



2011

## MIDDLE PENINSULA PDC TECHNICAL ASSISTANCE PROGRAM



**Virginia Coastal Zone**  
MANAGEMENT PROGRAM



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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.

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## EXECUTIVE SUMMARY

The Technical Assistance (TA) Program funded through the Virginia Coastal provides Middle Peninsula Planning District Commission (MPPDC) staff the opportunity to create and implement adaptive management techniques, enhance communication between local, regional and state stakeholders, as well as inform planning decisions by local, regional, and state coastal managers. Specifically the TA Program provides the MPPDC with the necessary administrative framework to assist rural Middle Peninsula coastal localities (ie. staff and elected officials and community level groups) with access to enhance coastal zone management tools and techniques that balance economic development while protecting coastal resources.

Middle Peninsula localities rely annually on MPPDC staff to provide professional and technical coastal zone management planning assistance related to nationally recognized coastal issues with local implications (ie. coastal development planning, habitat protection awareness, coastal resiliency and vitality, climate change, and public access management). For the Federal FY 10 grant, the MPPDC work program consisted of three distinct tasks:

1. MPPDC staff provided coastal management support to local government elected officials, chief administrative officers for local governments, local planning staff, local planning commissions and wetlands board staff. For example, MPPDC staff provided GIS analysis of development proposals, land conversion, land use plans, and local land use ordinance implementation. MPPDC staff also provided research services for ongoing and new or emerging coastal issues.
2. MPPDC staff convened monthly to quarterly meetings with local government level planners, government administrators, and other appropriate government and non-governmental organizations (NGO) committees to assist with improving coastal planning.
3. MPPDC staff directly supported the implementation of the Middle Peninsula Chesapeake Bay Public Access Authority annual work plan element focusing on the development of a Regional Shallow Water Dredging and Sediment Management Master Plan.

## **I. Introduction**

As the MPPDC was funded through the Virginia Coastal Zone Management Program, coastal management support and coordination was able to be provided to local elected officials and other government officials, local planning commissions and local planning staff within the Middle Peninsula. From GIS support to coordinating and convening meetings on a variety of coastal issues, MPPDC staff was ultimately able to facilitate the improvement of coastal dynamics.

This report will touch on the three objectives of this project, including (1) Coastal Management Support, (2) Local Planning Coordination and (3) a Regional Shallow Water dredging Master Plan, as well as associated examples. *(Please note that Appendix A consists of a list of all activities supported by the Coastal Technical Assistance Program during the October 2010-September 2011 grant year.)*

## **II. Coastal Management Support**

On a variety of occasions MPPDC staff provided direct GIS analysis to supplement proposals, land conversations, land use plans, local land use ordinance implementations, as well as water user conflicts. MPPDC staff also responded to GIS analysis requests from other agencies as well as non-profit organizations involved in coastal resource management issues.

### **Examples of Coastal Management Support**

MPPDC staff updated the Essex County Protected Lands map for the Essex County Countryside Alliance (ECCA) annual newsletter (Appendix B). Protected lands depicted on the map included holdings by private land owners, Virginia Department of Forestry, the Middle Peninsula Chesapeake Bay Public Access Authority, and non-profit organizations (i.e. The Nature Conservancy). As a group of concerned landowners and citizens of Essex County and beyond, the ECCA is dedicated to the preservation and conservation of the natural, scenic and historical resources of Essex County, Virginia and the entire Rappahannock River Valley. The updated protected lands map of Essex

County, created by MPPDC staff, will assist in ECCA's mission to educate land owners as to the long term options and substantial benefits of preserving their land. In particular ECCA promotes conservation easements as a private land use tool to preserve land and has recently posted on their website information about Federal and State Governments recently extending incentives for conservation easement donations. Thus the combination of mapping efforts and outreach by ECCA, and previous conservation easement work completed by the MPPDC staff (Grant # NA10NOS4190205 Task 97.01 and 95) that resulted in additional funding for K-12 education through the composite index has informed ECCA's mission as well as private land owners in Essex County about available land use tools.

In April 2011 Middle Peninsula PDC staff assisted Middle Peninsula localities with redistricting needs. Article VII, Section 5 of the Virginia Constitution authorizes that the governing bodies of counties, cities, and towns to be popularly elected. The Constitution allows elections at large or by districts within the locality. If elections are by districts, the locality must redistrict every 10 years beginning in 1971. Of all the counties within the Middle Peninsula, Mathews County is the only county that elects their governing body at large. Therefore as Mathews County was not required to redraw district lines, all other Middle Peninsula counties had to review their districts to confirm that they met legal standards in advance of November 2011 elections. To redraw local election lines counties needed maps and population data. The 2010 Census data was released in spring of 2011, and localities had to redraw their voting district boundary lines to reflect population changes in their current voting districts from 2000 to 2010. The goal was to achieve an ideal population<sup>1</sup>, or as close as possible, for each voting district. For 2011 local redistricting, MPPDC staff assisted Essex County with their entire redistricting process from mapping (Appendix C) the new population data using GIS, drafting possible redistricting scenarios for public meetings, being present at Board of Supervisors meetings to presenting the redistricting plan drafts and providing a final map of the new local voting district boundary lines. MPPDC staff also assisted King William County with census data manipulation using GIS, and was available as an

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<sup>1</sup> Ideal population – achieving an equal number of people in each voting district

information resource for all other member localities in order to meet state redistricting requirements.

### **III. Local Planning Coordination**

MPPDC Staff continued to convene meetings with local government level planners and administration as well as bi-monthly meetings of the Middle Peninsula Chesapeake Bay Public Access Authority (MPCBPAA) to discuss ongoing and new issues related to coastal zone management.

#### **Examples of Local Planning Coordination**

As EPA expects Chesapeake Bay jurisdictions to develop Phase II Watershed Implementation Plans (WIP) with more specific information that facilitate actions by local partners to control nitrogen, phosphorus and sediment to achieve the Total Maximum Daily Load (TMDL) allocations, Virginia Department of Conservation and Recreation's Chesapeake Bay Local Assistance Program (DCR-CBLAP) was focused on working closely with coastal local governments, planning district commissions, soil and water conservation districts, watershed organizations and other stakeholders. To facilitate this process MPPDC staff coordinated and convened meetings with local stakeholders and DCR-CBLAP staff to understand the process, and more specifically the role of local governments, in developing the Bay Act Phase II WIP. MPPDC staff supplemented stakeholder discussions and kept stakeholders informed, with information from a variety of watershed-wide webinars and meetings associated with Chesapeake Bay efforts.

As a result of stakeholder discussions throughout the year, a need for coordination between Planning District Commissions (PDCs) and local government encompassing 85 local governments including the 6 Middle Peninsula local governments within the Chesapeake Bay Watershed was identified as being critical. Such coordination of PDCs could develop a streamlined process for local governments and a vehicle for EPA and the Commonwealth of Virginia to reach local stakeholders, while also assisting DCR and member local governments to respond timely with solutions that are cost effective and locally appropriate. To proactively seek PDC coordination, MPPDC staff in partnership with Virginia coastal PDCs submitted a grant

request to DCR Division of Stormwater Management to obtain funding for coordination efforts. *(Grant recipient notification was not received prior to project closeout.)*

With an interest of meeting future TMDL allocations, some Middle Peninsula localities are also concerned with protecting water quality for the sake of their shellfish aquaculture industry. However as discharge from failing septic systems as well as general runoff is a major threat to aquaculture along tidal creeks in Virginia, MPPDC staff sought the expertise of the National Sea Grant Law Center to assemble examples of local governments using enabling authority §15.2-1200<sup>2</sup> to protect water quality. Through Sea Grant's research, and the development of a memo (Appendix D), it was found that this statute has in fact been used by other Virginia localities to enforce water quality. These examples act as sample ordinances that are very much transferable to Middle Peninsula localities. Thus, through the utilization of a National resource and partner, MPPDC staff was able to provide land use and public policy options for Middle Peninsula localities that work within the regulatory framework of Virginia Commonwealth and which also helps local governments take charge of protecting their water resources while securing and promoting the health, safety and general welfare of their inhabitants. Because of this work, Middle Peninsula local governments have requested a special policy forum be attended by local elected officials, local planning commissioners, as well as local staff to discuss specific the utility and application of §15.2-1200 locally in November 2011.

Finally the MPPDC staff convened bi-monthly meetings of the Middle Peninsula Chesapeake Bay Public Access Authority (PAA) to discuss new and on-going public access and land management issues. This year the PAA acquired a 9.119 acre parcel of land in Moon, Mathews County as a gift from Mr. Conrad Hall in December 2010. However upon receipt of this land donation, the community of Moon expressed immediate concern about the current and future planning of the parcel. The property is

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<sup>2</sup> **§ 15.2-1200. General powers of counties.** *Any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth. Such power shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.*

held in the public's name as a perpetual public access site, but until a management plan is developed and adopted by the PAA, the site will remain closed to public use. Therefore, to ease concerns and to develop a management plan for the parcel, the PAA submitted a grant proposal to the National Park Service Rivers, Trails, and Conservation Assistance (RTCA) Program asking for assistance in facilitating the development a management plan for the Hall parcel. As the PAA received notification that the Hall Parcel Project was selected to receive RTCA assistance in FY12, the NPS in partnership with Mathews County and community stakeholders (ie. community residents, Mathews County Staff, and Board of Supervisors) will discuss potential water access and outdoor recreational opportunities that fit the community vision and meet the gift conditions imposed by Mr. Conrad Hall as well as the long-term passive and active public access needs of Mathews County.

Throughout all of these example, MPPDC staff initiated and promoted change within the Middle Peninsula as well as Tidewater Virginia through dialogue and collaboration with stakeholders (ie. Local, State, and National) that resulted in seeking funding options as well as the development of land use and public policy options to improve coastal management.

#### **IV. Development of a Regional Shallow Water Dredging and Sediment Management Master Plan**

##### **Users Guide to Dredging in Tidewater Virginia**

In October 2010 the Middle Peninsula Planning District Commission (MPPDC) and the Middle Peninsula Chesapeake Bay Public Access Authority (PAA) partnered with the U.S. Army Corps of Engineers (USACE) and Virginia Marine Extension Services to develop a Regional Shallow Draft Navigation and Sediment Management Master Plan. As part of the plan, a clear understanding of the dredging process and associated regulatory requirements and permit fees was critical, particularly as the financing paradigm for shallow draft dredging projects switches from being primarily federally funded to a privately funded activity. Therefore to inform future decision making associated with dredging issues within the Middle Peninsula and in other

Coastal localities in Virginia, MPPDC and PAA staff worked with Virginia Marine Resource Commission to develop a supplemental guidance report for local elected official, county staff, as well as commercial and private land owners to assist in guiding them through a dredging project – from start to finish. Please refer to Appendix D for the complete guidance report.

**Appendix A:  
Virginia Coastal Zone Management Program Staff Activities  
(October 2010-September 2011)**

*Coastal Resources Technical Assistance Program provides ongoing support to member localities of the Planning District Commission and other stakeholders committed to improving community development and coastal management within the coastal zone.*

### **October 2010**

- Prepared and submitted final financial report and reimbursement request to DEQ.
- Viewed the 7<sup>th</sup> webinar update on the new Chesapeake Bay TMDL process on September 28, 2010. The Draft Chesapeake Bay TMDL is available for review and public comment until November 8<sup>th</sup> and can be found here:  
<http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/drafttmdlexec.html>.
- Corresponded with Mary Moss Walker, Assistant to Peter C. Bance (President, Essex County Countryside Alliance), and Susan McFadden, Open Door Communications, about providing a copy of the Protected Lands in Essex County 2010 Map update for the Essex County Countryside Alliance's annual magazine.
- Provided Susan McFadden with a digital copy of the 2010 update of the Essex County Countryside Alliance (ECCA) Protected Lands in Essex County map.
- Provided Sara Stamp, MPPDC staff, with the county identifier for Middlesex County.
- Provided Jackie Rickards, MPPDC staff, with information about coastal activities performed during fiscal year 2010.
- Drafted and submitted the semiannual report to the Virginia Coastal Zone Management Program.
- Currently working on the final summary and report to submit to the Virginia Coastal Zone Management Program.
- Gave a tour of the Brown Tract to Ms. Pat Tyrrell, Tidewater Resource and Development Council; Mike Budd, Natural Resources Conservation Service; and Neil Clark, Virginia Tech, for preparation for the 34<sup>th</sup> Annual Fall Forestry & Wildlife Field Tour on Wednesday, November 10, 2010.
- Consulted with the Carter Borden, Gloucester County Board of Supervisors concerning dock improvements at the Perrin Creek Wharf. Suggested holding a meeting with local watermen to ascertain specifically what improvements are needed.
- Agreed to again serve on the Chesapeake Bay License Plate Grant Proposal Review Committee at the request of Delegate Harvey Morgan.

- Discussed the fiscal impact of conservation easements and their relationship to the Composite index with John Hutchinson, Gloucester County School Division Assistant Superintendent.
- Hosted a NOAA- Office of Coastal Resource Management (OCRM) strategic retreat with various NOAA state coastal program representatives. NOAA staff were interested in knowing more about the successful coastal zone management program implemented on the Middle Peninsula. Accompanied the OCRM staff on a paddle trip down the Dragon Run to view the Clay tract acquired under the Coastal and Estuary Land protection program.
- Attended the second national Working Waterfront and Waterways symposium held in Portland Maine. Presented a talk on the Mathews Aquaculture in water public business park as well as a talk on the successes of the Middle Peninsula Chesapeake Bay Public Access Authority.
- Agreed to assist Mathews County with two CDBG planning grants by providing several types of technical services: for the Main Street project, PDC staff will serve on the project management team; for the Aquaculture Business Park, PDC staff will assist with project implementation.
- Discussed the proposed permit by rule for wind energy facilities and the provision for local government zoning consistency determination with Ted McCormack and Larry Land, VACO; Tony Watkinson, VMRC; Laura McKay, Virginia Coastal Program; and Carol Wampler. DEQ.
- Consulted with Sherry Hamilton, *Gloucester-Mathews Gazette Journal* concerning the pending land donation in Mathews County to the Middle Peninsula Chesapeake Bay Public Access Authority.
- Convened the bi-monthly meeting of the Middle Peninsula Chesapeake Bay Public Access Authority. Focus of the meeting was the pending shallow water dredging and regional sediment management master plan.
- Initiated a draft scope of work discussion with Mark Mansfield, Army Corps of Engineers, for the start of a study to explore the shallow water dredging needs of the Middle Peninsula.
- Consulted with Susanna Musick, Marine Sport Fishing Specialist at VIMS, concerning public access master planning across the Middle Peninsula.
- Consulted with Reese Milligan, Gloucester County Assessor, concerning a technical correction to the Shark Parcel assessment. The assessed value has been corrected from \$7,000 to \$220,000.

- Served on a Gloucester County interview committee for the selection of a Planner II in Gloucester County.

### **November 2010**

- Completed and submitted the final summary and report the Virginia Coastal Zone Management Program.
- Created a sign for the Brown Tract to inform hunters that the track will be closed for hunting at noon on November 10<sup>th</sup> due to a Forestry and Wildlife Tour hosted by Virginia Cooperative Extension, the Virginia Forest Landowner Education Program.
- Discussed the intent of the Town of Tappahannock to request a transfer of Prince Street and how the process could be facilitated by the Middle Peninsula Chesapeake Bay Public Access Authority (PAA) with Lewis Lawrence, MPPDC Director of Regional Planning.
- Reviewed materials provided by John Morris, Attorney for the Public Access Authority (PAA), about road ending transfers and the steps that were developed for the transfer of road endings from the Virginia Department of Transportation to the PAA.
- Corresponded with Jimmy Sydnor, Assistant Town Manager of Tappahannock, about the Town's interest in having the PAA facilitate the transfer of a section of Prince Street for public access purposes.
- Participated in a survey on community sustainability planning at the request of David Corzilius, AICP, Green MBA Candidate (2011) at the Dominican University of California in San Rafael, California. The responses will support their efforts to better understand the growing and changing market of community sustainability planning in the United States. The data gathered in the survey is for academic research only. All answers provided as part of this survey will be kept in strictest confidence.
- Consulted with Sara Tatum, Virginia Department of Education, concerning a request to re-run the composite index scores for Middle Peninsula localities using new land book values less the value of conservation easements. Department of Education staff anticipates a December completion date.
- Discussed the Virginia Coastal Partners Workshop sessions and MPPDC staff serving as a plenary speaker over lunch with Beth Polak, Virginia Coastal Zone Management Program. MPPDC staff will give a talk on the fiscal impacts of conservation easements.
- Discussed the pending gift of 9 acres of land on Billups Creek to the Middle Peninsula Chesapeake Bay Public Access Authority from Conrad Hall with Tom Robinson of Mathews County. Advised Mr. Robinson that the PAA has signed the deed of gift, but the PAA Board would not meet until December to discuss the formation of a subcommittee to manage the land donation. Directed Mr. Robinson to avoid the land

until nearby land owners understand how the land is to be managed as well as given an opportunity to voice perspective on the donation.

- Met with Darrell Miller, Essex County practicing forester, to discuss timbering the Browne Tract and to demarcate the eastern property boundary of the Brown Tract for timbering and habitat improvements.
- Consulted with Christine Johnson a New York City Planner interested in waterfront use conflict management. Ms. Johnson was interested in how the York River Use Conflict project was administered and how the recommendations were developed.
- Consulted with Elaine Vaudreuil of the Coastal and Estuarine Land Conservation Program (CELCP) at the National Oceanographic and Atmospheric Administration (NOAA ) concerning the King William County CELCP application for the Scotland Landing parcel. Requested clarification and letter of direction concerning how the CELCP review team addressed the King William County Application.
- Attended a meeting with the Mr. Carter Borden, Gloucester County Board of Supervisor, and several watermen from Guinea in Gloucester County to discuss the need for Perrin Creek wharf improvements.
- Consulted with Joe Williams, VDOT central office, concerning Fleming Road in Gloucester County and the relations to the public right of way and who owns the right of way.
- Met with Dave Whitlow, Essex County Administrator, concerning use and capacity issues for the Wares Wharf Landing in Essex County as well as viewed the Poor House tract to discuss possible future public uses for the facility. Discussed various funding programs to assist with the planning of the Poor House tract with Danette Poole, Director of Planning and Recreation Department of Conservation and Recreation.
- Discussed various land donation issues associated with the Conrad Hall donation with the Neena Putt, Mathews County Board of Supervisor.
- Met with Faye Respress, Mathews County citizen, to discuss the Hall donation to the PAA. Advised Mrs. Respress that the PAA would authorize a contractor to enter the Hall property to make emergency repairs on the roof. Received word from Mrs. Respress that a roof contractor had already accessed the property to repair the roof.
- Issued a reminder notice to Tom Robinson to avoid the Hall donation until such time as the PAA Directors determine how the land will be managed.
- Contacted Paul Martin of Martins Custom Design to request several signs conveying that the Hall tract is closed until such time as the PAA Directors determine a management strategy for the land.

- Received word from Mike Ashley, Sportsmen Hunt Club that the Club has completed habitat improvements on the Clay Tract as agreed to under the PAA Habitat Improvement Contract dated December 2009.
- Renewed contract for habitat improvements for the 2010-2011 growing season. The Club will again disk and plant 5 acres with a habitat crop compatible with the planting season.
- Provided Florida resident public access deed ownership information for a VDOT road landing in Guinea. The resident is interested in purchasing the adjoin land and was interested in knowing the public right for ingress and egress at the road ending.
- Discussed real-estate disclosure requirement related to engineered septic systems with Allen Knapp, Virginia Department of Health (VDH). Followed up with a discussion with Ted McCormack, Virginia Association of Counties, concerning the draft VDH emergency regulations and the required recordation of maintenance agreement in the land records of each locality. Staff discussed the likelihood of a title search identifying the issues associated with an engineered septic system.
- Consulted with Dave Rosenberg, of the Virginia Division of Legislative Services, concerning amending the land use taxation program to include working waterfront infrastructure as an eligible category for equal tax treatment for watermen as compared to agricultural farmers.

### **December 2010**

- Attended a Mathews County Community Meeting with regards to the Hall Parcel recently acquired by the Public Access Authority (PAA).
- Discussed hunting on the Browne Tract with David Howl, a Richmond resident.
- Attended the Coastal Zone Management Program Workshop in Richmond, VA on December 7<sup>th</sup>-9<sup>th</sup>.
- Downloaded new GIS data layers created by VAPDC with the assistance of VITA/VGIN and checked them for any mistakes or omissions in Middle Peninsula area data. The map service includes the following data layers: VA PDC offices, VA PDC borders, VA MPO boundaries, VA PDC dual localities (members of two PDCs), VA CZM boundary (Coastal Zone Management Area), and VA localities by PDC.
- Searched through the Middle Peninsula DRAFT Regional Water Supply Plan for any mention of Healy's Mill Pond in Middlesex County. Mr. Jack Miller, Middlesex County Board of Supervisor, asked PDC Staff if Healy's Mill Pond was identified as a drinking water source in the Regional Water Supply Plan. The Pond is currently not identified as a future drinking water source in the Plan.

- VIMS Marine Advisory service has a program titled: Communicating Ocean Sciences to Informal Audiences seminar series. MPPDC staff presented a talk discussing how to communicate coastal issues with local elected officials. Those in attendance were staff and students at the Virginia Institute of Marine Science.
- Drafted the bi-monthly agenda for the Middle Peninsula Chesapeake Bay Public Access Authority. Meeting focused on shallow water dredging, land ownership issues, and discussion of draft working waterfront preservation legislation.
- Met with a Mathews County property owner looking for assistance with managing habitat and wildlife improvements for an estate containing in excess of 500 acres and over 3 miles of water front land.
- Attended the Coastal Partners workshop held at the Virginia Department of Environmental Quality. Presented talks on Climate Change, Blue Green Infrastructure, and the Fiscal Impacts of Conservation Easements.
- Attended the Chesapeake Bay Licenses Plate Committee meeting. Assisted with the review of over 100 proposals and distributed over \$300,000 grant funds supporting innovative Chesapeake Bay related initiatives.
- Attended the monthly meeting of the Middle Peninsula County Administrators and Town Managers. Discussed various On Site Disposal System issues and strategies to address water quality, land use, and waste water management concerns.
- Consulted with Delegate Harvey Morgan and various staff from Legislative Services concerning draft working waterfront preservation legislation.
- Discussed the private land donation from Mr. Conrad Hall with various residents from the Moon area in Mathews. Advised residents that the Middle Peninsula Chesapeake Bay Public Access authority has no current plans for the use of the property.
- Consulted with staff from the Department of Conservation and Recreation- Planning Assistance program concerning outdoor recreation and planning grant options and programs for an Essex County site.
- Renewed a contract for habitat improvements on the Clay Tract with the Sportsman Hunt Club. The Club completed habitat improvements under the current contract by disking and planting winter wheat and clover over a six-acre area for winter nutrition.
- Researched surface water supply issues in Middlesex County for Jack Miller, Chairman of the Middlesex Board of Supervisors.
- Provided Steve Whiteway, Mathews County Administrator, with legal research pertaining to Roanes Point landing.

## January 24, 2011

- Worked on the Virginia Fishery Resource Grant Program application presented by the Marine Advisory Program at VIMS which focused on developing a Harbor Master Plan for Perrin Creek.
- Drafted the 2010 At the Water's Edge annual newsletter for the Public Access Authority.
- Received a request for topographic data for the Cheatwood Mill Pond and drainage way in Essex County and discussed providing GIS VGIN elevation data layers to Jeffrey L. Howeth, President, J. L. Howeth, P.C. in Tappahannock, Virginia with Lewis Lawrence, MPPDC Director of Regional Planning. Mr. Howeth needs the data in order to attempt to identify the downstream critical cross-sections within the drainage way as it leads to Hoskins Creek and the Rappahannock River.
- Provided the secretary at J.L. Howeth, P.C. with PDC staff contact information to obtain the GIS data.
- Consulted with Billy Bonneville, Gloucester County Watermen, concerning commercial fishing infrastructure needs in Perrin River, Gloucester County.
- Discussed the prescriptive right-of-way claim across the Haworth Tract with John Kuriawa and Rina Aviram of the National Oceanic and Atmospheric Administration (NOAA) Ocean and Coastal Resource Management Program and Scott Katona of Dillard and Katona Law office Tappahannock, Virginia. Discussed NOAA's position, as the federal funding agency for the acquisitions, the claim of a prescriptive right-of-way by Robert Norman, adjoining land owner of record. NOAA staff will send a formal position statement to Public Access Authority (PAA) staff for the file.
- Contacted William Mills, Middlesex County resident, requesting a reinstatement of hunting privileges on PAA lands. Advised Mr. Mills of the PAA's policy related to hunting violations and requested a copy of the court order concerning his charge.
- Provided a Mathews County resident with contact information related to the Virginia Association of Counties.
- Discussed the fiscal impact of Conservation Easement with staff from the Piedmont Environmental Council and Carter White from Caroline County. Both were interested in project background information and transferability of project findings.
- Discussed personal property tax rate on commercial vessels with Louise Theberge, Gloucester County Board of Supervisors, and Brenda Garton, Gloucester County Administrator. Provided a copy of the MPPDC study related to vessel tax as well as a recent study conducted by the City of Hampton looking at the benefit of changing the taxing schema on personal watercraft.

- Discussed GIS data needs with Greg Hancock, College of William and Mary Geology Department. Mr. Hancock was looking for digital Chesapeake Bay Act features and digital elevation data for the Middle Peninsula.
- Arraigned for David S. Lazarus, DEQ Watershed Program Manager, to present a talk to the MPPDC concerning establishing a regional No Discharge Zones.
- Provided Emily Gibson, Gloucester County Planner, with a copy of the On Site Disposal System resolution adopted by the MPDDC.

### **February 2011**

- Updated the PAA's annual newsletter "At the Water's Edge." Projects highlighted in the newsletter include habitat management plans for PAA lands, community partnerships, new land acquisition, regional public water access master plan, Virginia Coastal Access website, and the dredging and sediment management study.
- Emailed Janet Loyd, Mathews Maritime Museum, results for the Mathews County Coastal Survey completed in 2009.
- Discussed redistricting for 2011 with Lewis Lawrence, MPPDC Director of Regional Planning.
- Reviewed guidance on the 2011 Local Redistricting process, schedule and mapping software.
- Discussed the Cheatwood Mill Pond GIS data request with the secretary at J.L. Howeth, P.C.
- Reviewed the 22<sup>nd</sup> Annual Environment Virginia Symposium flyer "Sustainable Solutions for Uncertain Times: Partnering for Economic and Environmental Success" being held at the Virginia Military Institute (VMI) from April 5-7, 2011. Symposium topics will include: DEQ Regulatory Updates, Collaborative Environmental Leadership, Energy: Resource Extraction and Generation, Storm-water, Chesapeake Bay TMDL, Climate Change, Emerging Issues and Opportunities, Zero Waste, Energy: Efficiency & Innovation, Conservation of Natural and Historic Resources, Restoring Ecosystems and Opportunities and Pitfalls with Social Media. For more information please go to: [www.vmi.edu](http://www.vmi.edu) and click on "Conference Center".
- Discussed Virginia Coastal Program Focal Area concepts with Beth Polak, Virginia Coastal Program. Coordinated with the other 8 Coastal PDCs who are voting members of the Coastal Policy Team concerning voting strategies for the upcoming focal area vote.
- Provided a Caroline County citizen with information concerning the Chesapeake Bay Preservation Act. Provided the citizen with contact information for George Washington

Regional Commission. The citizen indicated the assistance provided by MPPDC was superior to that of George Washington Regional Commission.

- Researched Compact Fluorescent Lamp (CFL) disposal issues for a Gloucester County business owner. Arraigned for the owner to speak with the Department of Environmental Quality recycling coordinator who manages CFL disposal issues.
- Drafted a sample No Discharge Zone (NDZ) resolution encouraging Middle Peninsula localities to consult with the Department of Environmental Quality to consider and discuss the benefits and pitfalls related to NDZ, for consideration by MPPDC Commissioners at the upcoming February meeting.
- Participated in a webinar sponsored by the National Organization of Development Council titled “Know your Region- Fostering Regional Innovation.”
- Discussed redistricting requirement with Kevin Burns, George Washington Regional Commission. Received a list of legislative services links to assist localities with the redistricting process.
- Discussed redistricting data needs with David Whitlow, Essex County Administrator.
- Discussed GIS build out concepts with Tommy Blackwell, Essex County Commissioner of Revenue. Provided some background on a build out analysis for Northampton County.
- Convened the bimonthly meeting of the Middle Peninsula Chesapeake Bay Public Access Authority. Meeting focused on a discussion of shallow water dredging needs.
- Consulted with Ellen Porter, Division of Legislative Services, concerning Senate Bill 1190, a Bill to expand the definitions of agricultural operation and production agriculture in the "Right to Farm Act" to include the practice of aquaculture.
- Discussed Jackson Creek dredging project with several Middlesex County business owners including Deltaville Boatyard.
- Provided King William County with a letter of reply from the National Oceanic and Atmospheric Administration Coastal Estuarine Land Protection program concerning the Scott Land Landing Application requesting federal financial assistance for land acquisition. Initiated discussion with the King William County Administrator concerning resubmitting another application requesting financial assistance.
- Attended the Virginia General Assembly subcommittee meeting to offer comment on House Bill 2508 concerning the transfer of Virginia Department of Transportation wharfs and piers under jurisdiction of VDOT.
- Attended a meeting of the Gloucester County Emergency Management Committee to discuss updating of the Gloucester Flood Plain management plan.

## March 2011

- Received notification from the Coastal and Estuarine Land Conservation Program (CELCP) staff that under appropriate manage conditions, timber harvest may occur and proceeds can be used to support conservation protection.
- Received a request from the Douglas W. Domenech, Secretary of Natural Resources, requesting time to present a briefing to the PDC Commission on Virginia's response and the expectations of local governments response related to Chesapeake Bay Watershed Improvement Plan. Scheduled the presentation for the April 27<sup>th</sup> PDC meeting.
- Consulted with representatives from Alcalde & Fay, Government and Public Affairs Consultants concern the formation of a coordinated multi state effort to engage the Environmental Protection Agency in dialog concerning the Chesapeake Bay cleanup effort and local government responsibility.
- Convened the monthly Local Government Administrators meeting. Discussed redistricting, local and state budget issues, Broadband Authority, Disability Services Board, Hazard Mitigation Plan approval, Energy Efficiency Block Grant and Bay Aging, and the Chesapeake Bay Watershed Improvement Plan.
- Developed a diagram of the road on the Haworth Tract to support legal consultation with regards to the right-of-way issue on the Haworth Tract.
- MPPDC staff attended a conference call hosted by Alcalde & Fay, a public affairs firm, to discuss the development of a Chesapeake Bay Restoration Coalition. Area of focus included: (1) Identify and secure federal funding for Chesapeake Bay restoration efforts, (2) Work to develop acceptable, science-based modeling resources in addition to the current model established and maintained by the EPA, and (3) Ensure that federal facilities be required to make the same modifications as non-federal facilities to meet the TMDL limits. (These facilities are, after all, part of the problem and must be part of the solution.)
- MPPDC staff updated the Public Access Authority (PAA) website with meeting minutes and other working waterfront documents.
- Revised the final project summary of the Virginia Coastal Zone Management Program Aquaculture Project to clarify the local action taken on the York River Use Conflict Recommendations.
- Attended a special meeting of the PAA and drafted Minutes for this meeting.
- Corresponded with Jay Woodard and Randy Owen, Habitat Management Division of Virginia Marine Resources Commission, with regards to regulatory issues surrounding a private entity dredging public resources and the placement of this dredging spoil. Such

regulatory questions are pertinent as the PAA continues to work with the US Army Corps of Engineers in developing a Regional Shallow Water Dredging Master Plan.

- Provided information to Virginia Tech students regarding the Climate Change GIS data and project.
- Revised King William Scotland Landing Coastal and Estuarine Land Conservation Program (CELCP) application for resubmission in 2011.
- Consulted with Beth Polak, Virginia Coastal Zone Management Program, regarding procedural questions related to CELCP application.
- Discussed redistricting GIS details with Tom Brockenbrough, Accomack County Planner.
- Met with Jeff Howeth, P.C. at the MPPDC Regional Office, and supplied him with the requested GIS data he needed for a project they are doing in Essex County.
- Consulted with Keith Hill, Consulting Gateway Corporation, about the ability of the PDC to release all data and information gathered in the planning process and application process to the public.
- Consulted with Judy Bentley, Icon Broadband Technologies, about releasing broadband planning and application materials.
- Received notice from Keith Hill and Judy Bentley that all information and materials created for the MPPDC's broadband planning and application efforts can be released.
- Attended a free Redistricting Webinar in which representatives from ARCBridge Consulting and Training, Inc. (<http://www.arcbridge.com/>) used DISTRICTSolv (an ArcGIS extension) to demonstrate how new plans can be created using existing districts.
- Checked on the progress of the Google Fiber for Communities initiative and found no updates as to where Google is planning to do an experiment project.
- Gathered broadband files at the request of Ace Broadband Communications "ABC Corp".
- Prepared a data CD with all of the broadband planning and application materials to date for Ace Broadband Communications as requested.
- Requested that a copy of the MPPDC's Round 2 ARRA Broadband Application be filed in the MPPDC's library.
- Researched and provide a copy of a generic zoning ordinance, void of any mention of a specific city, county or town to the Lewis Filling, Urbanna Town Manager.

- Provided GIS technical assistance to member localities on issue related to redistricting.
- Responded to a request from the Department of Housing and Community Development concerning Middle Peninsula Community Development Block Grant regional priorities.
- Discussed the timbering of the Browne Tract with Darrell Miller, Special Forestry Consultant to the PAA. Mr. Miller is working towards obtaining a right of way to access the King and Queen County portion of the Browne Tract.
- Consulted with Allen Knapp, Department of Environmental Quality-Division of Waste Water, concerning foreclosure on a property which has chosen to waive the required secondary treatment (engineered septic system). What happens to the waiver requirement for the new owner who has purchased the foreclosed property? The answer appears to be that the waiver is removed and any future owner will be required to meet secondary treatment standards.
- Received notification of FEMA's approval of the Middle Peninsula Hazard Mitigation Plan. Notified member localities of local adoption steps.

#### **April 2011**

- Attended the quarterly meeting of the Virginia Coastal Program, Coastal PDC Committee. Discussed Virginia's Chesapeake Bay Cleanup plan as well as proposed reductions in federal funding for several coastal zone management initiatives.
- Convened the monthly meeting of the local government administrators. Received a report from Bay Aging concerning the status of the agency and future action to protect and restore public trust in light of recent audit issues. Discussed VRS versus VACorp line of duty benefits program and the fiscal implications to local governments. Strategized on the steps necessary to repeal the disability services board. The meeting closed with a discussion of Chesapeake Bay Clean-Up Phase II Watershed Improvement Plan.
- Presented a talk to the Chesapeake Board of Realtors concerning what the Middle Peninsula Planning District is and why regional planning is important. Also discussed the nexus between regional and local land use planning and the real estate profession. The group discussed OSDS issues, permitting and regulations, sea level rise, real-estate assessment and land use taxation.
- Convened the April meeting of the Middle Peninsula Chesapeake Bay Public Access Authority. Meeting focused on shallow water dredging issues facing all Middle

Peninsula localities. The discussion included financing of future dredging projects, sediment management, and private property beach nourishment concerns

- Discussed aquaculture and other land use and community development issues with Cory Nealon of the *Daily Press*.
- Discussed the implications of real estate foreclosure and engineered septic system waivers with Allen Knapp, Virginia Department of Health. Reviewed and discussed the General Assembly requirement for OSDS real estate foreclosure disclosure requirements.
- Agreed to participate on a General Assembly-directed stake holder committee to discuss the land use implications of Aquaculture. The committee is tasked with determining the appropriate balance between a private landowner's right to develop a commercial enterprise and the extent of local government's authority to oversee land use through its zoning power.
- Discussed with Lee Stephens of Spott Fain the legal concept of the Middle Peninsula Chesapeake Bay Public Access Authority working with the Williams Wharf facility in Mathews to possibly hold a public access easement on the facility.
- Assembled and distributed the April 2011 meeting agenda and packet for the Public Access Authority (MPCBPAA).
- Consulted with Jay Woodard (VMRC) and Randy Owen (VMRC) with regard to dredging and sediment management as well as the regulatory issues that may be encountered when a private entity dredges "public" resources.
- MPPDC staff held a meeting with Chip Neikirk (VMRC), Jay Woodward (VMRC) and Randy Owen (VMRC) to discuss shallow water dredging and sediment management and associated regulatory issues. MPPDC staff is in the process of developing a matrix of dredging scenarios that will supplement the Regional Shallow-Draft Navigation and Sediment Management Plan for the Middle Peninsula of Virginia.
- Reorganized and enhanced the format of the MPPDC Staff Activities Report, including a general fact sheet that provides a description of the MPPDC and the region as well as a Staff Activities Service summary which describes the services that each locality receives per month and the mandates that the localities are participating in and their current status.
- Continued to construct the CELCP application for acquisition of the Scotland Landing in King William County. MPPDC staff addressed comments received by the Coastal Zone Management Program and will submit the application on April 25, 2011.

- Scheduled a meeting with David Whitlow, Essex County Administrator, to discuss redistricting plan examples.
- Prepared two redistricting plan examples for the Essex County Board of Supervisors to consider as options for realigning the voting (election) districts in Essex County based on 2010 census population data.
- Met with Dave Whitlow, Essex County Administrator to review the redistricting plan examples to be presented to the Essex Board of Supervisors for consideration.
- Prepared and printed maps and handouts for the April 11, 2011 Essex County Board of Supervisors Redistricting Meeting.
- Attended the April 11<sup>th</sup> Essex County Redistricting meeting and presented the redistricting plan examples to the Board of Supervisors and citizens present.
- Provided David Whitlow, Essex County Administrator, with the number of people shifting from each voting district in the 2011 redistricting plan examples.
- Provided Ace Broadband Communications a data CD with all of the broadband planning and application materials to date as requested.
- Provided David Broad with the handouts from the Board of Supervisors redistricting meeting on April 11<sup>th</sup> in PDF form to be posted on their website for public review
  - (<http://www.essex-virginia.org/redistricting.htm>).
- Reviewed the notice for the Essex Redistricting public hearing that will be advertised in the newspaper and sent edits back to Linda Lumpkin, Essex County Deputy Administrator and Economic Development Director.
- Sent David Broad a summary explaining the Essex County redistricting handouts to include in the public review materials on the website.

### **May 2011**

- MPPDC staff continued to work with Virginia Marine Resource Commission (VMRC) to understand dredging process and regulatory issues related to such projects, particularly as the financing paradigm for shallow-draft dredging projects switches from being primarily federally funded to privately funded. MPPDC staff developed a matrix to provide guidance to private and public entities focused on dredged material disposal options and associated fees (i.e. permit, dredging and encroachment fees). Additionally MPPDC staff drafted a document that outlines the steps and applicant responsibilities of a typical dredging project-from the identification of a dredging need, to applying to VMRC, to actual dredging operations.

- MPPDC staff addressed comments made by the Virginia Coastal Zone Management Program with regard to the CELCP application to acquire Scotland Landing in King William County. MPPDC staff submitted the final application on April 27, 2011.
- Drafted updates for the “Coastal and Community Development” work program on the website.
- Drafted a support letter to the Middlesex County Board of Supervisors with regard to their application to the Virginia Marine Resources Commission for the dredging of Jackson Creek.
- Discussed materials needed for the Essex County Redistricting Public Information meeting held on May 25, 2011 from 6-7pm with David Whitlow, Essex County Administrator.
- Updated the redistricting maps and handouts for Essex County with Virginia Coastal Program logos.
- Provided copies of handout/map packets for the Essex Redistricting Public Information Meeting, assembled the handouts in proper order and delivered them to the meeting.
- Attended the May 2011 meeting of the Essex County Board of Supervisors where the Board voted to adopt Plan Example 1 as the County's redistricting plan.
- Provided Lewis Lawrence, MPPDC Acting Executive Director, with a screenshot of the Mathews County Zoning Map for a discussion about amending the Right to Farm Act for Aquaculture.
- Provided David Whitlow, Essex County Administrator, with the addressed structures located within the census block that is shifting voting districts in the County’s 2011 redistricting plan.
- Performed online research to locate GIS data for the tornado that went through Gloucester County on Saturday, April 16, 2011. Located latitude and longitude data and sent to Rita Taylor in the Gloucester County GIS Department.
- Discussed the Essex County redistricting boundaries with David Whitlow, Essex County Administrator and provided him with latitude and longitude data for points along a portion of the new voting districts boundary.
- Filed building official monthly reports for King William County from March and April 2011 and from Essex, Middlesex, and Mathews Counties for April 2011.

- Reviewed the 2011 CDBG Application that the Town of West Point submitted to DHCD for funding and provided a letter with comments on the proposed Port Richmond Neighborhood Revitalization Project to DHCD per the Town's request. The consultant that the Town hired provided the application for review.
- Provided Matt Walker, Middlesex County Planning Director, agricultural (direct, indirect and induced economic benefit) production information for Middlesex County.
- Consulted with Qian Cai, Weldon Cooper Center at UVA, concerning 2010 demographic analysis for the Middle Peninsula region.
- Submitted a letter to Anthony Moore, Assistant Secretary of Natural Resources for the Chesapeake Bay, thanking him for attending the April MPPDC monthly meeting. Requested further clarification and responses to specific questions asked by MPDDC Commission members.
- Contacted the National Sea Grant Law Center requesting research assistance on examples of local governments using enabled authority similar to 15.2 -1200 to protect water quality.
- Consulted with David Jasinski, TMDL Consultant, concerning a GIS model designed to illustrate the EPA watershed model and various outcomes for local government.
- Consulted with David Sacks, Department of Conservation and Recreation, concerning convening a meeting to discuss Middle Peninsula localities' and Middle Peninsula Planning District Commission's specific roles in Chesapeake Bay Clean up.
- Convened the monthly meeting of the local government administrators. Discussed Conservation easement MOU between Virginia Outdoors Foundation and Local Governments; and the concept of the June PDC Dinner meeting focusing on holding a regulatory enforcement forum on Onsite Sewage Disposal System Issues.
- Discussed aquaculture and other land use and community development issues with the Chairman of the Middlesex Planning Commission and several Middlesex County residents.
- Discussed participation on a General Assembly directed Aquaculture stakeholder committee with Larry Land -VACO, Tony Watkinson –VMRC, and Robbins Buck - Virginia Department of Agriculture. The Committee is tasked with determining the appropriate balance between a private landowner's right to develop a commercial enterprise and the extent of local government's authority to oversee land use through its zoning power.
- Convened a special meeting with Local Government Administrators, Planning Directors, and Codes Compliances staff to discussed local governments position concerning

aquaculture and associated land use issues. Discussed the recent Virginia court ruling that local governments have concurrent zoning authority over tidal waters with the Virginia Marine Resource Commission. Staff from counties of Essex, Gloucester, Middlesex, King William, Mathews, Middlesex, and the Town of West Point either attended or submitted comments for the meeting.

### **June 2011**

- MPPDC staff developed a handout focused on demographic information specific to the Middle Peninsula with data obtained from the Weldon Cooper Center.
- Coordinated with Eldon James, Rappahannock River Basin Commission Coordinator, to speak at the Rappahannock River Basin Commission meeting with regards to the Middle Peninsula Chesapeake Bay Public Access Authority – explaining who we are and what we do.
- After receiving a 2011 Tax Bill from Mathews County Treasury Department for the newly acquired Hall Parcel in Mathews County, PAA staff emailed Ray Hunley, Mathews County Commissioner of Revenue, and a copy of the enabling authority stating the tax exempt status of the Middle Peninsula Chesapeake Bay Public Access Authority.
- MPPDC staff attended the Middlesex County Planning Commission Meeting on June 9<sup>th</sup>. The guest speaker at the meeting was Donna Holt, State Executive Director of the Virginia Campaign for Liberty. The topic of the presentation was sustainable development.
- Finished drafting a supplemental guidance report outlining the responsibilities of a dredging applicant in proceeding with a dredging project - from the identification of a dredging need, to applying to Virginia Marine Resource Commission (VMRC) for a dredging permit, to the actual dredging operation.
- Sent Tony Yang, Huawei Technologies, digital copies of the Middle Peninsula broadband planning studies.
- Provided Betty Brooks, King William County staff, with the 18 years and older 2010 census population data for the proposed voting districts as requested.
- Reviewed fire district GIS data for King William County to determine population for each district as requested. Informed Betty Brooks, King William County staff, that the fire district boundaries do not exactly match up with census block boundaries, so an exact population count per fire district is not possible without modifying the boundaries of the fire districts.

- Attended the first meeting of the General Assembly directed Aquaculture stakeholder committee. The committee is tasked with determining the appropriate balance between a private landowner's right to develop a commercial enterprise and the extent of local government's authority to oversee land use through its zoning power. Consulted with Larry Land, VACO; Tony Watkinson, VMRC; and Robbins Buck, Virginia Department of Agriculture, concerning the breadth of amending the right to farm act and the impacts to local government.
- Consulted with Amanda Johnston, Legislative Assistant for Senator Thomas Norment, Jr. concerning a request for an attorney general's opinion for the following question:

As to §3.2-301, would the proposed amendment provision only apply to areas currently zoned as agricultural districts by local government? If not, what districts would the amendment specifically apply to and why?

- Created a mapping project to illustrate agriculture only zoning districts in Virginia's coastal localities, integrating GIS data the MPPDC already had or that had been provided by localities.
- Discussed GIS data for Mathews County with Chris Ingram, Mathews County Planning/Wetlands Coordinator.
- Contacted Peter Stith, Northampton County's GIS Coordinator/Long Range Planner, for agriculture zoning district GIS data.
- Contacted E. Luttrell Tadlock, Northumberland's Assistant County Administrator, for agriculture zoning district GIS data.
- Contacted Tom Brockenbrough, GIS Coordinator for Accomack County Department of Planning, to obtain GIS data for zoning districts where only agriculture uses are permitted.
- Contacted Westmoreland County's Building and Zoning Department to obtain GIS data for zoning districts where only agriculture uses are permitted.
- Contacted Stuart McKenzie, Northern Neck PDC staff, to obtain GIS data for their localities agriculture-only zoning districts.
- Received GIS data for Accomack County zoning districts.
- Received data for Northampton County zoning districts.
- Received data for Northumberland County zoning districts.

- Digitizing Mathews County zoning districts to illustrate zoning districts of the county where only agriculture is permitted.
- Provided Carl Thiel-Goin, Conservation/Education Specialist with Tidewater SWCD, with an update on the Middle Peninsula PDC's broadband planning activities.
- Corresponded with Steve Whiteway, Mathews County Administrator & Middle Peninsula Broadband Authority Chair, about the potential for a meeting of broadband authorities in Virginia to discuss challenges the authorities are facing in getting broadband projects implemented.
- Provided Judy Bentley, Icon Engineering Inc., with contact information for PDC staff providing support for the Middle Peninsula Broadband Authority. There is the potential for a meeting of broadband authorities in Virginia to discuss challenges the authorities are facing in getting broadband projects implemented.
- Filed the building official monthly permits for the counties of Essex, Mathews, Middlesex and King William from May 2011.
- Received 2000-2010 Middle Peninsula demographic data from Qian Cai, Director of the Demographics and Workforce Group at the University of Virginia's Weldon Cooper Center for Public Service.
- Researched TMDL impairments and implications for shellfishing along the shoreline of King and Queen County for Tom Swartzwelder, King and Queen County Administrator.
- Coordinated a speaking engagement with the Middle Peninsula Realtors Association to discuss the work of the MPPDC and the relations to the real-estate community.
- Consulted with Matt Walker, Planning Director for Middlesex County, and a Middlesex County resident considering donating a 40 acre tidal island to the Middle Peninsula Chesapeake Bay Public Access Authority for future benefit of the citizens of Middlesex County.
- Consulted with Ann Jennings, Executive Director of the Chesapeake Bay Foundation, concerning Middle Peninsula local government approach to Chesapeake Bay clean up requirements.
- Participated in a state wide conference call with all Virginia Planning District Commissions to discuss the status of local and regional initiatives for addressing water quality issues associated with Chesapeake Bay Clean up.
- Received a response letter from Anthony Moore, Assistant Secretary for Chesapeake Bay Restoration, concerning questions posed by MPPDC Commissioners at the April MPPDC

Meeting. Transmitted responses received to Middle Peninsula local government administrators for review.

- Received a research report from the National Sea Grant Law Center focusing on examples of local governments using enabled authority similar to 15.2 -1200 to protect water quality.
- Consulted with Peggy Sanner, Chesapeake Bay Foundation Virginia Senior Attorney, concerning local government's use of 15.2-1200 to protect water quality.
- Met with David Jasinski, TMDL Consultant, to review the VBay Dashboard. The Dashboard is a tool which illustrates various TMDL and EPA modeling features for localities and regions across the Chesapeake Bay.
- Consulted with David Sacks, Assistant Division Director for the Department of Conservation and Recreation, concerning convening a meeting to discuss possible responsibilities for Middle Peninsula local government and Middle Peninsula Planning District Commission's associated with Chesapeake Bay Clean up.
- Convened a special meeting called by the Department of Conservation and Recreation related to Chesapeake Bay Clean Up. The meeting was attended by Middle Peninsula local government administrators, local planners, local codes compliances staff, representatives from the soil and water district, local health department and others to discuss specific Middle Peninsula local government and Middle Peninsula Planning District Commission's role in Chesapeake Bay Clean up. Staff from Essex, Gloucester, Middlesex, King and Queen, Mathews, and the Town of West Point either attended or submitted comments for the meeting.
- Convened the monthly meeting of the local government administrators. Discussed Energy Efficiency Block Grant project progress and project re-scoping needs with Kathy Vesley-Massey, Bay Aging Chief Executive Officer and Ron Hachey Energy Projects Coordinator for DMME (Department of Mines, Minerals & Energy).

### **July 2011**

- MPPDC staff drafted and submitted a grant application to the United States Department of Agriculture Farmers Market Promotion Program (FMPP) requesting \$65,747 in FMPP funds to develop a web-based Seafood Farmers Market that would directly connect seafood producers/harvesters in the region with seafood consumers – providing a new market that may not otherwise be available and an opportunity to quickly get their products to market. The Exchange would accept listings of local fish, crabs, oysters, and similar products; would allow freshly caught seafood direct from watermen and aquafarmers to be delivered to consumers as easy as picking up the phone and placing an order. The exchange would be a free service to buyers and sellers providing instantaneous listings of fresh foods available only from Middle Peninsula watermen and

offering consumers the freshest food at competitive prices by connecting them directly with the local fishing industry.

- MPPDC staff drafted and will submit a grant application to the National Park Service Rivers, Trails and Conservation Assistance Program by August 1, 2011. The application focuses on developing a Land Management Plan for the Mathews Heritage Park. This parcel was donated to the PAA in fall 2010 and the PAA is seeking assistance in facilitating stakeholder discussions as a management plan is developed in order to meet the community vision, meet the gift conditions imposed by Conrad Hall as well as the long term passive and active public access needs of the Mathews County. MPPDC staff also corresponded with Stephen Whiteway, Mathews County Administrator, with regard to obtaining support letters from the county and local organizations for this application.
- Attended the National Park Service (NPS) open house in Richmond, Virginia to suggest locations and identify stretches of waterfront in need of public access sites within the Middle Peninsula. This information will be integrated into the NPS's "Chesapeake Bay Regional Public Access Plan 2012." MPPDC staff also suggested access points and stretches of waterfront via the NPS's interactive map. The suggested sites and stretches of waterfront came from the Coastal Survey 2008 and the Mathews County Coastal Survey (2010). MPPDC staff also called Cindy Chance, NPS Chesapeake Bay, to inquire about the interactive website. For more info visit:  
[http://www.baygateways.net/viewrelease.cfm?press\\_release\\_id=289](http://www.baygateways.net/viewrelease.cfm?press_release_id=289).
- MPPDC staff inquired about the new release to the Landowners in York and Rappahannock Watershed Eligible for Cooperative Conservation Partnership Initiative forestry funds to support Chesapeake Bay Efforts. Since the PAA owns land within these watersheds, staff was interested in the PAA eligibility to obtain these funds as a political subdivision. After speaking with Glenn Ransone at the Farm Service Agency, MPPDC staff found that the PAA is not eligible as a political subdivision.
- Consulted with Ann Jursick, River Keeper for the Chesapeake Bay Foundation concerning the MPPDC Water Quality Public Policy forum held at the Virginia Institute of Marine Science. Discussed how local governments may respond to Chesapeake Bay Clean up.
- Discussed Browne Tract ownership issues with Ray England, Essex County resident, interested in understanding the history of the Browne Tract and the Browne State Forest.
- Advised all Middle Peninsula localities of the availability of James Madison Anemometer leasing program to assist local government with siting of wind energy facilities.
- Discussed the need for technical and financial assistance to review EPA Bay Wide data model results at the local level with *Joan Salvati*, DCR Chesapeake Bay, TMDL Phase II Lead.

- Consulted with Kevin Wade, Owner of J and W Seafood to discuss the concept of a seafood exchange system within the Middle Peninsula.
- Consulted with Martha Little, Director of Stewardship Virginia Outdoors Foundation, concerning an attorney general's opinion related to the conservation easements and land use taxation.
- Attended a VIMS Chesapeake Bay workshop and presented a talk on the role of local governments related to Chesapeake Bay Clean Up.
- Attended the Coastal Zone Management Conference held in Chicago. Attended session on coastal economic development, conservation, working waterfronts, aquaculture development and other related topics.
- Provided GIS mapping assistance to a Middlesex County realtor looking to list Dragon Run land for sale.
- Discussed Chesapeake Bay clean up-TMDL issues with *Martin Schlesinger, Gloucester County Public Utilities* Director. Provided an update on the release of EPA data scheduled to be released Aug 1, 2011. Advised that the MPDDC has requested financial and staff support to assist Middle Peninsula local governments with reviewing EPA data.
- Attended the summer meeting of the Coastal PDC's. The meeting was held at the Fisherman's Island National Park Center. Discussed various Coastal Zone management concerns, funding and ongoing coastal PDC projects.
- Attended the third general assembly-directed aquaculture study committee meeting to review local government authority to manage land use associate with aquaculture. Presented a map illustrating all land zoned for agriculture within the Chesapeake Bay. The Aquaculture industry had hoped to amend the right to farm act to include aquaculture as a protected use. The map illustrates that 100% of all land along the western Bay Shore is zoned for uses other than agriculture.
- Continued work on a mapping project to illustrate agriculture-only zoning districts in Virginia's coastal localities, integrating GIS data the MPPDC already had or that had been provided by localities.
- Created a map of Essex County illustrating the new voting districts with county roads at the request of Linda Lumpkin, Deputy County Administrator for Essex County.

### **August 2011**

- Filed the July 2011 building official monthly reports for Essex, Mathews, and Middlesex Counties.

- Corresponded with Mark Bittner, Director of Planning and Information Technology at Crater Planning District Commission, about GIS data for the coastal agriculture zoning map.
- Completed a final draft of the map illustrating agriculture only zoning districts in Virginia's coastal localities, integrating GIS data the MPPDC already had or that had been provided by localities.
- Prepared and delivered the final map illustrating Essex County's new voting districts with road details to the Essex County Registrar's Office.
- Prepared and electronically submitted a map for the Down on the Farm Tour 2011 at the request of Anne Davis, Administrative Coordinator at Three Rivers Soil and Water Conservation District located in Tappahannock, VA.
- Prepared a GIS data layer containing conservation easements and other preserved land data that contained tax map information that MPPDC staff had on file for King and Queen County at the request of Donna Sprouse, GIS Coordinator for King and Queen County. Data files were submitted to Ms. Sprouse via email.
- Reviewed Housing and Urban Development (HUD) Notice of Funding Availability (NOFA) for comprehensive community development grants. Pre-applications are due August 25<sup>th</sup>.
- Consulted with Marty Schlesinger, Gloucester County Public Utilities Director, concerning locality obligations related to Virginia Watershed Implementation Plan / Chesapeake Bay Total Maximum Daily Loadings and US Environmental Protection Agency-Chesapeake Bay model data concerns.
- Consulted with Ann Jurczyk of the Chesapeake Bay Foundation (CBF) concerning a workshop sponsored by CBF and the Virginia Department of Conservation and Recreation to prepare local governments to respond to DCR's request for Assistance. The workshop will cover:
  - How local communities benefit from Bay Cleanup efforts?
  - What is the community conservation information (CCI)?
  - What do I need to turn in? By when? In what format? To whom?
  - What design, technical assistance and funding sources are available?
- Consulted with Jimmy Sydnor, Town of Tappahannock Zoning Administrator/Planning Director, concerning Prince Street, public access, and land transfer.
- Arraigned for the Chesapeake Bay Foundation (CBF) TMDL training workshop to be held at the Virginia Institute of Marine Science, student commuter lab.

- Consulted with Stephanie Showalter, National Sea Grant Law Center, concerning legal research assistance to address heir land ownership issues.
- Consulted with Captain Allen Alexander of York River Charters concerning various public access issues across the Middle Peninsula. Additionally advised on the policy of the Middle Peninsula Chesapeake Bay Public Access Authority related to Eco-Tourism business opportunity on land owned and managed by the Authority. Specific interest in using PAA lands in King and Queen County for Eco-Tourism was discussed.
- Convened a conference call between Jerry Davis, Executive Director of the Northern Neck PDC, Elian Meil, Executive Director Accomack North Hampton PDC, and Tom Murray, Marine Advisory Services at VIMS, to discuss a grant application to form a Rural Chesapeake Bay Working Waterfront Coalition. The Coalition will work directly with the commercial fishing industry to address regulatory and tax relief issues.
- Consulted with Anthony Moore, Assistant Secretary for Chesapeake Bay Restoration, and Joan Salvati, DCR Division of Stormwater Management, concerning a Middle Peninsula request for financial and technical assistance. Received notification of approval for the Circuit Rider assistance through the Center for Watershed Protection.
- Consulted with Neal Barber, President of the Middle Peninsula Land Trust, concerning support for honoring retiring Delegate Harvey Morgan's service to the Middle Peninsula.
- Consulted with Essex County and Mathews County representatives on issues related to dredging, permitting, and financing dredging projects for non ACE maintained creeks.

### **September 2011**

- Discussed the Chesapeake Bay Foundation-Department of Conservation and Recreation (DCR's) EPA TMDL data training held at VIMS with Middle Peninsula local government administrators. Discussed implications of local governments responding versus not responding to DCR's request for data and BMP assessment.
- Consulted with Mr. John Carlock, Deputy Executive Director Hampton Roads Planning District Commission, concerning failing septic systems and relations to EPA TMDL data. The Chesapeake Bay TMDL establishes limits on the amount of nitrogen, phosphorus, and sediment that can enter the Bay. As part of the effort to meet the nitrogen limits set forth in the TMDL, reductions in the nitrogen load from the onsite sewage system sector must be achieved. The Proposed Final Alternative Onsite Sewage System (AOSS) Regulations will help localities reduce nitrogen loads, but will not achieve all the reductions needed. Localities will also need strategies for upgrading existing non failing systems to denitrifying systems and for connecting to existing sewer systems.

- Received approval notice to the Middle Peninsula Planning District Commission's request for access to technical assistance to help Middle Peninsula local governments respond to the July 25<sup>th</sup> letter from the Department of Conservation and Recreation concerning Chesapeake Bay Phase II TMDL WIP. MPPDC is the first PDC in the state to receive approval to access such assistance. Mr. Dave Hirschman, Program Director at the Center for Watershed Protection, will be the regions point of contact and is scheduling a conference call with all Middle Peninsula local governments for late September.
- Convened a special meeting with Virginia Department of Health Division of Onsite staff and local Middle Peninsula Three Rivers Heath District staff to discuss enforcement approaches to address failing septic systems within the Middle Peninsula. The enforcement meeting was a result of the June water quality public policy forum held at VIMS. MPPDC staff initiated the discussion by asking why it was acceptable for failing septic systems to on the VDH books for more than a decade without corrective action. As a result, MPPDC staff, working with VDH staff will develop a process for corrective action involving VDH staff, local government staff, and locality specific Commonwealth Attorney. The process will utilize corrective letters, enforcement letters, loans and grants, and lastly court action. Chesapeake Bay Clean up requirement will play an important future role.
- As comments were received from Virginia Marine Resource Commission about the draft the 'Users Guide to Dredging in Tidewater Virginia,' time has been spending refining the guidance report.
- Contacted Mr. Doug Sampler, U.S. Army Corps of Engineers, with regards to funding available for debris removal for water channels within the Middle Peninsula. Mr. Sampler explained that funding for debris removal is not really much different than a navigation dredging project and there for funds are limited.
- Discussed the 2011 update of the Essex County Protected Lands map for the Essex County Countryside Alliance's (ECCA) annual report with Ms. Susan McFadden, Open Door Communications, and Ms. Mary Moss Walker, Assistant to Mr. Peter C. Bance (President of ECCA).
- Received a list of conservation easements in Essex County from Mr. Thomas Blackwell, Essex County Commissioner of the Revenue, of most of the new easements from July 2010-July 2011.
- Completed a 2011 Essex County Protected Lands map update for the Essex County Countryside Alliance's (ECCA) annual report and submitted it to Ms. Susan McFadden and Ms. Mary Walker.

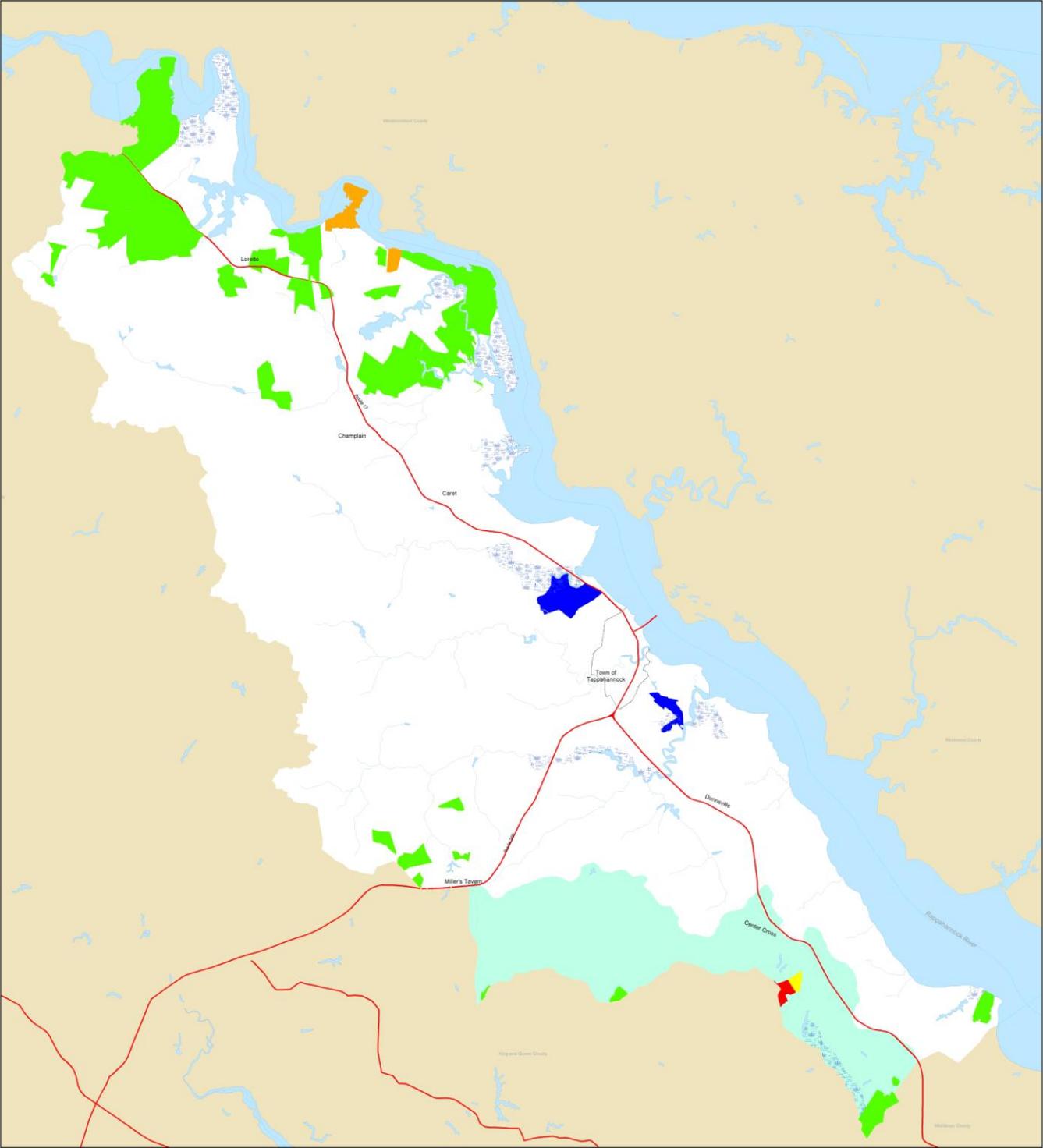
- Provided Ms. Donna Sprouse, Assistant Zoning Administrator & GIS Coordinator for King and Queen County, with GIS data files including all jurisdiction boundaries for the State of Virginia, state-wide and regional water coverage and 2008 Virginia Geographic Information Network (VGIN) Road Center Line files.
- Attended the September 2011 King and Queen County Planning Commission meeting where discussion focused on updating the county's comprehensive plan with presentations by Mr. Mike Chandler, Chandler Planning, and Mr. Lewis Lawrence, Acting-Executive Director of MPPDC.
- Began creating a new map of the Middle Peninsula Region for the MPPDC's new website.
- Convened the monthly meeting of the Middle Peninsula Local Government Administrators. Discussed a request from the Community Service Boards (CSB) for tax exempt status for land held and used by the CSB. Also discussed Chesapeake Bay TMDL EPA data issues, Comprehensive Economic Development committee membership, and Conservation easement and corresponding local public policy and options for enforcement and taxing by local governments.
- Consulted with Mr. Mark Slaughter, Virginia Department of Emergency Management, concerning a new program from the U.S. Geological survey (USGS). The program has developed a mobile storm-surge network to capture information of the timing, extent, and magnitude of storm tide. This mobile network consists of 40-70 water-level and barometric-pressure monitoring devices that are deployed in the days and hours just prior to hurricane landfall. VDEM asked if Middle Peninsula localities would be interested in designating location for mobile storm-surge data equipment.
- Attended the August VMRC stakeholder panel meeting to discuss the implications of amending the right to farm act and local government's authority to manage aquaculture. During the 2011 General Assembly session Senator Thomas K. Norment, Jr. patroned SB 1190, which would have amended and reenacted §§ 3.2-300, 28.2-603, and 28.2-1203 of the Code of Virginia, relating to aquaculture and the use of pier structures authorized by the Marine Resources Commission and the authority of local governments.
- Received notification that an application requesting financial assistance to create a Rural Chesapeake Bay Working Waterfront coalition has been funded. MPPDC will partner with the Northern Neck PDC and Accomack Northampton PDC to convene a series of local meetings to discuss common issues and challenges facing the commercial seafood industry and barriers to economic growth and job creation.
- Met with Ms. Mary-Carson Saunders, a William and Mary Law student who has offered to research local issues associated with local government's requirements for meeting the Chesapeake Bay TMDL WIP standards. Mr. Mart Carson will research implications for

local government associated with using the default EPA data or responding directly to the EPA data.

- Received August 2011 building official monthly reports for Essex, Mathews, and Middlesex Counties.

**Appendix B:  
Essex Countryside Alliance Map**

# Protected Lands 2011 Essex County, Virginia



**Protected Lands reported to PDC as of July 2011**

- Rappahannock River Valley National Wildlife Refuge
- VA Department of Forestry
- Middle Peninsula Chesapeake Bay Public Access Authority
- Land Protected by Private Landowners
- Essex County's Additional Protected Parcels as of July 2011

**Watershed Unit:**

- Dragon Run Watershed in Essex County

Data for the map provided by Essex County, the Virginia Department of Conservation & Recreation's protected lands database, Virginia Outdoors Foundation & The Nature Conservancy

## **Appendix C: Essex County Redistricting Maps**

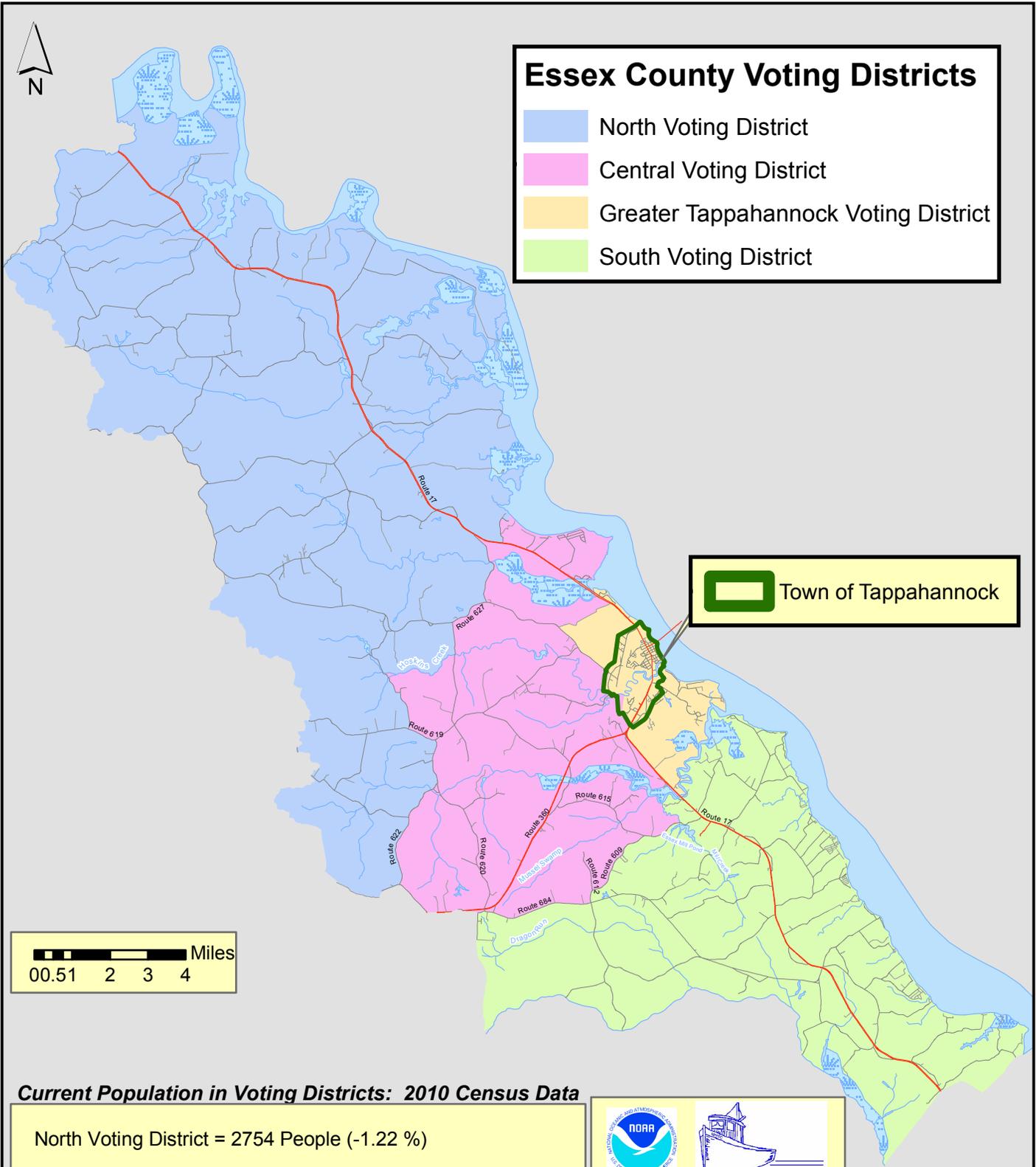
Below is a description of the three maps of  
Essex County Redistricting efforts created by MPPDC staff –

**Current Map:** Shows the voting districts from 2001 with the 2010 census data.

**Example 1 Map:** Shows the minimum voting district boundary changes that would get population in each district within the acceptable deviation range ( $\pm 5\%$ ).

**Example 2 Map:** Shows the boundary exchanges for getting population in each district as close to ideal (having equal numbers of people in each district) as possible.

# Essex County Voting Districts 2010 Census Population



**Current Population in Voting Districts: 2010 Census Data**

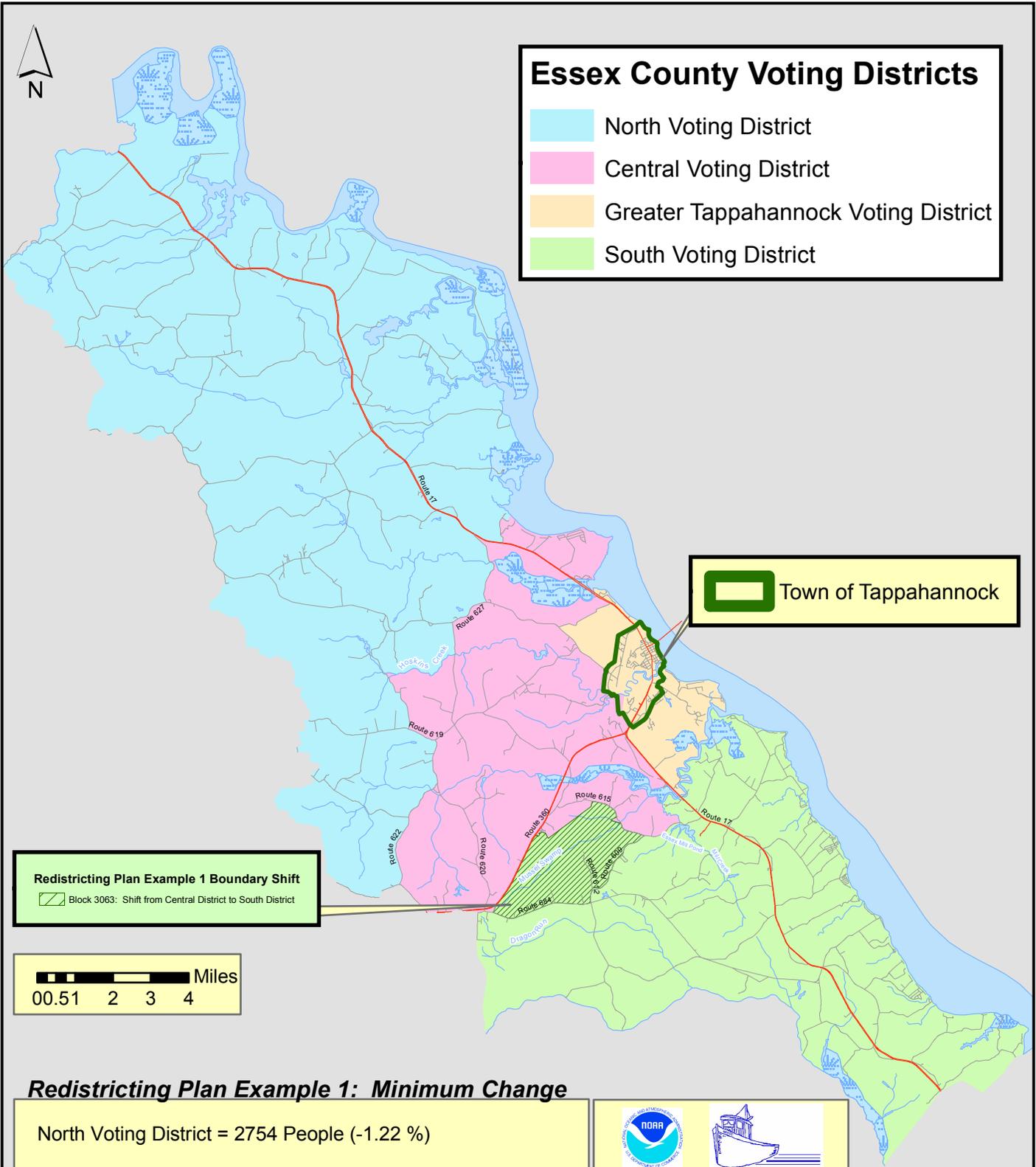
North Voting District = 2754 People (-1.22 %)
Central Voting District = 3017 People (8.2 %)
Greater Tappahannock Voting District = 2899 People (3.98 %)
South Voting District = 2481 People (-11 %)
(All data from 2010 Census.)



Although this data has been used by the Middle Peninsula Planning District Commission (MPPDC), no warranty, expressed or implied is made by the MPPDC as to the accuracy or application of the database and related materials, nor shall the fact of distribution constitute any such warranty; and no responsibility is assumed by the MPPDC in connection herewith. This map was created in March/April 2011 by MPPDC staff (CRCM).

This map production is a product of the MPPDC Technical Assistance Program and was funded by Virginia's Coastal Zone Management Program of the Department of Environmental Quality through Grant #NA10NOS4190205 Task 44 of the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resources Management, Under the Coastal Zone Management Act of 1972, as amended.

# Essex County Redistricting 2011 Redistricting Plan Example 1



## Redistricting Plan Example 1: Minimum Change

North Voting District = 2754 People (-1.22 %)

Central Voting District = 2744 People (-1.58 %)

Greater Tappahannock Voting District = 2899 People (3.98 %)

South Voting District = 2754 People (-1.22 %)

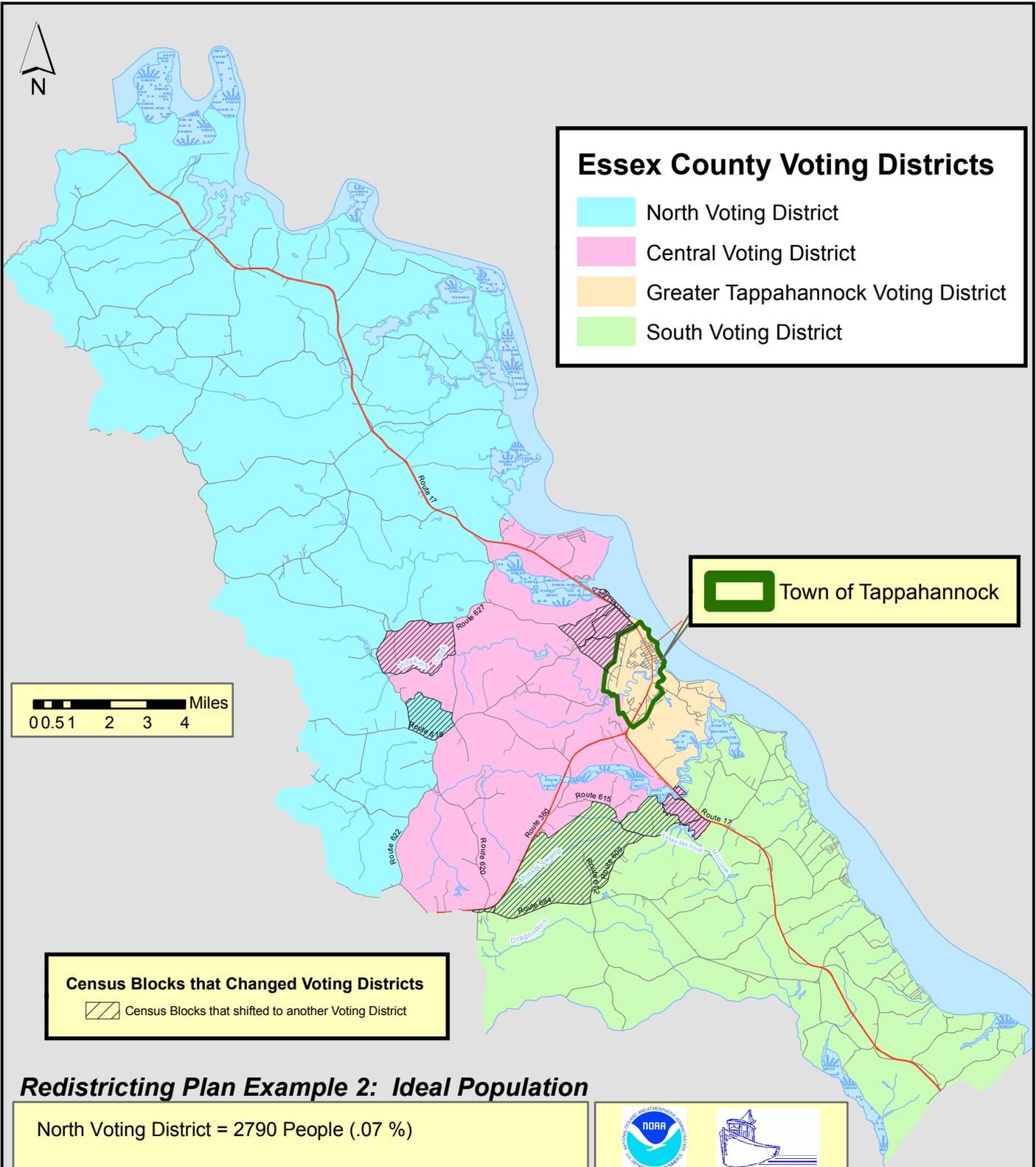
(All data from 2010 Census.)



Although this data has been used by the Middle Peninsula Planning District Commission (MPPDC), no warranty, expressed or implied is made by the MPPDC as to the accuracy or application of the database and related materials, nor shall the fact of distribution constitute any such warranty; and no responsibility is assumed by the MPPDC in connection herewith. This map was created in March/April 2011 by MPPDC staff (CRCM).

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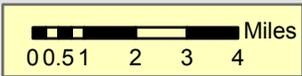
# Essex County Redistricting 2011 Redistricting Plan Example 2



### Essex County Voting Districts

- North Voting District
- Central Voting District
- Greater Tappahannock Voting District
- South Voting District

Town of Tappahannock



#### Census Blocks that Changed Voting Districts

Census Blocks that shifted to another Voting District

### **Redistricting Plan Example 2: Ideal Population**

North Voting District = 2790 People (.07 %)
Central Voting District = 2754 People (-1.22 %)
Greater Tappahannock Voting District = 2768 People (-.72 %)
South Voting District = 2839 People (1.83 %)
(All data from 2010 Census.)



Although this data has been used by the Middle Peninsula Planning District Commission (MPPDC), no warranty, expressed or implied is made by the MPPDC as to the accuracy or application of the database and related materials, nor shall the fact of distribution constitute any such warranty; and no responsibility is assumed by the MPPDC in connection herewith. This map was created in March/April 2011 by MPPDC staff (CRCM).

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**Appendix D:  
Virginia Code § 15.2-1200 as Authority for Water Quality Ordinances**

# Virginia Code § 15.2-1200 as Authority for Water Quality Ordinances

Megan Jessee, Legal Intern\*\*

Summer 2011 Chesapeake Bay Foundation

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## I. INTRODUCTION

This memo addresses the question whether Virginia Code § 15.2-1200 may be used as authority for appropriate local ordinances to address local water quality issues. My research indicates that this statute has in fact has been used for this purpose.

The question is important because of Virginia's "Dillon Rule," so called because of its articulation by Judge John Dillon in his 1872 treatise, *The Law of Municipal Corporations*. Under this rule, a locality has no powers except as expressly granted by the state legislature. Its use in Virginia may be dated from 1896 when, in *City of Winchester v. Redmond*, the Virginia Supreme Court described it as a principle which lies "at the foundation of the law of municipal corporations."<sup>1</sup> Quoting from the treatise, Justice Reily said:

It is a general and undisputed proposition of law... that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; Second, those necessarily or fairly implied in or incident to the powers expressly granted; Third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.<sup>2</sup>

According to this principle, a Virginia locality wishing to enact new water pollution control rules may do so only if a section of the Virginia Code or Virginia Constitution specifically authorizes the action.

## II. VA. CODE § 15.2-1200 AND SELECTED ORDINANCES

Section 15.2-1200 of the Virginia Code grants local governments the authority to enact laws deemed necessary to protect the "health, safety and general welfare" of their residents, including "regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county."<sup>3</sup> Some localities in eastern Virginia have cited to this section as authority for provisions intended to address local water pollution. In most discovered instances, localities have done so in conjunction with other Code provisions, such as

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\*\* This document summarizes research; it is not intended to be, and should not be used as, legal advice regarding any specific situation.

<sup>1</sup> *City of Winchester v. Redmond*, 93 Va. 711, 713-714 (Va. 1896).

<sup>2</sup> *Id.* (quoting 1 John Forrest Dillon, *The law of Mun. Corps.* §89 (3d ed.)).

<sup>3</sup> Va. Code § 15.2-1200

statutes relating to biosolids, local utilities, and Chesapeake Bay Preservation Act measures. In only a few cases have localities in this part of the Commonwealth cited this provision alone in addressing pollution problems. Examples of local ordinances relying on Va. Code §15.2-1200 follow.<sup>4</sup>

### **A. Henrico County**

Henrico County has cited §15.2-1200 as authority for several ordinances to improve local water quality. The first, §14-39 (“Pollution of Waters”),<sup>5</sup> relies on §15.2-1200 alone, and the second, § 24-106.2 (“Landscaping, tree cover, screen and buffer requirements, transitional buffering and design standards”),<sup>6</sup> relies as well on the Chesapeake Bay Preservation Act, § 10.1-2108, and other statutes.

Section 14-39 states:

No person shall bathe or wash any dog, other animal, vehicle or clothing in any stream, lake or other water of any park, or throw, cast, lay, drop, discharge, direct, deposit or abandon into any stream, lake or other water of any park, or in any storm sewer or drain flowing into such water, any substance, matter or thing, in whatever form, which may directly or indirectly result in the pollution of such waters.

This ordinance appears to have two important benefits. First, it is simple in its approach. Second, implementation of this ordinance is completely free because it involves prohibitions of non-economic activities.

Henrico Code § 24-106.2 addresses landscaping measures and provides a detailed, comprehensive plan to protect natural resources, including water quality. The ordinance’s purposes are described as follows:

The purpose and objective of this section is to facilitate the creation of a convenient, attractive and harmonious community; to conserve and protect natural resources, including air and water quality; to enhance property values; to preserve the unique character of an area; and to encourage the appropriate use of land. . . . More specifically, this section is intended to ameliorate the impact of more intense or incompatible uses by requiring a screen or buffer between such uses where they border less intense uses. Additionally, this section is intended to require the landscaping of certain parking lots in order to reduce the harmful effects of wind and air turbulence, heat, the glare of motor vehicle lights, to diminish stormwater drainage problems, to prevent soil erosion, to

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<sup>4</sup> A list of ordinances from Eastern Virginia Bay watershed that regulate matters related to water quality (*e.g.*, septic, biosolids, and others) under §15.2-1200 is attached as Appendix B.

<sup>5</sup> HENRICO COUNTY, VA. CODE § 14-39 (2010).

<sup>6</sup> HENRICO COUNTY, VA. CODE § 24-106.2 (2010).

provide shade and to enhance the appearance of parking lots. Additionally, this section requires the preservation and planting of trees on sites to provide a specified percentage of tree cover at ten years' maturity.

## **B. Chesterfield County**

Section 12-26 of the Chesterfield County Code, titled “Disposition of sludge, etc.” states that it is “[a]uthorized by Code of Virginia, § 15.2-1200.”<sup>7</sup> This ordinance governs disposal of “sludge and other material” from septic tanks, providing that “[t]he sludge or other material shall be carefully deposited and the surface of the ground, manholes and tanks into which the deposit is made shall be maintained in a sanitary condition. Any sludge or other material that is spilled shall be promptly and completely removed.”<sup>8</sup> The ordinance further requires both that “[a]ll persons who engage in the business of cleaning septic tanks shall provide the health department with the name, address and location of the site where the sludge and other material will be disposed” as well as requiring County Health Department approval of disposal sites.

## **C. Surry County**

Surry County cites §15.2-1200 as the authority for the entirety of Chapter 30 of its Code, titled “Environment.” The chapter includes ordinances for two local regulatory programs, on-site sewage and biosolids, each of which recites additional Code authorities.<sup>9</sup> Article II of this chapter, titled “On-site Sewage Disposal,” includes §§ 10-19, “Permit required to install or maintain septic tank or privy, conditions in permit”; 10-20, “Nonconforming houses and structures; compliance” and 10-21, “Septic tanks, etc., regulations; permit procedure.”

Section 10-19 requires property owners to obtain a permit from the county health director before constructing or installing a septic system. Before this permit may be issued, §10-19(b) further requires the health director to inspect the property to determine the following:

- (1) Whether a public sanitary sewer is available;
- (2) Whether the land is suitable for a septic tank and, if so, the proper location for;
- (3) The proper location for a privy; and
- (4) Such other requirements, if any, which should be stated in the permit to secure and promote the public health.<sup>10</sup>

Section 10-20 offers a timeline for enforcement of Article II, stating that all property must be made to comply with Chapter 10 within one year from the effective date of the ordinance.<sup>11</sup> Section 10-21 prohibits any person from engaging “in the business of installing, constructing, repairing or cleaning septic tanks in the county without first having obtained from

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<sup>7</sup> Chesterfield has a more comprehensive set of ordinances that regulate septic systems pursuant to Va. Code § 15.2-2126. See §§12-11 through 12-25

<sup>8</sup> CHESTERFIELD COUNTY, VA., CODE § 12-26 (1997).

<sup>9</sup> The on-site sewage provisions recite Va. Code §§ 32.1-163 et seq., as authority, and the biosolids provisions recites Va. Code § 62.1-44.19:3.

<sup>10</sup> SURRY COUNTY, VA., CODE § 10-19(b) (2009).

<sup>11</sup> SURRY COUNTY, VA., CODE § 10-20 (2009).

the health director a permit to engage in such business in the county.”<sup>12</sup> This section states that such permits are to be issued “on a calendar year basis.”<sup>13</sup>

#### **D. New Kent County**

Chapter 38 of the New Kent County Code, “Health and Sanitation,” cites for its authority to Virginia Code § 15.2-1200 and other Code sections.<sup>14</sup> Of particular interest is Article III, “Septic Tanks; Septic Tank Contractors and Cleaners.”<sup>15</sup> This lengthy article includes 12 subsections which regulate all aspects of septic system installation and maintenance. The New Kent ordinances notably differ from those of Chesterfield and Surry counties in both quantity and enforcement power, enacting a significantly greater number of septic system regulations under the authority of 15.2-1200.

New Kent County explicitly categorizes a violation of Article III of Chapter 38 as a class 2 misdemeanor.<sup>16</sup> Section 38-181, “Order to correct violations or health hazards,” provides “the health director, his authorized agent, or other lawful authority”<sup>17</sup> with the power to issue an order to any land owner upon a finding of a violation. Section 38-181 further declares a failure to comply with such an order to be “unlawful.”<sup>18</sup>

### **III. §15.2-1200 AND NUISANCE LAW**

A question has been raised as to whether the decision in *Old Dominion Land Co. v. Warwick County*, 172 Va. 160 (Va. 1939), which affirms a right to dump sewage in tidal waters, currently requires a finding that an act amounts to a “nuisance” before a local government may regulate it. In considering this question, it is important to note that *Old Dominion Land Co* was decided in 1939, before the 1950 enactment date of 15.2-1200. In 1939, therefore, the powers granted to localities under 15.2-1200 were not yet available. Later cases have also questioned its holding, recognizing the drastic federal and state policy changes concerning water pollution that have occurred since that time.<sup>19</sup> For example, in questioning the continuing validity of *Old Dominion Land Co.* 172 Va. 160, the United States Court of Appeals for the Fourth Circuit said, in *Moore v. Hampton Roads Sanitation Dist. Com.*, 557 F.2d 1030, 1033 (4th Cir. 1976):

Since 1939. . . Virginia has imposed ever-stronger controls on the discharge of sewage into state waters. A Virginia statute now prohibits the discharge of raw sewage into such waters. Va. Ann. Code, 1973 Repl. Vol., § 62.1-44.5. We conclude that whether or not the discharges of raw sewage by the City can be characterized

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<sup>12</sup> SURRY COUNTY, VA., CODE § 10-21 (2009).

<sup>13</sup> *Id.*

<sup>14</sup> Article 38 of the New Kent County Code refers generally to Va. Code §§ 15.2-1200, as well as to § 15.2-901 (trash removal); § 15.2-2109 (public utilities); Code of Virginia, tit. 32.1 (health); and, § 62.1-44.2 (State Water Control Law).

<sup>15</sup> NEW KENT COUNTY, VA., CODE ch. 38, art. III (2002). *See also, id.* at art. IV (“Sanitary Privies”).

<sup>16</sup> NEW KENT COUNTY, VA., CODE § 38-182 (“Penalties for violation of article”) (2002).

<sup>17</sup> NEW KENT COUNTY, VA., CODE § 38-181 (2002).

<sup>18</sup> *Id.*

<sup>19</sup> *Moore v. Hampton Roads Sanitation Dist. Com.*, 557 F.2d 1030, 1033 (4th Cir. 1976).

as occasional, they are not now protected by the public policy of the State<sup>20</sup>

Based on the reasoning of *Hampton Roads Sanitation Dist. Com.*, it seems clear that *Old Dominion Land Co.* should not be considered to limit the use of Va. Code §15.2-1200.

#### **IV. SUMMARY AND CAUTIONARY NOTE**

As this survey indicates, localities in Virginia have relied on Va. Code § 15.2-1200 to take certain actions to protect local water quality. These examples suggest that the provision should be considered by localities as they address local problems. While most localities have used §15.2-1200 in conjunction with other more specific statutes, that pattern has not universally been followed and does not seem to be a requirement.

However, as the statute itself makes clear, a locality would have to ensure that any new water quality ordinance promulgated under the authority of the statute is “not inconsistent with the general laws of the Commonwealth.” *See* Va. Code §15.2-1200. Notably, the Commonwealth retains control over water quality throughout the state, pursuant to the State Water Control Law, Va. Code §§ 62.1-44.2, *et seq.*, and other state laws. *See, e.g.*, § 62.1-44.4 (“The right and control of the Commonwealth in and over all state waters is hereby expressly reserved and reaffirmed”). The federal government also has important regulatory authorities over water quality pursuant to the Clean Water Act. Ensuring consistency with all such other provisions is a requirement that may not be ignored.

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<sup>20</sup> *Id.*

Appendix A: Text of Ordinances Discussed Above

**Chesterfield County:**

**Sec. 12-26. - Disposition of sludge, etc.**

No person shall dispose of the sludge and other material removed from septic tanks except by depositing it into a sewerage system or sewage treatment plant, at such designated locations and under such conditions as may be approved by the health department. All persons who engage in the business of cleaning septic tanks shall provide the health department with the name, address and location of the site where the sludge and other material will be disposed. The county health department shall approve the disposal site before any disposal takes place.

The sludge or other material shall be carefully deposited and the surface of the ground, manholes and tanks into which the deposit is made shall be maintained in a sanitary condition. Any sludge or other material that is spilled shall be promptly and completely removed.

State law reference—Authorized by Code of Virginia, § 15.2-1200.

**Surry County:**

**Sec. 10-19. - Permit required to install or maintain septic tank or privy; conditions in permit.**

(a) Persons required to construct or install a septic tank upon property owned by them within the county shall do so only pursuant to a permit issued by the health director.

(b) Before issuing any permit under subsection (a) of this section, the health director shall cause an investigation to be made to determine:

- (1) Whether a public sanitary sewer is available;
- (2) Whether the land is suitable for a septic tank and, if so, the proper location for;
- (3) The proper location for a privy; and
- (4) Such other requirements, if any, which should be stated in the permit to secure and promote the public health.

(c) Any permit issued under this section may contain such requirements as the health director may deem necessary to secure and promote the public health, and it is unlawful for any permit holder to violate, or to permit the violation, of any such requirement.

**Sec. 10-20. - Nonconforming houses and structures; compliance.**

Each house or other structure within the county which is intended for use or which is used as a place for human habitation, employment or congregation, including tourist and

other camps and tent shows, which fails to comply with the requirements of this chapter on the effective date of the ordinance from which this section is derived shall, by its owner, be made to comply with this chapter within one year from the effective date of said ordinance.

**Sec. 10-21. - Septic tanks, etc., regulations; permit procedure.**

(a) No person shall engage in the business of installing, constructing, repairing or cleaning septic tanks in the county without first having obtained from the health director a permit to engage in such business in the county; and such permits, when issued, shall be issued on a calendar-year basis and shall not be in lieu of individual permits required for each septic tank or privy installation.

(b) No permit shall be issued by the health director to any person engaged in cleaning of septic tanks unless the equipment used in connection with the work is capable of holding and transporting the contents of cesspools, septic tanks and privies without leakage or spillage. The place of disposal shall be such that no source of food and no water supply or stream will be contaminated by the presence of the contents from septic tanks or that the presence of such contents at such place will create a hazard to the health of any person. The manner of disposal shall be such that flies will not have access to such contents and that it will not create a hazard as far as the health of any person is concerned.

(c) The conviction of any person for violating any of the rules and regulations of the health director, the state department of health, or statutes regulating the constructing, installing and cleaning of septic tanks and disposal of human wastes, shall automatically revoke any permit issued under this section.

**New Kent County:**

**Sec. 38-171. - Permit and approval required prior to installation, use and repair of septic tank system.**

It shall be unlawful for any person, for himself or for another, to install, construct, use, maintain or repair, or to contract to install, construct, maintain or repair, a septic tank system in the county without first obtaining a septic tank permit. Each proposed septic tank system shall be approved by the county health department by a certificate of approval signed by the health director as a condition precedent to the granting of a county building permit.

**Sec. 38-172. - Construction, inspection and approval of septic tank systems, house sewers and connections; state department of health rules and regulations.**

(a) The entire septic tank system shall be built in accordance with the design of plans shown on the septic tank permit. Such design shall provide for a primary drainfield area and a secondary, or repair drainfield area with a capacity equal to that of the primary drainfield area. The secondary, or repair drainfield area shall be utilized only if the primary drainfield fails, and not for the purpose of expansion of the primary drainfield in order to accommodate additions to or enlargement of the structures served by such system. The size and type of the sewer lines shall be specified on the permit. A filter may

be installed on the septic tank prior to the discharge of effluent from the septic tank. The sewer line from the building to the septic tank, including all necessary connections and filters, shall be subject to inspection and approval by the health department. The installation of a filter and proper maintenance of the filter will exempt the homeowner from the five-year pump out requirement described in sections 38-176 and 94-39 of this Code.

(b) The septic tank system shall be constructed in accordance with specifications set forth in the state department of health rules and regulations, and the requirements set forth in this article. A copy of such regulations shall remain on file in the office of the county administrator.

**Sec. 38-173. - Prohibited installations.**

(a) *Endangering any well or source of water supply.* No septic tank permit shall be issued for any system where an existing well or domestic water supply system is present and the installation of such system violates the requirements and safety standards established by regulations of the state department of health.

(b) *In swampy areas subject to flooding; prohibited connections to septic tank system.* Septic tank installations in low swampy areas with a high water table or in areas which may be subjected to flooding are prohibited. It shall be unlawful to connect basement floor drains and roof, gutter and downspout drains or footing drains into any part of the septic tank system.

**Sec. 38-174. - Restrictions on systems underlying buildings, hard-surfaced areas and other impervious structures or substances.**

No part of any septic tank system shall be covered with a building or with relatively or completely impervious structures such as driveways, patios, blacktop or other hard-surfaced areas or stationary built-in place or outdoor cooking facilities or garages. Exceptions to the foregoing may be made by obtaining permission from the county health department to cover the septic tank, provided that it is designed to withstand specified loads and contains approved access manholes to each section of the septic tank.

**Sec. 38-175. - Inspection and approval of installation prior to covering; method of covering and backfilling.**

Before any part of a septic tank system, including the house sewer, shall be covered, it shall be inspected and approved by a representative of the county health department. The septic tank system shall be properly covered and backfilled immediately after approval, taking care not to disturb the pipe, grades, joints or alignment by the backfilling. If any septic tank system or part of such system is covered before being finally inspected and approved, as described in this section, it shall be uncovered by the installer at the direction of the health department.

**Sec. 38-176. - Septic tank pump out.**

All septic tank systems not requiring an NPDES permit and located within either a resource protection area or a resource management area, as defined in chapter 94, article II of this Code shall be pumped out at least once every five years, however, in lieu of requiring proof of septic tank pump-out every five years, owners of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

**Sec. 38-177. - Septic tank contractor's permit required; application; duration; removal; revocation.**

Any person contracting to install, repair or clean a septic tank in the county for another person shall first obtain a permit from the county health department to do such work. To obtain a permit as required by this section, such person shall apply to the county health department and, if the applicant is considered qualified to perform the duties of such a contractor, a permit shall be issued. Permits shall be renewed annually, and a permit may be revoked at any time by the county health department for failure to comply satisfactorily with the provisions of this article and other regulations of the county health department and the state department of health.

**Sec. 38-178. - Equipment used by septic tank cleaning contractors; approval of site for disposal of sludge and other material.**

No person shall engage in the business of cleaning septic tanks in the county unless the equipment used by such person in connection with the operation of such business complies with the following standards and has been inspected and approved in writing by the county health department:

- (1) The tank into which the septic tank sludge is pumped or delivered and carried is fully enclosed and watertight.
- (2) All inlets and outlets to such tank are fully enclosed and provided with watertight valves.
- (3) Suction and discharge houses are watertight, and provision is made for carrying them in such a manner to prevent leakage.
- (4) All exposed surfaces are painted and maintained in a sanitary condition by frequent washings.
- (5) The name and address of the person owning or operating such equipment is painted thereon in letters at least four inches high.
- (6) The person conducting the business has a site for disposal of the sludge or other material

**Sec. 38-179. - Manner of disposal of sludge or other septic tank material.**

It shall be unlawful to dispose of sludge and other material removed from septic tanks except in accordance with regulations of the state department of health. Any spillage of sludge or other material shall be promptly and completely removed.

**Sec. 38-180. - Officers and officials issuing permits or licenses shall comply with article; permits issued contrary to article are null and void.**

All departments, officials and employees of this county that are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this article, and they shall issue permits for uses only when they are in harmony with the provisions of this article. Any such permit, if issued in conflict with the provisions of this article, shall be null and void.

**Sec. 38-181. - Order to correct violations or health hazards.**

If, upon investigation, the health director, his authorized agent, or other lawful authority shall find any violation of sections 38-1, 38-2, 38-211 through 38-213 and this article, or of the provisions of any septic tank permit issued under it, or if any septic tank system, privy, closet, toilet, drainage system or any part of such system is found detrimental to life or health, the health department or such other authority shall issue an order directly to the owner or occupant of the property upon which such violation or condition exists to abate, remove, suspend, alter, improve or otherwise correct the violation or condition as specified in the order. It shall be unlawful for any such property owner or occupant to fail to comply with the requirements of such order within the time therein specified for compliance.

**Sec. 38-182. - Penalties for violation of article.**

Any person violating any of the provisions of sections 38-1, 38-2, 38-211 through 38-213 and this article shall be guilty of a class 2 misdemeanor.

Appendix B: Some Ordinances Citing Va. Code § 15.2-1200 as Authority

1. Northumberland County - Chapter 39 (Biosolids).
2. King George County - Appendix A – Zoning Ordinance, Article 4, Section 4.6 (Biosolids)
3. Westmoreland County - Chapter 22, Article VII
4. Lancaster County - Chapter 9.5, Article IV
5. Isle of Wight - Chapter 14, Article XIV
6. Hanover County – Chapter 10, Article III
7. King William County
  - a. Chapter 30 – “Environment”
  - b. Chapter 58 – “Solid Waste”
8. Spotsylvania County – Chapter 22, Article VI

**Appendix E:  
Users Guide to Dredging in Tidewater Virginia**



# Users Guide to Dredging in Tidewater Virginia

*Providing guidance through a dredging project - from the identification of a dredging need, to identification of sediment disposal site, to applying for a dredging permit, to the dredging of a channel*

*Middle Peninsula Planning  
District Commission*

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Middle Peninsula  
Planning District Commission



Virginia Coastal Zone  
MANAGEMENT PROGRAM



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## Executive Summary

As a coastal region, navigable waterways are critical to the economic fabric of the Middle Peninsula. Open waterways invite residents as well as tourists to explore and enjoy the coastal natural resources and wildlife of the region.

Over the years, the U.S. Army Corps of Engineers has been responsible to “ensuring navigation on our nation’s waterways moves safely, reliably, and efficiently with minimal impact to the environment, thus sustaining a vital component of the economy (USACE, 2010).” In 2009, however, Representative Robert Wittman held a meeting at the Middle Peninsula Planning District Commission to inform regional stakeholders that federal funding once available for the dredging of the shallow draft channels (ie. federally designated channels with depth of -15 feet mean lower low water (MLLW) or less), will no longer be available in the near future. Consequently localities, commercial property and/or private citizens will likely bear the burden of funding these shallow draft projects previously funded by the Corps.

The Middle Peninsula Planning District Commission (MPPDC), therefore, partnered with the Middle Peninsula Chesapeake Bay Public Access Authority (MPCBPAA), Virginia Marine Extension Program, and the U.S. Army Corps of Engineers to develop a Regional Shallow Draft Navigation and Sediment Management Plan that provides a matrix of channels designated as Federal Navigation Channels within the Middle Peninsula that will need to be maintained, the approximate cost of the project, as well as a recommended timetable to dredge channels within the Middle Peninsula. To supplement that report the MPCBPAA developed this guidance report to assist localities, as well as commercial property and/or private citizens with the execution of a shallow draft channel dredging projects (ie. federally designated channels or non-federally designated channels).

Although each project is unique and may require unique considerations there are a variety of common components that factor into a successful dredging project within Tidewater Virginia: (1) identification of a channel with a dredging need, (2) conducting a pre-dredge bathymetric survey to determine the current condition of the channel and volume of material to be removed, (3) identification and selection of a dredge disposal site, typically public or, private beaches and/or, private or public upland containment sites, (4) applying for and receiving the necessary permits via the submission of the Commonwealth of Virginia’s Standard Joint Permit Application (JPA) and attendance, as necessary, at one or more required public hearings, (5) selection of a contractor and execution of the contract, (6) convening a pre-dredging conference with representatives from the appropriate regulatory agencies, (7) initiation and completion of the proposed dredging project, and (8) submission of a post-dredge bathymetric survey to permitting authorities for determination of permit compliance. As each component influences the overall cost of a dredging project it is important that applicants, whether a public entity, private entity or a public private partnership, weigh the various options as federal funding to maintain shallow draft navigable waterways will likely no longer be available in the future.

## **Introduction**

In October 2010, the Middle Peninsula Planning District Commission (MPPDC) and the Middle Peninsula Chesapeake Bay Public Access Authority (PAA) partnered with the U.S. Army Corps of Engineers (USACE) and Virginia Marine Extension Services to develop a Regional Shallow Draft Navigation and Sediment Management Master Plan. As part of the plan a clear understanding of the dredging process and associated regulatory issues was critical, particularly as the financing paradigm for shallow draft channel dredging projects switch from being primarily federally funded to a privately funded activity. This document outlines the steps and the applicant responsibilities necessary to execute a dredging project in Tidewater Virginia - from identifying the dredging need, to identifying a disposal site for the dredge material, to applying to the appropriate regulatory authorities for a permit, to the actual dredging of the channel. Thus, before significant local investments are committed to regional dredging efforts, Virginia localities as well as commercial property and/or private citizens will need to consider various approaches to dredging, the placement of dredged material, and project financing regimes.

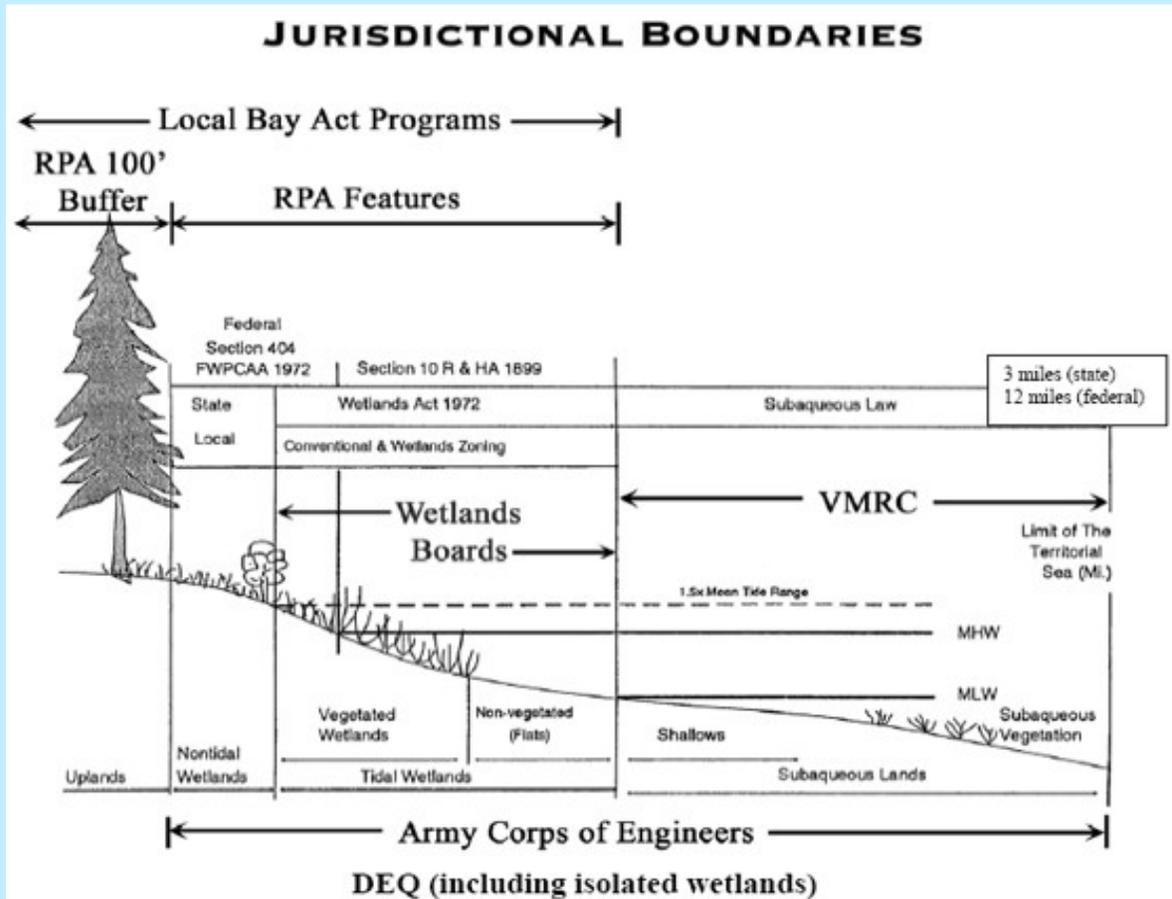
## **STEPS: The Execution of a Dredging Project**

### **1. Identify Channel with Dredging Need:**

To begin the dredging process, a navigable channel must be identified as having a need for dredging, which is evident when navigation becomes obstructed and/or limited, particularly due to shoaling. The need may be identified by a private or public entity, but may also be identified by the USACE if a problem is noticed during a routine survey of a channel. Following the identification of a channel in need of dredging, the party interested in having the channel dredged may choose to meet with the regulatory agencies responsible for the review and permitting of the proposed dredging. These agencies typically include the USACE, Virginia Department of Environmental Quality (DEQ), Virginia Marine Resources Commission (VMRC) and local wetlands board. The agencies will review the channel in question and the associated project need. Preliminary comments will be offered relative to the information necessary to complete the JPA and the agencies will recommend design considerations necessary to avoid or minimize adverse environmental impacts. Also there will be consideration and discussing regarding the suitability of the proposed disposal site as well as the associated permit fees, royalties and/or mitigation costs.

## The Role of Jurisdictional Boundaries

The jurisdictional boundaries of the Virginia Commonwealth in conjunction with the specifics of the individual dredging project will ultimately determine the permits necessary to complete a dredging a project. As shown in the figure, the jurisdictional boundaries of federal, state and local jurisdictions are have the tendency to overlap which makes the permitting process project specific and at times complicated.



With a specific channel identified, it is important to note whether the channel has been previously dredged or not. This will likely influence the amount of permit fees and royalties required by the permitting agencies. According to VMRC's Subaqueous Guidelines Section II, K, II maintenance dredging is defined by VMRC as dredging activities for navigation purposes that have been previously authorized by the Commission, to the depth previously authorized by the Commission, and where a royalty, if applicable, has been previously paid to the Commission for the initial removal of State-owned submerged lands. (Please note that public entities, including towns, cities and counties are exempt from dredging royalties). As a maintenance dredging project, the applicant is required to pay VMRC's permit fee, but shall be exempt from all other fees and royalties. Typically, maintenance dredging requires no additional permit fees from the USACE or DEQ, however, mitigation costs may or may not be applicable. If a project is within the jurisdiction of the local wetlands board, permit fees and/or mitigation costs may be required. This will vary between counties.

## 2. Pre-Dredge Bathymetric Survey:

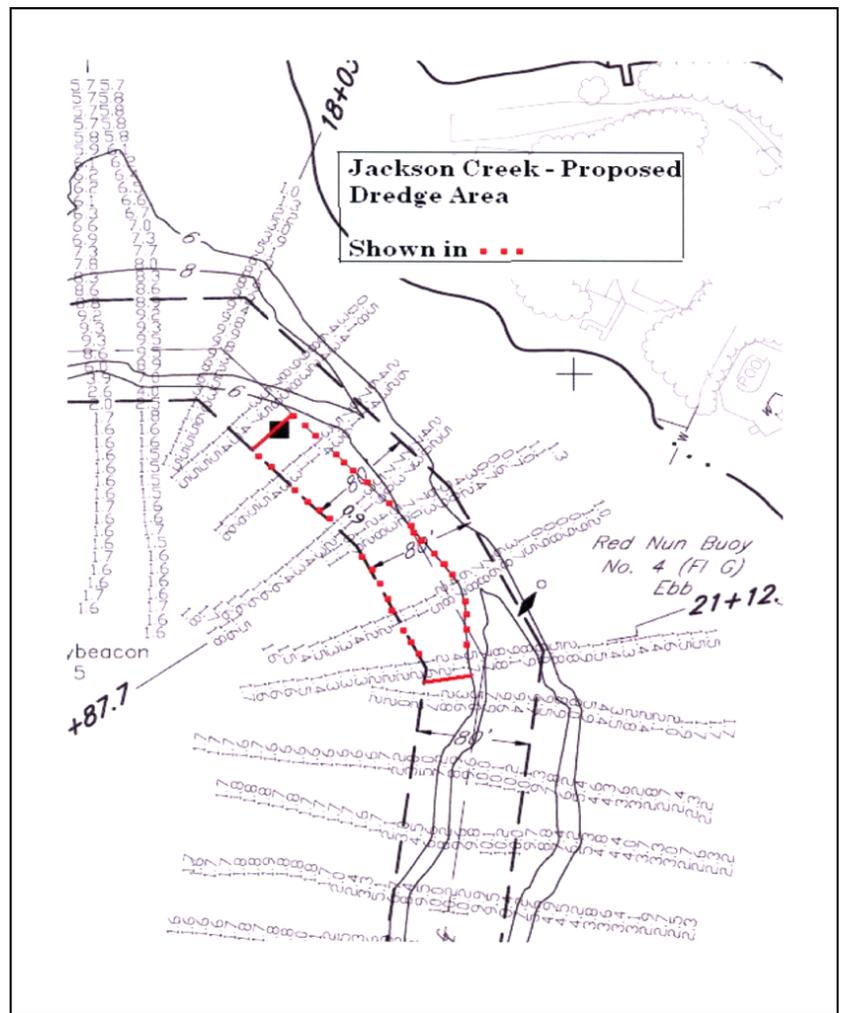
For the identified channel, a pre-dredge bathymetric survey is needed to determine the water depths relative to mean low water (MLW). The pre-dredge survey may be performed by anyone (ie. certified engineer, licensed land surveyor or firm, private entity, etc), but should include sufficient transects and be referenced to MLW. The survey evaluates current depth conditions and ultimately guides the amount of dredging that will occur at the site (Figure 1). For private channels, maximum project depths typically are governed by the draft of the vessels utilizing the area. For channels designated as federally maintained, maximum project depths are previously established by the District Engineer (USACE) or by Congress.

## 3. Identify and Select Disposal Site:

Once a channel is identified as having a dredging need, a disposal site location should be determined and prepared to receive and permanently contain the dredged material. Since overboard disposal of dredged material into tidal waters is generally not permitted (VMRC Subaqueous Guidelines Section III, E), applicants will need to consider disposal areas that are acceptable to the various permitting agencies. Factors to consider for a disposal site, include, but are not limited to the following (VMRC Subaqueous Guidelines Section III, C):

1. Encroachment into natural drainage ways;
2. Chemical nature of the dredged material and its potential for polluting adjacent or nearby underground water supplies;
3. Encroachment over the underground utilities, ie. water lines and sewer facilities;
4. Value of the site to the natural environment;
5. Proximity to populated areas; and
6. Anticipated use of the material or disposal site after dredging material is placed and consolidated.

According to §10.1-704 of the Code of Virginia, the beaches of the Commonwealth (ie. beaches classified as public) shall be given priority consideration as sites for the disposal of dredged material determined to be suitable for beach nourishment for public benefit. The Secretary of Natural Resources shall have the responsibility of determining if the dredged material is suitable for beach nourishment; however if a public beach placement site is not suitable or available, dredged material may be placed on private beach, or in a



**Figure 2: Example of a bathymetric survey indicating the depth of the Jackson Creek (Middlesex County) Channel. The red denotes the proposed dredged location parameters.**

private or public upland containment site. In general the regulatory and advisory agencies reach a decision on the suitability of an area for beach nourishment.

Depending on the sediment disposal site, VMRC has associated royalties. Such royalties may be important in determining the most feasible disposal site for the dredge project:

**a. Public Beach –**

If a public beach is chosen as the disposal site, fee simple and adjacent property owners may benefit from the additional protection offered by the larger beach. VMRC requires a permit and charges an encroachment royalty of \$0.05 per square foot for placement of sandy dredge material over the adjacent State-owned subaqueous lands (ie. area channelward of MLW). The placement of sandy dredge material on public or private beaches, landward of MLW, is exempt from local wetlands boards. Permits may, however, be required from the DEQ and the USACE.

**b. Private Beach or Shoreline-**

Applicants may have to work with fee simple and adjacent property owners to obtain an easement if the proposed disposal site is a private beach or shoreline. If the private property owner is unwilling to relinquish property rights to the applicant, then they will need to apply for permits to allow for the placement of the dredge material on their property. Ideally the applicant and property owner will be co-applicants on the VMRC JPA (see Section 3 for more information). VMRC has no jurisdiction landward of MLW; therefore, there will never be a placement royalty assessed by VMRC for the disposal of dredge material above MLW. The placement of sandy dredge material on public or private beaches, landward of MLW, is exempt from local wetlands boards. Permits may, however, be required from the DEQ and the USACE. The placement of dredge material on intertidal shorelines which do not meet the definition of a beach will require permits from the local wetland board, DEQ and the USACE.

**c. Private Upland Containment Site –**

A containment site owned privately may be used for disposal of dredged material, particularly if the dredge material is unsuitable for beach nourishment. The upland containment site acts as a permanent reserve for dredged sediment and in some case acts as a holding location for dredged material to dry. Also in ideal situations the upland containment site is not located within the Resource Protection Area<sup>1</sup> (RPA).

**d. Public Upland containment site –**

A containment site owned by a public entity may be used for disposal of dredged material, if it is unsuitable for beach nourishment. The upland containment site acts as a permanent reserve for dredged sediment and in some case acts as a holding location for dredged material to dry. Also in ideal situations the upland containment site is not located within the RPA.

Additionally as county wetland boards regulate the use and development of wetlands, the placement of dredged material on public and private beach, and/or upland private or public containment site may fall in the jurisdiction of the local Wetlands Board. Wetlands Boards within the Middle Peninsula have varying wetland permit application fees and they each have varying degrees of experience in working with dredging projects. Wetland Boards will receive the JPA application for review and within 45 days the Wetland Board will make the notify the applicant if a wetland permit is required or not. Table 1 reviews the fee schedule for wetland permits within the Middle Peninsula.

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<sup>1</sup> **RESOURCE PROTECTION AREA (RPA):** that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters (9VAC10-20-40).

Table 1: Local Wetland Board Permit Fee Schedule

County	Wetland Permit Fee	Contact for more information
Essex	Currently the county does not have fee schedule in place. However there a public hearing would be needed for the project.	804-443-4951
Gloucester	Non-commercial/residential: \$200 Commercial Projects: \$300	804-963-1217
	<ul style="list-style-type: none"> <li>▪ Includes cost of advertising the proposed project in public notice section of local newspaper</li> <li>▪ permit valid for 1 year</li> </ul>	
King & Queen	Residential: \$300 Commercial Projects: \$400	804-785-5975
	<ul style="list-style-type: none"> <li>▪ permit application needs to be submitted 6 weeks prior to Wetlands Board Meeting</li> <li>▪ permit valid for 18 months</li> <li>▪ if project is exempt then there is still a \$25 fee to review the JPA</li> </ul>	
King William*	\$300 Wetland Permit Fee (ie. flat rate) for Public Hearing and review by the Wetland Board	804-769-4969
Mathews	Single-User (private, non-commercial, residential): \$150 Multi-User (commercial, community, industry, government): \$200 After the fact Application – Double the application fee and subject to possible violation fees up to \$10,000	804-725-1624
	-fees include advertising for public hearing paid by county	
Middlesex	Private Use: \$150 Commercial Use or community Use \$250	804-758-3382
	-fee includes cost of public hearing, the cost of advertising proposal in Southside Sentinel for two weeks and Wetland Permits	

**4. Submission of the Joint Permit Application:**

One of three parties, including a public entity (ie. political subdivision), private entity (ie. home owner, home owner association), or a public private partnership, may request a dredging project. This request is made upon the completion and submission of a Local/State/Federal Standard Joint Permit Application (JPA) (Appendix B) to VMRC. Commission serves as the clearinghouse agency for the distribution of the JPA to the advisory and regulatory agencies routinely involved in the review and permitting of dredge projects. This application must be submitted for any and all projects which propose to impact to tidal and non-tidal shorelines and submerged lands. This includes dredging projects, erosion control project, private or commercial piers, utility and road crossings, etc. Upon receipt of a given application by all of these regulatory agencies, the JPA is concurrently reviewed by the wetlands board, VMRC, USACE, and DEQ. Most dredge projects additionally are received by the National Marine Fisheries Service (NMFS), the Environmental Protection Agency (EPA), the Virginia Institute of Marine Science and possibly other State advisory agencies.

In accordance with the Code of Virginia, VMRC assesses a permit fee of \$25 for projects costing \$10,000 or less, and \$100 for projects costing more than \$10,000. Copies of the JPA may be obtained from the local wetlands boards, VMRC, DEQ, USACE, or can be downloaded from the Norfolk District Corps of Engineers web site at <http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/Web2008StdJPA.pdf>.

Agencies will review the JPA application and contact the applicant individually about additional permit requirements for the project. As mentioned earlier each project is unique which requires unique consideration as well as associated permits.

As the USACE has regulatory authority over Section 404 of the Clean Water Act (33 U.S.C. §1344), Section 10 of the Rivers Harbors Act of 1899 (33 U.S. C. §403), and Section 103 of the Marine Protection Research and Sanctuaries Act (33 U.S.C. §1413), shallow water dredging projects may qualify for additional national and regional permits. The USACE will notify the prospective permittee within 45 days of receiving the JPA application whether the project may proceed under the nationwide permit or whether an individual permit is required. If, after reviewing the notification, the District Engineer determines that the proposed activity would have more than a minimal individual or cumulative adverse impact on the aquatic environment or otherwise may be contrary to the public interest, the engineer will either condition the nationwide permit authorization or reduce or eliminate the adverse impacts, or notify the prospective permittee the at the activity is not authorized by the nationwide permit and provide the permittee with instruction on how to seek authorization under an individual permit. The specifics of the projects will determine the type of permits required for the project, but below is sample of permits that dredging project may require:

Nationwide Permit 3 Maintenance<sup>2</sup>: authorizes the removal of accumulated sediments and debris in the vicinity of and within an existing structure and the placement of new or additional riprap to the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure(s) was built but cannot extend further than 200 feet in any direction from the structure.

Nationwide Permit 19 Minor Dredging<sup>3</sup>: authorizes dredging of no more than 25 cubic yards below the plane of the ordinary high watermark or the mean high water mark from navigable waters of the United States.

LOP-2 (Letter of Permission)<sup>4</sup>: authorizes dredging (channels and basins) for certain navigationally-related recreational and commercial dredging projects, by either mechanical or hydraulic method, in waters of the United States, within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District Corps, subject to the terms and conditions further set out herein.

To have questions answered about particular projects within the region please call the Northern Neck USACE field office at 804-435-9362 or Gloucester County USACE field office at 804-642-5389.

As the Virginia Department of Environmental Quality administers the Virginia Water Protection (VWP) Permit Program (§§ [62.1-44.15](#) and [62.1-44.15:20](#) of the Code of Virginia) for the Commonwealth, impacts to surface waters such as land clearing, dredging, filling, excavation, draining or ditching in open water, streams and

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<sup>2</sup> For more details and a copy of the permit visit: [www.nao.usace.army.mil/technical%20services/Regulatory%20branch/NWP2007/NW-3.pdf](http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/NWP2007/NW-3.pdf)

<sup>3</sup> For more details and a copy of the permit visit: [www.nao.usace.army.mil/technical%20services/Regulatory%20branch/NWP2007/NW-19.pdf](http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/NWP2007/NW-19.pdf)

<sup>4</sup> For more details and a copy of the permit visit: [www.nao.usace.army.mil/technical%20services/Regulatory%20branch/08-LOP-Final/08-LOP02%20Permit.pdf](http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/08-LOP-Final/08-LOP02%20Permit.pdf)

wetlands require such a permit. For maintenance dredging previously authorized, a regional permit 19 (RP-19) may be required which does not include a fee. However if it is determined that a permit from DEQ is required, then the fee structure is based on the size of the area to be dredged, the amount of material to be removed, the habitat of the area, and if the area is tidal or non-tidal. Since each project is case specific and such things as avoidance and minimization of wetland impacts, and project purpose and need are all taken into consideration it is best to call the DEQ Tidewater Regional Office for more details at (757) 518-2158.

Once the application has been approved by all of the regulatory agencies exerting jurisdiction, the permittee is responsible for the project's permit fees, associated dredging and placement royalties and/or mitigation costs. With respect to VMRC, according to VA Code §28.2-1206 Section E, "All counties, cities and towns of the Commonwealth shall pay the required permit fee but shall be exempt from all other fees;" such fees include dredging and placement fees. For private applicants, dredging fees will apply while VMRC will consider the dredging fees for private public partnerships on a case by case basis. The approved permit shall specify a royalty which may not be less than \$0.20 per cubic yard and no more than \$0.60 per cubic yard. In establishing the royalty, VMRC takes the following factors into consideration:

1. The primary and secondary purpose for removing the bottom material;
2. Whether the material has any commercial value and whether it will be used for any commercial purpose;
3. The use to be made of the removed material and public benefit or adverse effect upon the public that will result from the removal or disposal of the material;
4. The physical characteristics of the material to be removed; and
5. The expense of removing and disposing of the material.

In most cases the applicant is charged \$0.45 per cubic yard for dredged material, proposed to be removed from State-owned bottom. If the dredged material is high quality and has the potential for commercial use, then the applicant may be charged \$0.60 per cubic yard.

As stated earlier, another factor contributing to the project's associated dredging royalty is whether the project is considered a maintenance dredge project or not. A maintenance dredge, as defined by VMRC, is a dredging activity for navigation purposes that have been previously authorized by the Commission, to the depth previously authorized by the Commission, and where a royalty, if applicable, has been previously paid to the Commission for the initial removal State-owned submerged lands (Constitution VMRC Subaqueous Guidelines Section II). Therefore if one's project meets this definition the permittee is exempt from dredging royalties. If the project is not considered maintenance then the permittee will be charged \$0.20-\$0.60 per cubic yard.

A permittee is also responsible for placement royalties. If the dredged sediment is placed below mean low tide then the associated royalty is \$0.05 per square foot. However to place dredged material above the mean low water mark on private property, the private property owner may have to obtain a wetlands or coastal primary sands dunes and beaches permit.

Ultimately the permittee is liable for the proper completion of the project, in particular closely adhering to all of the permit conditions issued by the regulatory agencies. These include strict adherence to the maximum permissible project depths, vegetated wetlands buffers, allowable dredge footprints and proper erosion and sediment control at the dredge cut, pipeline or transfer route and dredge disposal site. The permittee is also required to adhere to any regulations or laws that protect threatened and endangered species and other sensitive habitats such as submerged aquatic vegetation or oyster reefs.

For a comprehensive overview of permit fees, dredging fees, and encroachment/placement fees associated with dredging projects, please refer to the Table 3.

#### **5. Selection of a contractor:**

With the parameters for a dredged project approved by the appropriate regulatory agencies, the permittee seeks bids from marine contractors and subcontractors capable of meeting the permits parameters.

#### **6. Pre-dredging conference:**

Often, as permit condition, a pre-dredging conference is held at the site prior to the commencement of dredging. The permittee, the dredging contractor, and a member of the VMRC staff must attend the meeting. Other agencies may choose to participate. Held seven days prior to the commencement of dredging, the conference includes an inspection of the dredge material containment area, an inspection of the previously staked dredge area, and a discussion of the terms and conditions of the permit.

#### **7. Dredging**

Initiation of the dredge project commences only after all parties acknowledge that they understand the terms and conditions of the permits issued.

#### **8. Post-Dredge Bathymetric Survey:**

The permittee will often be required to provide a post-dredging bathymetric survey of the dredged area within 30 days following dredging of the channel. The survey must be signed and dated as being accurate and true. The survey must be referenced to mean low water and include a transect at the channelward end of the dredge cut and at specified intervals along the dredged channel to the landward terminus of the dredged area. Accurate bathymetric data from each transect shall be used to establish the top width of the dredge cut ( $\pm 1'$ ) and must include a depth measurement exterior to both sides of the dredge cut. If applicable, the survey must also indicate the horizontal distance between the top of the dredge cut and the vegetated wetlands depicted on the project drawings.

#### **9. VMRC Final Review:**

VMRC is responsible for regulating activities on State-owned submerged land, tidal wetlands and dunes/beaches pursuant to Chapters 12, 13, and 14, Subtitle III, of Title 28.2 of the Code of Virginia. Hence, following dredging activities and receipt of the required post-dredge bathymetric survey, VMRC staff will review the dredged activity to verify that it was completed in accordance with the terms and conditions of their permit. The remaining permitting authorities will also review the project to insure project compliance with their laws and regulations.

**Table 3: This matrix identifies sediment disposal options as well as the associated costs (ie. permit fees, dredging fees and royalties and encroachment fees) for entities interested in pursuing a maintenance or new dredging project.**

Dredging Project Applicant	Type of Dredging		Sediment Disposal Site Options				Associated Costs			
	Maintenance	New	Public Beach	Private Beach		Public Upland Containment Site	Private Upland Containment Site	Permit Fees	Dredging fees and royalties	Encroachment/Placement royalties
				Easement	No easement					
Public Entity	*		✓	✓		✓	✓	<b>VMRC:</b> Dredging Permit is \$25, but if the cost of the project is to exceed \$10,000 the permit fee of \$100 shall be paid <b>DEQ:</b> will vary based on permit requires (ie. Virginia Water Protection Permit) <b>USACE:</b> individual permits may require a fee up to \$100 (case sensitive); additional permits related to a nationwide permit there are no additional permit fees <b>Local Wetland Board:</b> Wetland Permit fees vary (Refer to Table 2)	Counties, Cities and Towns are exempt from all other dredging royalties	Counties, Cities, and Towns are exempt from all other dredging royalties
Public Entity		*	✓	✓		✓	✓			
Public Entity	*		✓		✓	✓	✓			
Public Entity		*	✓		✓	✓	✓			
Private Entity	*		✓	✓		✓	✓	<b>VMRC:</b> Dredging Permit is \$25, but if the cost of the project is to exceed \$10,000 the permit fee of \$100 shall be paid <b>DEQ:</b> will vary based on permit requires (ie. Virginia Water Protection Permit) <b>USACE:</b> individual permits may require a fee up to \$100 (case sensitive); additional permits related to mulit-user permits there are no additional permit fees <b>Local Wetland Board:</b> Wetland Permit fees vary (Refer to Table 2)	Exempt from all other fees and royalties due to being a maintenance dredging activity	\$0.05 / ft <sup>2</sup> below MLW and the applicant may have to pay legal fees to obtain an easement for placement on private property
Private Entity		*	✓	✓		✓	✓			
Private Entity	*		✓	✓	✓	✓	✓			
Private Entity		*	✓	✓	✓	✓	✓			
Public Private Partnership	*		✓	✓		✓	✓	<b>VMRC:</b> Dredging Permit is \$25, but if the cost of the project is to exceed \$10,000 the permit fee of \$100 shall be paid <b>DEQ:</b> will vary based on permit requires (ie. Virginia Water Protection Permit) <b>USACE:</b> individual permits may require a fee up to \$100 (case sensitive); additional permits related to mulit-user permits there are no additional permit fees <b>Local Wetland Board:</b> Wetland Permit fees vary (Refer to Table 2)	Exempt from all other fees and royalties due to being a maintenance dredging activity	\$0.05 / ft <sup>2</sup> below MLW and the applicant may have to pay legal fees to obtain an easement for placement on private property
Public Private Partnership		*	✓	✓		✓	✓			
Public Private Partnership	*		✓		✓	✓	✓			
Public Private Partnership		*	✓		✓	✓	✓			

**Additional Information:**

The U.S. Army Corps of Engineers also has a primary responsible for the removal of debris from federally maintained navigable channels and waterways. Section 202 of the Water Resources Develop Act of 1976 authorizes the USACE to remove debris from federally maintained commercial harbors and water areas immediate adjunct thereto. Additionally the USACE is responsible for the removal of salvable vessels, marine debris, and other obstruction from federally maintained navigable waterways under emergency conditions. In the case that a waterway is obstructed by large pieces of debris, on a none emergency basis funds for removing debris is limited for localities.

**Added Value and Benefit:**

As mentioned earlier an applicant has four general options to dispose of dredged material (ie. private beach, public beach, public containment site and private containment site). However to add additional value to the dredged material, which may benefit the public, Middle Peninsula localities could consider placing dredged material at road endings to improve regional water access. Through past research, the Middle Peninsula Chesapeake Bay Public Access Authority (PAA) identified over three hundred road endings within the Middle Peninsula that could potentially yield access to public water. Additionally the PAA could work with neighbors at these road ending sites to expand public beach or water access.

**Conclusions:**

Although dredging projects within the Tidewater Virginia have a general procedure to follow, each project presents unique permitting requirements. Therefore as funding paradigm for shallow water projects is anticipated to change from a primarily federally funded to a privately funded activity, private citizens and public entities have a variety factors to consider in the future dredging of shallow draft channels; however closely working with Virginia regulatory agencies involved with authorizing JPA may ease the permitting process for shallow draft navigation projects and will ultimately help to keep channels open for navigation within the region.

## Check List for Executing a Dredging Project

- Identify channel with dredging need
- Conduct a pre-dredge bathymetric survey
- Identify and select a location for disposal of dredged material
- Apply for and receive the necessary permit via the submission of the Commonwealth Joint Permit Application (Appendix A- JPA) and attend one or more required public meetings.
  - Applicant name and address
  - Detailed description of the proposed activity
  - Map drawn to an appropriate and uniform scale – should include area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location width depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenance of facilities
  - Description of the type of equipment to be used and the means of access to the activity site;
  - Names and addresses of record of adjacent land and known claimants water rights in or adjacent to the wetland of whom the applicant has notice
  - Cost estimate
  - Primary purpose of the project
  - Secondary purpose of the proposed project
  - Complete date of the measures to be taken during and after alternation to reduce detrimental offsite effects;
  - Completion date of the proposed work, project or structure
  - Additional material and documentation as the wetlands board may require.

When Joint Permit Application is approved by the various regulatory agencies....

- Put project out to bid and select a contractor
- Conduct pre-dredging conference with representatives from the appropriate regulatory agencies and the dredging contractor
- Executive contract (ie. dredge channel and place dredged material)
- Conduct post-dredge bathymetric survey

## Appendix A: **Glossary**

**Beach-** the shoreline zone comprised of unconsolidated sandy material upon which there is mutual interaction of the forces of erosion, sediment transport and deposition extending from the mean low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of storm waves), or the nearest impermeable manmade structure, such as a bulkhead, revetment, or paved road (§28.2-1400 of the Code of Virginia).

**Beach nourishment-** placement of good quality sand along a beach shoreline to raise the elevation of the nearshore area.(VIMS, 2006)

**Beach of the Commonwealth-** public beach

**Joint Permit Application or JPA-** The standard Joint Permit Application for shoreline stabilization structures and other activities conducted in wetlands and the marine environment. The applicant completes one form and submits to either local agency or VMRC, which is responsible for distributing to local, state and federal permitting and advisory agencies (e.g. VIMS, Department of Game and Inland Fisheries, Department of Conservation and Recreation, Department of Environmental Quality, U.S. Army Corps of Engineers). (VIMS, 2006)

**Maintenance Dredging-** is strictly defined by the VMRC as dredging activities for navigation purposes that have been previously authorized by the Commission, to the depth previously authorized by the Commission, and where a royalty has been previously paid to the Commission for the initial removal State-owned submerged lands (Constitution of Virginia Article XI Section II)

**Mean Lower Low Water-** A tidal datum, a standard elevation defined by a certain phase of the tide The average of the lower low water height of each tidal day observed over the National Tidal Datum Epoch (The specific 19-year period adopted by the National Ocean Service as the official time segment over which tide observations are taken and reduced to obtain mean values (e.g., mean lower low water, etc.) for tidal datums.) For stations with shorter series, simultaneous observational comparisons are made with a control tide station in order to derive the equivalent datum of the National Tidal Datum Epoch. (NOAA, 2011)

**Mean low water** -The average height of low waters over a nineteen year period. Virginia is a low water state, meaning private property extends to the mean low water line. (VIMS, 2006)

**Private beach-** a beach, as defined by §28.2-1400 of the Code of Virginia, whose underlying fee (ownership) is held privately and not by a local, state or federal governmental entity and whose public use is restricted or controlled by the property owner.

**Public beach-** a sandy beach located on a tidal shoreline suitable for bathing in a county, city or town and open to indefinite public use (Code of Virginia §10.1-705)

**Royalties-** fees paid to the Commonwealth for certain uses of submerged public lands. They are assessed in addition to permit fees. All royalties are subject to change in accordance with the Commission's public participation procedures and regulatory adoption process. Contact the Virginia Marine Resources Commission Habitat Management Division for a current royalties schedule. (VMRC Subaqueous Guidelines Section I)