



# COMMONWEALTH of VIRGINIA

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The Honorable Robert G. Marshall  
Member, House of Delegates  
P.O. Box 421  
Manassas, Virginia 20108-0421

Dear Delegate Marshall:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You inquire concerning the effect of the failure of a locality to give notice of a Resource Protection Area ("RPA") designation as required by applicable statutory notice requirements. Specifically, you ask whether: (a) such failure invalidates the designation; (b) an affected landowner has legal recourse against the present or future designation of an RPA; and (c) such failure operates as a bar to that locality from designating an RPA for the property of the same landowners who were not previously notified.

## Response

It is my opinion that § 15.2-2204(E) cures any failure to notify the affected landowners, provided that a public hearing was held prior to the RPA designation. Thus, if a public hearing was held, such failure to notify the affected landowners does not invalidate the designation, give the affected landowners any legal recourse, or operate as a bar to that locality from designating a subsequent RPA for the property of the landowners who did not receive prior notification. Finally, regarding future designations, it is my opinion that a landowner who does not receive notice of a proposed designation has the right to an appeal as provided by § 15.2-2204(E).<sup>1</sup>

## Background

You relate that an RPA<sup>2</sup> designation occurred prior to 1990 under Title 15.1.<sup>3</sup> You also relate that there is no public record confirming that the locality gave the required notice<sup>4</sup> to the affected landowners. The 1997 Session of the General Assembly repealed Title 15.1 and recodified Title 15.1 as Title 15.2.<sup>5</sup>

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<sup>1</sup>Section 15.2-2204(E) provides that a "[e]very action contesting a decision of a locality based on a failure to advertise or give notice as may be required by [Chapter 22] shall be filed within 30 days of such decision with the circuit court having jurisdiction of the land affected by the decision."

<sup>2</sup>See 9 VA. ADMIN. CODE § 10-20-40 (2004) (defining "Resource Protection Area").

<sup>3</sup>See 1997 Va. Acts ch. 587, at 976, 976-1397; see also *id.*, cl. 4, at 1401 (making provisions effective on Dec. 1, 1997).

<sup>4</sup>See VA. CODE ANN. § 15.1-431 (1989). Since you do not provide the exact year, I am using the statute as it existed in 1989 as a reference point.

<sup>5</sup>See *supra* note 3.

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Although the RPA designation about which you inquire occurred prior to the 1997 recodification of Title 15.1, § 15.2-2204(E) specifically provides a curative measure for actions taken under former Title 15.1. Therefore, the applicable law for the issues you present is found in Title 15.2.

### Applicable Law and Discussion

The Chesapeake Bay Preservation Act<sup>6</sup> requires that all localities in Tidewater Virginia, as defined therein,<sup>7</sup> incorporate water quality protection measures in their zoning ordinances for Chesapeake Bay Preservation Areas.<sup>8</sup> Article 7, Chapter 22 of Title 15.2, §§ 15.2-2280 through 15.2-2316, contains the enabling statutes governing zoning in Virginia. Section 15.2-2204(A) requires that notice be given upon the designation of a Chesapeake Bay Preservation Area or RPA. Generally, before such designation is made, a locality must publish notice of the public hearing and provide written notice to the affected landowners.<sup>9</sup> However, § 15.2-2204(E) provides, in pertinent part, that:

The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by [Chapter 22], provided a public hearing was conducted by the governing body prior to such adoption or amendment.

### Conclusion

Accordingly, it is my opinion that § 15.2-2204(E) cures any failure to notify the affected landowners, provided that a public hearing was held prior to the RPA designation. Thus, if a public hearing was held, such failure to notify the affected landowners does not invalidate the designation, give the affected landowners any legal recourse, or operate as a bar to that locality from designating a subsequent RPA for the property of the landowners who did not receive prior notification. Finally, regarding future designations, it is my opinion that a landowner who does not receive notice of a proposed designation has the right to an appeal as provided by § 15.2-2204(E).<sup>10</sup>

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

2:1301; 1:1055; 1:941/06-074

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<sup>6</sup>Va. Code Ann. tit. 10.1, ch. 21, §§ 10.1-2100 to 10.1-2115 (2006).

<sup>7</sup>See § 10.1-2101 (defining "Tidewater Virginia").

<sup>8</sup>See § 10.1-2109(C); see also § 10.1-2101 (defining "Chesapeake Bay Preservation Area").

<sup>9</sup>See VA. CODE ANN. § 15.2-2204(B) (Supp. 2006). The significant portion of the predecessor statute requiring notice essentially is the same as the notice requirements of the current statute. Compare § 15.1-431 (1989), with § 15.2-2204(B).

<sup>10</sup>See *supra* note 1.