

2019

## Dredged Material Siting: Fast-track Permitting and Beneficial Use Program



**Virginia Coastal Zone**  
MANAGEMENT PROGRAM



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## Executive Summary

As a coastal region, navigable waterways are critical to the economic fabric of the Middle Peninsula region and rest of Tidewater Virginia. Open waterways invite not only commerce, but residents and visitors to explore and enjoy the coastal natural resources of the region.

Over the years, the U.S. Army Corps of Engineers has been responsible for “ensuring navigation on our nation’s waterways moves safely, reliably, and efficiently with minimal impact to the environment, thus sustaining a vital component of the economy (USACE, 2010).” In 2009, however, federal funding to address dredging of the shallow draft channels (i.e. federally designated channels with depth of -15 feet mean lower low water (MLLW) or less) was pulled. Consequently, Virginia localities have been put in the position of bearing the financial and administrative burden to maintaining their waterways.

In 2018, the General Assembly session passed a suite of bills to assist localities to address dredging issues within Tidewater Virginia. Therefore, to support these bills and Tidewater localities, MPPDC staff and project partners worked to provide a comprehensive understanding of dredged material siting, ownership, permits and potential beneficial uses of dredged material.

To help localities understand the steps involved in a shallow water dredging projects, Virginia Institute of Marine Science Shoreline Studies Program produced a report to guide local governments through project considerations (i.e. federal or non-federal channel, dredged material location). The report applies its findings to Davis Creek in Mathews County which provides a case study for other Tidewater Virginia channels.

As more and more localities will be forced to manage their own dredging projects, they will consequently need to handle the dredging material produced from these projects. To-date most of the dredged material is stored at disposal sites that are costly to maintain; however, there are opportunities to put this material to beneficial use. Also, for high quality dredged material that is currently stored there is a potential opportunity for “innovative reuses”. According to the Virginia Coastal Policy Center, *as localities begin to bear the dredging burden, they should reconsider the current use, or lack of use, of dredged material, and how it might be reused once stored, to make the process more efficient, cost-effective, and sustainable.*

## Introduction

During the 2018 General Assembly session, a suite of new 309-driven coastal resiliency legislative bills passed to help localities meet their dredging needs in the face of reduced support from the U.S. Army Corps of Engineers. In part, one of the bills, HB 1096, was designed to speed up the permitting process for dredging proposals and directed the Virginia Marine Resource Commission (VMRC) to adopt *regulations to establish and implement a fast-track permitting program that authorizes the selection and use of appropriate sites in Tidewater Virginia, as defined in § 28.2-100 of the Code of Virginia, for the disposal of material dredged in such region, with such regulations to be effective no later than July 1, 2019.* Therefore, as VMRC finalized these regulations, MPPDC staff and project partners have worked to position rural coastal localities with a comprehensive understanding of dredged material siting, ownership, permits and potential beneficial uses of dredged material. More specifically, this project focused on three objectives:

1. **Identifying Opportunities for Beneficial Use of Dredged material** - MPPDC staff mapped publicly owned tax-exempt lands within the Middle Peninsula, Northern Neck and Accomack-Northampton Planning District Commissions that could potentially be used for beneficial use of dredged material.
2. **Channel Analysis** – Virginia Institute of Marine Science developed a report to offer general considerations for localities on dredging and the disposal of material from shallow draft channels. Additionally, the report offers background on shallow draft channels, both federally and non-federally maintained, and suggests procedures for the dredging and disposal process.
3. **Legal Research** – Virginia Coastal Policy Clinic (VCPC) at the College of William and Mary conducted research regarding the beneficial use of dredged material and the role of state permitting programs and regulation. In a separate report VCPC explored ownership rights of dredged material.

## Product #1: MPPDC – Identifying Opportunities for Beneficial Use of Dredged Material

Based on HB1096, the Virginia Marine Resources Commission (VMRC) developed regulations for a “Fast Track Permitting Program for Disposal of Dredged Material” ([Chapter 4 VAC 20-1340-10 ET](#)). The purpose of this regulation is to *establish the necessary application requirements and review procedures for fast-track permitting of dredging and dredged material disposal sites involving state-owned submerged lands. Fast-track permitting shall be available only to local governments in Tidewater Virginia.* Since Tidewater localities are the eligible applicants, MPPDC staff generated maps of publicly owned tax-exempt land within the Middle Peninsula, Northern Neck and Accomack Northampton Planning District Commissions that could potentially be evaluated or used for the general storage of dredged material and for locations to support the creation of wetlands, living shorelines, beaches and flood control projects.

Maps (Appendix C) were created of publicly owned tax-exempt land within the Middle Peninsula, Northern Neck, and Accomack Northampton Planning District Commissions to gain an understanding of the potential locations that could be evaluated or used for the general storage of dredged material and for locations to support the creation of wetlands, living shorelines, beaches and flood control projects. In compiling these sites from locality commissioners of revenue, GIS specialists, and/or planners, these maps improve the long-term planning of dredging projects and the placement of dredged material that will be useful upon the finalization of regulations for fast-tracking permitting of dredging proposals in

Virginia. It should be noted that MPPDC staff originally requested publicly tax-exempt data from Commissioners of Revenues; however there were several Commissioners of Revenue who would not provide the requested public data and as other data sets were utilized, it reduced the accuracy and or completeness of illustrating all publicly owned tax-exempt land within their jurisdictional boundaries.

## Product #2: VIMS Shoreline Studies – Channel Analysis

MPPDC contracted with the Virginia Institute of Marine Science (VIMS) Shoreline Studies Program to explore general considerations for localities on the dredging and disposal of material from shallow draft channels for channels in the Middle Peninsula, Northern Neck, and Eastern Shore. The report offers a background on shallow draft channels, both federally and non-federally maintained, suggests procedures for the dredging and disposal process, and applies this process to Davis Creek. Please see Appendix A for the entire report.

## Product #3: Virginia Coastal Policy Clinic - Legal Research

MPPDC contracted with the Virginia Coastal Policy Clinic (VCPC) to explore ownership right at sites with material from completed dredging projects and whether quality dredged material stored on a publicly owned upland site can be later used for other applications. Based on the research the report found that the majority of dredged material is considered unsuitable for beneficial use projects and the material is disposed—either in open water, confined disposal facilities (usually when the material is contaminated), or in other upland disposal facilities—and, once disposed, the question of reuse for other applications is off the table, yet technological advances could add value for reuse in the future. However, the for proportion of dredged material currently being used for beneficial use and the ownership rights are relatively straightforward and resolved by property and contract law. Please see Appendix B for the entire report.

In a second effort, VCPC researched the beneficial use of dredged material, including wildlife habitat restoration and development, beach nourishment for beaches subject to erosion, and managing solid waste landfills. The report analyzed state permitting programs and regulations associated with permissions to storing and using dredged material in Virginia. Please see Appendix C for the entire report.

## Conclusion

Based on the findings of the reports, localities are provided insight to the considerations needed for the successful completion of a dredging project. VMRC finalized dredging regulations - as directed in HB 1096 – which provide Tidewater localities the opportunity to initiate long term planning efforts to maintain their waterways and protect their shorelines.

# Appendix A: VIMS Shoreline Studies Program Report - Rural Shallow Water Dredging: Channel Assessment and Disposal Site Strategies

## Appendix B: VCPC Report – Dredged Material Ownership: Rights and Reuse

## Appendix C: VCPC Report – Beneficial Use of Dredged Material: Role of State Permitting Programs and Regulations