan:

- Residential Area:  
The majority of the watershed is designated for low density residential development, although the policies do state that preservation of prime farmland is a priority. Appropriate densities are determined by the zoning ordinance and surrounding uses.
- Industrial Development Area:  
South of Saluda, there is an existing area of light industrial use/zoning that is planned for continued light industrial use. The plan also identifies the Route 17 corridor as an “Industrial Development Opportunity Zone”, appropriate for suitable industrial activities. Exact boundaries would be determined as individual uses are approved. The south side of Route 17 is generally located within the Dragon Run watershed.
- Transitional Development Commercial Center :  
Saluda and the surrounding area is planned to continue as a mixed settlement of low impact commercial activities, services, and residences at low to medium density adjoining higher intensity commercial development

In addition, the following points are important, relative to the Dragon Run in the Middlesex County Comprehensive Plan:

- The comprehensive plan does not map or identify the Dragon Run drainage area as a distinct geographic planning area subject to a separate set of planning policies.
- There is minimal discussion of the Dragon Run in the current comprehensive plan and very little specific policy guidance for the Dragon Run.
- The adopted comprehensive plan does not place particular emphasis on the Dragon Run as a regional resource.

The primary mention of the Dragon Run in the current Plan is under Chapter VI, Section C. 1. (Environmental Objectives): “*Protect rivers, marshes, wetlands, and other bodies of water, e.g. the Dragon Run System, from pollution, disturbance and destruction.*”

The Dragon Run is also mentioned under Chapter V, Section 8. Public Facilities and Services; paragraph d. Waterfront Access. This paragraph addresses the County’s “*superb boating, fishing, hunting and touring areas of the Dragon Run Swamp, the Rappahannock and Piankatank Rivers, and the Chesapeake Bay make ready access by every segment of the resident and transient population essential to their well-being.*” This policy statement may be more appropriately applied to the Chesapeake Bay and other river systems, than the Dragon Run, where a number of landowners have expressed

concerns about increasing public access to the Dragon Run, unless it can be carefully managed and controlled.

In general, the existing Comprehensive Plan policies and maps for Middlesex County do not give significant mention of the Dragon Run and its drainage system, nor do they give adequate policy direction for conservation efforts to preserve the future character and quality of the Dragon Run area.

## **B. Key Recommendations from the “Preservation and Progress” Report**

The recommendations in the “Preservation and Progress” report are intended to conserve the important natural resources and traditional rural economy and small businesses of the Dragon Run area, as described in the Dragon Run Memorandum of Agreement of 2002.

The “Preservation and Progress” report describes a model Comprehensive Plan district that is summarized below:

- The overall intent of **Dragon Run Compatible Economic Development and Preservation District** is for the area to remain largely rural, with low intensity uses, and to preserve its key natural areas and its water quality. Specifically, to:
  - maintain the health and quality of the Dragon Run stream system and associated natural areas,
  - achieve the objectives of the Memorandum of Agreement and reinforce the existing shared values for preserving the Dragon Run,
  - support the traditional economic base of the Dragon Run area and its rural industries such as farming and forestry that are compatible with preserving the natural health of the stream system, and
  - support new rural economic development and industries that are compatible with the traditional pattern of rural land uses in the Dragon Run area
- The boundaries of the district are generally defined as the boundaries of the drainage area or watershed – it is not necessary that these be mapped in order to establish the district.
- The intent of the policies for the District is not to prevent development of those areas, but, through policies and standards, to ensure that they are developed in ways that are compatible with the basic intent of preserving the



Dragon Run's natural resources and low intensity rural character. Specific policies include:

- **Rural Character**
  - The Dragon Run District should maintain its rural character into the future.
  - It should continue to adapt to changing times, but new development in the District should integrate harmoniously with the existing rural economy and settlement patterns.
- **Land Use**
  - Low intensity rural land uses, that are consistent with the preservation of the area's natural resources should be the dominant land uses in the District.
  - New residential development in the District should generally be of a very low intensity rural character, incorporating standards to ensure compatibility with the natural resources and rural surroundings.
  - New non-residential development in the District should also be low intensity, compatible with surrounding rural areas and incorporate development standards and management practices that ensure preservation of the area's natural resources.
- **Water and Wastewater**
  - The extension of central sewer and water is not considered consistent with preserving the area's rural character and land uses
- **Compatible Economic Development**
  - Support the cornerstone rural industries of the area, such as farming and forestry, and enact policies and ordinances that help protect the long-term viability of these industries, while ensuring that they are practiced in ways that are compatible with the health of the natural resources on which they depend.
  - Encourage compatible new supportive industries such as value-added farming and timber products, local specialties and handicrafts and small-scale workshops and craft industries, and others that integrate well with the existing rural economy.

- **Natural Resource Protection**
  - Protect the key natural resources in the District, including the ground and surface water quality, wetlands and sensitive environmental features, native plant and animal species and their natural habitats and the productive soils that support farming and forestry uses.
- **Recreation and Tourism**
  - Discourage the extensive use and exploitation of the area for public recreation and large-scale tourism.

It is important to note that this is generally in concert with Middlesex County's existing policies for most of the area around the Dragon Run already.

### **C. Compatibility of Recommendations with the Existing County Comprehensive Plan**

The Future Land Use Map in the Middlesex County Comprehensive Plan designates the overwhelming majority of the Dragon Run drainage system as Low Density Residential. In addition, numerous policies throughout the Comprehensive Plan urge the preservation of important natural resources, farm and forestry lands and overall rural character.

The recommended policies in the proposed **Dragon Run Compatible Economic Development and Preservation District** are in concert with these policies and the overall intent of the Comprehensive Plan for its rural areas. The proposed model District does not discourage residential development, but urges that it be done with densities and development patterns that protect the overall rural character of the area. Thus the proposed District is compatible with the intent of the current County Comprehensive Plan.

The primary aspect of conflict, however, is in the areas along Route 17 that are designated Industrial Development Area, and the areas around Saluda that are designated Transitional Development Commercial Center. The goals of these districts are not compatible with the goals of the model Dragon Run district. As discussed below, it is recommended that the Model district language be modified to fix this inconsistency prior to adoption of the new district.

## **D. Considerations for Implementing the Recommendations**

In general, the **Dragon Run Compatible Economic Development and Preservation District** can be adopted by the County as an amendment to its current Comprehensive Plan, without any major change in policy direction from the current Comprehensive Plan. It is recommended, however, that the following language be added to the Model district in order to address the issue of compatibility with the Industrial Development and Transitional Development Commercial Center districts:

Recommended revised language for Section 3.0, DISTRICT DEFINITION:

### **3.0 DISTRICT DEFINITION**

*The boundaries of the **Dragon Run Compatible Economic Development and Preservation District** are generally defined as the boundaries of the watershed, or natural drainage area of the Dragon Run. The watershed for the Dragon Run is the area where precipitation collects and funnels to end up in the Dragon Run stream. It is the primary area that affects the water quality of the Dragon Run. It is also the area where compatible rural land uses have predominated and maintained the quality and health of the stream system.*

*The following policies are generally intended to apply to the entire watershed of the Dragon Run. However, recognizing that the Middlesex County Comprehensive Plan has previously identified some areas within the watershed as Industrial Development Areas and Transitional Development Commercial Center, the following District policies do not apply to those areas.*

*It is the intent of the policies for this District not to prevent development of any areas, but, through policies and standards, to ensure that they are developed in ways that are compatible with the basic intent of preserving the Dragon Run's natural resources and low intensity rural character.*

## **II. THE ZONING RECOMMENDATIONS**

### **A. The Dragon Run in the Current County Zoning Ordinance**

In general, the County Zoning Ordinance has several areas which are important, relative to the recommendations in the Preservation and Progress report:

- There is a considerable variety of zoning districts, including commercial and industrial zones within the watershed or drainage area of the Dragon Run.
- More intense zones such as higher density residential and non-residential zones are present but only over a relatively small portion of the drainage area.
- The list of permitted uses includes a few uses that are incompatible with the goals of maintaining the rural character of the Dragon Run area.
- Both the Chesapeake Bay Protection Ordinance and the proposed “Streamside Buffer Zone” generally supercede the provisions of the existing Dragon Run Conservation District.

## **B. Key Recommendations from the “Preservation and Progress” Report**

In general, the Zoning Recommendations are intended as options for Middlesex County to adopt in whole or in part, as is, or customized for the county policy and zoning framework.

There are three basic types of recommendations contained in the report:

1. Watershed-based (Drainage Area Zone)
2. Streamside (Stream Buffer Zone)
3. Conservation Subdivision Option

### Drainage Area Zone:

- The proposed district is an Overlay Zone (it modifies, but doesn’t eliminate the base zoning)
- The proposed District extends over the whole Drainage Area or watershed of the Dragon Run
- The District includes a Table of Uses to modify some uses in the Base Zone. This provision is intended to protect traditional rural industries in the area and can be customized to best fit with the County’s existing zoning provisions.

### Stream Buffer Zone:

- The proposed district is an Overlay Zone (it modifies, but doesn't eliminate the base zoning)
- It extends 200' landward from the Chesapeake Bay Resource Protection Area
- It allows only certain conservation & passive recreational uses as specified
- The District is primarily intended to protect stream ecology
- It generally permits Farming & Forestry with BMP's

Conservation Subdivision Option:

- The Conservation Subdivision Option is a voluntary (optional) development type with a built-in incentive for conserving natural areas and prime forest or farm land.
- The general incentive mechanism is Ministerial Approval for 10 lot subdivisions
- Development is permitted as a conservation-based cluster option with permanent easement over 75% of a tract
- There is no common ownership of the open space required and all the land can remain in individual private ownership
- Required easements for the open space may be held by the County or a qualified Conservation Organization

**C. Compatibility of Recommendations with the Existing County Zoning Framework**

Specific issues of compatibility between the proposed zoning recommendations and the County's zoning framework are as follows:

- A number of uses that are listed as permitted in the current Table of Uses may be incompatible with the purpose of the Drainage Area Zone. These include Auto/Truck Sales (new) and Public Airport.

- The current Dragon Run Conservation District (DRCD) is generally superseded by the existing Chesapeake Bay ordinance and the proposed Stream Buffer Zone. The DRCD is based on soil types, and is both more complicated to administer, and provides less overall protection than the 200 foot buffer of the Stream Buffer Zone.
- The proposed Conservation Subdivision Option is generally compatible with the current County zoning and subdivision ordinances. Currently, the Low Density Residential zone allows up to 6 lots to be developed as a Minor Subdivision, with ministerial (non-legislative) approval. The Conservation Subdivision option would increase this type of approval to 10 lots, in exchange for clustering lots and permanent protection of open space.

#### **D. Considerations for Implementing the Recommendations**

In general, the zoning recommendations can be adopted by the County as amendments to its current zoning and subdivision ordinances without major disruption to the structure or intent of either ordinance. It is recommended, however, that the following issues be addressed at the time that the actual ordinance amendments are drafted:

##### Drainage Area Zone:

The list of permitted and conditional uses currently in the Dragon Run area should be carefully reviewed and only those uses that are clearly incompatible with the intent of the proposed Drainage Area Zone should be eliminated as part of a new Use Table.

Specific permitted or conditional uses that should be considered for prohibition in the Drainage Area Zone include the following. Note that, since this is an overlay zone, it would only modify the uses in those underlying zoning districts in which these uses are already permitted:

- Airport, public
- Auto/Truck Sales (new)
- Auto Racetrack
- Car Wash, attended or self-service
- Hospital
- Junkyard
- Landfill, public (county)
- Marina

- Seafood Processing Plant

Specific Permitted uses that should be considered for change to a conditional use include the following. Note that, since this is an overlay zone, it would only modify the uses in those underlying zoning districts in which these uses are already permitted:

- Apartments
- Auction House
- Auto Service Station
- Auto/Truck Service, Repair
- Business or Technical School
- Child Care Center
- Contractor's Storage Yard/Office
- Eating Establishments/Restaurant
- Financial Institution without drive-in
- Food Processing Plants
- Golf Course/Country Club
- Grocery Store
- Kennel, commercial
- Lumber and Building Supply
- Manufacturing
- Office, Public/Government
- Nursing Home/Home for Elderly
- Printing, Commercial/Newspaper
- Research Institutions, Labs
- Retail Sales Establishment
- Service Business
- Theater
- Warehouse, Wholesale Distribution
- Wholesale Businesses

Stream Buffer Zone:

The current Dragon Run Conservation District (DRCD) is generally superceded by the existing Chesapeake Bay ordinance and the proposed Stream Buffer Zone. The DRCD is based on soil types, and is both more complicated to administer, and provides less overall protection than the 200 foot buffer of the Stream Buffer Zone.

If the new zoning recommendations are adopted, it may be advisable to repeal the existing DRCD.

Conservation Subdivision Zone:

In general, the Conservation Subdivision Ordinance can be adopted in as an option within a new Dragon Run overlay zone in the County code. However, the Conservation Subdivision Ordinance, as well as all the new zoning provisions, should have a thorough legal review by county staff or outside legal experts to ensure that they conform fully to the State Code and they are not in conflict with any of the other provisions of the County Code.



**Appendix C:**  
**Virginia Coastal Zone Management SAMP Summary**

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	FY 10	
SAMP: Dragon Run	\$69,000	\$56,000	\$50,000	\$14,000	\$25,000	\$214,000

**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 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 its 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.

**Appendix D:  
Cumulative Goals and Outcomes (FY2005-FY2010)**

# 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 2014; 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 recommendations (ie. Land Use and Resource Preservation, Identify and Implement Tools to Preserve Forest, Farm, and Natural Resources as well as Agricultural Land and Open Space Preservation Issues) 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](http://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 15<sup>th</sup>. 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 E:**  
**Dragon Run Steering Committee Meeting: December 2010**



#### DRAGON RUN STEERING COMMITTEE

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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 9<sup>th</sup> 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](mailto:sstamp@mppdc.com).

Sincerely,

A handwritten signature in cursive script that reads "Sara E. Stamp".

Sara

Enclosure



## **Dragon Run Steering Committee Winter Quarterly Meeting February 9<sup>th</sup>, 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 8<sup>th</sup>. 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 F:**  
**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 18<sup>th</sup>. 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 15<sup>th</sup> 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 G:**  
**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  
Email: mppdc@mppdc.com Webpage: www.mppdc.com

## 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 H:**  
**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.



# **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...
6. What is the perceived land use impact of conservation easements in the Middle Peninsula? Your thoughts??
7. 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 a meeting in the Middle Peninsula Planning District Commission Board Room in Saluda, Virginia, at 1 p.m. on December 17, 2010. Ms. Sara Stamp welcomed those in attendance including Frank Herrin, Friends of Dragon Run (FODR); Hank Hartz, Virginia Outdoors Foundation (VOF); Bob Lee, VOF; Scott Lucchesi, King William Planning Department; Andy Lacatell, The Nature Conservancy (TNC); Ben McFarlane, Hampton Roads Planning District Commission (HRPDC); Rob Suydam, Virginia Department of Forestry (DOF); Sarah Richardson, Virginia Department of Conservation and Recreation (DCR); Neal Barber, Middle Peninsula Land Trust (MPLT); and Jackie Rickards, Middle Peninsula Planning District Commission.

Ms. Sara Stamp first reviewed the background of this project, the fiscal finding of the report as well as the 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 and how they fiscally impact counties. 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 impacts 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 Virginia 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 I:  
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

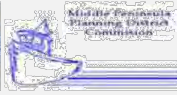
time for the county to respond and provide feedback. Therefore if such a process is standardized for the other conservation entities, this may help improve partnerships with local governments.

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 J:**  
**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 <b>Communication between Conservation Community and Locality</b></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"> <li>1. Reference to Article XI of Constitution</li> <li>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)</li> <li>3. Reference to Virginia Conservation Easement Act (Section 10.1-1010)</li> <li>4. A space for citations from the County's Comprehensive Plan indicating consistency with the plan and/or other county adopted land management plans</li> <li>5. An agreement between the conservation entity and the County/Town</li> </ol>	<p>Please see last page of this document for the MOU template</p>	
<p>2 <b>Disconnect between land use tools and current views of local officials</b></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 <b>Commissioners of Revenue and Planning Staff are unable to easily track/search for easements once recorded</b></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 <b>Consistency in accounting for the reduction of fair market values with conservation easements</b></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 K:  
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)**






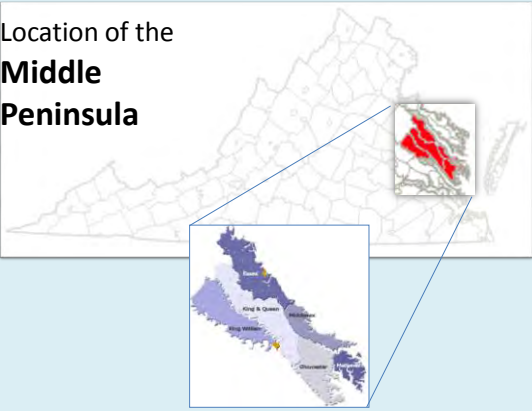
## CONSERVATION EASEMENTS:

### *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

<b>Open-Space Land Act 1966</b>
Public Bodies
10.1-1700 – 10.1-1705

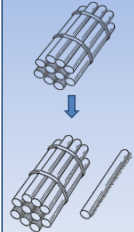
<b>Virginia Conservation Easement Act 1988</b>
Non-Profits
10.1-1009 – 10.1-1016

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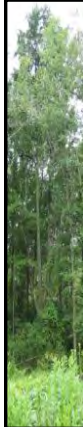


### Bundle of Sticks Theory

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.

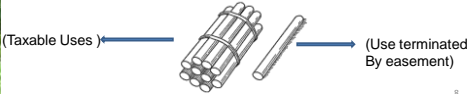


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### Virginia Conservation Easement Act: 10.1-1011 Taxation

*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.***




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### 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



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### 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



Value is determined by the assessor and/or Commissioner of Revenue

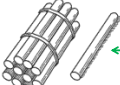
\*\*Total value of property may go up, down or stay neutral depending on real estate market dynamics\*\*

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.




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

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



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\*\*

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

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## 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.

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### 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 <b>\$150,000</b></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 <b>\$112,500</b></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><b>\$855.00 is due</b></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> $\left( \frac{\$112,500}{\$100} \right) \times \$0.57 = \$641.25 \text{ is due}$
<p>The Commissioner of Revenue will record <b>\$150,000</b> in the Land Book</p>	<p>The Commissioner of Revenue will record <b>\$112,500</b> in the Land Book</p>

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### Non Land Use Program King & Queen, Mathews

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<p>The Commissioner of Revenue will record <b>\$150,000</b> in the Land Book</p>	<p>The Commissioner of Revenue will record <b>\$112,500</b> in the Land Book</p>

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### Land Use Program Essex, King William, Gloucester, Middlesex

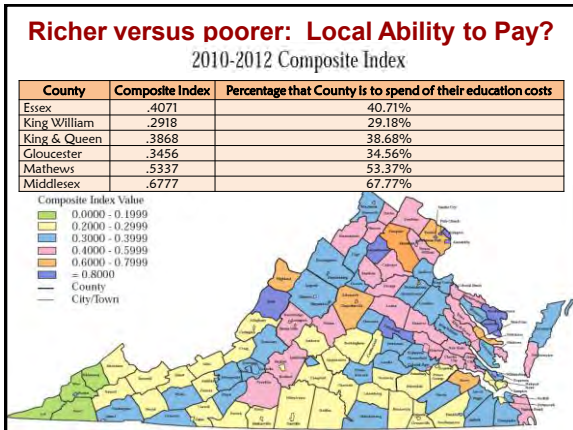
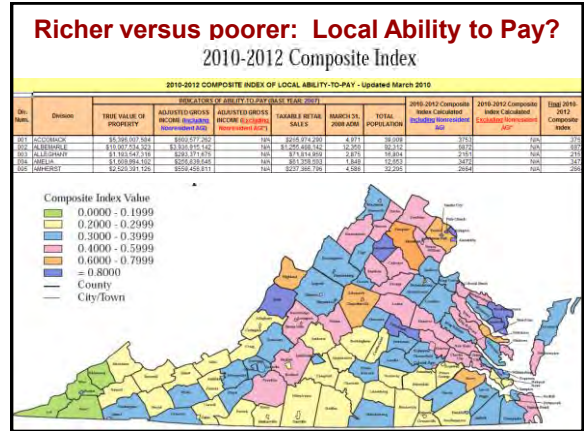
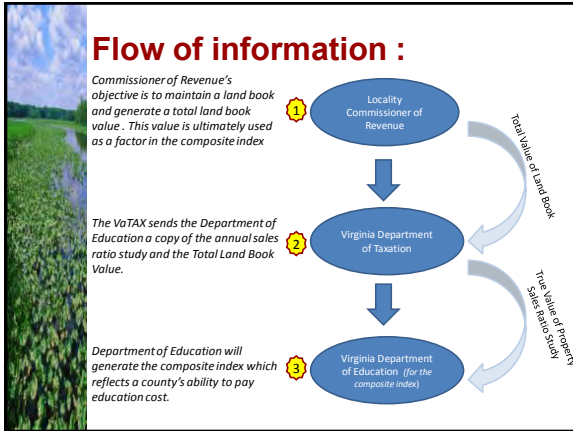
Scenario #1: Land Use Value	Scenario #2: Conservation Easements
<p>1. Mr. Jones owns 100 acres.</p> <p>His land is assessed at <b>\$150,000</b></p> <p>But, the Land use rate for agriculture land is <b>\$550/acre</b></p> <p>Therefore, the land use value of the land is <b>\$55,000</b></p>	<p>2. Mr. Jones 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 <b>\$55,000</b></p>
<p>The land use value is taxed. Therefore with a tax levy of \$0.57/\$100...</p> $\left( \frac{\$55,000}{\$100} \right) \times \$0.57 =$ <p><b>\$313.50 is due</b></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> $\left( \frac{\$55,000}{\$100} \right) \times \$0.57 = \$313.50 \text{ is due}$
<p>The Commissioner of Revenue will record <b>\$150,000</b> in the Land Book</p>	<p>The Commissioner of Revenue will record <b>\$55,000</b> in the Land Book</p>

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### 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 <b>\$150,000</b></p> <p>But, the Land use rate for agriculture land is <b>\$550/acre</b></p> <p>Therefore, the land use value of the land is <b>\$55,000</b></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 <b>\$55,000</b></p>
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<p>The Commissioner of Revenue will record <b>\$150,000</b> in the Land Book</p>	<p>The Commissioner of Revenue will record <b>\$55,000</b> in the Land Book</p>

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, 5230R AC (L&CA), 1018 485 5497 471 290 767 004 583, 0299 406 714 24 475 484

**Owner Address:** DELTAVILLE VA, 22843

**Total Land Area:** 52.318 Acres

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

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

**Legal Description:** NORSH DIV, 5230R AC (L&CA), 1018 485 5497 471 290 767 004 583, 0299 406 714 24 475 484

**Zoning:** R-1

**Price Assessment:** \$497,200

**Impoverished District:** NONE TOP

**Local ID #:** 297 400

**Remarks:**

**Assessment Values (Map#- 40 BC)**

No Building	0
Land Value	\$1,133,200
Other Improvements	0
<b>Total Value:</b>	<b>\$1,133,200</b>

**Average Description (Map#- 40 BC)**

Size In Acres	Description	Land Area or Per Acre	Unit Value	Adj. %	Unit Value	Average Value
1.00	Residence	Loop Area	800,000	0.00		\$800,000
2.00	Per Acre	Per Acre	100,000	0.00		\$200,000
2.00	Per Acre	Per Acre	10,000	0.00		\$20,000
86.318	Per Acre	Per Acre	2,300	0.00		\$196,200
						<b>Total Value: \$1,133,200</b>

### Example 2 – Essex County (LU)

**Property Address:** SPANISH RD (OFF), 12 WHEATFIELD X, 22577

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

**Legal Description:** CEDAR GROVE (PART)

**Ownership:** VACANT

**Building Type:** UNCLASD BLDG, FARM BLDG - SUBURBAN

**Year Assessed:** 2008

**Zoning:** AGRICULTURAL

**District:** OCCUPANCY

**MBRTyp:** 0

**Condition:**

**Assessment Values (Map#- 40 BC)**

No Building	0
Land Value	\$1,133,200
Other Improvements	0
<b>Total Value:</b>	<b>\$1,133,200</b>

**Average Description (Map#- 40 BC)**

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### Example 2 – Essex County (LU)

<b>Property Address</b> # PASSING RD (OFF)		<b>Owner Name/Address</b> PINE HILL LLC C/O TOM BISHAZO 14 HOLLOWOOD FARM RD PRESTONBURG VA 24665	
<b>Mag#:</b> 9-60		<b>Owner:</b> VACANT	<b>Map#:</b> 07 0 (00P 00)
<b>Acct#:</b> 00-1		<b>Drilling Type:</b>	<b>Plat Map#:</b> 3482
		<b>Use/Class:</b> INCL FARM RES - SUBURBAN	<b>Average:</b> 18.100
		<b>Year Assessed:</b> 2009	<b>Year Built:</b>
			<b>Land Use #:</b>
<b>Legal Description:</b> CEDAR GROVE (PART)			
-----Land Valuation-----			
Math Class	Desc	Grd Size	Depth Rate FV/Pct Value
A	19 WOOD/OFFRD	E	19.330 2400.00 36727- 9665
<b>Total Land Value</b>		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)			
<b>Total Property Value</b>		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%
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<b>Regional Total</b>	<b>38,872</b>	<b>20,665</b>	<b>59,537</b>	<b>\$262,974</b>	<b>\$156,340</b>	<b>\$419,313</b>	<b>-</b>

### 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%	<b>\$13,571,837</b>
Gloucester	\$5,587,222	85.11%	<b>\$6,564,707</b>
Essex	\$18,594,806	95.23%	<b>\$19,526,206</b>
King and Queen	\$3,115,224	70.00%	<b>\$4,450,320</b>
King William	\$7,394,152	89.89%	<b>\$8,225,778</b>
Mathews	\$197,600	62.56%	<b>\$315,857</b>

*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

31

### 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

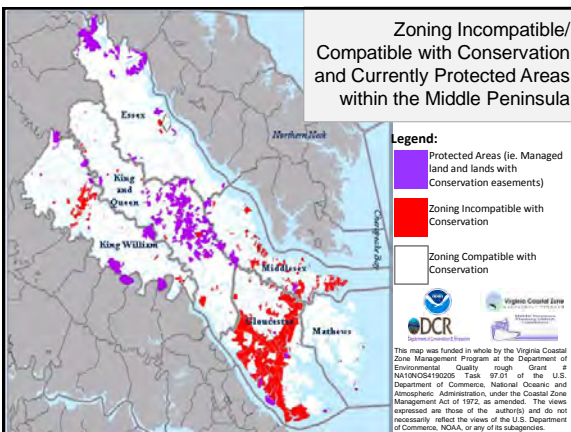
### Where do you want 'em?

- 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](mailto:jrickards@mppdc.com)

38






## CONSERVATION EASEMENTS:

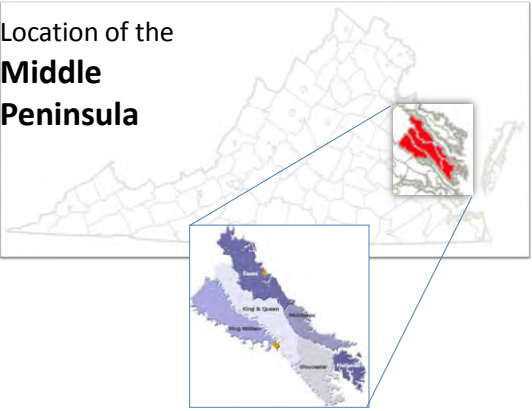
### Fiscal Impacts to Localities in the Middle Peninsula

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 Department of Environmental Quality Order #VA120204130002. This is not a map of the Virginia Coastal Zone Management Act of 1972, as amended. The area represented on this map is the subject of the Virginia Coastal Zone Management Act of 1972, as amended, and does not necessarily reflect the view 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



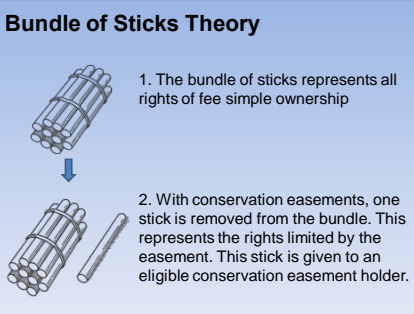
## Phase 1- Project Goals

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

<b>Open-Space Land Act 1966</b>
Public Bodies
10.1-1700 – 10.1-1705
<b>Virginia Conservation Easement Act 1988</b>
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

<p><b>Scenario #1: Assessment Value</b></p> <p>1. Ms. Smith owns 100 acres.</p> <p>Her land is assessed at <b>\$150,000</b></p>	<p><b>Scenario #2: Conservation Easements</b></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 <b>\$37,500</b></p> <p>2. The taxable rights, the remaining bundle of sticks, will have a value of <b>\$112,500</b></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><b>\$855.00 is due</b></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> $\left( \frac{\$112,500}{\$100} \right) \times \$0.57 = \$641.25 \text{ is due}$
<p>The Commissioner of Revenue will record</p> <p style="text-align: center;"><b>\$150,000</b> in the Land Book</p>	<p>The Commissioner of Revenue will record</p> <p style="text-align: center;"><b>\$112,500</b> in the Land Book</p>

11

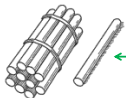
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12

### 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.

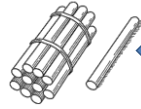


Because of the stick, the land eased receives the land use value

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.

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### Land Use Program



Essex, King William, Gloucester, Middlesex

Scenario #1: Land Use Value	Scenario #2: Conservation Easements
1. Mr. Jones owns 100 acres.  His land is assessed at \$150,000 But, the Land use rate for agriculture land is \$550/acre Therefore, the land use value of the land is \$55,000	2. Mr. Jones now wants to put all 100 acres in a conservation easement. Tax exempt rights with easement One stick removed from the bundle represents the rights limited by the easement.  Taxable rights
The land use value is taxed. Therefore with a tax levy of \$0.57/\$100... $\left( \frac{\$55,000}{\$100} \right) \times \$0.57 =$ \$313.50 is due	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 Mr. Jones's will be taxed based on the land use value of the land. With a tax levy of \$0.57/\$100... $\left( \frac{\$55,000}{\$100} \right) \times \$0.57 = \$313.50$ is due
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16

### Land Use Program

Essex, King William, Gloucester, Middlesex

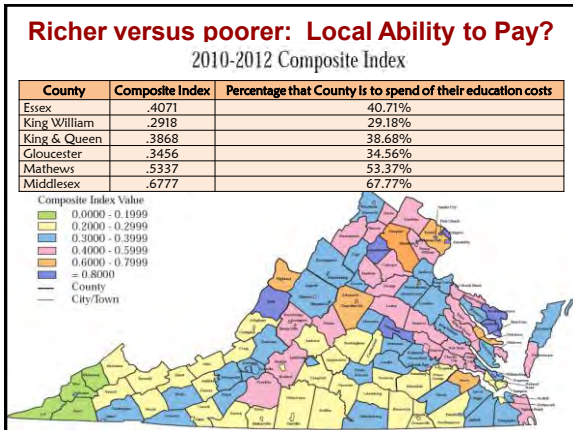
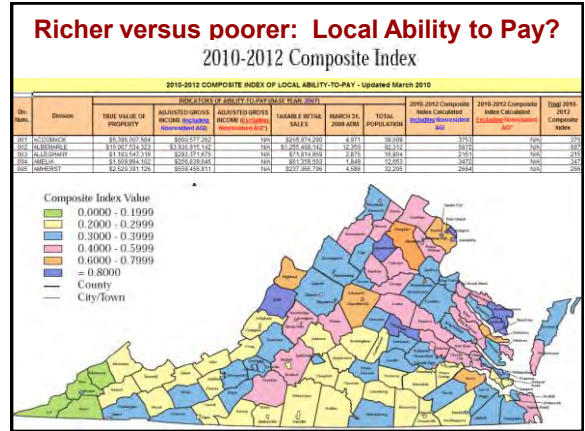
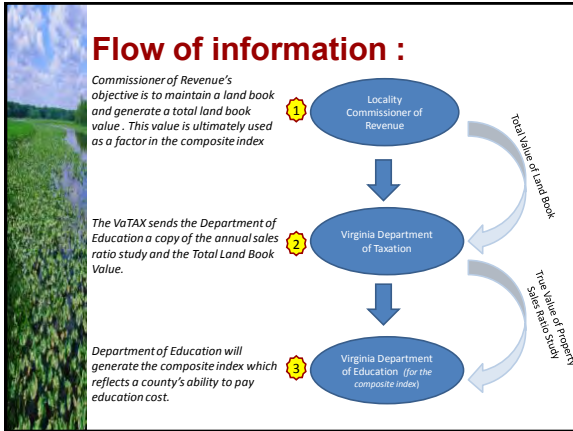
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### PROPERTY ASSESSMENT, TOTAL LAND BOOK VALUE, COMPOSITE INDEX and their CONNECTION

18





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

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 1018 AHS 5497 471 290 757-04-583  
 1229-406-714-24475-454

**Legal Description:** NORRIS SWP  
 5230R AC (L&CA)  
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**Assessment Values (Map#-40 BC)**

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<b>Legal Description:</b> CEDAR GROVE (PART)			
<b>Ownership:</b> VACANT <b>Drilling Type:</b> Use/Class: SINGLE FARM RES - SUBURBAN Year Assessed: 2009		<b>Map#:</b> 07 0 (009 00) <b>Plot Width:</b> 348.0 <b>Average:</b> 19.330 <b>Year Built:</b>	
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Gloucester	\$5,587,222	85.11%	<b>\$6,564,707</b>
Essex	\$18,594,806	95.23%	<b>\$19,526,206</b>
King and Queen	\$3,115,224	70.00%	<b>\$4,450,320</b>
King William	\$7,394,152	89.89%	<b>\$8,225,778</b>
Mathews	\$197,600	62.56%	<b>\$315,857</b>

*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

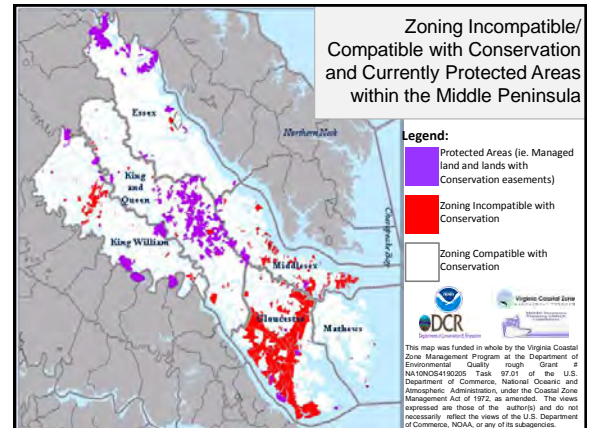
**Is there a disconnect between what our planning tools encourage and what our elected officials value currently and what our conservation community is accomplishing?**

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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**Appendix L:  
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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## 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).<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> That percentage, however, decreases with income. Only 50% of surveyed adults with household income below \$15,000 reported having a will.<sup>4</sup>

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

<sup>2</sup> Personal Communication with Elizabeth G. Johnson (Sept. 18, 2012).

<sup>3</sup> 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>.

<sup>4</sup> *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.<sup>5</sup> 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.<sup>6</sup>

Former slaves often hoped that land ownership would lead to self-sufficiency, economic opportunity, and political participation for their descendants.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> "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

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<sup>5</sup> VA. CODE ANN. § 64.2-200.

<sup>6</sup> *Heirs' Property and Land Loss Prevention*, Lawyers' Committee for Civil Rights Under Law, [http://www.lawyerscommittee.org/projects/community\\_development/page?id=0029](http://www.lawyerscommittee.org/projects/community_development/page?id=0029).

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

<sup>8</sup> AARP, *supra* note 3, at 3.

<sup>9</sup> 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).

<sup>10</sup> 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.<sup>11</sup> 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."<sup>12</sup> 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

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<sup>11</sup> See Black's Law Dictionary 1622 (9th ed.).

<sup>12</sup> 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](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,<sup>13</sup> 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.<sup>14</sup>

#### **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.<sup>15</sup> 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."<sup>16</sup> 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.<sup>17</sup> 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.

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

<sup>14</sup> *Id.* § 8.01-93.

<sup>15</sup> Currently, only eleven states use the Torrens System.

<sup>16</sup> Black's Law Dictionary (9th Ed. 2009).

<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> 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.”<sup>21</sup> 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.”<sup>22</sup>

## **V. CLEARING TITLE TO HEIR PROPERTY IN VIRGINIA**

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

<sup>19</sup> See generally *Probate in Virginia*, Virginia Court Clerks’ Association, available at [http://www.courts.state.va.us/courts/circuit/resources/probate\\_in\\_virginia.pdf](http://www.courts.state.va.us/courts/circuit/resources/probate_in_virginia.pdf) (outlining intestacy rules in Virginia).

<sup>20</sup> VA. CODE ANN. § 64.2-510. See also section IV.B.

<sup>21</sup> *Id.*

<sup>22</sup> 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,<sup>23</sup> tenants-in-common,<sup>24</sup> life estate,<sup>25</sup> 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.”<sup>26</sup> 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.<sup>27</sup>

Once 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.<sup>28</sup> 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

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<sup>23</sup> “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).

<sup>24</sup> “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.

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

<sup>26</sup> GEORGIA APPLESEED, HEIRS PROPERTY IN GEORGIA ATTORNEY TRAINING MANUAL 3.2, available at [http://www.gaappleseed.org/docs/heirproperty\\_attorney.pdf](http://www.gaappleseed.org/docs/heirproperty_attorney.pdf).

<sup>27</sup> 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.

<sup>28</sup> 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.<sup>29</sup> 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."<sup>30</sup> 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.<sup>31</sup> 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.

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<sup>29</sup> See *id.* at 32.

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

<sup>31</sup> 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."<sup>32</sup> 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.<sup>33</sup>

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.

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

<sup>33</sup> 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.<sup>34</sup> PACE financing helps private property owners avoid the high upfront costs associated with these types of energy improvements.<sup>35</sup> 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.<sup>36</sup> "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)."<sup>37</sup> An appurtenant, first-priority lien<sup>38</sup> guarantees repayment of the total loan cost.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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."<sup>42</sup>

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<sup>34</sup> 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).

<sup>35</sup> 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).

<sup>36</sup> Wiener & Alexander, *supra* note 34, at 574.

<sup>37</sup> 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).

<sup>38</sup> 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.*

<sup>39</sup> Wiener & Alexander, *supra* note 34, at 574-75.

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

<sup>41</sup> Wiener & Alexander, *supra* note 34, at 575.

<sup>42</sup> VA. CODE ANN. § 58.1-3340

States establish PACE programs by granting municipalities the authority to create special assessment districts (SADs),<sup>43</sup> to define qualified improvement projects, and to issue bonds to raise capital.<sup>44</sup> SADs typically overlay traditional assessment districts that finance local improvements such as schools, roads, and water retention facilities.<sup>45</sup> After establishing a PACE SAD, the municipality can then raise the needed funds by issuing tax-exempt bonds,<sup>46</sup> which are backed by first-priority liens.<sup>47</sup> These bonds can be an attractive investment option.<sup>48</sup> 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 ...”<sup>49</sup> 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.”<sup>50</sup>

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.<sup>51</sup> Virginia localities, for example, are authorized to use special assessments to fund local stormwater management programs.<sup>52</sup> Initial funding to cover the cost of infrastructure and equipment may be obtained through the issuance of general obligation or revenue bonds.<sup>53</sup> 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.”<sup>54</sup> Localities may combine the billings for stormwater charges with billings for water or sewer charges, real property tax assessments, or other billings.<sup>55</sup>

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<sup>43</sup> 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).

<sup>44</sup> Eisen, *supra* note 35, at 84.

<sup>45</sup> Wiener & Alexander, *supra* note 34, at 570.

<sup>46</sup> *Id.* at 572.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> VA. CODE ANN. § 15.2-958.3(B).

<sup>50</sup> 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).

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

<sup>52</sup> See, VA. CODE ANN. § 15.2-2114.

<sup>53</sup> *Id.* § 15.2-2114(F).

<sup>54</sup> *Id.* § 15.2-2114(B).

<sup>55</sup> *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 M:**  
**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.