



**MIDDLE PENINSULA
PLANNING DISTRICT COMMISSION**

COMMISSIONERS

Essex County

*Mr. John Clickener
Hon. Margaret H. Davis
Hon. John C. Magruder*

Town of Tappahannock

Hon. Roy M. Gladding

Gloucester County

*Hon. Ashley C. Chriscoe
(Vice-Chairman)
Dr. William G. Reay
Hon. Michael R. Winebarger*

King and Queen County

*Hon. Sherrin C. Alsop
Hon. R. F. Bailey
Mr. Thomas J. Swartzwelder
(Chairman)*

King William County

*Hon. David E. Hansen
Hon. Travis J. Moskalski
(Treasurer)
Mr. Eugene J. Rivara
Ms. Bobbie Tassinari*

Town of West Point

Hon. Jack Lawson

Mathews County

*Hon. George C. Morrow
Mr. Thornton Hill
Hon. Marion C. Love
Ms. Melinda Conner*

Middlesex County

*Mr. Gordon E. White
Hon. Wayne H. Jessie, Sr.
Mr. Matthew L. Walker
Ms. Kathleen Swinehart*

Town of Urbanna


*Hon. Steve Hollberg
Ms. Holly Gailey*

Secretary/Director

Mr. Lewis L. Lawrence

MEMORANDUM

TO: MPPDC Board of Commissioners

FROM: Lewis Lawrence, Executive Director 

DATE: June 19, 2018

RE: June Commission Meeting

The Middle Peninsula Planning District Commission will host its monthly meeting on Wednesday, June 27, 2018 at 7:00 p.m. in the Regional Board Room at the Middle Peninsula Planning District Commission office in Saluda.

Enclosed are the June meeting agenda and supporting materials for your review prior to the meeting.

If you have any questions concerning material in your agenda packet, please give me a call at 804-758-2311 or email me at LLawrence@mppdc.com.

I look forward to seeing you on **June 27th**!

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***Middle Peninsula Planning District Commission
Meeting***

7:00 P.M.

Wednesday, June 27, 2018

125 Bowden Street

Saluda VA 23149

- I. Welcome and Introductions
- II. Approval of May Minutes
- III. Approval of May Financial Reports
- IV. Executive Director's Report on Staff Activities for the Month of June
- V. MPCBPAA Update
- VI. MPA Update
- VII. Public Comment

AGENDA ITEMS FOR DISCUSSION

- VIII. US Coast Guard Report on Channel Markers
- IX. Landowner Rights: Public Access Legal Enforcement
- X. MPPDC Living Shoreline Incentive Program Update
- XI. Report from the MPPDC Nominating Committee and Election of MPPDC Officers
- XII. Other Business
- XIII. Adjournment

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MIDDLE PENINSULA PLANNING DISTRICT COMMISSION

May 23, 2018
Saluda, Virginia

I. Welcome and Introductions

The monthly meeting of the Middle Peninsula Planning District Commission was held in the Regional Board Room at the Middle Peninsula Planning District Commission office in Saluda, Virginia on Wednesday, May 23, 2018, at 7:00 p.m. MPPDC Chairman Thomas Swartzwelder welcomed everyone in attendance.

Commissioners Present

Essex County: John Magruder, John Clickener

King and Queen County: Tom Swartzwelder

Gloucester County: Ashley Chriscoe, Michael Winebarger

King William County: Travis Moskalski, Eugene Rivara, David Hansen

Mathews County: Melinda Conner, Marion Love, Tim Hill

Middlesex County: Kathy Swinehart

Commissioners Absent

Essex County: Margaret "Prue" Davis

King and Queen County: R.F. Bailey, Sherrin Alsop

Gloucester County: Dr. Willy Reay

King William County: Bobbie Tassinari

Mathews County: G.C. Morrow

Middlesex County: Matt Walker, Wayne Jessie, Gordon White

Town of Urbanna: Steve Hollberg, Holly Gailey

Town of West Point: Jack Lawson

Town of Tappahannock: Monte "Roy" Gladding

Also in Attendance

Lewis Lawrence, MPPDC Executive Director

Beth Johnson, MPPDC Finance Director

Harrison Bresee III, MPPDC Regional Emergency Planner

Dawn Kirby, MPPDC Secretary

Stephanie Heintz, Consociate Media

II. Approval of April Minutes

Chairman Swartzwelder asked whether there were any corrections or changes to the April Minutes. Several Commissioners were incorrectly noted as being absent or present. Corrections were made to the April Minutes. Chairman Swartzwelder requested a motion to approve the corrected April Minutes. Mr. Hill moved that the corrected April Minutes be approved. Mr. Moskalski seconded the motion; motion carried.

III. Approval of April Financial Report

Chairman Swartzwelder asked whether there were any questions regarding the April financial report before being approved subject to audit. There being no questions, Chairman Swartzwelder requested a motion to approve the April

financial report subject to audit. Mr. Magruder moved to approve the April financial report subject to audit. Ms. Conner seconded the motion; motion carried.

IV. Executive Director's Report on Staff Activities for the Month of May

Chairman Swartzwelder requested MPPDC Executive Director, Lewie Lawrence review the Executive Director's Report on Staff Activities for the month of May. The Executive Director's Report on staff activities is developed at a monthly staff meeting, organized by PDC Service Centers, and the activities are used to report grant funding activities.

Mr. Lawrence directed Commissioners' attention to several items:

- Provided the Middle Peninsula Water Supply Planning Committee with a copy of the draft partial 5 year update regarding water supply, use and projections and alternatives analysis as required by DEQ. Committee members were given until May 7th to submit comments. Mr. Lawrence thanked County staff for responding.
- Consulted with Gloucester homeowner regarding LSIP program and provided application. Homeowner has been approved for a VCAP grant through the Tidewater Soil and Conservation District, but is interested in a loan for the entire project and will repay portion when grant money is received. Mr. Lawrence reported uncommitted funding has dropped to under \$100,000 and it will be up to the Commission to decide if they would like to continue this program.
- Received phone call from Mathews citizen regarding proposed "Oyster Coffins" to be permitted off his shoreline and how he could be involved in the permit process. Referred him to local planning department, VMRC, Wetlands Board, and/or Mathews Board of Supervisors for additional information and opportunities to comment on proposed project. Mr. Lawrence reported he has received 6 calls to date concerning this subject.
- Received a call from Mike Italiano, President & Chief Executive Officer for Market Transformation to Sustainability (MTS) and Capital Markets Partnership, U.S. Green Building Council (USGBC), Risk-Based Corrective Action (RBCA) Leadership Council, and American Society of Testing & Materials (ASTM) Committee E50 on Environmental Assessment. Mr. Italiano is inquiring about locality interests in bringing a lawsuit against big oil companies for Virginia's estimated share of \$300 million to address sea level rise costs. Asked Mr. Italiano to send information to review if this initiative moves forward.
- Consulted with Jo Lerch from the Virginia Association of Counties concerning the economic impact of the Morris Bridge replacement effort on marinas if the bridge height was lowered. Advised that significant impact would be realized locally if the bridge was lowered to a height that impacted marine traffic. Additionally, discussed the increasing applications for solar

operations across the Commonwealth. Currently 74 notices have been filed covering 30,000 acres in 40 different counties. Mr. Lawrence stated the largest solar operation is 5.4 square miles located in Spotsylvania.

- Consulted with Joe Schumacher from Congressman Robert Wittman's office concerning multiple requests for a database from the U.S. Coast Guard regarding aids to navigation scheduled to be removed within the Middle Peninsula and beyond. Mr. Lawrence reported Rep. Wittman plans to issue a Letter of Congressional Inquiry.
- Attended ACT Chesapeake Chapter webinar on Changes to Commuter Tax Benefits resulting from the Tax Act of 2017. Included in the bill is a provision that effectively provides that the unrelated business taxable income of an organization is to be increased by the amount of the benefit paid to employees as either a subsidy or pre-tax. This will cause a problem for non-profits as they may now have to pay an unrelated business income tax equal to 21% of the benefits provided to employees or funded through pretax payroll deduction which is likely to put in jeopardy their provision of this benefit to their employees. Mr. Lawrence reported that approximately 30,000 out commuters will be affected.
- Mr. Lawrence reported he will be meeting at VIMS with the new Secretary of Commerce, Brian Ball on May 24.
- Attended a called meeting by the Virginia Coastal Policy Law Center, located at the College of William and Mary Law School to review a draft report titled: *No Vacancy: Defining the Problem and Proposing Solutions to Vacant Housing in the Middle Peninsula*. The paper (1) proposes a definition of "vacant housing" to encourage uniformity in an area where uniformity is much needed, (2) identifies issues with the marketability of such property, (3) summarizes the current legal framework within which the Commission can function, (4) evaluates helpful case studies from the other localities facing a similar problem, and (5) suggests specific policy changes. Mr. Lawrence hopes to be able to share the results at the next Commission meeting.
- Participated as the Controller and Evaluator for Mathews County for the National Level exercise: "Atlantic Fury" on May 7. The scenario was re-entry and recovery in Mathews County two days after a Category 4 hurricane passed over Hampton Roads, over Mathews County and through New England. Mathews County was able to assess strengths and weaknesses in their Emergency Operations, including discussing the need for a Debris Management Plan and Strategy.

V. MPCBPAA Update

Mindy Conner, Chairman of the MPCBPAA reported the port-a-john issue at Perrin Wharf has been resolved with the Virginia Department of Health.

VI. MPA Update

Travis Moskalski, Chairman of the MPA provided the Commission with an update on the current activities of the MPA. At its last meeting, Christy Morton, VEDP Vice-President gave a presentation on site readiness, marketing and what Virginia is doing to boost its marketability. There was a small discussion on how to increase exposure of the MPA. Carlton Revere, Revere Gas reviewed the MPA's business outreach plan and will be providing feedback in the near future.

VII. Public Comment

None.

VIII. Socialnomics: Is the Middle Peninsula Ready?

Lewie Lawrence, Executive Director shared a YouTube video about how and why the world is changing especially as concerns Millennials and technology and how we continue to fall behind. Mr. Lawrence stated that everything continues to change and we need to be ready. He asked the Commission to think about "Are we ready?"

IX. Virginia Economic Development Partnership: Rural Focus (Rescheduled June)

X. Dredging Budget Update: Advantus Strategies Memo

Lewie Lawrence, Executive Director read a memo he received from Mr. Crockett at Advantus Strategies regarding the Virginia Waterway Maintenance Fund. The Senate Finance Committee and full Senate met on May 22 to discuss and review the proposed budget, as negotiated and agreed by Sen. Emmett Hanger, Co-Chair of the Senate Finance Committee, and Del. Chris Jones, Chair of the House Appropriations Committee. The amendment introduced by Del. Keith Hodges and Sen. Lynwood Lewis establishing the Virginia Waterway Maintenance Fund was among the amendments approved by the respective chairs. The amendment, as represented in the roster of amendments agreed to by Sen. Hanger and Del. Jones, appropriates \$1,350,000 to support a dredging project or projects that have been approved by the Authority. *The Authority shall develop guidelines establishing an application process as set out in Chapter 642, 2018 Session of the General Assembly, Projects for which the Authority may award grant funding include (i) feasibility and cost evaluations, pre-project engineering studies, and project permitting and contracting costs for a waterway project conducted by the Commonwealth; (ii) the state portion of a nonfederal sponsor funding requirement for a federal project, which may include the beneficial use of dredged materials that are not covered by federal funding; (iii) the Commonwealth's maintenance of shallow-draft navigable waterway channel maintenance dredging and the construction and management of areas for the placement of dredged material; and (iv) the beneficial use, for environmental restoration and the mitigation of coastal erosion or flooding, of dredged materials from waterway projects conducted by the Commonwealth. Special consideration shall be given to any locality which provides a three-to-one match for*

any requested funding in the first year and the Authority shall not require any level of matching contributions from the applicant. Who puts up the three and who puts up the one remains unclear at this point.

XI. Consociate Media: Approach to Messaging the work of the Commission

Stephanie Heinatz, Consociate Media has been engaged to provide PR services for the Middle Peninsula Planning District Commission. Ms. Heinatz spoke to the Commission as to her goal to effectively relay to Middle Peninsula elected officials, and the community as a whole, the incredibly complex work of the Commission and the challenges that could possibly be faced in doing so. Ms. Heinatz will be attending Commission meetings over the next few months to get a better understanding of the work of the Commission in order to make the best recommendations. Limited funding from the Coastal Zone Management Program has been secured to fund this endeavor beginning in the Fall.

XII. Report from the MPPDC Budget Committee: Consideration of FY19 MPPDC Budget & OPD

Lewie Lawrence, Executive Director read from the MPPDC Budget Committee report. The Commission's OPD is more certain than last year and represents a best guess estimate of the resources that will be available to fund the work program. Remaining uncertainty over changes to the Federal Budget by Congress juxtaposed against an, as yet, uncertain state budget continues to create unusual budgetary challenges for the Commission as well as its localities. Nevertheless, staff has identified new resources to fund the work of the Commission. Staff anticipates Federal funding of approximately \$637,000, an increase of \$162,000 over FY18. This represents an increase in federal funding of 34%. Anticipated State funding committed to the MPPDC shows an increase of 11%. Currently for FY19, staff has obtained funding commitments to fully fund all current PDC staff positions with a salary adjustment of 6% across the board as recommended by the Budget Committee. The Commission has not provided staff COLA's since 2008 and staff salaries have continued to decrease relative to market values with some positions now more than 20% below average. One planner position is proposed to be re-classified to more accurately reflect the requirements of the position. Beth Johnson, Finance Director provided the Commission with handouts and reviewed the proposed FY19 Draft Budget Overview, Revenues and Expenses. There was a brief discussion concerning the amount allocated for postage. Chairman Swartzwelder requested a motion to direct staff to email all future documents including the Commission meeting packets in an effort to save on postage. Mr. Chriscoe so moved; Mr. Hill seconded. The motion carried. Chairman Swartzwelder requested a motion to adopt the FY19 Budget & OPD as presented. Mr. Chriscoe so moved; Mr. Clickener seconded. The motion carried.

XIII. Other Business

• **June MPPDC Meeting**

Lewie Lawrence, Executive Director asked the Commission if they would like to have the June Commission meeting at Capt. Sinclair's in Gloucester County. After a brief discussion, it was decided to have the June meeting at its regular location in Saluda.

• **Advantus Strategies Contract**

Lewie Lawrence, Executive Director informed the Commission that the contract with Advantus Strategies expires this month. Having Mr. Crockett continuing to build relationships is of great importance to the MPPDC. Chairman Swartzwelder requested a motion to authorize the Executive Director to discuss with Mr. Crockett, continuing to enlist his services over the summer months with a maximum immediate expenditure of up to \$2,000 and to request an interim contract for services. Mr. Love so moved; Mr. Chriscoe seconded. The motion carried.

XIV. Adjournment

Chairman Swartzwelder requested a motion to adjourn the meeting. Mr. Hill motioned to adjourn; Mr. Clickener seconded. The motion carried.

**Note: All handouts distributed at a meeting are filed in the official MPPDC record book of the minutes. Copies of all PowerPoint presentations, if any, are filed with the official minutes.*

COPY TESTE:

(Secretary)

Project Financial Report

Middle Peninsula Planning District Commission

Run Date: 06/06/2018
 Run Time: 2:21:22 pm
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Period Ending: 05/31/2018

Expenditures

Code	Description	Budget	Curr Month	Project Total	Un/Over	% Budget	Revenues	Balance
30013	EE&CBG Project	3,975.00	(0.73)	4,051.83	(76.83)	101.93%	4,560.19	508.36
30109	MPEDRO Staff Support	20,800.38	687.98	25,352.01	(4,551.63)	121.88%	28,284.03	2,932.02
30111	Blue/Green Infrastructure	36,140.77	80.41	35,827.22	313.55	99.13%	35,155.64	(671.58)
30115	VHDA Community Impact	30,000.00	902.09	6,415.69	23,584.31	21.39%	0.00	(6,415.69)
30170	MPBDP Staff Support	22,213.09	25.78	21,055.13	1,157.96	94.79%	23,595.29	2,540.16
30213	FY18 TDM	84,807.00	18,738.31	71,985.30	12,821.70	84.88%	74,101.27	2,115.97
30315	FY18 Rural Transportation	72,500.00	6,400.72	52,400.67	20,099.33	72.28%	37,054.83	(15,345.84)
30420	Onsite Loan Management	168,942.76	334.81	150,504.94	18,437.82	89.09%	183,654.65	33,149.71
30428	WQIF 2016, \$183500 RLF	216,500.00	2,180.26	81,390.64	135,109.36	37.59%	77,909.62	(3,481.02)
30429	Septic Pumpout 2017/EPA	11,082.00	(19.75)	6,897.72	4,184.28	62.24%	6,973.98	76.26
30502	Water Supply Planning	168,132.45	3,002.73	154,472.27	13,660.18	91.88%	160,632.45	6,160.18
31002	GA Lobby FY09	21,450.00	5,000.00	20,431.34	1,018.66	95.25%	5,752.25	(14,679.09)
31204	Regional Emergency Plann	95,000.00	(710.47)	93,549.27	1,450.73	98.47%	94,906.32	1,357.05
31205	MSAT Phones/2016SHSP/	58,409.00	0.00	58,426.10	(17.10)	100.03%	58,257.51	(168.59)
31206	Regional EOP Gap Analysis	82,851.00	(44.09)	83,018.36	(167.36)	100.20%	82,851.00	(167.36)
31207	MP/NN Mass Casualty Exe	64,473.00	4,772.53	11,439.59	53,033.41	17.74%	0.00	(11,439.59)
31208	MP/NN Regional Debris M	43,000.00	3,360.99	8,337.61	34,662.39	19.39%	535.23	(7,802.38)
31500	Living Shoreline Incentive	25,830.00	250.42	8,140.04	17,689.96	31.51%	22,117.57	13,977.53
32015	FY17 PAA Staff Support	8,027.46	345.94	7,614.01	413.45	94.85%	8,027.46	413.45
32016	VIMS Living Shoreline/EPA	92,636.80	96.98	34,884.20	57,752.60	37.66%	34,162.42	(721.78)
32017	NAWCA PAA project	75,000.00	444.33	3,803.00	71,197.00	5.07%	75,000.00	71,197.00
32138	FY17_Coastal_TA/NOAACZ	60,000.00	0.00	60,551.61	(551.61)	100.92%	60,551.61	0.00
32139	Eco_Business - PAA Match	47,000.00	(473.14)	49,099.57	(2,099.57)	104.47%	47,627.90	(1,471.67)
32140	FY18 Coastal TA	60,000.00	4,701.67	38,444.08	21,555.92	64.07%	29,764.65	(8,679.43)
32141	WWF_ANPDC	10,000.00	1,191.89	6,734.41	3,265.59	67.34%	5,000.00	(1,734.41)
32142	ANPDC Ecotourism	47,495.00	3,575.23	25,547.45	21,947.55	53.79%	19,980.07	(5,567.38)
32143	WIP III	0.00	275.00	275.00	(275.00)	0.00%	0.00	(275.00)
32210	WWF Initiative/NOAACZ	50,000.00	(473.44)	52,012.82	(2,012.82)	104.03%	50,507.12	(1,505.70)
38018	FY18 Local Projects	170,904.00	8,674.18	147,764.66	23,139.34	86.46%	198,405.16	50,640.50
Totals:		1,847,169.71	63,320.63	1,320,426.54	526,743.17	71.48%	1,425,368.22	104,941.68

Balance Sheet by Category

Middle Peninsula Planning District Commission

Run Date: 6/6/18
Run Time: 2:24:14 pm
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Period Ending: 05/31/2018

Format: 1 Board

Assets:

Cash in Bank	592,063.81
Cash in Bank, Restricted	251,582.92
Receivables	285,610.96
Property & Equipment	6,743.44
Prepaid Pension (Deferred Outflows)	30,454.00

Total Assets:

\$1,166,455.13

Liabilities:

Accounts Payable	1,937.97
VRA Loan Payables	271,624.61
Payroll Withholdings	(0.46)
Accrued Leave	45,589.34
Deferred Inflows (VRS)	220,036.00
Net Pension Liabilities	56,917.00
Cost Allocation Control	2,694.92

Total Liabilities:

\$598,799.38

Equity:

Local Initiatives/Information Resources	35,961.41
Economic Development	3,913.98
Transportation Programs	(13,229.87)
Emergency Management Projects	(18,220.87)
Onsite Repair & Pumpout	29,747.31
Housing	(6,069.74)
Coastal Community & Environmental	(5,256.06)
Public Access Auth Programs	70,888.67
Mandates	6,165.49
Temporarily Restricted	180,190.32
General Fund Balance	283,565.11

Total Equity:

\$567,655.75

Total Liabilities and Equity

\$1,166,455.13

Balance:

\$0.00

Agencywide R&E by Category

Middle Peninsula Planning District Commission

Run Date: 06/06/2018

Run Time: 2:25:13 pm

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Period Ending: 05/31/2018

Format: 1 Agencywide R&E

With Indirect Cost Detail

Code & Description	Budget	Current	YTD	Un/Over	% Bud
Revenues					
	0.00	20,554.89	20,554.89	(20,554.89)	0.00 %
Local Match	0.00	0.00	63,926.06	(63,926.06)	0.00 %
Local Annual Dues	109,899.00	0.00	109,899.00	0.00	100.00 %
Local Other Revenues	28,524.00	3,767.00	54,857.30	(26,333.30)	192.32 %
Local Other Organizations	15,000.00	0.00	14,317.05	682.95	95.45 %
State Revenues	143,817.00	0.00	141,176.00	2,641.00	98.16 %
Federal Revenues	474,620.00	53,568.58	349,233.22	125,386.78	73.58 %
Miscellaneous Income	7,700.00	4,887.60	13,572.06	(5,872.06)	176.26 %
RevolvingLoan Program Income	9,000.00	995.11	60,713.33	(51,713.33)	674.59 %
Revenues	788,560.00	83,773.18	828,248.91	(39,688.91)	105.03 %
Expenses					
Personnel	341,895.00	33,363.90	366,047.98	(24,152.98)	107.06 %
Facilities	29,678.00	2,698.75	28,217.62	1,460.38	95.08 %
Communications	5,600.00	377.86	4,540.62	1,059.38	81.08 %
Equipment & Supplies	4,900.00	240.32	983.18	3,916.82	20.06 %
Travel	10,350.00	180.30	5,707.17	4,642.83	55.14 %
Professional Development	9,950.00	865.00	11,622.99	(1,672.99)	116.81 %
Contractual	323,574.00	10,302.85	193,920.09	129,653.91	59.93 %
Miscellaneous	58,685.00	15,291.65	49,382.88	9,302.12	84.15 %
Regional Share	0.00	0.00	63,926.06	(63,926.06)	0.00 %
Expenses	784,632.00	63,320.63	724,348.59	60,283.41	92.32 %
Agency Balance	3,928.00	20,452.55	103,900.32		

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Middle Peninsula Planning District Commission
Executive Director's Report of Regional Progress
June 19, 2018

Note: On May 23, 2018, the Commission voted to direct staff to email all future documents including the Commission meeting packets in an effort to save on postage. As we strive to make this report more informative and user friendly, some previously contained information may now be accessed by clicking on the following link(s):

- For the latest Demographic Information from VEC:
http://virginialmi.com/report_center/community_profiles/5109000318.pdf
- For MPPDC Website: <http://www.mppdc.com/>

If there is some item that has been removed from the report that you found to be exceptionally useful and would like to have included, please let staff know.

MPPDC Staff and Contact Information

Executive Director: Lewis Lawrence

Contact Info: llawrence@mppdc.com (804) 758-2311x24 (804) 832-6747 (cell)
Programs: *Coastal Zone Technical Assistance, Local Initiatives, Public Access Authority*

Finance Director: Beth Johnson

Contact Info: bjohnson@mppdc.com (804) 758-2311x22
Programs: *Commuter/ Employer Transportation Services, Septic Repair & Pumpout Assistance, Revolving Loan Programs Administration, PDC Finance & Grants Administration, PAA staff support, MPEDRO Staff support*

Planner 2: Harrison Bresee

Contact Info: hbresee@mppdc.com (804) 758-2311x26 (757) 871-2245 (cell)
Programs: *Regional Emergency Planning*

Planner 2: Jackie Rickards

Contact Info: jrickards@mppdc.com (215) 264-6451 (cell)
Programs: *Environmental Programs, Graphic Arts*

Planner 1: Matt Becker

Contact Info: mbecker@mppdc.com (804) 758-2311x28
Programs: *Rural Transportation Planning*

Secretary: Dawn Kirby

Contact Info: dkirby@mppdc.com (804) 758-2311x21
Programs: *Septic Pumpout Assistance, Facilities Scheduling*

Project 30502 Water Supply Planning

9 VAC 25-780 establishes a planning process and criteria that all local governments will use in the development of local or regional water plans. The plan will be reviewed by the Department of Environmental Quality and a determination will be made by the State Water Control Board on whether the plan complies with this regulation. Within five years of a compliance determination by the board, the plan will be reviewed to assess adequacy and any significant changes will require the submission of an amended plan and review by the board. All local programs will be reviewed, revised, and resubmitted to the Department of Environmental Quality every 10 years after the last approval. The jurisdictions of Essex, King and Queen, King William, Mathews, Middlesex, Tappahannock, Urbanna and West Point opted to prepare a regional plan with assistance from Middle Peninsula Planning District Commission staff and EEE Consulting, an environmental consulting firm. The Regional Plan was completed and submitted to the Virginia Department of Environmental Quality for compliance review by the November 2, 2011 deadline for Regional Plan submission.

- Continued working to complete outstanding compliance requirements for Middle Peninsula localities. Based on information provided by EEE in their 5 year Compliance Update Report, research gathered and uploaded to VA Hydro by MPPDC staff, and data that was generated via VA Hydro, most of the compliance requirements have been met. The only compliance requirements that remain for localities include peak day water use by month for various community water systems (CWS).

The table below shows the current status of all localities:

Locality	Status
Essex County	Still need data from Gwynfield Subdivision CWS. Staff have reached out to Aqua Virginia and waiting response.
Town of Tappahannock	Met all Compliance Requirements – complete
King William County	Still need data from King William CWS; Cedar Crest; Marle Hill Section 3; Venture Heights Subdivision; Oak Spring; and Woodruff Subdivision. Staff have reached out to CWSs and waiting response.
Town of West Point	Met all Compliance Requirements – complete
King & Queen County	Met all Compliance Requirements – complete
Mathews County	Still need data from Milford Haven Coast Guard Station CWS. Staff have reached out to CWSs and waiting response.
Middlesex County	Still need data from the following CWS: Jackson Creek Condominiums; Green Branch MHP; Saluda; Mizpah Nursing Home; Coves at Wilson Creek; and Bush Park MHR. Staff have reached out to CWSs and waiting response.
Town of Urbanna	Met all Compliance Requirements - complete

- Drafted and sent letters to community water system operators to request peak day water use data by month.
- Corresponded with Carol Martin with Hudgins Point Condominiums in Mathews County regarding their community water system. Ms. Martin said that they do not have data for the peak day water use by month.
- Inserted an estimate of the number of residences for self supplied users on individual wells with drawing less than 300,000 gallons per month into Va Hydro.

- Corresponded with Brian Purvis, King William County Public Works, about the peak day water use by month for the Central Garage community water system. Forwarded this data to Tammy Stephenson, DEQ to upload into VA Hydro.
- Corresponded with Greg Arrington with Sydnor Hydro about the peak day water use by month for the Cedar Creek community water system in King William County. He provided data which was forward to Tammy Stephenson, DEQ to upload into VA Hydro.

INFORMATION RESOURCES/ASSISTANCE

- Updated www.mppdc.com website – meeting notices, reports, news releases, GoVA meetings and MPA notices.
- Received call from local citizen inquiring as to the date and time of the next Commission meeting. Citizen expressed interest in speaking during the public comment period. Citizen was provided with the June meeting date and time as well as the opportunity to leave a message with the Executive Director to answer any further questions.

COASTAL COMMUNITY DEVELOPMENT/ ENVIRONMENTAL

Funding – VDEQ, VIMS, VDCR, local match from MPPDC General Fund & partners

Project 32015 - Staff Support to Middle Peninsula Chesapeake Bay Public Access Authority (MPCBPAA)

Middle Peninsula Chesapeake Bay Public Access Authority Special Project – Support of Executive Order 23, Goal 8 Coastal Management Coordination Public Access: Continue implementation of adopted annual work program, including identifying land, either owned by the Commonwealth or private holdings that can be secured for use by the general public as a public access site; researching and determining ownership of all identified sites; determining appropriate public use levels of identified access sites; developing appropriate mechanism for transferring title of Commonwealth or private holdings to the Authority; developing appropriate acquisition and site management plan. This Program allows the Authority to function by supporting the individual projects and operations of the Authority, as well as, by responding to daily requests for assistance from local government staff.

- Prepared vouchers, processed A/P, reconciled bank statements. Prepared monthly financial statements.
- Submitted proposed draft public access easement language to Virginia Outdoors Foundation staff for review. The easement will be placed on Captain Sinclair’s Recreation Area as part of a \$180,000 grant award to protect the public right for water access.

Project 32016 - VIMS Living Shoreline

MPPDC submitted a proposal to the National Fish and Wildlife Foundation for VIMS. The objective of this project is to leverage previous funding from NFWF to install oyster bag sills at two publicly-owned (MPCBPAA) properties on and monitor them for a year. In addition, existing oyster bag sill installations at four private locations will be monitored to determine overall project effectiveness. This work will provide recommendations for installations along fetch-limited shorelines of Chesapeake Bay.

- Coordinated NFWF site visits.

Project 31500 - Living Shoreline Incentive Program RLF

This program provides low interest loans to homeowners to install living shorelines as defined by § 28.2-104.1 of the Code of Virginia: “Living shoreline” means a shoreline management practice that provides erosion control and water quality benefits; protects, restores or enhances natural shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials. Revolving loan program capitalization provided through an interest free loan from the Virginia Clean Water Revolving Loan Fund through the Virginia Resources Authority.

- Convened loan committee to review application for Gloucester project. Approved \$44,100 loan and sent to Middlesex Title to schedule a closing. Homeowner was awarded a VCAP grant for \$20,000 which will be used to pay down the MPPDC loan when received as VCAP funds are not released until the project is complete. MPPDC loan funds will be used as needed during construction.
- Received final invoice for plantings for Gloucester project installed in Fall of 2017.
- Received notice from Mathews homeowner that plantings have failed at project completed in Fall of 2017 and requesting coverage under MPPDC LSIP Insurance Program. Staff will review claim and work with homeowner.
- Consulted with Glenda Brooks, Middlesex Title and homeowner regarding possible right of way issue discovered during title search.
- *Executed ACH loan payments for loans. All MPPDC loan funding programs require that loan recipients authorize loan payments to be made automatically from loan recipients' bank accounts. Loan clients authorize the payments at loan closing (ACH Authorizations). MPPDC staff process these payments on the 15th of each month. This places the onus to not make a payment on the loan client contacting MPPDC staff prior to the loan processing date of the 12th of the month to request a payment be held. This has significantly reduced defaults and delinquent repayments of MPPDC loans.*
- **Remaining uncommitted funds - \$83,677**

Project 32017 – NAWCA PAA Acquisitions

The Wetlands Conservation on the Middle Peninsula of Virginia Phase I proposal is the first in a series of projects planned by the Middle Peninsula District Commission (MPPDC) in coordination with local, state and federal agencies, non-government organizations and landowners to protect key wetlands along the Chesapeake Bay. This project will employ a novel, creative and cost effective land conservation model in order to perpetually protect 77.05 acres of coastal habitat.

- Consulted with a Gloucester County absentee landowner interested in expanding public access to the waters of the Commonwealth and supporting the work of the Middle Peninsula Chesapeake Bay Public Access Authority. The landowner expressed interest in participating in the U.S. Fish and Wildlife Grant. Provided landowner with the necessary Notice of Potential Interest in Acquisition.
- Coordinated with Glenda Brooks of Middlesex Title concerning the acquisition of outparcels located at Captain Sinclair's owned by the Carneal Family. Anticipated closing date is end of June.

Project 32140 – Virginia Coastal TA FY18

This project 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.

- Consulted with a local contractor regarding questions of "Standard" Construction Warranty or implied warranty for shoreline hardening and living shoreline projects. Discussed if a contractor's license does or should require some type of warranty as part of a construction project on the waterfront. It was suggested that staff speak with the state board of contractors regarding warranty questions.
- Consulted with a Lancaster County resident interested in background on the PamunkeyNet broadband project.
- Received notification from the Director of the Three Rivers Health District that the Perrin Wharf portajohn issue has been resolved. The Health Department will designate an offsite location to handle sewage concerns. PAA staff is awaiting a letter of confirmation.

- Consulted with retired VMRC Commissioner, Bill Pruitt concerning sunk and abandoned vessels and VMRC's historic approach to handling such matters when a vessel encroaches on state owned bottom.
- Consulted with Joe Schumacher of Congressman Rob Wittman's staff concerning a yearlong request for a report from the U.S. Coast Guard on the status of aids to navigation and channels across the Chesapeake Bay and tributaries. Received report from U.S. Coast Guard which illustrates the degree to which sedimentation is impacting channels.
- Convened a special meeting of all Middle Peninsula local government administrators and environmental planning staff to discuss matters related to the new stormwater law to be enacted on July 1, 2018 and how locality staff may want to address consistency for program implementation across multiple jurisdictions. Elizabeth Andrews, Virginia Coastal Policy Center, Carl Hershner, Director, Center for Coastal Resource Management at VIMS, Sara Stafford, College of W&M Public Policy program and Mike Rolband, President of Wetland Studies and Solutions participated in the discussion.
- Consulted with Matt Huntley, lead tax policy analyst at Virginia Department of Tax concerning business structure related to conservation tax credits.
- Convened monthly meeting of the Local Government Administrators. Discussed VIMS new flooding assessment GIS tool to help localities better understand the economic and revenue impact of repetitive flooding on residential and business owned properties. Gloucester County was the first test locality for the study.
- Attended the Virginia Coastal Policy Center Advisory Group Meeting held at the College of W&M, School of Law to discuss the current and potential focus areas for the VCPC program.
- Presented two talks about Blue Green Infrastructure and Federal, State and Local regulations to manage growth and water quantity and quality issues impacting Rural Coastal Virginia. Talks were given to the Rappahannock River Basin Commission and the Chesapeake Bay & Rivers Association of REALTORS.
- Reviewed the 2018 Report on Implications of SLR and U.S. Coastal Real Estate Market. Provided information to all Middle Peninsula local government administrators and the Chesapeake Bay & Rivers Association of REALTORS for review and consideration.

Project 32141 – Working Waterfront Zoning and Coastal Living Policy Development

MPPDC staff in partnership with Accomack-Northampton PDC and the Northern Neck PDC will work to develop a legislative brief for the 2018 General Assembly Session. Also staff will work with localities to develop working waterfront zoning and coastal living policy language. This work will then be shared with interested Board of Supervisors, Town Councils and the general public.

- Inventoried references to working waterfronts in locality comprehensive plans and provided localities an opportunity to review and provide feedback. This information will be shared at the next meeting of the Working Waterfront Steering Committee.
- Participated in the Spring Coastal PDC meeting conference call on June 13th. At this meeting the Coastal PDCs discussed CZM Resilience Projects (i.e. recently completed, underway, and planned), the Marsh Resilience Summit, and US Coast Guard Aids to Navigation Assessment.
- Corresponded with Shep Moon, Virginia Coastal Zone Management Program, regarding use conflict in Mathews County. MPPDC staff provided a review of the York River Use Conflict report in 2008 and the powers of local government regarding zoning within its "territorial boundary."
- Reviewed draft letter to be sent to the Director of the Virginia Port Authority indicating the legislative intent of the Virginia Waterways Management Fund to help rural coastal localities financially address the

cost of dredging. Offered to assist the Port Authority with developing grant guidelines to ensure the world coastal localities remain competitive for grant funding.

Project 32142 – ANPDC Ecotourism

This project is a collaboration between rural PDCs (ANPDC, NNPDC, and MPPDC) to develop and expand watertrails within each region. MPPDC staff will focus on developing watertrails on the York River, Pamunkey River, Mattaponi River and the Mobjack. MPPDC staff will also work with PDCs to create an interactive itinerary tool and to develop an overall Rural Coastal Virginia Water Trails theme/brand.

- Created letters for public waterfront property owners, including Chesapeake Bay National Estuarine Reserve, Virginia Department of Forestry, Virginia Department of Conservation and Recreation, Virginia Department of Game and Inland Fisheries, Virginia Department of Transportation, National Park Service, Gloucester County, King William County, King & Queen County, Town of West Point, York County, and New Kent County. The letters were sent to agency/locality points of contact in order to gather information regarding policies and rules for accessing publically owned lands by water (and by land to access the water) and if the sites identified are locations eligible to be added to the water trail map and discussions.
- Corresponded with John Edwards, Town of West Point, and reviewed the Google Map with potential access locations for the proposed water trail in Middle Peninsula.
- Corresponded with Steve Living, Virginia Department of Game and Inland Fisheries, regarding public access locations and associated rules and policies to access the land.
- Corresponded with Carol Steele, Gloucester County Assistant County Administrator for Community Services regarding public access locations owned by Gloucester County on the York River and adjacent creeks that have access to the York River.

Project 32143 – WIP III

In support of the Chesapeake Bay Phase III Watershed Implementation Planning (WIP) efforts, the Virginia Department of Environmental Quality, in cooperation with the Chesapeake Bay Program Partnership and other state and federal partners, has made grant funds available as authorized in the federally-funded 2017 Commonwealth of Virginia Chesapeake Bay Regulatory and Accountability Program (CBRAP) Work Plan approved by EPA. Virginia's Planning District Commissions (PDCs), as authorized in the Code of Virginia (§15.2-4207), encourage and facilitate local government cooperation and state-local cooperation in addressing on a regional basis problems of greater than local significance, specifically in the functional area of environmental management. The intent of this project initiative is for each Virginia Planning District Commission (PDC) covering Chesapeake Bay watershed localities to convene locality and regional officials, staff and stakeholders to provide input and recommendations for meeting Local Area Planning Goals (LAPGs) in accordance with the DEQ-provided "Outline for Local Area Planning Goal Initiative".

- Received notification from all Middle Peninsula localities regarding participation in Watershed Implementation Plan Phase III participation.
- Received WIP III contract packet, executed and returned to DEQ staff. Signed task order with the Berkeley Group to coordinate technical aspects of the WIP III Scope of Work.
- Coordinated with George Washington Regional Commission and Accomack-Northampton PDC on using the Berkeley Group staff for WIP III technical work to ensure consistency across a large consistent coastal geography.
- Consulted with Oyster Company of Virginia regarding term nutrient remediation credits and relationship to WIP III.

- Initiated research on various Blue and Green Infrastructure approaches for water quality improvements and business creation across Rural Coastal Virginia.
- It is the consensus that Bay Clean up needs 10,000,000,000 oysters to meet Chesapeake Bay Clean up goals. For economic development this translates into the following:
 - 1,600 oysters per cage
 - 6,250,000 cages
 - 3 workers per 1000 cages
 - 18,750 workers
- Researched the use of living shorelines as a creditable BMP under the WIP III and ways to monetize the deployment of living shorelines.

TRANSPORTATION

Funding – VDRPT, VDOT, local match from MPPDC General Fund

Project 30212 - Transportation Demand Management (TDM) Services

This program assists local commuters and employers with transportation issues. The main emphasis is on lowering the number of single occupancy vehicle commutes within and from the Middle Peninsula region through marketing and promotion of the program through local media and provision of ride matching services to commuters.

- Updated website – www.midpenrideshare.org
- Consulted with Carol Steele, Gloucester County regarding a Smart Scale Application and associated Park and Ride lot issues.
- Submitted ACT Conference scholarship application to ACT Chesapeake Chapter.
- Consulted with Mike Stevens, Bay Transit regarding bus wrappers.
- Consulted with Stephanie Heinatz regarding refresh of Rideshare outdoor media messages.
- Received online registration from Essex County resident commuting to Tappahannock. No match available.
- Received online registration from Ashland resident commuting to Charlottesville. No match available. Referred to Rideshare (Charlottesville) and Ridefinders (Richmond) for assistance.
- Received phone call from Warsaw resident wanting to take a new job in Urbanna, but without transportation. Bay Transit unable to assist with entire commute trip. No match available.
- Participated in DRPT webinar on VANSTART/VANSAVE program. DRPT is looking to consolidate and ensure consistency in program offerings across the state.
- Participated in DRPT Post Award Grants Workshop via webinar.
- ***Current commuter database – 158***

Project 30314 – Rural Transportation Planning

This program provides rural transportation planning services through the Rural Transportation Planning Work Program which outlines specific tasks and goals to guide the rural planning of transportation services.

- Discussed invoicing and reporting needs with Drew Williams, Berkley Group.

- Executed and submitted FY19 VDOT contract.
- Conducted research on the Rural Transportation Planning Program, consulted previous RTP reports and previous scopes of work.
- Conducted research on the VDOT funding and planning structure for transportation investments.
- Convened local planners meeting on May 30th. Topics included: Long Range Transportation Plan (LRTP) Update, the land use implications of solar utility scale developments, DEQ Watershed Implementation Plan (WIP) Phase 3, local planners concerns over the enforcement of right of way encroachments and viewshed conflicts between property owners and floating oyster cages.
- Developed and sent out Meeting Minutes from the May 30th Local Planners Meeting to the local planners email list.
- Continued to compile a list of RTP activities performed during FY18 fourth quarter.
- Reached out to Fredericksburg District to reschedule presentation to the Local Planners' Group regarding the LRTP Update.
- Contacted Joyce McGowan of VDOT on VDOT's policy on enforcing right of way encroachments. Sent out VDOT's response to local planners.
- Attended the VAMPO/VAPDC Annual Training Session on June 8th. Topics covered: Title VI, Federal and State Transportation Policy Updates, examples of active transportation planning throughout the commonwealth, long range transportation planning, smart scale funding.
- Began compiling updated demographic data for the LRTP update.
- Created agenda for the June 27th Local Planners Meeting and emailed to local planning staff.

ONSITE REPAIR & PUMPOUT

Funding –VRA Loan Funds, local match from MPPDC General Fund, cost sharing

Project 30420/30428 - On-Site Technical Guidance Assistance and Revolving Loan Program

The On-Site Technical Guidance Program aids the Middle Peninsula localities and residents in the technical understanding and implementation of approaches to address On-Site Disposal Systems and improve water quality by assisting local homeowners with repairing failing septic systems through low-interest loans and/or grants. In addition MPPDC received funding under the Water Quality Improvement Fund (WQIF) to provide grants to low to moderate income Middle Peninsula and New Kent County homeowners to repair failing septic systems impacting water quality and health in the region. Grants can be paired with loans from the MPPDC Onsite Wastewater Revolving Loan Fund to provide matching funds as required. It is anticipated this funding will be used to provide assistance to 20-27 homeowners.

- Consulted with Janet Swords, AOSE regarding pending septic repair.
- Discussed denial of financial assistance for septic repair with Middlesex homeowners. Homeowners had previous loan/grant package and defaulted on the loan. Repayment was only made after contact from attorney for collection. Loan Committee denied approval of further loans. Also, DEQ does not allow for new grant within lifetime of previously cost-shared system. Homeowner would not be eligible for grant for 15 months. Sent information to Matt Walker, Middlesex County Administrator regarding denial of assistance to this homeowner.
- Consulted with Julia Goens, Middlesex Health Department regarding Middlesex repair permit. 20

- Convened loan committee to review application for Gloucester repair. Loan (\$1200) and grant (\$4800) were approved. Paperwork executed and job completed.
- Received application for Middlesex pump tank replacement in the mail.
- Received application for conventional Gloucester repair. Contacted Turlington's Septic for copy of estimate and permit.
- Mailed preliminary approval letters to 4 Gloucester homeowners. Systems need to be designed, permitted, and estimates provided before formal approvals are issued. Clients were informed of their potential eligibility for loans/grants.
- Mailed preliminary approval letter to Middlesex homeowner. System needs to be designed, permitted, and estimates provided.
- Received call from Heathsville resident concerning sewage coming out of the ground in their backyard. Referred caller to Northern Neck PDC for Septic Repair/Pumpout inquiry.
- *Executed ACH loan payments for septic repair loans. All MPPDC loan funding programs require that loan recipients authorize loan payments to be made automatically from loan recipients' bank accounts. Loan clients authorize the payments at loan closing (ACH Authorizations). These payments occur on the 15th of each month. This places the onus to not make a payment on the loan client contacting MPPDC staff prior to the loan processing date of the 12th of the month to request a payment to be held. This has significantly reduced defaults and delinquent repayments of MPPDC loans as well as collection efforts.*
- **Remaining uncommitted septic repair funding – \$122,023 in loan funds, \$124,623 in grant funds.**

ECONOMIC DEVELOPMENT

Funding – EDA, local match from MPPDC General Fund, BDP Loan Program Income

Project 30111 - Blue/Green Infrastructure

Commission's effort to promote compatible economic development across the Middle Peninsula looking to leverage blue and green assets.

- Attended Flood Plain Workgroup presentation given by Robbie Coates, VDEM Hazard Mitigation Grants Program. Mr. Coates discussed innovative projects that could receive FEMA HMA funding for living shorelines as a resiliency strategy.

Project 301702 - Small Business Revolving Loan Fund

MPPDC agreed to service Middle Peninsula Business Development Partnership's (MPBDP) Small Business Loan Portfolio after MPBDP's dissolution November 30, 2011. MPPDC established a revolving loan fund and staff initiate ACH loan payments from clients bank accounts and manages the accounts. Principal repaid will be held until the Commission determines the best use for these funds as allowed by the USDA (RBEG) original lending restrictions. Interest earned will be used to offset administration costs.

- *Executed ACH loan payments for MPBDP loans. All MPPDC loan funding programs require that loan recipients authorize loan payments to be made automatically from loan recipients' bank accounts. Loan clients authorize the payments at loan closing (ACH Authorizations). MPPDC staff process these payments on the 15th of each month. This places the onus to not make a payment on the loan client contacting MPPDC staff prior to the loan processing date of the 12th of the month to request a payment be held. This has significantly reduced defaults and delinquent repayments of MPPDC loans.*
- **Funds available – \$138,452**

Project 30109 – Staff Support to Middle Peninsula Alliance (MPA)

MPPDC staff are providing clerical and fiscal assistance to the Middle Peninsula Alliance.

- Prepared vouchers, processed A/P, processed deposits and balanced bank account. Prepared monthly financial statements.
- Attended MPA Board meeting and took minutes.
- Prepared MPA Board meeting minutes, printed monthly meeting materials, placed monthly reminder calls and provided Liz Povar, MPA Principal Officer with the anticipated attendance.

LOCAL INITIATIVES

Funding - local dues, PDC base-funding from VDHCD and/or MPPDC General Fund. Funding for specific projects may come from locality requesting assistance.

Project 380181 - Local & Regional Technical Assistance

This program responds to daily requests for technical assistance which other commission programs are unable to provide.

- Worked with the Gloucester County Office of Emergency Management and Mathews County Department of Emergency Management to compose a draft State Homeland Security Grant for supporting Gloucester's and developing Mathew's Community Emergency Response Team (CERT).
- Participated as an observer in the King William/Pamunkey Tabletop Exercise (TTX) at the King William Fire and Rescue station in Aylett, VA 23009. The scenario was a train derailment with a HAZMAT situation blocking the only access road to the Pamunkey Reservation. Private, State, Federal, and Local parties participated.
- Conducted preliminary research on EDD application requirements.
- Consolidated the previous consultant's EDD application narrative.
- Updated the EDD application. Only remaining requirements are gaining state and local approval before submitting to EDA to begin formal application process.

Project 31002 – GA Lobby

This program provides professional services to represent Middle Peninsula interests at the General Assembly during the current session.

- Consulted with Robert Crockett, President of Advantus Strategies concerning ongoing consulting and lobbying work for the Commission. Requested a draft proposal for General Assembly off-cycle support services.
- Reviewed a draft letter signed by the General Assembly members representing the Middle Peninsula and Eastern Shore regarding the legislative intent of the Virginia Waterways Management Fund for the benefit of Rural Coastal communities. The letter has been sent to the Virginia Port Authority which must develop guidelines for accessing funds.

HOUSING

Funding –Housing Loan Program Income

Project 300132 – Energy Efficiency and Conservation Block Grant (EECBG) Revolving Loan Fund

The program emphasizes a community-based approach to help meet energy and climate protection goals. MPPDC was awarded a contract to provide weatherization renovations to 12 homeowners ineligible for LMI weatherization programs in each of the 6 counties. MPPDC subcontracted the promotion and construction

portions of this project to Bay Aging but was tasked with administering the overall project. MPPDC is administering the revolving loan program per DMME.

- **Funds available = \$40,054**

Project 30115 – VHDA Community Impact Grant

This project will consider new approaches to address vacant homes and clouds on deeds within the Middle Peninsula. Using recommendations derived from VCPC's extensive policy analysis, MPPDC will identify feasible strategies to address housing issues in the region. This work will also include a limited field inventory which will help MPPDC better evaluate how many vacant homes are in the Middle Peninsula. The short-term objective of Phase I is to identify tools available to address housing vacancies and determine how many vacant homes are in the Middle Peninsula. MPPDC will contract with VCPC and the Berkley Group to provide needed analysis and footwork.

- Consulted with Angela King, Assistant Director of Virginia Coastal Policy Clinic on the update to the MPPDC-VCPC housing legal research study. The first draft of the study has been completed and questions and clarifications were offered while out for review. VCPC summer students will be updating the report and anticipate a final by July.

EMERGENCY SERVICES

Funding - Pending

Project 31204 – Regional Emergency Management Planner

Regional Emergency Planner position housed at the Middle Peninsula Planning District Commission (MPPDC) in Saluda. The Middle Peninsula crosses VDEM Region 1&5 boundaries. Position will support local Emergency Coordinators by assisting/coordinating homeland security & disaster response preparedness; Rt. 17 evacuation planning; & resource data collection.

Project 31207 – MP/NN Mass Casualty Exercise

The 2017 Gap Analysis of the Middle Peninsula/Northern Neck's Emergency Operations Plans (EOPs), identified the need of integrating as a region, including the need for a regional exercise that would require multiple jurisdictions to carry out a coordinated response to an incident. This functional exercise will include the Middle Peninsula, will invite the Northern Neck, and will provide jurisdictions that recently purchased regional support trailers, the opportunity to deploy and use that gear in a simulated real-world event.

- Developed the exercise goals and objectives for the September 22, 2018 exercise.
- Began setting up meetings with individual localities to discuss roles and responsibilities for the exercise.

Project 31208 – MP/NN Regional Debris Management Plan

The Middle Peninsula/Northern Neck Debris Management Plan improves and supports the jurisdictions within the Middle Peninsula/Northern Neck's Operational Coordination, Information Sharing and Recovery Planning. The 2017 Gap Analysis of the Middle Peninsula/Northern Neck's Emergency Operations Plans (EOPs), identified the need to develop a Regional Debris Removal Plan that would engage the 10 county area in a joint planning process.

- Consulted with VDEM Region 5 on Debris Management Plan rules, regulations, and information pertaining to Virginia localities.
- Continued to review Debris Management Plans from various Virginia localities and other states.
- Completed two State Homeland Security Grants (SHSP) for the 2018 grant cycle. The first grant covers 50% of the salary for a Regional Emergency Planner at the MPPDC. The second grant is to develop post disaster re-entry plans for MPPDC localities. Grant awards will be announced in September 2018/ with awards to start in October 2018.

AGENCY ADMINISTRATION

Funding - Indirect cost reimbursements from all PDC projects

MPPDC Administration

Administrative services provided to MPPDC programs. Planned FY18 Indirect Cost rate =58.9%.

- Presented FY19 budget to Commission for approval at the May Commission meeting. Commission approved budget as presented.
- Upgraded GMS software to new platform.
- Attended VAPDC workshop on Federal Title VI compliance, transportation updates, DHCD updates – broadband (VATI) and GoVirginia, VHDA presentation on programs offered.
- Consulted with Joe Schumacher, Congressman Wittman’s office regarding ongoing issue with inability to purchase stamps at Saluda post office.

MPPDC: Membership, Appointments, Committee Assignments, and Networks

Coastal Policy Team (CPT): The CPT, whose members and alternates represent the Virginia Coastal Zone Management Program's key partners and eight planning district commissions, provides a forum for discussion and resolution of cross-cutting coastal resource management issues. Members serve on the team at the discretion of their agency or planning district commission director. The CPT recommends funding levels to the DEQ Director for coastal zone management projects. (MPPDC Staff 15 years +)

Congressman Robert Wittman's Fisheries Advisory Committee and Environmental Advisory Committee: (MPPDC Staff 8 years +)

Virginia Sea Grant Program External Advisory Committee (EAC): The EAC provides stakeholder input on the strategic planning process, the research proposal review process, and on Commonwealth-wide trends and needs. The EAC is a diverse group of end-users including representatives from state agencies, the education community, coastal planning and management, the private sector, and NGOs. (MPPDC Staff 9 years+)

The Association for Commuter Transportation (ACT) (Telework Council Secretary): ACT is the premier association for professionals and organizations whose focus is the delivery of commuting options and solutions for an efficient transportation system. The Telework Council is concerned with promoting telework and providing telework information and technical assistance to employers (MPPDC Staff 10 years+)

Middle Peninsula Northern Neck Coordinated Human Services Mobility Committee: Provides direction for a unified comprehensive strategy for transportation service delivery in the Middle Peninsula and Northern Neck Planning Districts focused on unmet transportation needs of seniors, people with disabilities, and people with low incomes. (MPPDC Staff 12 years)

The Coastal Society: The Coastal Society is an organization of private sector, academic, and government professionals and students. The Society is dedicated to actively addressing emerging coastal issues by fostering dialogue, forging partnerships, and promoting communications and education. (MPPDC staff serves as a Director)

Hurricane Evacuation Coordination Workgroup: The Hurricane Evacuation Coordination Workgroup is comprised of state and local emergency representatives tasked with finding solutions to fill in the gaps in the Commonwealth's and Locality's plans to respond to a Major Hurricane Evacuation.

Shelter Location Identification Subcommittee of the Hurricane Evacuation Coordination Workgroup: Local and state experts tasked with identifying state and local shelter locations that can meet the needs of individuals with access and functional needs. A recent federal court ruling indicates that prior knowledge of shelter locations allows for more complete personal preparedness planning.

Shelter Staffing Subcommittee of the Hurricane Evacuation Coordination Workgroup: Local and state experts tasked with recommending solutions to alleviate staffing limitations in emergency shelters.

Eastern Virginia Groundwater Management Advisory Committee (EVGMAC) Workgroup #2B: EVGMAC is charged with assisting the State Water Commission and DEQ in developing, revising and implementing a management strategy for groundwater in Eastern Virginia Groundwater Management Area. Group #2B will identify trading options and programs used in other states; evaluate how trading programs might help with future growth and development, and individual and regional solutions; and evaluate feasibility, data needs, cost and possible participants.

Stakeholder Advisory Group for fees related to the consolidated Virginia Erosion and Stormwater Management Program: Item 8 of Chapters 68 and 758 of the 2016 Acts of Assembly directed Virginia Stormwater Management Program Authorities and Virginia Erosion and Sediment Control Program Authorities to submit information to DEQ by August 1, 2016 and directed DEQ to conduct its evaluation based on revenues and resource needs from July 1, 2014, to June 30, 2016.

Opportunities Identified to Implement Commission Priorities

Service Center	Project Title and Description	Funding Requested	Status
Environmental	NFWF TA Service Provider	n/a	Approved
Environmental	DEQ – NPS Septic Repair WQIF grants to homeowners	\$200,000	Extended
Environmental	CZM – ECO PAA Dragon Run	\$40,000	Funded
Environmental	NFWF – PAA Living Shoreline Oyster Bag Sills & Monitoring (VIMS)	\$96,637	Funded
Environmental	DEQ – Capitalization – MP Living Shoreline Revolving Loan Program	\$250,000	Funded
Emergency Mgmt	VDEM – Homeland Security Regional Emergency Planner	\$95,000	Not funded
Emergency Mgmt	VDEM – Middle Peninsula/Northern Neck Mass Casualty Functional Exercise	\$64,473	Funded
Emergency Mgmt	VDEM – Homeland Security Middle Peninsula/Northern Neck Regional Debris Mgmt Plan	\$43,000	Funded
Environmental	DEQ – Septic Pumpout	\$17,000	Funded
Environmental	NAWCA Acquisitions	\$75,000	Funded
Economic Dev	CZM Legal Research	\$7,000	Submitted
Environmental	CZM FY18 Coastal TA	\$30,000	Funded
Environmental	NFWF – Living Shoreline Cost Share and Demo Project	\$137,000	Not Funded
Environmental	CZM ANPDC WWF	\$10,000	Funded
Housing	VHDA – Community Impact Grant	\$30,000	Funded
Environmental	CZM ANPDC Ecotourism	\$39,263	Funded
Transportation	DRPT -FY19 TDM Operating	\$67,846	Funded
Transportation	DRPT – TDM Marketing Research and Design	\$20,000	Funded
Environmental	CZM – Coastal Technical Assistance – FY18	\$30,000	Submitted
MPCBPAA	Virginia Outdoor Foundation – Captain Sinclair Easement/Improvements	\$180,000	Approved
Environmental	CZM ANPDC Ecotourism	\$38,263	Submitted
Environmental	CZM NNPDC WWF	\$5,000	Submitted
Environmental	CZM Dredging	\$50,000	Submitted
Environmental	CZM Rural Enhancement Authority	\$10,000	Submitted
Transportation	VDOT – RTP FY19	\$58,000	Funded
Local	Urbanna Comp Plan Update	\$15,000	Submitted
Emergency Mgmt	Re-Entry and Access Authorization Plans	\$44,050	Submitted
Emergency Mgmt	Regional Emergency Planner Position	\$49,500	Submitted

ACRONYMS

ACH	Automated Clearing House	MPRSC	Middle Peninsula Regional Security Center
AFG	Assistance to Firefighters Grants	NHD	Natural Heritage Data
AFID	Agricultural and Forestry Industries Development	NIMS	National Incident Management System
AHMP	All Hazards Mitigation Plan	NFWF	National Fish and Wildlife Foundation
BCC	Building Collaborative Communities Project	NOAA	National Oceanic and Atmospheric Administration
BOS	Board of Supervisors	NPS	National Park Services
CBPA	Chesapeake Bay Preservation Area	OCVA	Oyster Company of Virginia
CBSF	Chesapeake Bay Stewardship Fund	OLGA	On-line Grant Administration
CDBG	Community Development Block Grant	PAA	Public Access Authority
CEDS	Comprehensive Economic Development Strategy	RBEG	Rural Business Enterprise Grant
CIP	Capital Improvement Plan	RBOG	Rural Business Opportunity Grant
COI	Conflict of Interest	RFP	Request for Proposal
CRS	Credit Rating System	RFQ	Request for Qualifications
CVE	Countering Violent Extremism	RLF	Revolving Loan Fund
CZMP	Coastal Zone Management Program	RTP	Rural Transportation Planning
DEQ	Department of Environmental Quality	SERCAP	Southeast Rural Community Assistance Project
DGIF	Department of Game and Inland Fisheries	SHSG	State Homeland Security Grant
DHR	Department of Historic Resources	SWCD	Soil and Water Conservation District
DHCD	Department of Housing and Community Development	SWM	Storm Water Management
DMME	Department of Mines Minerals and Energy	SWRP	State Water Resource Plan
DOC	Department of Corrections	THIRA	Threat & Hazard Identification & Risk Assessment
DOE	Department of Energy	TIF	Tax Increment Financing
DRPT	Department of Rail and Public Transportation	TMDL	Total Maximum Daily Loads
EDA	Economic Development Administration	USDA	U.S. Department of Agriculture
EDO	Economic Development Organization	USFWS	U.S. Fish and Wildlife Service
EECBG	Energy Efficiency and Conservation Block Grant	VAPA	Virginia Planning Association
EOC	Emergency Operation Center	VAPDC	Virginia Association of Planning District Commissions
EPA	Environmental Protection Agency	VASG	Virginia Sea Grant
FEMA	Federal Emergency Management Agency	VAZO	Virginia Association of Zoning Officials
Fracking	Hydraulic Fracturing	VCP	Virginia Coastal Program
GIS	Geographic Information System	VCZMP	Virginia Coastal Zone Management Program
HAM	Amateur Radio	VCWRLF	Virginia Clean Water Revolving Loan Fund
HRPDC	Hampton Roads Planning District Commission	VDEM	Virginia Department of Emergency Management
LGA	Local Government Administrators	VDH	Virginia Department of Health
LPT	Local Planning Team	VDOT	Virginia Department of Transportation
LSIP	Living Shoreline Incentive Program	VDMME	Virginia Department of Mines, Minerals, and Energy
MOU	Memorandum of Understanding	VEE	Virginia Environmental Endowment
MPA	Middle Peninsula Alliance	Vertical Assets	"Towers or other structures that hold cell, broadband and other equipment"
MPBA	Middle Peninsula Broadband Authority	VHB	Vanasse Hangen Brustlin
MPCBPAA	Middle Peninsula Chesapeake Bay Public Access Authority	VIMS	Virginia Institute of Marine Science
MPEDRO	Middle Peninsula Economic Development and Resource Organization	VMRC	Virginia Marine Resource Commission

VOAD	Volunteer Organization Active in Disasters
VOP	Virginia Outdoors Plan
VRA	Virginia Resources Authority
VSMP	Virginia Stormwater Management Program
VTA	Virginia Transit Association
VWP	Virginia Water Protection
VWWR	Virginia Water Withdrawal Reporting
WIP	Watershed Implementation Plan
WQIF	Water Quality Improvement Fund

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
Fifth Coast Guard District

431 Crawford Street
Portsmouth, VA 23704-5004
Staff Symbol: (dpw)
Phone: (757) 398-6230
Fax: (757) 398-6303
Chris.P.Scraba@uscg.mil

5760
June 6, 2018

Joe Schumacher
District Director
Office of Rep. Rob Wittman, VA-01
6501 Mechanicsville Turnpike, Suite 102
Mechanicsville, VA 23111

Dear Mr. Joe Schumacher,

I have received your email inquiry dated May 11, 2018 on federal Aids to navigation (ATON) in unstable, shoaled-in Virginia Waterways. We welcome the opportunity to discuss the Coast Guard's role in ensuring navigational safety and have attached enclosure (1) which is a visual representation of the federal aid assessment based on the degree of waterway stability within a specific Virginia waterway. This does not mean the Coast Guard will be removing these aids, it simply means these waterways are shoaled in where specified and normal access to our federal aids has been impeded.

The Coast Guard is committed to the safety of mariners and being able to safely mark navigable waterways throughout the country. However, accessibility to service aids by local Coast Guard Aids to Navigation Teams (ANT) and construction tenders is required to maintain a safe channel. The Coast Guard continues to work alongside our federal, state and local maritime partners and engage our waterway users regarding viability of waterways that are stable and of sufficient depth to provide a reliable navigation system. We will continue to work diligently to provide timely notification to local mariners and port partners when the known conditions of waterway enables us to do so.

Our responsibility is to safely protect the mariner by best marking the waterways and removing any hazards that could mislead and potentially injure the mariner. In these instances where navigable waterways have been impeded beyond properly marking safe water, the local ANT may have to discontinue the federal aids and mariners are cautioned to proceed at their own risk due to the shallow water depths. I understand that local residents become concerned when federal aids are removed from an unstable waterway, and this is only done in urgent circumstance when all other options have been attempted. Private Aids to Navigation is another option if the waterway is too shallow for federal aids or local officials working closely with the U.S. Army Corps of Engineers (USACE) on the likelihood a waterway receiving future federal funding for dredging. In Virginia localities where county waterway commissions have been created, such as the Eastern Shore Regional Navigable Waterways Committee and the recently formed Matthews County Waterways Committee, the Coast Guard and USACE have been able to successfully work alongside county Board of Supervisors and waterway officials to discuss federal aid and dredging priorities in a constructive and transparent manner. These groups have become great examples of working together to find solutions to resolve waterway issues with our state and local partners in a more coordinated manner.

Your unwavering commitment to navigation safety and the advocacy for mariners and maritime small businesses in your district is truly appreciated, and I thank you for your ongoing positive efforts to reach out to me with your federal aid concerns on behalf of numerous Virginia counties. I look forward to continuing our collaboration to ensure mariners operating vessels on Virginia's waters stay safe and that the Coast Guard can maintain the navigation safety of these waterways. Please do not hesitate to contact me should you have any more questions or concerns.

Sincerely,



C. P. SCRABA
Acting Chief, Waterways Branch
U.S. Coast Guard
By Direction

Enclosure (1): U.S. Coast Guard's Federal ATON Assessment of Virginia Waterways

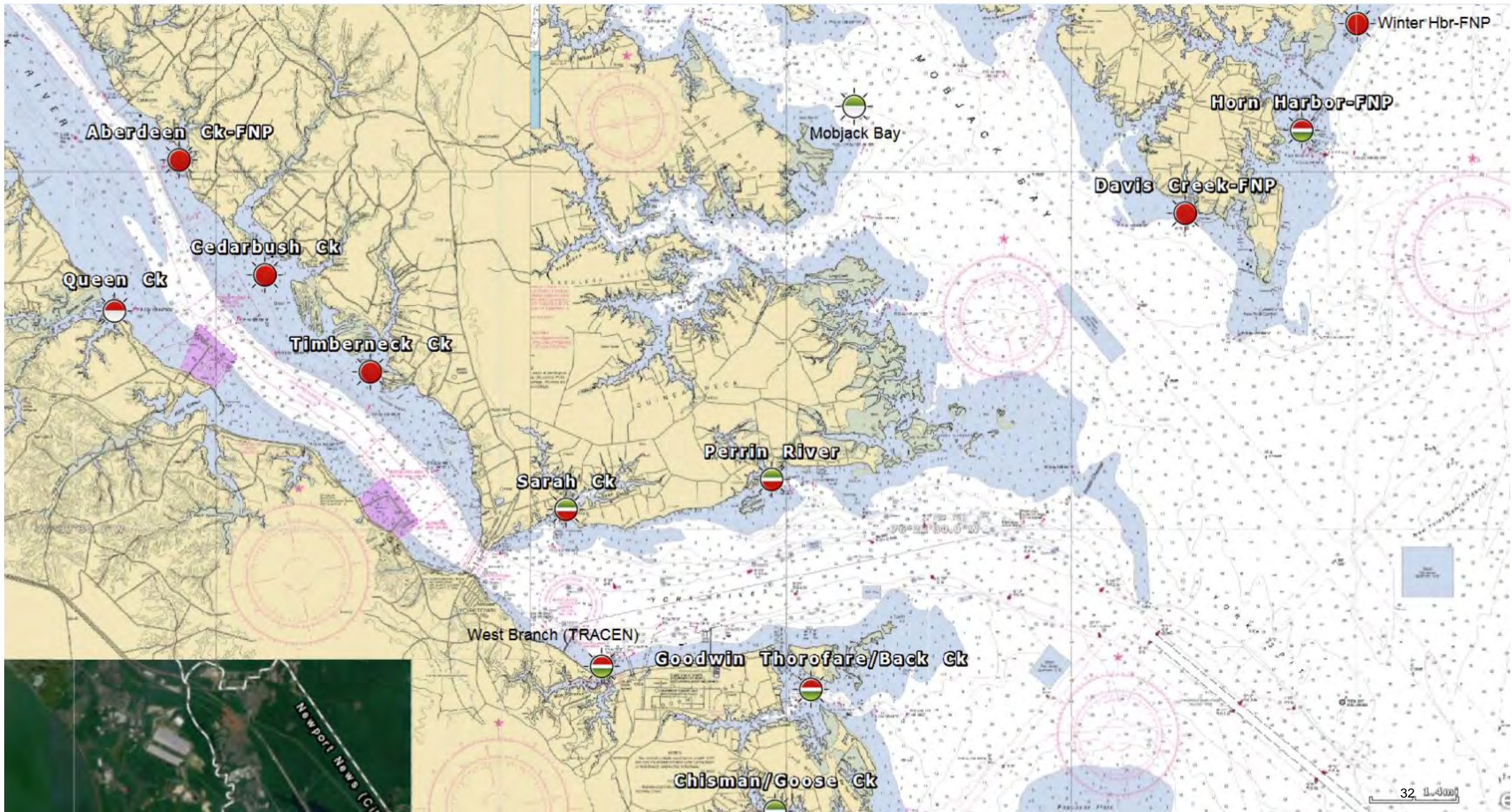
Copy: CG Sector Hampton Roads
Virginia Harbor Safety Committee

U.Ss Coast Guard's Federal ATON Assessment of Virginia Waterways

This 43-page assessment was compiled to provide a consolidated list of the status of federal ATON in Virginia Waterways. The information in this assessment will be used to assist the Coast Guard with managing the federal ATONs in Virginia's waterways based on water depths/shoaling that are considered stable, moderate, or severe. The key below provides symbology used on these charts.

Key for Charts	
Meaning	Symbol
Federal navigation project	FNP
Best Water	BW
Waterway is stable	Green
Waterway is shoaled in	Red
The waterway's entrance is stable but the end is shoaled in	Green over Red
The waterway's entrance is shoaled in but the end is stable	Red over Green
The waterway is shoaled in but there is a project ongoing	Red over White





Virginia Chart K (read South to North traveling up the coast)			
Waterway (WW)	WW Type	Depth (ft)	Notes
Chisman/Goose Creek	BW	8 to 2	Shifting shoals have limited the Coast Guard's access to the Waterway prompting a review of the waterway, results pending
Goodwin Thorofare	FNP	5	The aids in this waterway have been converted to Warning daybeacons and pending removal
West Branch (Wormly Ck)	CG	10	When this waterway is dredged Coast Guard will re-evaluate establishing new entrance aid
Queen Creek-York River	BW	5 to 12	The entrance to this waterway is shoaled in and work has begun on removing misleading aids
Aberdeen Ck	FNP	5	This waterway has been shoaled in
Cedarbush Creek	BW	4 to 7	This waterway has been shoaled in
Timberneck Creek-	BW	4 to 7	This waterway has been shoaled in
Sarah Creek-	BW	10 to 5	This waterway contains shifting shoals and is currently under review
Perrin River	BW	9 to 6	This waterway contains shifting shoals
Mobjack Bay*	BW	+6	There has been minor aid adjustments to mark best water within the bay
Davis Creek (Mobjack Bay)	FNP	8 to 1.7	Working with the local government to convey aids, there is severe shoaling within the waterway
Horn Harbor	FNP	5 to 7	Due to the entrance of this waterway shoaling in the Coast Guard has begun a review
Winter Harbor	FNP	less than 5	All aids have been removed due to severe shoaling

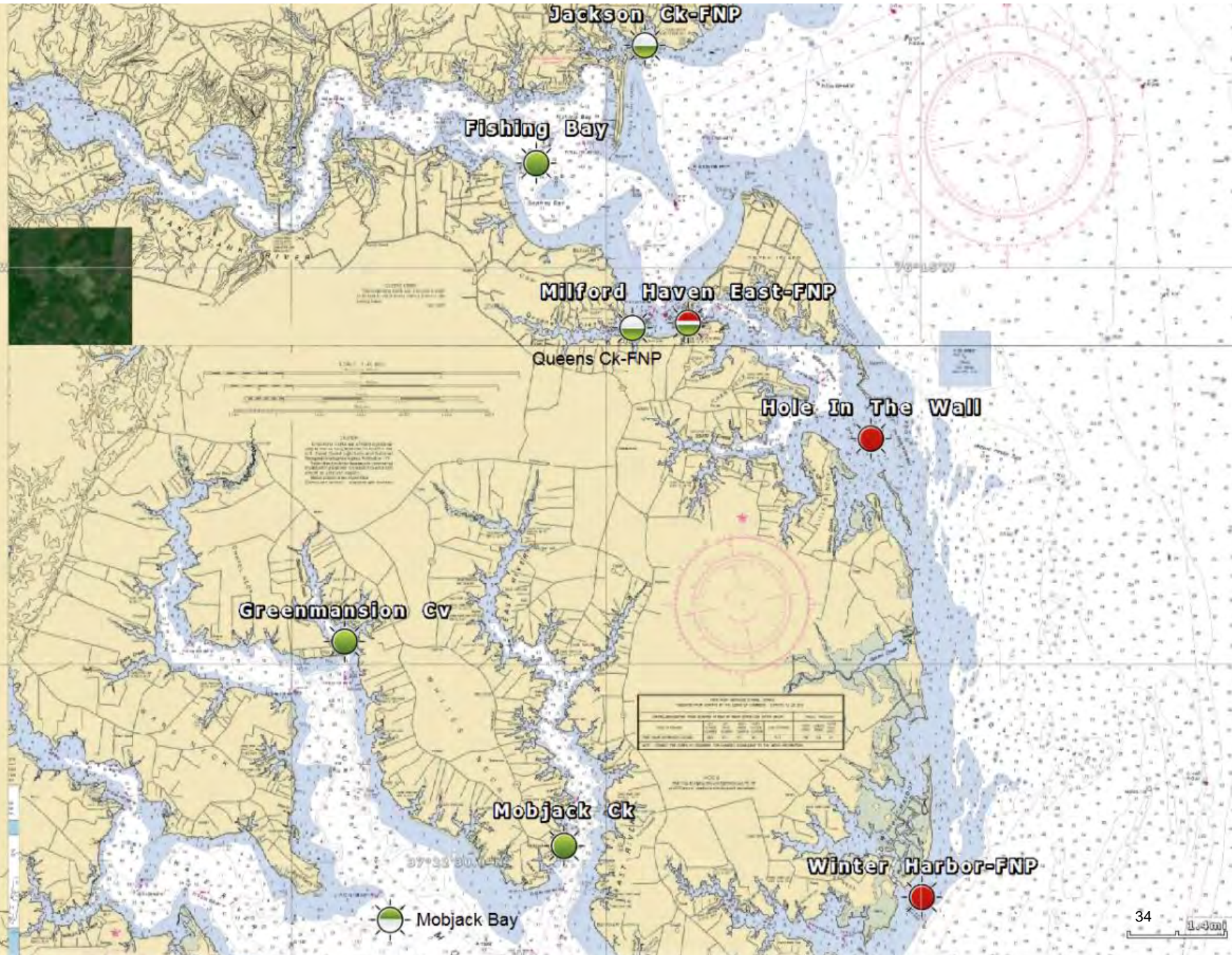
YORK RIVER

YORKTOWN TO WEST POINT

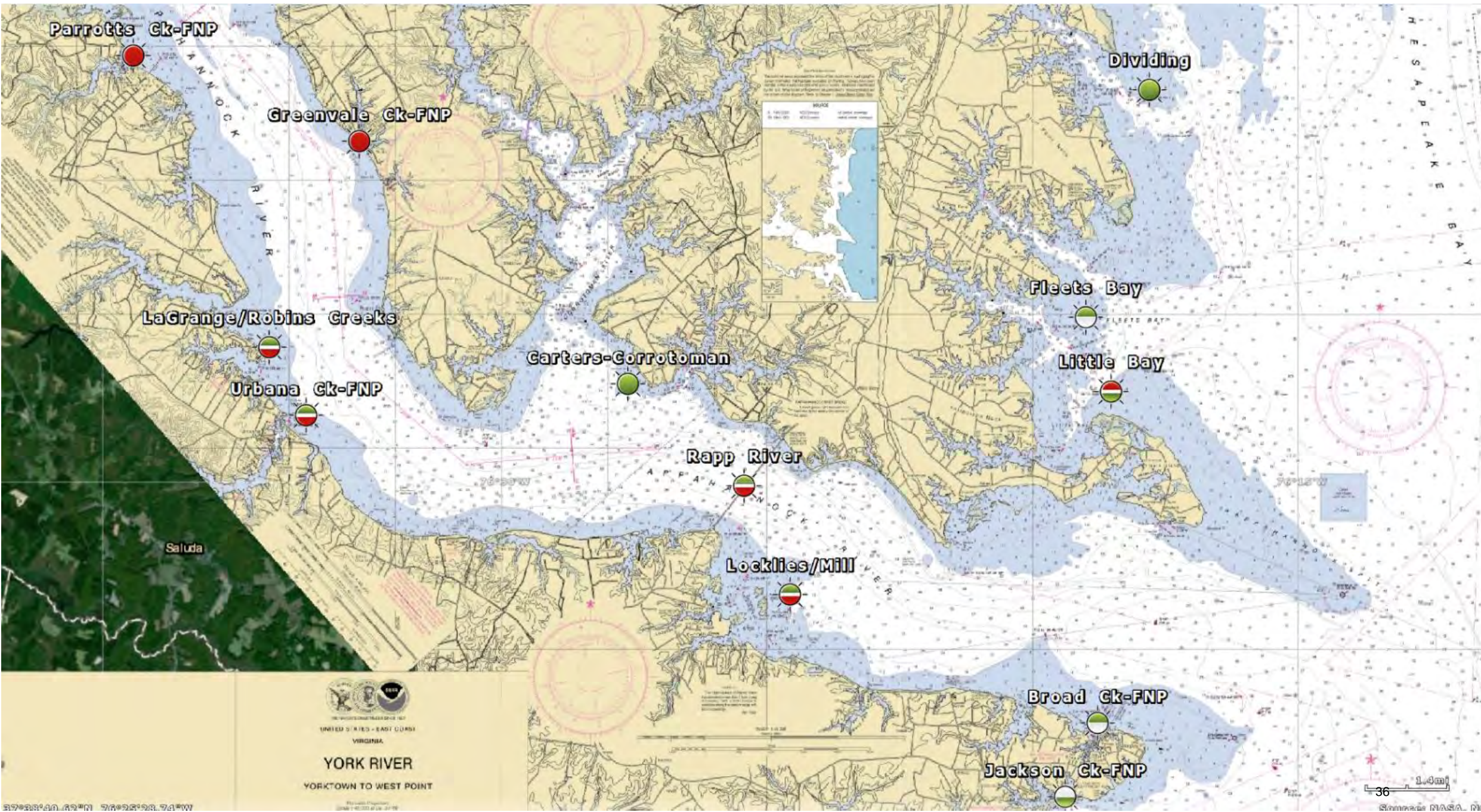
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NOTES
1. This chart is a reproduction of the original...
2. The soundings are in fathoms...
3. The depths are in fathoms...
4. The heights are in feet...
5. The bearings are in degrees...
6. The distances are in miles...
7. The bearings are in degrees...
8. The distances are in miles...

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Virginia Chart L (read Southwest to Northeast traveling up the coast)			
Waterway (WW)	WW Type	Depth (ft)	Notes
Greenmason Cove (Mobjack Bay)	BW	10 to 5	No issues
Mobjack Bay*	BW	+6	There has been minor aid adjustments to mark best water within the bay
Mobjack Creek	Private	+6	No issues
Winter Harbor	FNP		All aids have been removed due to severe shoaling
Hole In The Wall	BW	8 to 2	Working with the local government to convey aids, there is severe shoaling within the waterway
Milford haven East	FNP	10	The Coast Guard will reevaluate aids relocation after scheduled dredging is complete
Queens Creek	FNP	6 to 8	The Coast Guard will reevaluate aids relocation after scheduled dredging is complete
Fishing Bay	BW	20+ to 5	No issues
Jackson Creek	FNP	7	The Coast Guard is reevaluating aids relocation after scheduled dredging was completed



Parrotts Ck-FNP

Greenvale Ck-FNP

LaGrange/Robins Creeks

Urbana Ck-FNP

Carters-Corrotoman

Rapp River

Locklies/Mill

Dividing

Fleets Bay

Little Bay

Broad Ck-FNP

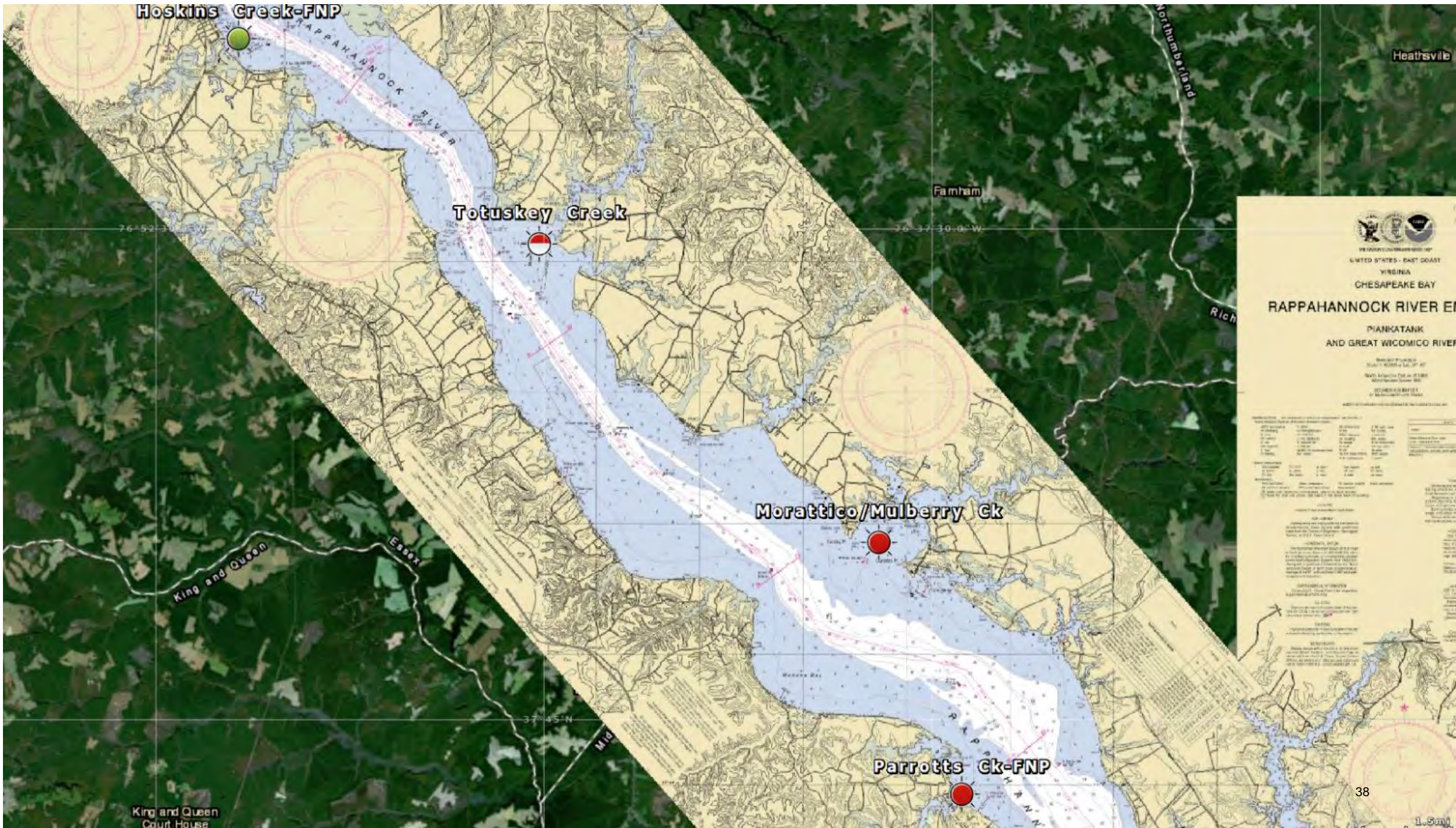
Jackson Ck-FNP



NOAA
 UNITED STATES COAST GUARD
 VIRGINIA
YORK RIVER
 YORKTOWN TO WEST POINT

1.4mi
 36

Virginia Chart M (read Southeast to Northeast traveling up the coast)			
Waterway (WW)	WW Type	Depth (ft)	Notes
Jackson Creek	FNP	7	The Coast Guard is reevaluating aids relocation after scheduled dredging was completed
Broad Creek	FNP	8	The aids in this waterway were adjusted after last scheduled dredge but shoaling is already evident in several areas
Locklies/Mill Creeks	FNP/ BW	4	The cut thru FNP is maintained to 4' and the aids on either side mark best water
Rappahannock	FNP/ BW	+20 to 8	There is shoaling in upper portions of the waterway
Urbana Creek	FNP	8	There is shoaling at the end of the waterway and the waterway is under review
LaGrange/Robins Creeks	BW	10 to 5	The waterway's entrance aids is in good water but the end of the waterway is shoaled in
Parrotts Creek	FNP	6 to 4.7	Coast Guard assest cannot access all of the waterway due to shoaling
Greenvale Creek	FNP	6	Due to the waterway being shoaled in seven lateral daybeacons will be converted to Warning Daybeacons then removed
Carters-Corrotoman River	BW	30 to 6	No issues
Little Bay*	BW	6 to 26	Fish Traps located in entrance reduce the depth of the waterway entrance
Fleets Bay*	BW	+15 to 5	The waterway needs minor aid relocation and is under review
Dividing Creek	BW	18 to 6	No issues



Virginia Chart N (read Southeast to Northeast traveling up the coast)			
Waterway (WW)	WW Type	Depth (ft)	Notes
Parrotts Creek	FNP	6 to 4.7	Coast Guard assest cannot access all of the waterway due to shoaling
Moratico/Mulberry Creek-	BW	4 to 12	Coast Guard assest cannot access all of the waterway due to shoaling
Totuskey Creek-	BW	4 to 8	Coast Guard assest cannot access all of the waterway due to shoaling and all structures past service life this Waterway is under Review
Hoskins Creek	FNP	10	This waterway recently was remarked and users have requested a rear range be rebuilt



SENATE OF VIRGINIA

LYNWOOD W. LEWIS, JR.
6TH SENATORIAL DISTRICT
ALL OF ACCOMACK, NORTHAMPTON,
AND MATHEWS COUNTIES; AND PART OF
THE CITIES OF NORFOLK AND VIRGINIA BEACH
P.O. BOX 760
ACCOMAC, VIRGINIA 23301



COMMITTEE ASSIGNMENTS:
AGRICULTURE, CONSERVATION AND
NATURAL RESOURCES
EDUCATION AND HEALTH
LOCAL GOVERNMENT

June 12, 2018

Mr. John F. Reinhart
CEO and Executive Director
Virginia Port Authority
101 West Main Street
Norfolk, VA 23510

Re.: Senate Bill 693, Virginia Waterway Maintenance Fund

Dear Mr. Reinhart:

Well before the 2018 General Assembly we, as representatives of rural coastal Virginia, were concerned about the state of our historic working waterfronts in the Commonwealth. These working waterfronts in the communities we represent provide the base of operations for our commercial watermen, as well as for recreational boaters and residents and visitors.

Our working waterfronts are not sustainable, though, without navigable waterway maintenance that provide access to and from the waters, bays and creeks so important to the economies of localities throughout the Chesapeake Bay. You are certainly aware, perhaps more than anyone, of the importance of waterway maintenance.

During the 2018 General Assembly we collectively worked on legislation and a connecting budget amendment establishing a mechanism to mend ongoing access challenges to our rural coastal waterways. Senate Bill 693 (Sen. Lewis) was approved by the General Assembly and added §62.1-132.3:3 and 62.1-132.3:4 to the Code of Virginia, relating to Virginia Waterway Maintenance Fund grant program. SB693 was introduced to support dredging project or projects, as decided by the Authority. The legislation established the fund to provide grants to "political subdivisions and the governing bodies of Virginia localities." The funding is connected to a budget amendment included in Item 461 of House Bill 5002 recently signed by the Governor. The amendment appropriates \$1,350,000 to VPA to support a dredging project or projects that have been approved by the Authority.

The amended Code of Virginia (sections numbered §62.1-132.3:3 and 62.1-132.3:4) are attached with this letter, as is the budget amendment as approved.

The purpose of this correspondence is to make sure you are aware that our intent of both SB693 and the budget amendment is expressly to support waterway enhancement in those areas that need it most – rural coastal Virginia. As such, when you begin the development of guidelines establishing an application process as set out in Chapter 642, we are requesting you include representatives of our communities who were instrumental in the drafting and development of SB693 and connecting budget language.

Our expectation is that you would reach out to us to provide names when you begin work on those guidelines. We are looking forward to working closely with you and your team on the development and use of the Waterway Maintenance Fund to help our communities.


Please reach out to us if you or your staff require further context regarding the intent of the legislation and the budget amendment. We are hopeful the legislation and the funds appropriated will begin to provide our communities hope that a solution to a systemic challenge to our important waterways on the Eastern Shore, Middle Peninsula and Northern Neck is near.

We are grateful for your service to the Commonwealth.

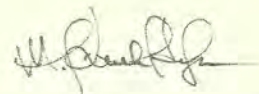
Sincerely,



The Honorable L. Lewis
Senate, 6th District



The Honorable R. Bloxom
House, 100th District



The Honorable K. Hodges
House, 98th District

Encl: Senate Bill 693 as enrolled

cc: The Honorable Shannon Valentine

Riparian Rights and Public Trust: Enforcement Authority



Photo Credit: Middle Peninsula Planning District Commission

Reeana Keenen, J.D. Candidate 2019
Virginia Coastal Policy Center
William & Mary Law School



Spring 2018

About the Author



Reeana Keenen was born and raised in Dallas, Texas, and attended the University of Texas at Austin where she earned a bachelor's degree in Public Relations. During the summer of 2017, Reeana worked for International Bridges to Justice in Geneva, Switzerland, researching foreign and international law. Reeana is the Managing Editor of the *Environmental Law & Policy Review*, Vol. 43, and she joined the Practicum to learn about environmental policy and the issues affecting Virginia's coastal communities.

About the Virginia Coastal Policy Center

The Virginia Coastal Policy Center (VCPC) at the College of William & Mary Law School provides science-based legal and policy analysis of ecological issues affecting the state's coastal resources, providing education and advice to a host of Virginia's decision-makers, from government officials and legal scholars to non-profit and business leaders.

CONTACT US

Please contact
Elizabeth Andrews
(eaandrews@wm.edu)
if you have comments,
questions, or suggestions.

With two nationally prominent science partners – the Virginia Institute of Marine Science and Virginia Sea Grant – VCPC works with scientists, local and state political figures, community leaders, the military, and others to integrate the latest science with legal and policy analysis to solve coastal resource management issues. VCPC activities are inherently interdisciplinary, drawing on scientific, economic, public policy, sociological, and other expertise from within the University and across the country. With access to internationally recognized scientists at VIMS, to Sea Grant's national network of legal and science scholars, and to elected and

appointed officials across the nation, VCPC engages in a host of information exchanges and collaborative partnerships.

VCPC grounds its pedagogical goals in the law school's philosophy of the citizen lawyer. VCPC students' highly diverse interactions beyond the borders of the legal community provide the framework for their efforts in solving the complex coastal resource management issues that currently face Virginia and the nation.

INTRODUCTION

In Virginia, private landowners own the land to the Mean Low Water mark (“MLW”), whereas in many coastal states private landowners only own to the high water mark. The bottomlands channelward of the MLW mark in Virginia are governed by the Public Trust Doctrine, meaning that the state holds this land in trust for use by the public.¹ However, use conflicts can arise where private landowners own property adjacent to publicly owned property or where public easements run through private property adjacent to public beach access points.

This Paper will provide a summary of the law regarding private and public use of property on Virginia’s coast, identify the entities with jurisdictional authority to resolve issues on such property, and analyze different types of conflicts that may arise.

¹ VA. CONST. art. XI, § 1.

I. SUMMARY OF THE LAW REGARDING PRIVATE AND PUBLIC USE OF PROPERTY

A. The Public Trust Doctrine

According to the Public Trust Doctrine, “lands were held by the state, as they were by the king, in trust for the public uses of navigation and fishery, and the erection thereon of wharves, piers, lighthouses, beacons, and other facilities of navigation and commerce.”² Put more simply, states have a responsibility to preserve and protect public lands for the use of their citizens.³ This doctrine is rooted in both federal and state common law, as well as state and federal constitutional law.⁴

Generally, states hold title to the lands beneath navigable waters, meaning the bottomlands are subject to the public trust doctrine.⁵ These lands must be held “in trust for the people of the State, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction of private parties.”⁶ In Virginia, the rights of landowners extend to the MLW mark,⁷ but the Virginia Marine Resources Commission may grant easements or leases over the bottomlands.⁸ The MLW mark is “[t]he average of all the low water heights.”⁹ It is also important to consider whether riparian landowners hold title under a king’s grant. A king’s grant, sometimes called a king’s patent, crown grant, or crown patent is a grant from the British Crown to a private individual.¹⁰ As discussed in Section II(B)(2)(a) of this Paper, Virginia case law has found within navigable waters, a king’s grant may convey exclusive fishing rights, as well as ownership of submerged lands.¹¹

The confluence of the Public Trust Doctrine and riparian owners’ rights up to the MLW mark present endless potential for use conflicts both on the land and in the water. To understand the legal interests at stake in each conflict, it is first necessary to have an understanding of the basic legal principles at work. Nuisance, trespass, and negligence law help to define these competing legal interests.

² Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 457 (1892).

³ See VA. CONST. art. XI.

⁴ J. Peter Byrne, *The Cathedral Engulfed: Sea-Level Rise, Property Rights, and Time*, 73 La. L. R. 69, 79 (2012).

⁵ See VA. CODE ANN. § 28.2-1200 (1998) (bottomlands are owned by the Commonwealth, but may be used by the people of the state for the purposes of “fishing, fowling, hunting, and taking and catching oysters and other shellfish”).

⁶ Robin Kundis Craig, *Public Trust and Public Necessity Defenses to Takings Liability for Sea Level Rise Responses on the Gulf Coast*, 26 J. Land Use & Envtl. L. 395, 403 (2011) (quoting Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 452 (1892)).

⁷ VA. CODE ANN. § 28.2-1202 (2014).

⁸ VA. CODE ANN. § 28.2-1208 (2009).

⁹ U.S. Dep’t of Comm., Tide and Current Glossary 15 (2000), <https://tidesandcurrents.noaa.gov/publications/glossary2.pdf>.

¹⁰ James W. Jennings and Erin B. Ashwell, *English Common Law Grants under Virginia Law: Rivers, Tides, and the Takings Clause*, 5 SEA GRANT L. & POL’Y J. 29, 32 (2013).

¹¹ See *infra* notes 103-04 and accompanying text.

B. Nuisance

Nuisance, very generally, is “the use of one property to the injury of another.”¹² Nuisance occurs when the owner or occupant of a property is harmed or barred from using their own property because of someone else’s use of another property.¹³ There are two types of nuisance in tort law—public nuisance and private nuisance. A nuisance is deemed to be public if there is “an unreasonable interference with a right common to the general public.”¹⁴ This type of nuisance includes “interference with the public health, the public safety, the public peace, the public comfort or the public convenience.”¹⁵ Some examples of public nuisances include: water pollution,¹⁶ loud noises,¹⁷ and prostitution houses.¹⁸ The Virginia Supreme Court, in *Virginia Beach v. Murphy*, described a public nuisance by noting:

If the annoyance is one that is common to the public generally, then it is a public nuisance. . . . The test is not the number of persons annoyed, but the possibility of annoyance to the public by the invasion of its rights. A public nuisance is one that injures the citizens generally who may be so circumstanced as to come within its influence.¹⁹

On the other hand, a private nuisance is “a nontrespassory invasion of another’s interest in the private use and enjoyment of land.”²⁰ Virginia case law has provided three specific examples of instances that may constitute a private nuisance: (1) diminishing the value of someone else’s property; (2) continuously interfering with a landowner’s control or enjoyment of his property; and (3) causing the landowner disturbance or annoyance when he uses his property.²¹ Virginia courts have held that invasion by coal dust and noise from a coal mine;²² hitching noises from tractor trailers twenty-four hours a day, every day of the year;²³ and soliciting private residences for the sale of goods²⁴ are all private nuisances.

C. Trespass

The law of trespass protects property rights in a literal, conventional sense; it protects an owner’s interest in exclusive possession of his or her land.²⁵ Trespass is similar to nuisance, but rather than merely an interference, it requires actual entry onto the land.²⁶ A good means of distinguishing nuisance and trespass is that nuisance is an interference with the right of enjoyment

¹² *Nuisance*, BOUVIER LAW DICTIONARY (2012).

¹³ *Id.*

¹⁴ Restatement (Second) of Torts § 821B (1979).

¹⁵ *Id.*

¹⁶ *New York v. New Jersey*, 256 U.S. 296, 313 (1921).

¹⁷ *See* *Cty. of Va. Beach v. Murphy*, 239 Va. 353 (1990).

¹⁸ VA. CODE ANN. § 48-7 (2005).

¹⁹ *Cty. of Va. Beach*, 239 Va. at 356.

²⁰ Restatement (Second) of Torts § 821B (1979).

²¹ *Va. Railway Co. v. London*, 114 Va. 334 (1912), *see*, *Bowers v. Westvaco Corp.*, 244 Va. 139, 148, 419 S.E.2d 661, 667 (1992).

²² *Nat’l Energy Corp. v. O’Quinn*, 223 Va. 83 (1982).

²³ *Bowers*, 244 Va. 139.

²⁴ *White v. Culpeper*, 172 Va. 630 (1939).

²⁵ *E.g. Kurpiel v. Hicks*, 284 Va. 347, 353 (2012) (citing *Tate v. Ogg*, 170 Va. 95, 99 (1938)).

²⁶ *Id.* at 353–54 (citing *Cooper v. Horn*, 248 Va. 417, 423 (1994)).

of land, whereas trespass is an invasion on the possession of land.²⁷ Trespass can be intentional²⁸ or reckless or negligent,²⁹ but cannot be accidental.³⁰ For example, if “A, against B’s will, forcibly carries B upon the land of C [,] A is a trespasser; B is not.”³¹ In addition to common law trespasses, Title 18.2, Article 5 of the Virginia Code forbids certain types of trespasses: one cannot enter the land of another after being forbidden from doing so,³² allow certain animals to run at large,³³ or hunt, fish, or trap on the land of another without his or her consent.³⁴

D. Negligence

A distinct legal claim is negligence, which can be related to both trespass and nuisance. A negligence claim is proven when five elements are met: (1) a duty to act in a certain way; (2) a breach of that duty; (3) proximate cause; (4) but-for cause; and (5) a harm.³⁵

Typically, the law imposes a “reasonable person” standard upon all people—everyone has a duty to behave as a reasonable person would under like circumstances.³⁶ A reasonable person considers the foreseeable risks and weighs them against the utility of the activity he intends to do.³⁷ However, this duty arises only with affirmative actions; usually, a person cannot be held liable for a failure to act, even if doing nothing causes harm to someone else.³⁸ There are also particular duties that are placed upon owners of land. As a general rule, the owner of land owes no duty to trespassers.³⁹ However, if the trespasser is a minor, the landowner is required to warn him of any dangers on the property.⁴⁰ In general, in Virginia, landowners owe no duty of care to anyone coming onto their land, with or without permission, for recreational purposes or to pass through

²⁷ *Whitehall Constr. Co. v. Washington Suburban Sanitary Com.*, 165 F. Supp. 730, 734 (D. Md. 1958).

²⁸ Restatement (Second) of Torts § 158 (1965). (“One is subject to liability to another for trespass . . . if he intentionally (a) enters land in the possession of another . . . , (b) remains on the land, or (c) fails to remove from the land a thing which he is under a duty to remove.”).

²⁹ *Id.* at § 165 (“One who recklessly or negligently . . . enters land in the possession of another . . . is subject to liability to the possessor if . . . his presence . . . causes harm to the land [or] to the possessor . . .”).

³⁰ *Id.* at § 166 (“[A]n unintentional and non-negligent entry on land in the possession of another . . . does not subject the actor to liability to the possessor, even though the entry causes harm to the possessor . . .”).

³¹ *Id.* at § 158.

³² VA. CODE ANN. § 18.2-119 (2011).

³³ VA. CODE ANN. § 18.2-121 (2004).

³⁴ VA. CODE ANN. § 18.2-132 (1975).

³⁵ Bouvier Law Dictionary defines negligence as “[a] breach of a legal duty that harms another. Negligence is the tort of failing to perform a legal duty, which causes a distinct injury to another person, or to another person’s property, or to another person’s legal interests.” *Negligence*, BOUVIER LAW DICTIONARY.

³⁶ Restatement (Second) of Torts § 283 (1965).

³⁷ See *In re City of New York*, 475 F. Supp. 2d 235, 243 (E.D.N.Y. 2007) (positing that “the Hand Formula reflects a rational method of determining the reasonableness of the conduct of a party who foresees a risk of injury to another to whom he owes a duty of care.”). For the Hand Formula, see, *U.S. v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947).

³⁸ See *Yania v. Bigan*, 155 A.2d 343 (Pa. 1959) (holding that the law imposes no legal duty on a person to save another from a dangerous situation unless he was legally responsible for putting the other person in the dangerous situation in the first place).

³⁹ Restatement (Second) of Torts § 333 (1965).

⁴⁰ *Id.*; see also *Keffe v. Milwaukee & St. Paul R.R. Co.*, 21 Minn. 207 (1875) (holding a defendant liable for injuries to a 7-year-old sustained when he played on an unlocked, unguarded railroad turntable because the Railroad knew the turntable was dangerous to children).

the property to get to another property.⁴¹ Landowners do owe particular duties to social guests and to business guests if the landowner knows of dangerous conditions on the property.⁴² According to Title 29.1 Article 509 of the Virginia Code, however, when a landowner grants permission for someone to come onto his land, he does not thereby certify that the premise is safe or make said person an invitee or licensee to whom a duty is owed.⁴³ Similarly, a landowner who grants an easement or license to the Commonwealth, agencies thereof, or a locality, is immune from liability to any member of the public arising from that member's use of the easement.⁴⁴

There are two types of causation that a plaintiff must prove to have a successful negligence claim: but-for causation and proximate causation. But-for causation means that the harm would not have occurred if the defendant had used due care; "but for" the defendant's negligence, the plaintiff would not have been hurt.⁴⁵ Proximate cause, on the other hand, means the defendant's conduct was the legal cause of the harm that occurred.

The actor's negligent conduct is the *legal cause* of harm to another if

- (a) his conduct is a substantial factor in bringing about the harm, and
- (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.⁴⁶

Proving the legal cause of harm requires some element of foreseeability—was the harm that occurred foreseeable from the actions the defendant took? "To impose liability upon one person for damages to another, it must be shown that the negligent conduct was a necessary physical antecedent to the damages."⁴⁷

E. Local Ordinances

Additionally, these legal concepts may also be incorporated into local ordinances for enforcement by the locality or state. The power of a locality to criminalize these behaviors is sometimes limited. Regarding nuisance,

If an ordinance makes criminal that conduct which is a public nuisance, it is a presumptively valid exercise of the locality's police power. On the other hand, if the prohibited conduct is merely a private nuisance, it cannot be made criminal because a municipality has no authority under its police power to punish conduct which is a private nuisance.⁴⁸

⁴¹ VA. CODE ANN. § 29.1-509(B) (2017).

⁴² See Restatement (Second) of Torts §§ 332, 341 & 343 (1965).

⁴³ VA. CODE ANN. § 29.1-509(C) (2017).

⁴⁴ *Id.* at (D).

⁴⁵ Restatement (Second) of Torts § 430 (1965).

⁴⁶ *Id.* at § 431 (emphasis added).

⁴⁷ *Beale v. Jones*, 210 Va. 519, 511 (1970) (citing *Wells v. Whitaker*, 151 S.E.2d 422, 428 (Va. 1966)).

⁴⁸ *Cty. of Va. Beach*, 239 Va. at 355. The test for a public nuisance is not the number of people harmed, but potential of the annoyance to violate the rights of the public. *Nolan v. New Britain*, 69 Conn. 668, 678 (1897).

For an example of these legal principles applied in local code, the Gloucester County Code prohibits public nuisance⁴⁹ and excessive noise.⁵⁰ It also lists several non-exclusive examples of nuisances, such as, maintaining or keeping any substance that is dangerous to public health or safety; any buildings or other structures that are kept or maintained in an unsafe condition, or in a way that is dangerous, unhealthy, injurious, or annoying to the public; and any trash or other articles thrown or placed on any street, sidewalk, or other public places that cause any injury or annoyance to the public.⁵¹ The Gloucester County Code also provides restrictions on boating and watercraft and explicitly authorizes “every game warden, marine resources commission inspector, and every other law enforcement officer of this State and its subdivisions and of the United States Government” to enforce the provisions of Section 21, watercraft and water safety ordinances.⁵²

Gloucester is not the only locality in Virginia to have such provisions in its Code. For example, the City of Virginia Beach,⁵³ Middlesex County,⁵⁴ and Mathews County⁵⁵ each have their own code provisions that outline boating, noise, and other restrictions.

The common law legal concepts of the Public Trust Doctrine, nuisance, trespass, and negligence, as well as the local ordinances of each locality in Virginia, may play a role when user conflicts arise in the water and on waterfront properties. Before outlining these different conflicts and the different legal interests involved, it is important to first have an understanding of the enforcement agencies designated to resolve these conflicts.

II. WHEN CONFLICTS ARISE

A. Enforcement Agencies

The following law enforcement agencies generally have jurisdiction over property and use conflicts that may arise on the waters and coasts of Virginia. It is important to note that in some situations there may be concurrent jurisdiction among multiple enforcement agencies. For example, as discussed below, local law enforcement, the Department of State Police, the Virginia Marine Police, and the Department of Game and Inland Fisheries Conservation Police all have the authority to enforce the criminal laws of the Commonwealth. In such situations, the ultimate enforcement agency may be the one that is better equipped with the resources to handle the conflict or, simply, the first one that is at the scene.⁵⁶ Additionally, while some enforcement agencies may have primary responsibility for an issue, other enforcement agencies may assist with that issue during the course of their regular duties.⁵⁷

⁴⁹ GLOUCESTER COUNTY, VA., CODE § 12-2 (1987), https://library.municode.com/va/gloucester_county/codes/code_of_ordinances?nodeId=10843.

⁵⁰ *Id.* at § 11-3 (2017).

⁵¹ *Id.* at § 12-3 (1987).

⁵² *Id.* at § 21.10 (1983).

⁵³ VIRGINIA BEACH, VA., CODE ch. 6, https://library.municode.com/va/virginia_beach/codes/code_of_ordinances?nodeId=CO_CH6BEBOWA.

⁵⁴ *See*, MIDDLESEX COUNTY, VA., CODE §§ 43, 44, http://www.co.middlesex.va.us/index_ordinances.html.

⁵⁵ *See*, MATHEWS COUNTY, VA., CODE ch. 15, <https://ecode360.com/MA1886>.

⁵⁶ Email correspondence with Law Enforcement Divisions of DGIF and VMRC (on file with author).

⁵⁷ *Id.*

1. Local Law Enforcement – Sheriff’s Office and Local Police Force

At the local level, there may be two law enforcement agencies with jurisdiction in the locality – the sheriff’s office and the local police force. The sheriff is a locally-elected constitutional officer responsible for jail administration, service to the courts, and law enforcement.⁵⁸ The sheriff’s office has primary law enforcement responsibility for counties without a local police force.⁵⁹ For localities with a police force, the sheriff’s office primary responsibilities is jail administration and service to the courts. Where established,⁶⁰ the local police force “is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.”⁶¹ In addition to having jurisdiction within the physical boundaries of the locality, the local police force has jurisdiction over property owned by the locality that is physically located outside of its borders.⁶² The police power includes the power to bar individuals from trespassing on a property per a request for assistance from the property owner and is implied in the police’s express powers.⁶³

In certain specific instances, local law enforcement powers are not limited to land. Localities have the power, granted by the Commonwealth, to enact ordinances paralleling state laws regarding the operation of watercraft and the conduct of people operating them, including ordinances that provide for enforcement and penalties.⁶⁴ For example, the Gloucester County Code provides for enforcement of boating ordinances by all law enforcement officers of the state and its political subdivisions, as well as the federal government – meaning that officers within these entities would actually have power to go out on the water and enforce the ordinances.⁶⁵

2. Department of State Police

The Department of State Police provides statewide law enforcement services within the Commonwealth, as well as emergency preparedness planning, training, and promotion.⁶⁶ State police functions center on highway patrol, the police school, the state police communication system, supervision of inspection stations, a variety of tasks associated with motor vehicles, and the registration of machine guns.⁶⁷ State police also have authority to enforce all criminal laws of the Commonwealth and investigate aircraft accidents.⁶⁸ The state police department’s Bureau of Criminal Investigation conducts investigations for matters referred by the Governor, as well as requests to investigate potential felonies from the Attorney General, local law enforcement, or

⁵⁸ VA. CODE ANN. § 15.2-1609 (1997); Virginia Sheriffs’ Association, *Sheriffs’ Offices Responsibilities*, <https://vasheriff.org/sheriffs-resources/sheriffs-offices-responsibilities/>.

⁵⁹ Virginia Sheriffs’ Association, *supra* note 58.

⁶⁰ VA. CODE ANN. §§ 15.2-1700 to -1702.

⁶¹ VA. CODE ANN. § 15.2-1704 (2010).

⁶² VA. CODE ANN. § 15.2-1725 (1997).

⁶³ *Collins v. Commonwealth*, 517 S.E.2d 277 (Va. Ct. App. 1999).

⁶⁴ VA. CODE ANN. § 19.1-744 (2001).

⁶⁵ GLOUCESTER COUNTY, VA., CODE § 21.10.

⁶⁶ Virginia Department of State Police, *2014-16 Strategic Plan 1*, <http://www.vsp.state.va.us/downloads/VSP%20Strategic%20Plan%202014-2016.pdf>.

⁶⁷ VA. CODE ANN. § 52-4 (1989).

⁶⁸ VA. CODE ANN. § 52-8 (1968).

Commonwealth's attorneys.⁶⁹ The state police department also investigates and enforces laws related to drugs and drug paraphernalia.⁷⁰

3. Virginia Marine Police

The Virginia Marine Police (“VMP”) were created as a division of the Virginia Marine Resources Commission to protect tidal natural resources, first and foremost.⁷¹ The VMP have the power to enforce boating laws on tidal waters, including the power to stop, board, and inspect any vessel subject to the provisions of the Virginia Code.⁷² The VMP conduct search and rescue operations, enforce boating laws, respond to emergencies on the water, and investigate accidents and other criminal activity.⁷³ VMP also work in conjunction with the United States Coast Guard (USCG) to enforce federally designated safety and security zones.⁷⁴ In addition to having the authority to enforce all criminal laws of the Commonwealth,⁷⁵ the VMP also have unique jurisdiction to enforce state and federal commercial and recreational fishery laws and regulations.⁷⁶

3. Department of Game & Inland Fisheries Conservation Police

The Department of Game & Inland Fisheries (DGIF) created its own police force called the Conservation Police (“CP” or “game wardens”), per its express authority from the Virginia Code.⁷⁷ CP have jurisdiction throughout the Commonwealth to enforce hunting, inland fishing, and trapping laws.⁷⁸ Additionally, like the VMP, regular CP have the same authority as sheriffs and other law enforcement officers to enforce all criminal laws of the Commonwealth; and special CP officers have general police power while performing duties on properties owned or controlled by the DGIF Board.⁷⁹ The CP also have the authority to enforce boating laws⁸⁰ and stop, board, and inspect vessels subject to the boating laws.⁸¹ The primary goal of the CP is to protect Virginia's natural resources.⁸² The CP also frequently provide resources and expertise to local law enforcement.⁸³

4. United States Coast Guard

In addition to state and local law enforcement agencies, federal agencies such as the USCG may also resolve issues that arise on the water. The USCG is a federal law enforcement body that has jurisdiction on the “high seas, outer continental shelf, and inward from the U.S. Exclusive

⁶⁹ VA. CODE ANN. § 52-8.1 (1980).

⁷⁰ VA. CODE ANN. § 52-8.1:1 (2000).

⁷¹ Virginia Marine Resources Commission, *What We Do*, <http://www.mrc.virginia.gov/mp/leoverview.shtm>.

⁷² VA. CODE ANN. § 29.1-745 (2015).

⁷³ Virginia Marine Resources Commission, *supra* note 71.

⁷⁴ *Id.*

⁷⁵ VA. CODE ANN. § 28.2-106(B) (2002).

⁷⁶ *Id.*

⁷⁷ VA. CODE ANN. § 29.1-200 (2009).

⁷⁸ *Id.* at § 29.1-203 (2003).

⁷⁹ *Id.* at § 29.1-205 (2007).

⁸⁰ VA. CODE ANN. tit. 29, ch. 7.

⁸¹ *Id.* at § 29.1-745 (1998).

⁸² Dep't of Game & Inland Fisheries, *Virginia Conservation Police*, <https://www.dgif.virginia.gov/conservation-police/>.

⁸³ *Id.*

Economic Zone to inland waters.”⁸⁴ The USCG enforces international and federal laws regarding marine resource regulation, border safety, immigration, and illegal drug activity.⁸⁵ Not only does the USCG prevent crimes and enforce criminal laws and regulations, the USCG also acts as a first responder, in that it serves search and rescue functions, provides aide to distressed boaters, and responds to environmental disasters.⁸⁶

All of the above law enforcement agencies have jurisdiction to enforce laws on the water, and most have the power to enforce laws on the lands of the Commonwealth to varying degrees. Thus, each of these enforcement agencies can assist in certain situations when conflicts arise in the water or on lands within their specified jurisdiction.

B. Conflicts on the Water

Virginia’s Public Trust Doctrine extends to the MLW mark.⁸⁷ The public, therefore, has the right to use the waters beyond the MLW mark.⁸⁸ However, the public’s right of use is not completely unrestricted. Conflicts may arise when both riparian owners and the public exercise their rights in the water and on public and private waterfront land.

1. On Navigable Waters

Two conflicts that may arise in the water include issues between boaters and oyster farmers, and issues between multiple boaters.

a) Boaters and Oyster Farmers

As oyster sales increase, the aquaculture industry in Virginia remains strong, and people continue to lease the bottomlands to grow their own oysters, whether to sell or for personal consumption.⁸⁹ As the tides ebb and flow, oyster cages may become closer or farther from the water’s surface. When the tide is low and the water is shallow, the cages may protrude from or lie just below the water’s surface, and may have the potential to cause damage to boats navigating the waters.⁹⁰ Here, the Commonwealth must balance the interests of different members of the public with other competing interests.

Suppose, for example, Farmer leases a one-acre tract of bottomland in the Bay on which she raises oysters to sell. To avoid damage to her oysters and comply with state regulations,⁹¹

⁸⁴ United States Coast Guard, *Maritime Law Enforcement*, U.S. DEP’T OF HOMELAND SECURITY (last visited Dec. 1, 2017), http://www.overview.uscg.mil/Missions/maritime_law/.

⁸⁵ *Id.*

⁸⁶ United States Coast Guard, *Maritime Responses*, U.S. DEP’T OF HOMELAND SECURITY (last visited Dec. 1, 2017), http://www.overview.uscg.mil/Missions/maritime_response/.

⁸⁷ VA. CODE ANN. § 28.2-1208 (2009).

⁸⁸ *Cent. R.R. Co.*, 146 U.S. at 457.

⁸⁹ Tamara Dietrich, *Virginia still tops in hard clam, oyster farming*, DAILY PRESS, July 31, 2017, <http://www.dailypress.com/news/science/dp-nws-clam-oyster-aquaculture-20170731-story.html>.

⁹⁰ See, e.g., Pamela D’Angelo, *State Regulators Try to Solve Oyster Farming Conflict in Virginia Beach*, WVTF, Sept. 26, 2016, <http://wvtf.org/post/state-regulators-try-solve-oyster-farming-conflict-virginia-beach>.

⁹¹ “When leased oyster planting ground is marked, the corners and boundary lines or the active works areas within the lease shall be marked with markers or buoys and shall be marked in a manner that does not create any unnecessary restriction to navigation”. 4 VA. ADMIN. CODE § 20-290-30.

Farmer has placed markers in the water to section off her tract. One day, Boater speeds through the water, ignoring the markers Farmer has set up. Boater hits some of Farmer's cages, causing damage to both the boat and the cages. Both Farmer and Boater have important interests at stake in this situation. Boater, as a member of the public, has an interest in being able to use the waters of the Commonwealth, per the Public Trust Doctrine.⁹² Boater also has an interest in fixing the damage to his boat. On the other hand, Farmer has an interest in using the waters of the Commonwealth for growing oysters, per her lease.⁹³ Farmer has an interest in using the tract in accordance with her lease, and she has a property interest in the cages and the oysters she raises.⁹⁴

Note that the Virginia Code states that the DGIF Board must adopt measures to ensure the prevention of property damage and collisions in the water.⁹⁵ The Board is responsible for adopting and enforcing these measures.⁹⁶ In fact, the Virginia Code provides for regulations against reckless and other improper boating practices.⁹⁷ Further, localities often adopt measures restricting the practices of boaters by imposing speed limits and no wake zones, among other measures.

In this type of conflict, where a boat collides with oyster cages, the VMP, CP, state police, and local law enforcement have jurisdiction to resolve the conflict and enforce state and local laws and regulations. The CP and VMP are able to ensure that Farmer was complying with the terms of her lease and with oyster farming regulations, as well as to impose penalties on Boater for boating at excessive or improper speed or violating any possible no wake zone limitations. State and local law enforcement also have jurisdiction in these areas, but, due to resources, may be more restricted than the VMP or CP in enforcing issues out on the water.

b) Between Boaters

Another type of conflict that could arise in navigable waters is between boaters. Boaters are restricted in the manner they operate their boats on navigable waters. Criminal penalties may be imposed for boaters who operate their boats in a reckless or improper way, and those who operate boats while intoxicated are also subject to criminal penalties.⁹⁸

Imagine that Boater A and his family are out on the water during a storm. Boater A does his best to steer clear of other watercraft and breakers that could damage his boat, but the waves are strong and visibility is low. Unbeknownst to Boater A, Boater B, whose vessel is smaller than that of A's, races dangerously close to A's boat in an attempt to get back to shore as fast as possible. In doing so, Boater B crashes into Boater A, causing one of A's family members to fall overboard and both boats to be damaged. In this case, both A and B have an interest in getting back to shore

⁹² *Cent. R.R. Co. v.*, 146 U.S. at 457.

⁹³ *Id.*

⁹⁴ For a related example of the rights of oyster farmers whose oysters are damaged by public use of the waters, *see Grant v. United States*, 192 F.2d 482, 484-86 (4th Cir. 1951) (holding that the lease acted as a limitation on the right of the public, in this case the government, to use the navigable waters, and as such, the government was liable for the damage it caused to plaintiff's oysters).

⁹⁵ VA. CODE ANN. § 29.1-735 (1987).

⁹⁶ *Id.*

⁹⁷ *See, e.g.,* VA. CODE ANN. §§ 29.1-738.01 to -738.03.

⁹⁸ *See* VA. CODE ANN. §§ 29.1-738.01 to -738.03.

safely. After the collision, both have an interest in getting the damage to their boats fixed. Boater A also has an interest in ensuring the well-being of his family member who was thrown overboard.

Here, the USCG, acting as a first responder, can conduct the search and rescue for A's overboard family member as well as bring everyone else safely back to shore. VMP, CP, or local law enforcement with a boating/marine patrol unit could respond to the accident. Whichever entity – VMP, CP, or local law enforcement – responds would be responsible for seeing any resulting charges through the court process. Additionally, A and B can pursue civil remedies to try to get the damages to their boats fixed, and A may try to pursue a civil suit against B for any injuries his family member sustained in falling overboard as a result of the crash.

The above conflicts have so far only dealt with conflicts that occur in the open waters, but conflicts also arise in the water above the MLW mark at high tide. In these conflicts, similar interests are at stake, and parties can look to state, local, or federal agencies for enforcement.

2. Above the Mean Low Water Mark

Waterfront property owners have title to property landward of the MLW mark.⁹⁹ Ownership of waterfront land entitles the property owner to certain riparian rights, such as the right to wharf out to navigable water.¹⁰⁰ However, such wharf cannot be for a commercial purpose, obstruct navigation, or injure the private rights of other people.¹⁰¹ Conflicts may arise where a riparian owner wishes to construct a structure on their land that extends into the water for purposes of accessing navigable water. For example, a waterfront owner who also owns boats and other watercraft may wish to build a large wharf to moor her boats.¹⁰² Thus, the riparian owner's rights may conflict with the public's rights. The below situation outlines the legal interests of each party when these rights conflict.

a) Recreational Users & Riparian Owners

Suppose Landowner A lives on and owns riverfront property along a navigable water. Landowner A's property is adjacent to a public beach where there is frequent activity with kayakers and beachgoers who access the beach via a public access point. Now suppose that one day, as kayakers return from an excursion, they paddle at high tide close to the shore to get to the public access point, passing over land that is above the MLW mark on A's property. Here, A has an interest in excluding people from her property, while the kayakers have an interest in using the public access point and navigating in the waters of the Commonwealth.

Generally, the public has a right to float in navigable waters, whether the submerged lands beneath them are held in public trust by the Commonwealth or privately owned pursuant to a king's

⁹⁹ See VA. CODE ANN. § 28.2-1202 (2014).

¹⁰⁰ See *Taylor v. Commonwealth*, 102 Va. 759, 880-81 (1904).

¹⁰¹ VA. CODE ANN. § 62.1-164 (1972).

¹⁰² For an example of a Virginia case dealing with this issue, see *Evelyn v. Commonwealth Marine Res. Comm'n.*, 621 S.E.2d 130 (2005) (holding that riparian owners may build without permits only structures "necessary" to access navigable waters and affirming the lower court's order to the riparian owner to remove a structure not in compliance with this rule).

grant or privately owned in fee ownership.¹⁰³ The Fourth Circuit, citing the Virginia Supreme Court, found that while it is established that the surface of navigable waters may be used by the public, the use of the submerged lands and the water's banks are a matter of state law.¹⁰⁴ Additionally, the specific actions of the kayaker are important in this hypothetical. If the kayaker on the surface of the water simply passes over Landowner A's property, this should fall under the public's right to navigation. However, if the kayaker exits the kayak to stand on the bottom, there may be an issue if the property at that point is upland of the MLW mark.

In cases of trespass, state police and local law enforcement have jurisdiction to enforce a landowner's private rights, although it is more likely that an individual would contact local law enforcement. Note also that, depending on the behavior of the kayakers, local nuisances and noise ordinances may come into play. Therefore, the language of the local ordinance should be reviewed to determine the appropriate enforcement authority. VMP and CP would also have jurisdiction to enforce any violations of state law should they be at the scene.

C. Conflicts on Land

1. Adjacent Properties & Conflicts Above the MLW Mark

Just as trespasses may occur above the MLW mark in the water, they may also occur—and may do so more frequently—above the MLW mark on land. Conflicts on the land may also give rise to other issues, such as nuisance, where no intrusion is made onto the property of the riparian owner but the riparian owner's interests are still disturbed. Such issues may arise where beachgoers use public beaches or road endings in such a way that annoys or bothers the landowner or where riparian owners live next to publicly owned and maintained land that falls into disrepair.

a) Noisy Beachgoers

One of the most common types of conflicts that occurs on waterfronts is when individuals make use of the beach. Suppose that Beachgoers go to a public beach via a public access point that is adjacent to Landowner O's plot. O's land runs parallel to a road that dead ends into a parking lot leased or owned by the locality. The parking lot shares its western border with O's land and its eastern border with the public beach that also is leased or owned and maintained by the locality. Assume Beachgoers do not step onto or park on O's land. However, every night, Beachgoers stay there until 2:00 or 3:00 a.m., drinking alcohol, buying and selling drugs, making a lot of noise, and leaving trash on the beach.

Beachgoers have an interest in making use of the public beach, although they are still bound by the laws of the Commonwealth and of the locality in doing so. O has an interest in the quiet enjoyment of his property and an interest in the exclusion of others from his property. Beachgoers

¹⁰³ A king's grant, also called a crown's grant, refers to a conveyance made by the King of England or a Royal Governor while Virginia was still a colony. The Virginia Supreme Court has found that within navigable waters, a king's grant may convey exclusive fishing rights, as well as ownership of submerged lands. *Kraft v. Burr*, 252 Va. 273 (1996).

¹⁰⁴ *Loving v. Alexander*, 745 F.2d 861, 868 (1984).

may be liable for private nuisance, for which O could implement a civil suit.¹⁰⁵ However, Beachgoers may also be in violation of parks rules, a local noise ordinance, or a criminal ordinance over which the local law enforcement entity has jurisdiction. Furthermore, depending on the particularities of the actions of Beachgoers, Beachgoers may also be guilty of public nuisance, which is an interference with a community interest for which jurisdiction lies with local law enforcement.

b) Maintenance of Publicly Owned Land

Related issues may also come up when riparian owners own land adjacent to publicly owned and maintained land. Suppose that O owns the same tract of land as in the previous example that is adjacent to a public park that has a parking lot, beach, and wharf. O is unhappy because the parking lot is dilapidated and the wharf is falling apart. Furthermore, the beach is dirty and littered with trash and drug paraphernalia. O has an interest in seeing that the adjacent properties are maintained because their appearance may affect O's property value and enjoyment of his land. Likewise, O does not want the trash and other debris on the beach to encroach upon his land. The trash on the beach also could pose a health or safety threat to O, who lives nearby, because the trash includes drug paraphernalia.

O may contact the entity that is responsible for maintaining the properties concerned and request that they be properly maintained. Although this action is not a legal remedy, it could be an effective way to get the public entity to take action. Failing this, O may be able to enforce maintenance via a writ of mandamus or on a gross negligence theory in civil court.¹⁰⁶ Where the public properties become overrun by individuals who engage in criminal activity, a noise ordinance violation, or other civil violations on the properties, O can call local law enforcement to stop the criminal activity or nuisance each time it occurs.

VI. CONCLUSION

In Virginia, the confluence of the Public Trust Doctrine and the private ownership of waterfront property to the Mean Low Water mark, with associated riparian rights, can give rise to a number of complex legal conflicts involving the competing interests of riparian owners and the public. These issues can involve nuisance, trespass, and negligence law as well as criminal laws, as espoused by local ordinances and state laws and regulations. When issues arise, general and specialized law enforcement agencies have jurisdiction to help resolve conflicts and balance the rights of both riparian owners and members of the public. These law enforcement agencies can include the Sheriff's Office, local police force, Department of State Police, Virginia Marine Police, DGIF Conservation Police, and the USCG.

In the water, when conflicts arise, such as between boaters and riparian owners, the Virginia Marine Police and DGIF Conservation Police have jurisdiction and resources to enforce the governing laws. However, state police and local law enforcement also have jurisdiction in certain instances. When conflicts arise among boaters on the water, such as when a collision

¹⁰⁵ See generally *Cty. of Va. Beach*, 239 Va. 353 (noting that private nuisances cannot be made criminal because a municipality has no authority to punish such conduct).

¹⁰⁶ See VA. CODE ANN. § 15.2-1809 (1997).

occurs, the USCG, Virginia Marine Police, and DGIF Conservation Police have the power to enforce boating laws, as well as conduct search and rescue operations.

When problems arise on land, state police and local law enforcement have jurisdiction, but just as on the water, the Virginia Marine Police and the DGIF Conservation Police also have general authority to enforce the laws and regulations of the Commonwealth. Not only can individuals resolve conflicts through criminal proceedings, civil remedies are also available for negligence, trespass, and nuisance. Both civil and criminal remedies for these issues have as their core purpose balancing the rights of the public to use the bottomlands and the navigable waters of the Commonwealth with the rights of riparian owners to use and enjoy their properties.