



MIDDLE PENINSULA CHESAPEAKE BAY PUBLIC ACCESS AUTHORITY

MEMORANDUM

TO: MPCBPAA

FROM: Jacqueline Shapo, NOAA CSC Coastal Management Fellow

DATE: October 5, 2007

RE: October 12th PAA Meeting

MEMBERS

Essex County
Mr. R. Gary Allen
Treasurer

Town of Tappahannock
Mr. G. Gayle Belfield

Gloucester County
Hon. Louise D. Theberge

King and Queen County
Mr. Ronald A. Hachey
Vice Chairman

King William County
Mr. Frank Pleva
Chairman

Town of West Point
Mr. Trenton Funkhouser

Mathews County
Mr. Steve Whiteway

This announcement serves as notice to call a meeting of the Public Access Authority on Friday, October 12, 2007 at **11:00 a.m.** The meeting will be held out at the Dragon Bridge, Jackson, Clay and Haworth Tracts, so please wear comfortable footwear. We will be carpooling to the parcels from the MPPDC in Saluda. Lunch will be provided.

The agenda and related materials, including driving directions from the MPPDC to the Dragon Bridge/Jackson/Clay and Haworth Tracts, follow. As I will be out-of-town, if you have any questions, please call (804-758-2311) or e-mail (LLawrence@mppdc.com) Lewie at your convenience.

AGENDA

1. Welcome and Introductions
2. Approval of Minutes
3. Financial Report
4. Public Comment
5. Public Access Code of Conduct
6. Other Business
7. Chairman Observations
8. Next Meeting
9. Adjourn

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**MIDDLE PENINSULA CHESAPEAKE BAY PUBLIC ACCESS AUTHORITY
MINUTES**

**August 17, 2007
Middle Peninsula Planning District Commission
Saluda, Virginia**

1. Welcome and Introductions

The Middle Peninsula Chesapeake Bay Public Access Authority held its meeting in the Middle Peninsula Planning District Commission Board Room in Saluda, Virginia at 11:00am on August 17, 2007.

Chairman Pleva called the meeting to order. Members and Alternates present were Terri Hale, King William County Assistant Administrator; Ron Hachey, King & Queen County Administrator; Gary Allen, Essex County Board of Supervisors; Trent Funkhouser, Town of West Point Town Manager; and Jimmy Sydnor, Town of Tappahannock Assistant Town Manager. Also present were Lewis Lawrence, Director of Regional Planning MPPDC; Jacqueline Shapo, NOAA Coastal Management Fellow; and Sara Stamp, SAMP Director MPPDC.

2. Approval of April and June Minutes

Due to the number of members and participating jurisdictions absent from the previous meeting on June 8, 2007, the quorum for voting was not met. Therefore, both the April 13 and June 8, 2007 Minutes were considered for approval at this meeting. Chairman Pleva requested a motion to approve the April 13 and June 8, 2007 Minutes. Mr. Allen moved that the Minutes be approved. Mr. Sydnor seconded the motion. Motion carried by unanimous vote.

3. Treasurer's Report

Due to the number of members and participating jurisdictions absent from the previous meeting on June 8, 2007, the quorum for voting was not met. Therefore, both the May 2007 and August 2007 Revenue and Expenditure Reports were considered for approval at this meeting. Chairman Pleva requested a motion to approve the May and August 2007 Revenue and Expenditure Reports subject to audit. Mr. Allen moved that the Report be approved; Mr. Funkhouser seconded the motion. Motion carried by unanimous vote.

4. Public Comment

There was no public comment.

5. CELCP Update

- a) Ms. Shapo reported that the paperwork for the Batten Match property (NOAA Grant # NA05NOS4191239, Task 1.03) was approved by the NOAA Grants Management Division and Grants Officer on August 10, 2007. The Special Award Conditions (SAC) for Task 1.03 was therefore released on August 10. Consequently, the PAA's

Cash Advance Request for the residual funds (minus 10%) from NOAA Grant # NA05NOS4191239, Task 1.01 was accepted by the Virginia Coastal Zone Management Program at the Department of Environmental Quality. Grant funds (minus 10%) to purchase the first three CELCP properties: Dragon Bridge, Jackson, and Haworth are set to be released by the CZM Program on Monday, August 20, 2007. Once the PAA has secured a closing date with The Nature Conservancy on the parcels, the CZM Program will release the residual 10% funding withheld for Task 1.01.

- b) Ms. Shapo reported that she is currently working on the CELCP application checklist for the Clay Tract. She has received the federal appraisal from The Nature Conservancy and the State Historic Preservation Office (SHPO) clearance letter from the Department of Historic Resources for the property. She is waiting on the remaining associated documents, before submitting the entire application packet to the CZM Program and NOAA for review. Ms. Shapo reported that the PAA must go to closing on Clay before December 31, 2007 – the deadline for the parent grant.

- 6. Working Waterfront Preservation Act of 2007 and Reauthorization of the Coastal Zone Management Act:** Ms. Shapo briefly discussed the Working Waterfront Preservation Act of 2007, introduced by Senator Susan Collins [R-ME] as S. 741 and then as an identical bill in the House by Congresswoman Jo Ann Davis (H.R. 2565). Ms. Shapo explained that the bill is designed to amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a grant program for state and local governments and non-profit organizations to ensure waterfront access predominantly for commercial fisherman, but also for other purposes. Ms. Shapo also discussed H.R. 3223 – a bill by Senator Thomas Allen [D-ME] to amend the Coastal Zone Management Act of 1972 to establish a grant program to ensure coastal access for commercial and recreational fishermen, other water-dependent coastal-related businesses, and other purposes. The regulations outlined in both bills will be used to guide the development of the PAA's Regional Waterfront Access Master Plan in the near future.
- 7. Approval of Draft PAA 2007-2008 Work Program and Budget:** Mr. Lawrence presented the updated draft of the *Middle Peninsula Chesapeake Bay Public Access Authority Overall Program Design (FY '08: July 1, 2007 – June 30, 2008)* for discussion. This draft incorporated discussions, suggestions, and requests from PAA members in attendance at the June 8, 2007 meeting. The work plan is designed around five program areas: MPCBPAA Administration and Local Public Access Technical Assistance (\$17,500); Land Acquisition (\$1,011,477); Access Infrastructure Improvements (TBD); Water Access Strategic Planning (\$30,000); and Special Access Projects (\$5,000). Mr. Lawrence outlined a brief description of each program and the activities involved. He noted that the work plan is still only in draft form, as there are outstanding finances from FY '07 that must be accounted for. The PAA agreed with Mr. Lawrence that the Authority should continue to work with John Morris of Beale, Davidson, Etherington, and Morris, P.C. to complete the first transfer of a road ending to the PAA (Lower Guinea Landing) – see (2) Program: Land Acquisition; Activities: VDOT Road Ending Transfer.

Additionally, Mr. Lawrence has been in discussions with Tom Murray (Marine Business Specialist, VIMS) related to Program 4: Water Access Strategic Planning; Dredging and

other barriers to access. Mr. Lawrence noted that local governments in the Middle Peninsula need alternative revenue generating opportunities to permit dredging and public access projects. Chairman Pleva suggested that a tool, such as a regional transportation authority, might be effective, if established, to account for penalties/fines for misuse of the waterway, generating funding to enhance dredging and improve public access.

Discussion was also held related to Program (5): Special Access Projects, VMRC's Wetland Mitigation Banking. Mr. Lawrence has conversed with Bill Whitley about filled wetlands in Gloucester County (where homes have been removed) and the possibility of converting these areas back into conserved wetlands with public access. The filled wetlands in Gloucester would then be utilized as a tidal wetland mitigation bank and could be used by Middle Peninsula localities and neighboring jurisdictions as credit properties. Funding will be available should the PAA wish to involve itself in the wetland banking business.

Chairman Pleva requested a motion to approve the FY '08 Work Plan and Budget. Mr. Funkhouser moved that the motion be approved; Mr. Hachey seconded the motion. Motion carried by unanimous vote.

8. Other Business

- a) **Browne Tract Ribbon Ceremony Article:** Ms. Shapo presented the PAA with copies of the article, published by Chris Rose in The Rappahannock Times, about the ribbon cutting ceremony. The article was published on May 9, 2007 and has received much positive feedback from the localities.

- b) **Dragon Run Access Informational Kiosks:** Ms. Stamp reported that she has secured six informational kiosks that will be established at public access sites throughout the Middle Peninsula. Ms. Stamp has designed the panels of the kiosk and the materials, which will be attached to it. Space is available on each panel for a site-specific map, where appropriate. Ms. Stamp also has designed and printed 500 brochures related to the Dragon Run SAMP and public and private access rights. Additionally, Ms. Stamp has developed small, color-coded signs, which demarcate different types of access, differentiate public parcels from private property, and may be installed at all public access sites throughout the Middle Peninsula. Each informational kiosk posted at a public access site will house a symbol decoder and perhaps brochures explaining each of the small signs.

Mr. Funkhouser suggested installing informational kiosks about the PAA at certain locations in West Point, such as Kiwanis Park, an adjacent DGIF state park, and the Mattaponi and Pamunkey Rivers Association boat landing. These kiosks could provide excellent publicity for the PAA and be used to educate the public about its rights where related to access and about other properties in the Middle Peninsula that provide for public access.

Chairman Pleva requested a motion to amend Program 5 (Special Access Projects) of the FY '08 Work Plan and Budget to permit the installation of access informational kiosks about the PAA in West Point. Mr. Allen moved that the motion be approved; Mr. Funkhouser seconded the motion. Motion carried by unanimous vote.

- c) **Town of Urbanna Joins the PAA:** Mr. Pleva reported that the Town of Urbanna has joined the PAA. Steve Holmberg has been appointed to represent Urbanna. The town currently is developing a resolution recognizing its need for the PAA and acknowledging its participation on the Authority.

9. Chairman Observations

None

10. Next Meeting

The next meeting of the Middle Peninsula Chesapeake Bay Public Access Authority will be held Friday, October 12, 2007 at 11:00am. Mr. Allen suggested that the meeting be held out at the three, new CELCP acquisitions: Dragon Bridge, Jackson, and Haworth.

11. Adjourn

Chairman Pleva requested a motion that the meeting be adjourned. Mr. Allen moved that the motion be approved; Mr. Funkhouser seconded the motion. Meeting was adjourned.

Frank Pleva

Revenue and Expenditure Report by Element

Middle Peninsula Planning District Commission

Run Date: 10/05/2007

Run Time: 3:41:45 pm

Period 07/01/07 to 09/30/07

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32007 PAA Administration - FY08

Project Period 7/1/2007 to 6/30/2008

Element Code & Description	Budget	Prior Year	Current	YTD	Proj Tot	Un/Ovr	% Bud
Revenues							
41700 VDCR	75,000.00	0.00	0.00	75,000.00	75,000.00	0.00	100.00%
Revenues	75,000.00	0.00	0.00	75,000.00	75,000.00	0.00	100.00%
Balance:	75,000.00	0.00	0.00	75,000.00	75,000.00		

320070 FY08 Admin

Revenues							
44010 MPLT/BFI Award	12,160.27	0.00	0.00	12,160.27	12,160.27	0.00	100.00%
44012 PAA Prior Year's Unspent	9,782.58	0.00	0.00	9,782.58	9,782.58	0.00	100.00%
44900 Miscellaneous Income	0.00	0.00	1,342.25	1,342.25	1,342.25	-1,342.25	0.00%
Revenues	21,942.85	0.00	1,342.25	23,285.10	23,285.10	-1,342.25	106.12%

Expenses

50000 SALARIES	2,720.00	0.00	0.00	0.00	0.00	2,720.00	0.00%
50500 FRINGE BENEFITS	919.00	0.00	0.00	0.00	0.00	919.00	0.00%
53400 Office Supplies	618.00	0.00	0.00	0.00	0.00	618.00	0.00%
53500 Meeting Supplies	0.00	0.00	53.60	103.49	103.49	-103.49	0.00%
54100 Private Mileage	0.00	0.00	14.55	14.55	14.55	-14.55	0.00%
56300 Legal Services	0.00	0.00	0.00	36.00	36.00	-36.00	0.00%
56400 Consulting/Contractural S	10,000.00	0.00	0.00	0.00	0.00	10,000.00	0.00%
57400 Public Officials Insurance	1,412.00	0.00	0.00	1,412.00	1,412.00	0.00	100.00%
59700 INDIRECT COSTS	1,831.00	0.00	0.00	0.00	0.00	1,831.00	0.00%
Expenses	17,500.00	0.00	68.15	1,566.04	1,566.04	15,933.96	8.95%

 Balance: 4,442.85 0.00 1,274.10 21,719.06 21,719.06

320071 Land Acquisition

Expenses

53400 Office Supplies	0.00	0.00	379.10	379.10	379.10	-379.10	0.00%
56300 Legal Services	22,000.00	0.00	0.00	0.00	0.00	22,000.00	0.00%
Expenses	22,000.00	0.00	379.10	379.10	379.10	21,620.90	1.72%

 Balance: -22,000.00 0.00 -379.10 -379.10 -379.10

320072 Access Infrastructure Improvements

Revenues

41700 VDCR	500.00	0.00	0.00	500.00	500.00	0.00	100.00%
Revenues	500.00	0.00	0.00	500.00	500.00	0.00	100.00%

Expenses

53400 Office Supplies	500.00	0.00	119.89	119.89	119.89	380.11	23.98%
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Revenue and Expenditure Report by Element

Middle Peninsula Planning District Commission

Run Date: 10/05/2007

Run Time: 3:41:45 pm

Period 07/01/07 to 09/30/07

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32007 PAA Administration - FY08

Project Period 7/1/2007 to 6/30/2008

Element Code & Description	Budget	Prior Year	Current	YTD	Proj Tot	Un/Ovr	% Bud
Expenses	500.00	0.00	119.89	119.89	119.89	380.11	23.98%
Balance:	0.00	0.00	-119.89	380.11	380.11		

320073 Water Access Strategic Planning

Expenses

50000 SALARIES	13,600.00	0.00	0.00	0.00	0.00	13,600.00	0.00%
50500 FRINGE BENEFITS	4,597.00	0.00	0.00	0.00	0.00	4,597.00	0.00%
53400 Office Supplies	350.00	0.00	0.00	0.00	0.00	350.00	0.00%
56400 Consulting/Contractural S	1,500.00	0.00	0.00	0.00	0.00	1,500.00	0.00%
57300 Promotion/Advertising	800.00	0.00	0.00	0.00	0.00	800.00	0.00%
59700 INDIRECT COSTS	9,153.00	0.00	0.00	0.00	0.00	9,153.00	0.00%
Expenses	30,000.00	0.00	0.00	0.00	0.00	30,000.00	0.00%
Balance:	-30,000.00	0.00	0.00	0.00	0.00		

320074 Special Access Projects

Expenses

50000 SALARIES	1,360.00	0.00	0.00	0.00	0.00	1,360.00	0.00%
50500 FRINGE BENEFITS	460.00	0.00	0.00	0.00	0.00	460.00	0.00%
56400 Consulting/Contractural S	1,900.00	0.00	0.00	0.00	0.00	1,900.00	0.00%
56600 Construction	365.00	0.00	0.00	0.00	0.00	365.00	0.00%
59700 INDIRECT COSTS	915.00	0.00	0.00	0.00	0.00	915.00	0.00%
Expenses	5,000.00	0.00	0.00	0.00	0.00	5,000.00	0.00%
Balance:	-5,000.00	0.00	0.00	0.00	0.00		

320075 Severn River Access Management Plan

Expenses

50000 SALARIES	2,380.00	0.00	0.00	0.00	0.00	2,380.00	0.00%
50500 FRINGE BENEFITS	804.00	0.00	0.00	0.00	0.00	804.00	0.00%
53400 Office Supplies	214.00	0.00	0.00	0.00	0.00	214.00	0.00%
59700 INDIRECT COSTS	1,602.00	0.00	0.00	0.00	0.00	1,602.00	0.00%
Expenses	5,000.00	0.00	0.00	0.00	0.00	5,000.00	0.00%
Balance:	-5,000.00	0.00	0.00	0.00	0.00		
Project Revenues:	97,442.85	0.00	1,342.25	98,785.10	98,785.10	-1,342.25	101.38%
Project Expense:	80,000.00	0.00	567.14	2,065.03	2,065.03	77,934.97	2.58%
Project Balance:	17,442.85	0.00	775.11	96,720.07	96,720.07		



What can the public do on rivers that are navigable for title purposes?

The three activities that the courts have traditionally mentioned are navigation, fishing, and commerce. The public can fish, from the river or from the shore below the "ordinary low water line." (Note that the fish and wildlife are owned by the state in any case.) But the courts have ruled that any and all non-destructive activities in these areas are legally protected.

What about getting to and from the river?

Normally there is no right to cross private land to get to or from a river. For example, there is no right to walk across a farmer's field to get from a public highway to a river.

However, the state has a duty to maintain public access routes to rivers under certain conditions, as part of its public trust duties. Courts have found it unlawful for a state to close off an existing public access route when there are no other public access routes nearby.

What about river pollution and leaving trash?

Local, state and federal regulations limit or prohibit water pollution. Hefty fines can apply.

Balancing private property and public rights through a Code of Conduct in the Dragon Run

The sense of being invaded by trespassers strikes a deep emotional chord in many a landowner who has a river flowing through his property. Some Dragon Run landowners tend to lump all river users together - those who canoe quietly down the middle of the river, those who stand quietly below the ordinary low water line to fish, those who stay on or near the river but litter and make noise, and those who proceed well away from the river onto private land. However, the right of the public for the use of

title navigable waterways soundly exists in the Public Trust Doctrine. This right may be compared to the right to use a public roadway. Individuals have the right to use the roadway in its defined boundaries, but not drive through adjacent private yards or throw litter out of the window as they are passing through.

Additionally, while public roadways are generally well defined, the line between navigable and non-navigable waterways becomes increasingly vague as one travels further from the natural and ordinary Dragon Run mainstem, thereby increasing the potential for conflict between landowners and users.

Ultimately, the practice of responsible recreation coupled with an awareness of the public and private rights, including its vagueness in some locations, is the key to reducing conflict.

Acknowledgement: Adapted from *Who Owns the River?* From the National Rivers Website:

<http://www.nationalrivers.org/us-law-who->



**Virginia Coastal Zone
MANAGEMENT PROGRAM**

This work was funded by the Virginia Coastal Zone Management Program at the Department of Environmental Quality through Grant # NA06NOS4190241 Task 95 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 are those of the author(s) and do not necessarily reflect the views of NOAA or any of its subagencies.



Mission: 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.

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DRAGON RUN SPECIAL AREA MANAGEMENT PROGRAM



DRAGON RUN SPECIAL AREA MANAGEMENT PROGRAM

What is the Dragon Run Special Area Management Program (SAMP)?

This partnership between the Virginia Coastal Zone Management Program and the Dragon Run Steering Committee of the Middle Peninsula Planning District Commission is designed to address both the differing viewpoints and common ground that exist concerning the future of the watershed.

What is the Dragon Run Steering Committee?

Formed in 1985, the Dragon Run Steering Committee consists of landowners and local elected officials and is the key vehicle for cooperation and coordination among the four counties concerning watershed issues.

What counties are in the watershed?

The counties of Essex, Gloucester, King and Queen, and Middlesex contain the watershed.

STEERING COMMITTEE

Essex County – Prue Davis (Chair)(S), Fred Hudson (P), Dorothy Miller (L), M. Scott Owen (L)

Gloucester County – Charles “Rick” Allen (S), Dr. Eric Weisel (P), Terry DuRose (L), Dr. Willy Reay (L)

King and Queen County – Keith Haden (S), Kempton Shields (P), Robert Gibson (L), William “Frank” Herrin (L)

Middlesex – John D. “Jack” Miller (S), John England (P), R. D. Johnson (L), William Bagby (L)

(S) denotes Supervisor

(P) denotes Planning Commissioner

(L) denotes Land Interest

Staff – Sara Stamp

PUBLIC RIGHTS FOR USE OF THE DRAGON RUN

Which rivers are owned by the public?

The U.S. Supreme Court has held that the bed and banks under all rivers, lakes, and streams that are navigable, for title purposes, are owned by the states, held in trust for the public through the Public Trust Doctrine. Title in this context means ownership. In Virginia, this public-trust ownership extends up to the ordinary low water line, (or ordinary low water mark,) encompassing what is commonly referred to as the submerged and submersible land, as opposed to the upland.

What does navigability, for title purposes, mean?

Through various court cases, federal courts have articulated the following test, which is known as the federal test of navigability for title purposes:

- * Navigability is determined as of the date of statehood
- * Waters must be navigable in their natural and ordinary condition;
- * The waterway must be usable for transportation conducted in customary modes of trade and travel on water; and
- * The waterway must be capable of or susceptible to use as a highway for the transportation of people or goods.

The courts have determined that the use or potential for use by almost any type of watercraft is sufficient to determine this type of navigability.

Do shallows, rapids, and other obstacles make a river non-navigable for title purposes?

No. The courts make no requirements that a river be uniformly deep, or flat, or that navigation be practical going upstream as well as downstream. The presence of rapids, even numerous rapids and waterfalls, or blockages does not disqualify a river.

What if the river is only physically navigable during the wet season of the year?

It still qualifies as navigable for title purposes. But a normally dry creek bed or “wash” that is only temporarily navigable during extreme weather does not qualify. (If it’s normally dry because of upstream dams, then it does qualify. The legal test is based on the river’s natural condition.)

What if the current property owner’s deed reads to the middle of a river, or seems to surround and include the river?

If the physical characteristics of the river are such that it meets the federal test of title navigability, it is public land up to the ordinary low water line. Since a deed can only convey interests actually owned by the seller, and since the bed and banks of all navigable rivers passed to the states at the time of statehood, it is likely that the state is the true owner. The state’s ownership is a “prior existing right” and is frequently mentioned as such on deeds. Somewhere along the chain of property transactions, a deed may have been changed to include the riverbed. If this happened it was likely done incorrectly.

From the MPPDC in Saluda:

Proceed on US-17 N to Rt. 602 (Wares Bridge Road) in Middlesex County.

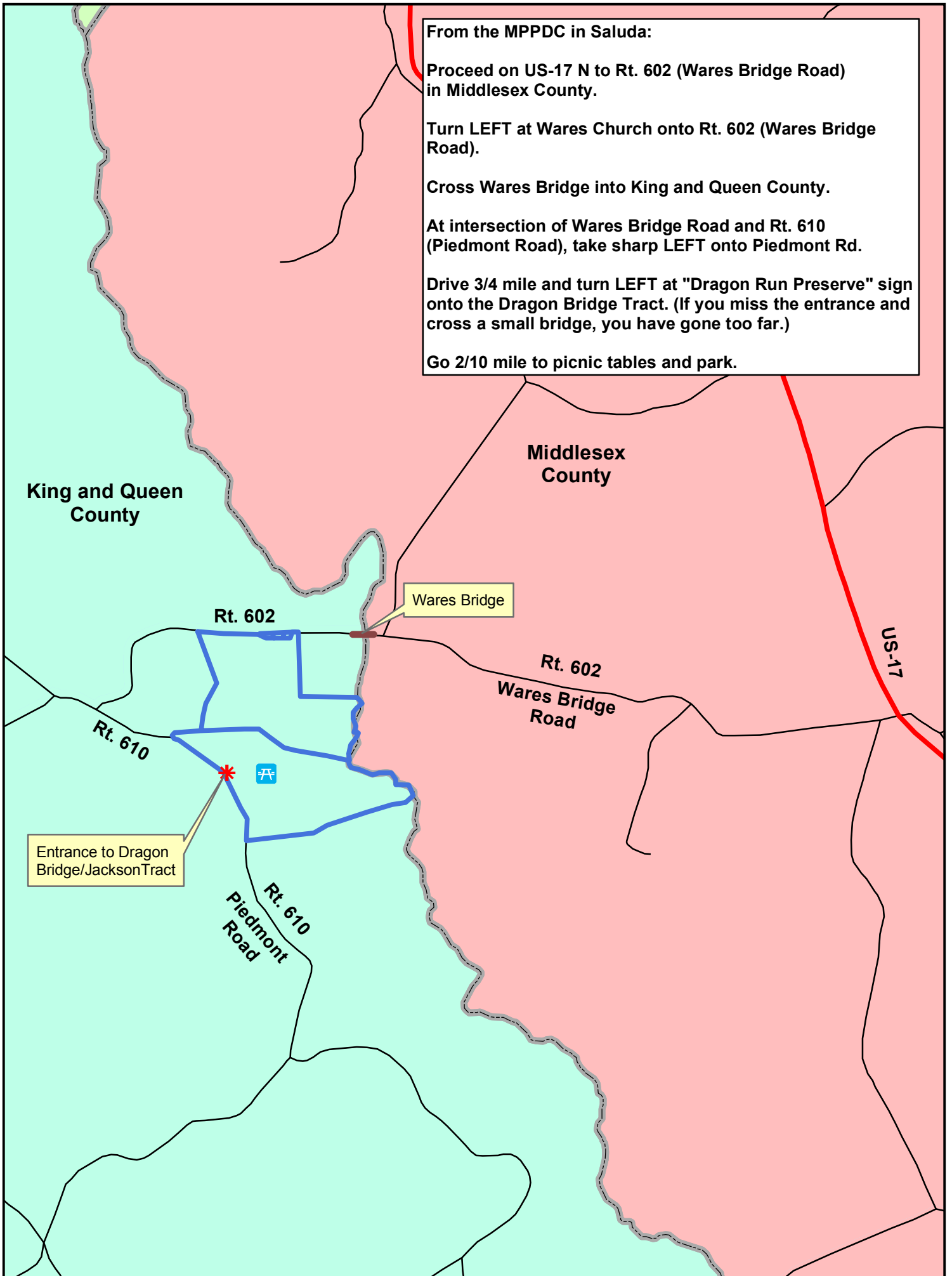
Turn LEFT at Wares Church onto Rt. 602 (Wares Bridge Road).

Cross Wares Bridge into King and Queen County.

At intersection of Wares Bridge Road and Rt. 610 (Piedmont Road), take sharp LEFT onto Piedmont Rd.

Drive 3/4 mile and turn LEFT at "Dragon Run Preserve" sign onto the Dragon Bridge Tract. (If you miss the entrance and cross a small bridge, you have gone too far.)

Go 2/10 mile to picnic tables and park.



King and Queen
County

Middlesex
County

Wares Bridge

Rt. 602

Rt. 602

Wares Bridge
Road

US-17

Rt. 610

Entrance to Dragon
Bridge/Jackson Tract

Rt. 610
Piedmont
Road

From the MPPDC in Saluda:

Proceed on US-17 S to VA-33. Turn RIGHT onto VA-33 toward West Point.

Drive 3 miles on VA-33, and turn RIGHT onto Rt. 609.

Go 2.9 miles, and turn RIGHT onto Rt. 608.

Continue to follow Rt. 608 for 1.8 miles to two swinging gates on LEFT. Turn LEFT into these gates, which mark the entrance to the Haworth Tract.

