

WETLANDS OVERSIGHT IN VIRGINIA: A RESOURCE CAPABILITY ANALYSIS

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Introduction

This section of the overall research project, *Regulatory Fidelity—An Analysis of Wetlands Management in Virginia*, is a resource capability analysis designed to educate and inform possible wetlands management reform in Virginia. This paper analyzes available wetlands board budgetary and administrative data for the wetlands boards across the Virginia Coastal Zone and provides research and analysis regarding possible explanatory factors for the varying levels of adherence to Virginia Institute of Marine Science (VIMS) guidance among wetlands boards. It also provides an analysis of the budgetary and administrative capacity of Virginia Marine Resources Commission (VMRC) to conduct regulatory oversight of local wetlands boards. Finally, this paper examines the feasibility of oversight reform options, including two recommendations made by VIMS, from a budgetary and administrative capacity standpoint.

Wetlands Boards Analysis

This paper offers a three-part approach to determine the budgetary and administrative capacity of wetlands boards. First, Appendix 1 contains informational fact sheets for each of wetlands boards established in the Virginia Coastal Zone. Each sheet contains information to the extent that it was made publicly available by the locality. Second, Appendix 2 is a spreadsheet of demographic information for the Virginia Coastal Zone. It offers comparative demographic information for the Commonwealth of Virginia and the nation as a whole. Additionally, Appendix 2 matches each county's fidelity to VIMS' guidance to the demographic information. Below are some noticeable results from Appendix 2:

- Most areas with the worst records for VIMS compliance have low population densities. Out of the 10 localities with 0% compliance, eight of the localities had population densities below 500 people per square mile.
- Most of the localities with the worst records for VIMS compliance had a small number of wetlands projects reviewed by their wetlands board from 2009 to 2011. Of the worst offenders (the 10 localities with 0% compliance), each reviewed 20 or less wetlands projects during that time period.
- Most of the localities with wetlands board decisions that were consistent with some form of guidance had the largest number of projects reviewed by their wetlands board. Out of the nine localities in the middle third of VIMS compliance, seven had wetlands boards that reviewed over 60 projects.
- Most of the localities with no projects reviewed between 2009 and 2011 have the largest population densities. All of the localities with zero projects reviewed between 2009 and 2011 have population densities that exceed 1,200. This is likely due to the tendency of urban localities to have a small number of undeveloped wetlands.

- Areas with the worst records for adhering to VIMS guidance tend to have smaller unemployment rates. Out of the 10 localities with no adherence to VIMS guidance, seven had unemployment rates below 6.0%.

Third and finally, this paper offers additional information regarding localities and wetlands board activities through six case studies.

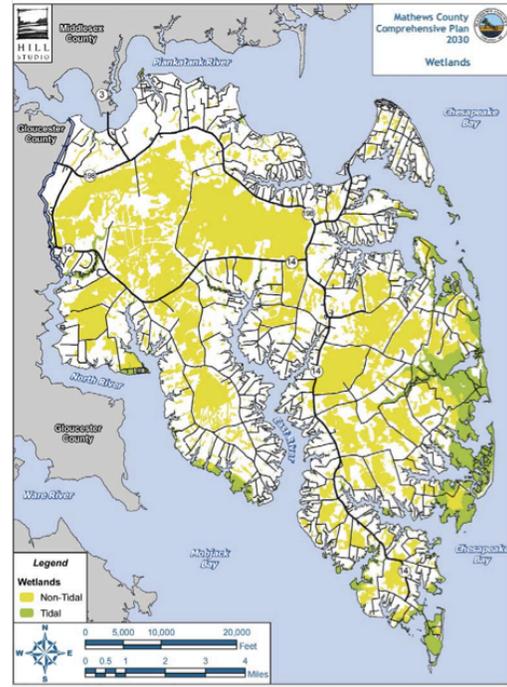
Wetlands Boards Case Studies

Mathews County

Located on the tip of the Middle Peninsula, Mathews County is found in the middle of the Virginia Coastal Zone. Its three maritime borders, which are the Mobjack Bay, the Chesapeake Bay, and the Ware River, are responsible for the county's 217 miles of shoreline. This is a steep figure for a relatively small county of only 252 square miles and less than 9,000 people.

The interior of Mathews County is also marked by water. There are 6,950 acres of tidal wetlands and 15,448 acres of non-tidal wetlands. Combined, tidal and non-tidal wetlands make up over 40% of the county's total landmass. Figure 1 illustrates the wetlands coverage in Mathews County.

Figure 1: Mathews County



The Mathews County Wetlands Board regulates the intertidal zone, which contains non-vegetated wetlands. It has jurisdiction from mean low water (MLW) to the landward limit of vegetated wetlands and some beaches and dunes.¹ Local/State/Federal Joint Permit Applications are submitted for requested shoreline erosion control project. These are reviewed concurrently by the Mathews County Wetlands Board, VMRC, the U.S. Army Corps of Engineers, and other agencies as necessary.²

Source: Mathews County 2010 Comprehensive Plan

Mathews County has a stated goal of increased training for Board members in “living shoreline” stabilization methods which include the development of a certification program that can serve as a model for other communities.³ They also plan to use the Shoreline Management Plan by integrating it into governmental permitting, Wetlands Board decisions, and planning recommendations.⁴

¹ “Mathews County Shoreline Management Plan,” Shoreline Studies Program, Virginia Institute of Marine Science, last edited March 2010. http://web.vims.edu/physical/research/shoreline/docs/Mathews_ShorelineMgtPlan/Final%20PDF/Mathews_SMP.pdf, p. 7.

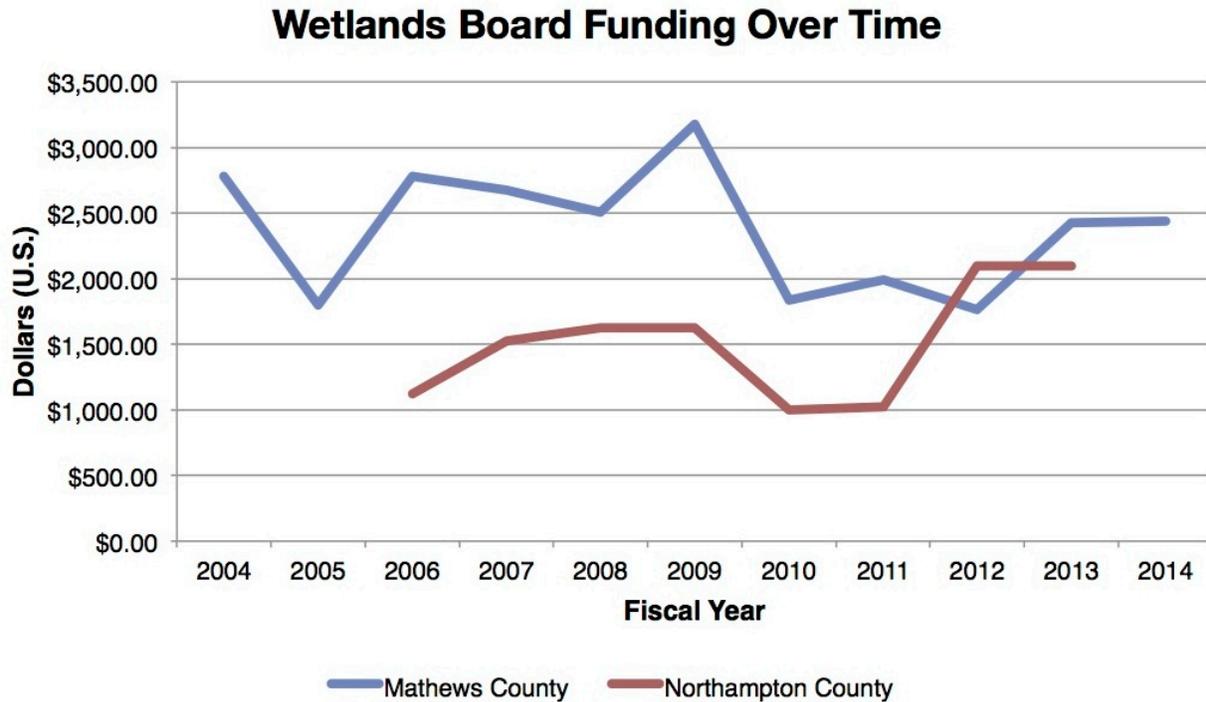
² “Mathews County Shoreline Management Plan,” p.6.

³ “Mathews County Comprehensive Plan 2030,” adopted January 18, 2011, <http://www.co.mathews.va.us/home/showdocument?id=1433>, p. 4.

⁴ “Mathews County Comprehensive Plan 2030,” p.143. Thomas Jefferson Program in Public Policy

The Mathews County Wetlands Board is made up of five members and falls under the jurisdiction of the Department of Planning and Zoning. Figure 2 is a comparison of funding for the Mathews County Wetlands Board and the Northampton County Wetlands Board. The counties are of comparable population size and each borders water on three sides.

Figure 2: Mathews County Wetlands Board Funding Over Time

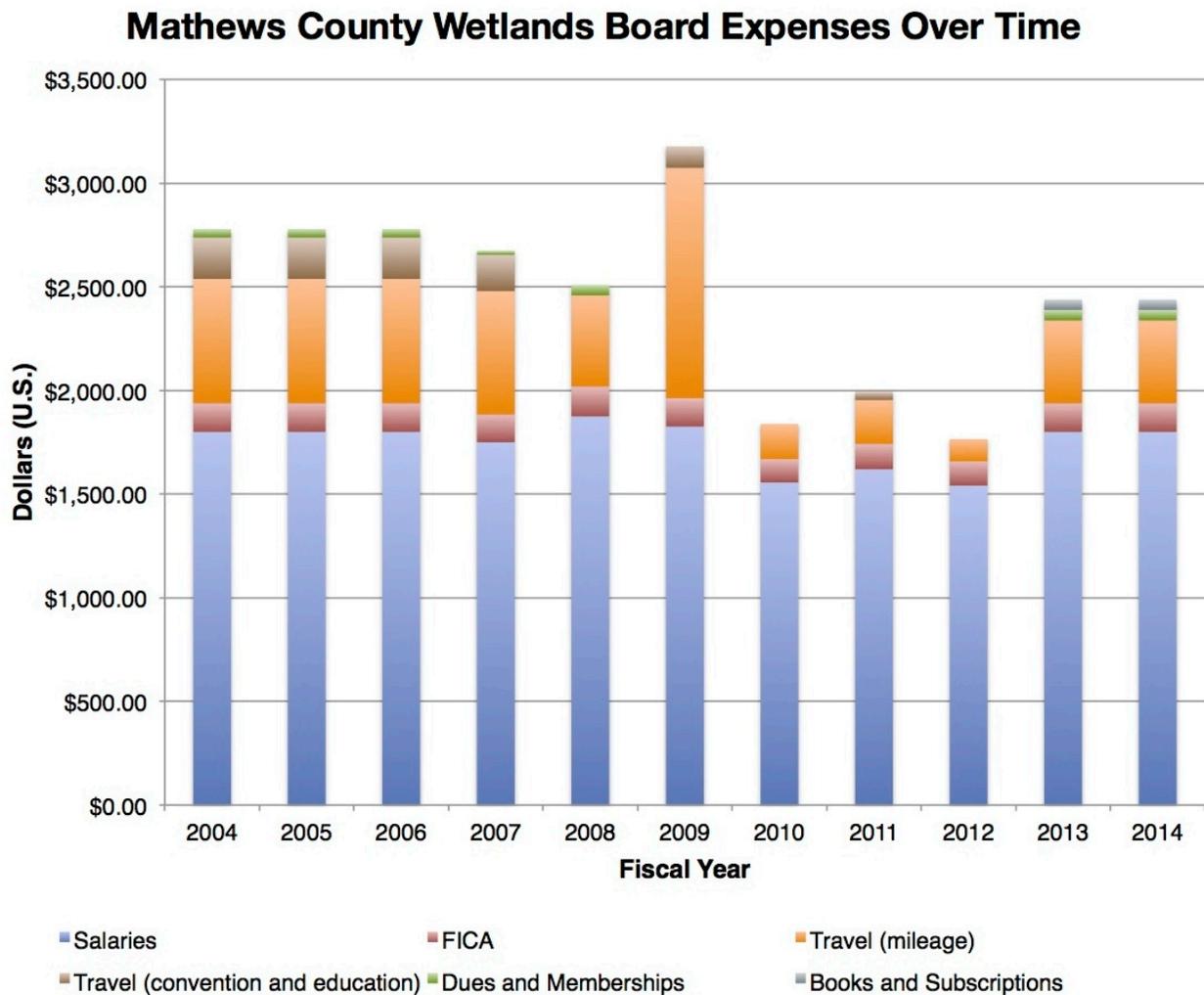


Source: Mathews County and Northampton County Budgets, FY 2004-2014.

In 2004, the Mathews County Wetlands Board received \$2,778 in funding in the County budget via the Department of Planning and Zoning. A small shift in funding occurred, coinciding with the economic downturn. Still, a decade later, the Mathews County Wetlands Board is set to receive \$2,438 for Fiscal Year 2014, just 12% less than ten years prior.

Figure 3 depicts Mathews County Wetlands Board spending, broken out by itemized expenditures. Expenditures listed were consistent for all 11 years.

Figure 3: Mathews County Wetlands Board Expenses Over Time



Source: Mathews County Budgets, FY 2004-2014.

Salaries for the Board members, while small, are easily the largest expense for the Wetlands Board. The second largest, mileage reimbursement for travel, is primarily for travel to permitting sites. The travel for convention and education appears to primarily be VIMS-hosted training.

King and Queen County

King and Queen County is located in the Middle Peninsula of Virginia's Coastal Zone. King and Queen County shares its northern border with Essex County and its southern border with King William and Gloucester Counties. It is a rural county, with a population of 7,046 and a population density of 22 people per square mile.⁵ The unem-

⁵ American Fact Finder," *United States Census Bureau*, accessed November 25, 2013, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.
Thomas Jefferson Program in Public Policy

ployment rate for the county is 6.5%, which is above the overall unemployment rate for the Commonwealth of Virginia.⁶ From 2007 through 2011, the median household income for King and Queen County was estimated to be \$48,170, which is slightly below the average for Virginia's Tidal Area.⁷

King and Queen County has a local wetlands board to manage both vegetated and non-vegetated tidal wetlands. The Wetlands Board has five members and one alternate who each serve five-year terms. All of the Board members are appointed by the Board of Supervisors. King and Queen County's Wetlands Board meets every fourth Tuesday of the month to review permit requests that involve the alteration, development, or use of the county's tidal wetlands. The Wetlands Board also discusses enforcement of wetlands regulations and investigates illegal wetlands activities.⁸ King and Queen County's Wetlands Board receives about three or four permit applications each year, with a maximum request of 11 permit applications in 2007.⁹

The Wetlands Board also has one staff member to assist in the activities of the Wetlands Board. This staff member has the position of Environmental Codes Compliance Officer, which is a shared staff position among all environmental programs within King and Queen County. In the Joint Permit Application process, the Environmental Codes Compliance Officer is responsible for sending out advertisements of proposed projects to the local newspaper. Newspaper advertisements for King and Queen County's Wetlands Board are usually posted in the public notice section of the *Southside Centennial* newspaper for two weeks.¹⁰ The cost of providing the advertisement is covered in the application fee.¹¹

The Virginia Marine Resources Commission (VMRC) also assists in the activities of King and Queen County's Wetlands Board. Permit requests involving tidal wetlands are sent to VMRC for review of potential effects on tidal wetlands. After an initial assessment, VMRC sends the permit application to the Wetlands Board and other agencies for further review. After the proposed project is listed in the newspapers for two weeks, the Wetlands Board discusses the permit application at their monthly meeting. A VMRC representative is present at each meeting. VMRC also sends staff members to the site of the permit proposal to find any potential risks to tidal wetlands. After the permit is signed by the Wetlands Board, VMRC keeps a copy of the permit. VMRC is responsible for keeping track of all of the tidal permit applications in Virginia's Tidal Region to determine how permitting activities are impacting wetlands.¹²

⁶ "Unemployment Rates by County in Virginia, August 2013," Bureau of Labor Statistics, last modified October 22, 2013, <http://www.bls.gov/ro3/valaus.htm>.

⁷ "American Fact Finder," *United States Census Bureau*, accessed November 25, 2013, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.

⁸ "Environmental," *King and Queen County's Environmental Codes Compliance Office*, accessed December 1, 2013, http://www.kingandqueenco.net/html/govt/envirodocs/wetlands_main.html.

⁹ David McIntire (Environmental Codes Compliance Officer), in discussion with the authors, November 2013.

¹⁰ David McIntire (Environmental Codes Compliance Officer), in discussion with the authors, November 2013.

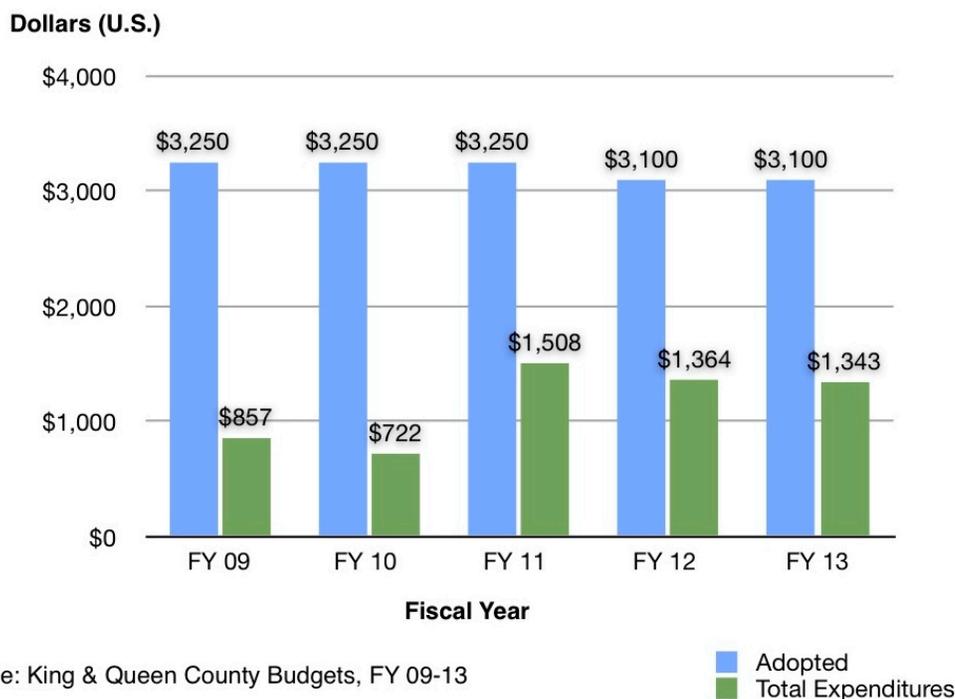
¹¹ "Environmental," *King and Queen County's Environmental Codes Compliance Office*, accessed December 1, 2013, http://www.kingandqueenco.net/html/govt/envirodocs/wetlands_main.html.

¹² David McIntire (Environmental Codes Compliance Officer), in discussion with the authors, November 2013.

Figure 4 provides a comparison of King and Queen County’s adopted budget and actual expenditures from fiscal years 2009 through 2013. Despite difficult economic conditions, the amount of money allocated to the Wetlands Board has not fluctuated significantly over time. Of King and Queen County’s total adopted budget in FY2013 (\$20,570,822), the Wetlands Board received \$3,100. It is interesting to note that King and Queen County’s Wetlands Board never spent its entire budget. Often the Wetlands Board would spend less than half of its share of the total adopted budget.

Figure 4: A Comparison of King and Queen County’s Adopted Budgets and Actual Expenditures

A Comparison of King and Queen County’s Wetlands Board Adopted Budgets and Actual Expenditures (FY 09-13)

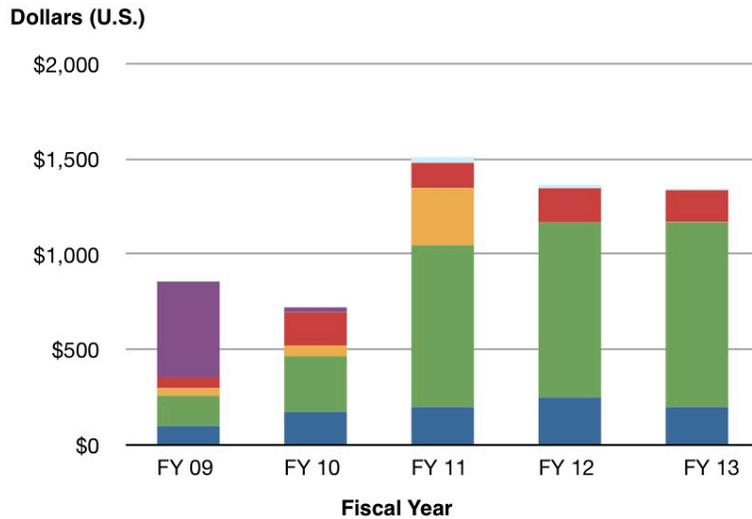


King and Queen County’s budgetary documents also provide a breakdown of how the Wetlands Board budget is spent each year. Figure 5 provides an analysis of King and Queen County’s Wetlands Board expenditures from Fiscal Years 2009 through 2013. Over time, advertising has become a larger portion of King and Queen County’s Wetlands Board expenditures each year. Advertising money is spent on buying space in local newspapers to advertise proposed permit projects. Education spending for the Wetlands Board decreased over time. Wetlands Board expenditures on mileage has remained stable since around FY2010. Mileage expenditures include all traveling costs for Board members and staff. Compensation for Board Members is a minimal portion of King and Queen County’s Wetlands Board expenditures.¹³

¹³ David McIntire (Environmental Codes Compliance Officer), in discussion with the authors, November 2013.

Figure 5: King and Queen County's Wetlands Board Expenditures

King & Queen County's Wetlands Board Expenditures (FY 09-13)



Source: King & Queen County Budgets, FY 09-13

- Office Supplies
- Seminars-Meals & Lodging
- Convention & Education
- Mileage
- Postal Services
- Advertising
- Compensation Wetlands Board Meetings

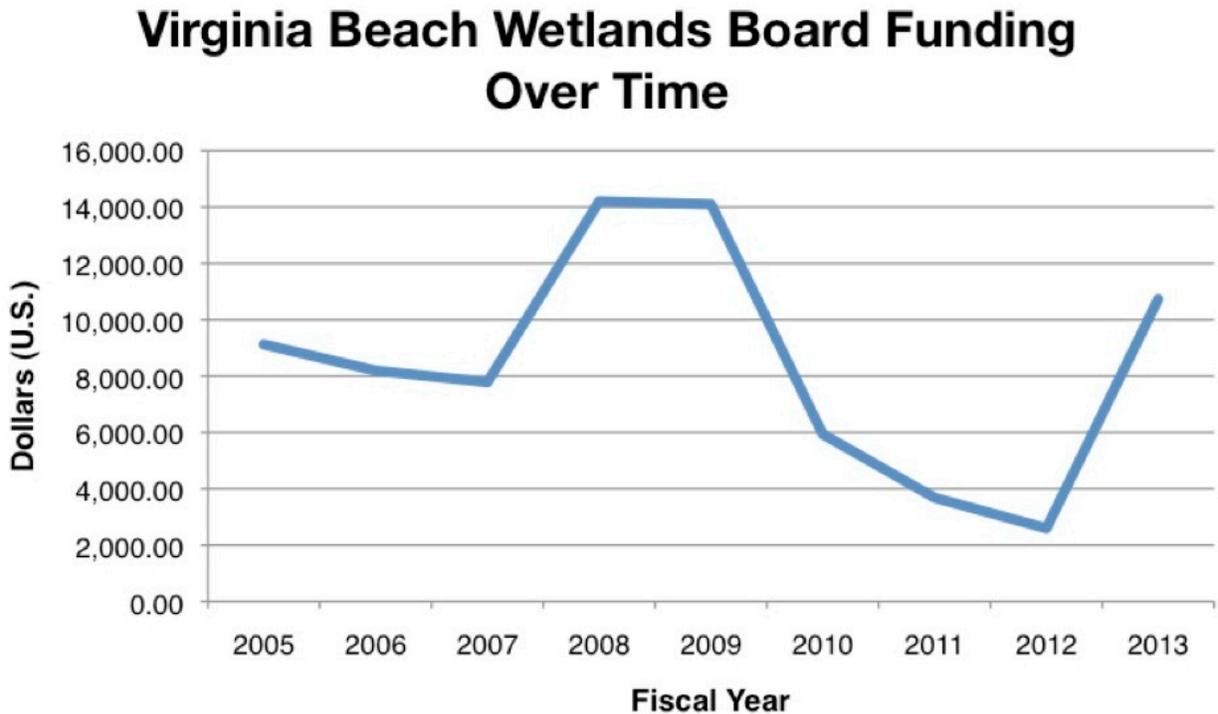
City of Virginia Beach

Located on the southeast corner of the Commonwealth, Virginia Beach is Virginia's largest city with nearly 450,000 residents. The City of Virginia Beach underscores the importance of wetlands by describing on its website their purposes for flood control, erosion control, pollution filtration, and fish and wildlife habitation. With jurisdiction that lies between mean low water (MLW) and mean high water (MHW) for non-vegetated wetlands and from MLW to an elevation one and one-half times the mean tide range for vegetated wetlands, the Wetlands Board provides or denies permission to fill, alter, or build in or around wetlands through the permitting application process. The mean tidal range in the Virginia Beach area is about two feet for rivers and bays and 3.5 feet for ocean area.

The Wetlands Board, which has seven members who serve for five years each following an appointment from the City Council, operates under the Planning Department. The Planning Department requires and prepares a legal advertisement to accompany the permitting application that must appear in a local newspaper. The fee for the advertisement is \$150. There is also a \$300 fee for a Wetlands Board permit application for wetland development and a \$100 Wetlands Board Deferral Fee per deferral. The checks for these fees are made payable to the Treasurer of Virginia Beach but are sent to the Planning Department to the attention of the Coastal Zone Administrator.

Figure 6 depicts the level of funding for the Virginia Beach Wetlands Board from Fiscal Years 2005 through 2014. The Wetlands Board has seen a sizable decrease in funding over the past decade. The Board spent \$9,126 in FY2005, but in FY2014 it had decreased to \$3,721, a drop of nearly 60%. There have been large fluctuations in funding, as evident by the FY2013 level of \$10,733.

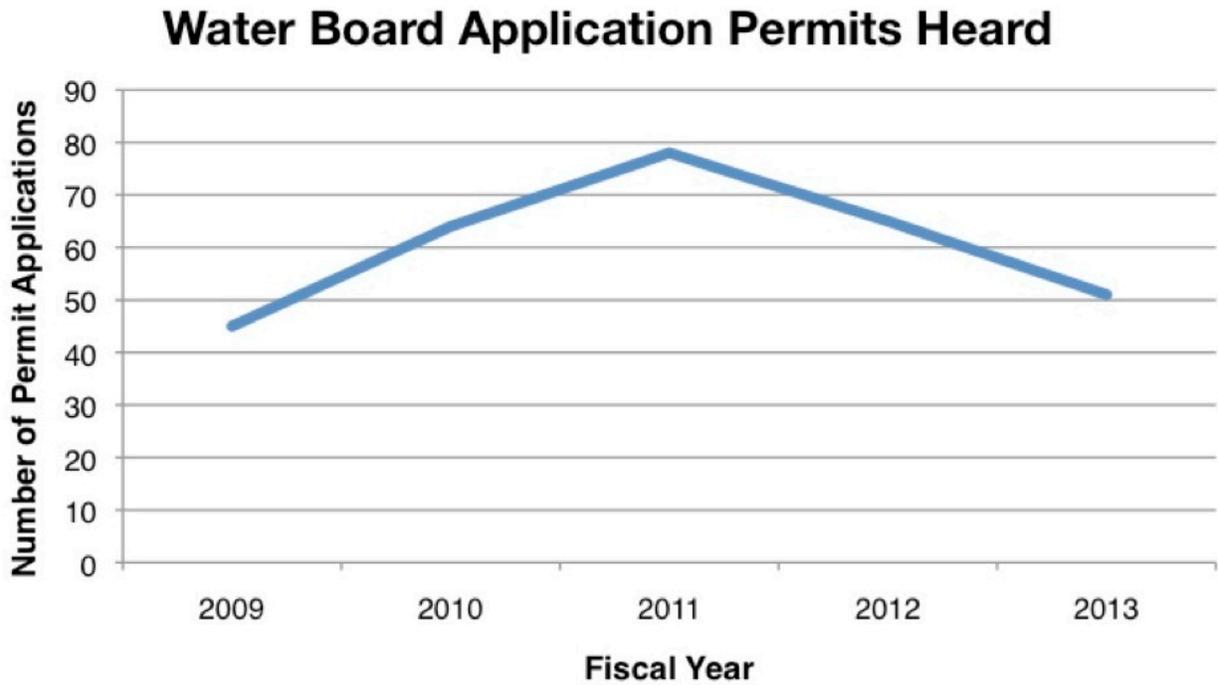
Figure 6: Virginia Beach Wetlands Board Funding Over Time



Source: City of Virginia Beach Operation Budgets, FY 2005-2013.

Figure 7 illustrates the fluctuation in the number of permits from FY2009 to FY2014. The 2014 amount is the estimate for that fiscal year. Unfortunately, permit data prior to FY2009 was not available. There was a spike in permit applications in FY2011, with a buildup in FY2010 and a falloff in FY2012. There has only been a slight increase in permits from FY2009 to FY2014 from 45 to 51.

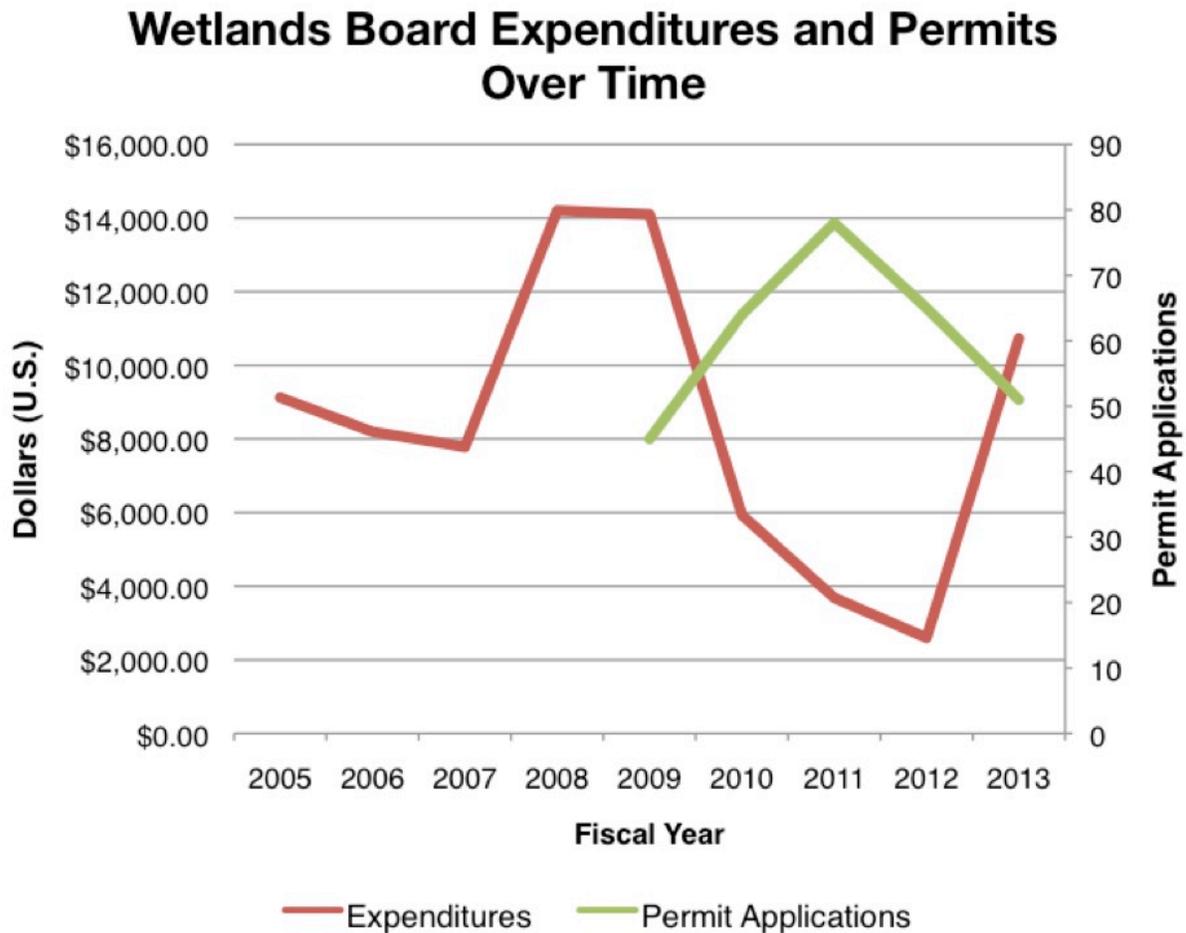
Figure 7: Wetlands Board Application Permits Heard



Source: City of Virginia Beach Operation Budgets, FY 2009-2013.

In Figure 8, the Virginia Beach Wetlands Board permits and expenditures are in the same graph in order to detect any correlation between the two.

Figure 8: Wetlands Board Expenditures and Permits over Time



Source: City of Virginia Beach Operation Budgets, FY 2005-2013.

Even with limited permitting data available, there is clearly little observable correlation between city expenditures for the Virginia Beach Wetlands Board and permits that come before it. While the expenditures levels vacillate from year to year, with one major dip between Fiscal Years 2009 and 2013, the data shows that the largest number of permit applications in the past five years actually occurred in FY2011, which saw the second lowest expenditure amount in the last decade.

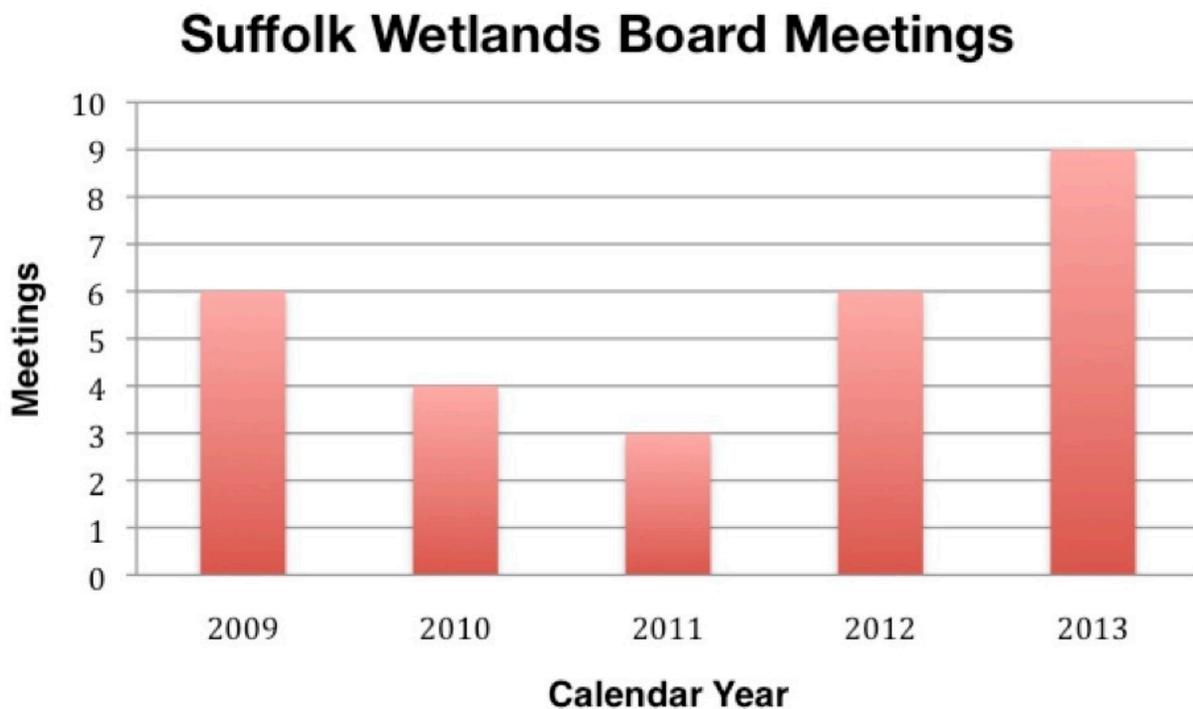
The municipal government of Virginia Beach has offered a few clues as to the direction they see the city taking in terms of wetlands management. The City of Virginia Beach’s 2009 Comprehensive Plan contains an entire section dedicated to the rural area of the city, where the priority is to “protect and sustain environmental resources for future generations,” which largely speaks to wetlands preservation and conservation. The Plan notes that wetlands in the southwest quadrant of the city specifically should be protected.¹⁴ Additionally, VIMS is singled out as a future partner as the city seeks to restore Submerged Aquatic Vegetation and undertake wetlands restoration projects.

¹⁴ “Comprehensive Plan 2009.” City of Virginia Beach, VA. <http://www.vbgov.com/government/departments/planning/2009CompPlanProcess/Pages/default.aspx>. Accessed December 14, 2013.

City of Suffolk

Located in the southeast corner of Virginia, the City of Suffolk contains over 5,500 acres of tidal wetlands. Wetlands oversight occurs within the Department of Planning and Community Development, and Suffolk’s webpage includes several links to VIMS, describing its role in the permit process as “strictly advisory.” Despite its relatively large web presence, the Suffolk Wetlands Board is not actually listed in the city budget apart from a reference in the duties of the Department of Planning and Community Development. Moreover, the Board often does not meet for its monthly meeting. Figure 1 lists the occurrences of Board meetings by year from January 2009 through October 2013. Importantly, the relatively high number of meetings held in 2013 through October is largely due to work sessions.

Figure 9: Suffolk Wetlands Board Meeting



Source: “Wetlands Board Agendas,” City of Suffolk website.

Public hearings before the Wetlands Board require the payment of a \$250 Wetland Permit fee. After-the-fact projects must pay a \$300 fee, which does not include additional civil penalties that the Board may impose for the violation. These fees cover advertising costs. The permits from the Board typically are valid for one year.

Lancaster County

Lancaster County is located on the southeastern tip of Virginia’s Northern Neck Peninsula. Lancaster shares its southern border with Middlesex County and shares its northern border

with Richmond and Northumberland Counties. In 2012, Lancaster County had an estimated population of 11,236. Lancaster County is one of most densely populated counties in the Northern Neck Peninsula, with an estimated population density of 85.5 persons per square mile.¹⁵ Lancaster County has an unemployment rate of 6.6%, which is slightly above the average unemployment rate for the Commonwealth of Virginia.¹⁶ From 2007 to 2011, the median household income for Lancaster County was \$46,625. In comparison to the rest of Virginia's Coastal Zone, Lancaster's median household income is below average.¹⁷

Lancaster County's Wetlands Board is in the Office of Planning and Land Use. Lancaster's Wetlands Board consists of five board members who are appointed by Lancaster County's Board of Supervisors. Each board member serves a five year term. Each board member serves as a representative from one of the five districts in Lancaster County.¹⁸ The Wetlands Board meets on the second Thursday of every month to discuss permit proposals. In its permitting process, the Wetlands Board may work with VMRC, the Department of Environmental Quality (DEQ), VIMS, and the Army Corps of Engineers.¹⁹ Lancaster County's Wetlands Board does have staff to assist in the permitting process and other activities; however staff members are shared among the entire Planning and Land Use Office.²⁰

¹⁵ "American Fact Finder," *United States Census Bureau*, accessed November 25, 2013, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.

¹⁶ "Unemployment Rates by County in Virginia, August 2013," *Bureau of Labor Statistics*, last modified October 22, 2013, <http://www.bls.gov/ro3/valaus.htm>.

¹⁷ "American Fact Finder," *United States Census Bureau*, accessed November 25, 2013, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.

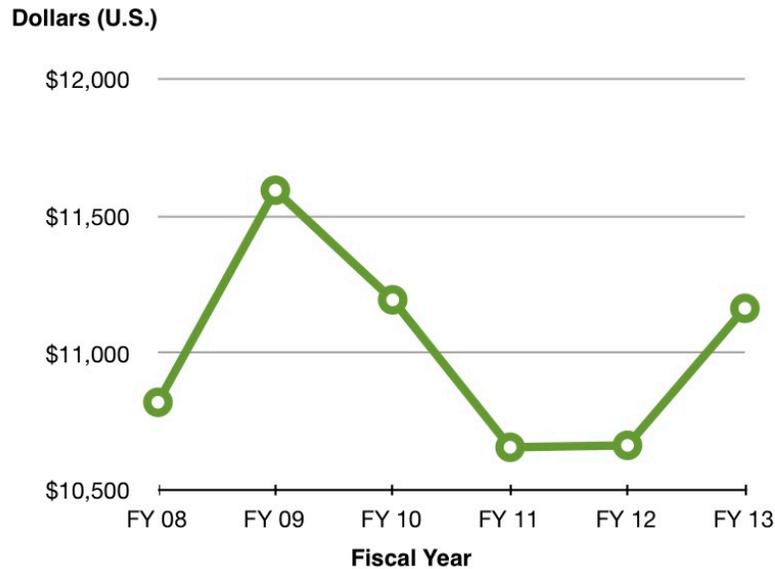
¹⁸ "County Official Directory," *Lancaster County, Virginia*, accessed November 24, 2013, <http://www.lancova.com/lancdir.htm>.

¹⁹ "The Joint Permit Application Process," *Lancaster County, Virginia*, accessed November 24, 2013, <http://www.lancova.com/jpaprocess.pdf>

²⁰ "Planning and Land Use Office," *Lancaster County, Virginia*, accessed November 24, 2013, <http://www.lancova.com/pluoff.htm>.

Figure 10: Lancaster County Wetlands Board Adopted Budgets

Lancaster County Wetlands Board Adopted Budgets (FY 08-13)



Source: Lancaster County Budgets, FY 08-13

Wetlands Board Budget

Lancaster County’s budget provides data for its Wetlands Board from Fiscal Years 2010 through 2013. Figure 10 (above) show the changes in Lancaster’s Wetlands Board budget since FY2008. Lancaster County’s Wetlands Board budget peaked in FY2009, dipped in FY2010 and FY2011, and rebounded in FY2013. Similar to King and Queen County, Lancaster’s budgets provide specific data on how the Wetlands Board used its budget each year. Compensation for Board members was consistently a significant portion of the Wetlands Board’s adopted budget. In the FY2013 adopted budget, each Board member was allocated \$1,100 as compensation for their service on the Wetlands Board. Advertisements for proposed permitting projects is consistently a significant portion of Lancaster’s Wetlands Board spending. In FY2013, Lancaster’s Wetlands Board was allocated \$2,500 for advertisements, which is a slight increase from the \$2,000 allocated for advertisement spending in FY 2010.²¹ Wetlands Board expenditures on postal services have increased over time. In the approved FY 2013 Lancaster County budget, \$2,200 was allocated for postal service spending, from the \$700 allocated for postal services in FY2009.²²

²¹ “FY 2012/2013 Annual Budget,” *Lancaster County, Virginia*, accessed December 2, 2013, <http://www.lancova.com/FY13Budget.pdf>.

²² “FY 2010/2011 Annual Budget,” *Lancaster County, Virginia*, accessed December 2, 2013, <http://www.lancova.com/FY11Budget.pdf>.

James City County

James City County is located in the southern part of Virginia's Coastal Zone on a peninsula and shares its borders with the City of Newport News, York County, and the City of Williamsburg. James City County is a large county with an estimated population of 68,967 and a population density of 470.4 people per square mile.²³ The unemployment rate in James City County is 4.6%, which is below the average unemployment rate for Virginia's Coastal Zone.²⁴ James City County had a median household income of \$75,938 between 2007 and 2011, which was well above average in comparison to the rest of the Commonwealth of Virginia.²⁵

James City County's Wetlands Board is within the Engineering and Resource Protection Division. The Wetlands Board consists of five members and two alternates. Each member is appointed by the Board of Supervisors to serve on both the Wetlands Board and the Chesapeake Bay Board. Members serve five year terms on both Boards.²⁶ James City County's Wetlands Board is focused on balancing responsible development with wetlands conservation.²⁷ The Wetlands Board meets every month if permit applications need to be reviewed. The staff of the Engineering and Resource Protection Division is responsible for reviewing permit applications and advertising the permit's public hearing in a local newspaper.²⁸ Wetlands Board meetings are broadcasted live on Cox Cable and are rebroadcasted three times on a Community Channel.²⁹

²³ "American Fact Finder," *United States Census Bureau*, accessed November 25, 2013, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.

²⁴ "Unemployment Rates by County in Virginia, August 2013," *Bureau of Labor Statistics*, last modified October 22, 2013, <http://www.bls.gov/ro3/valaus.htm>.

²⁵ "American Fact Finder," *United States Census Bureau*, accessed November 25, 2013, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.

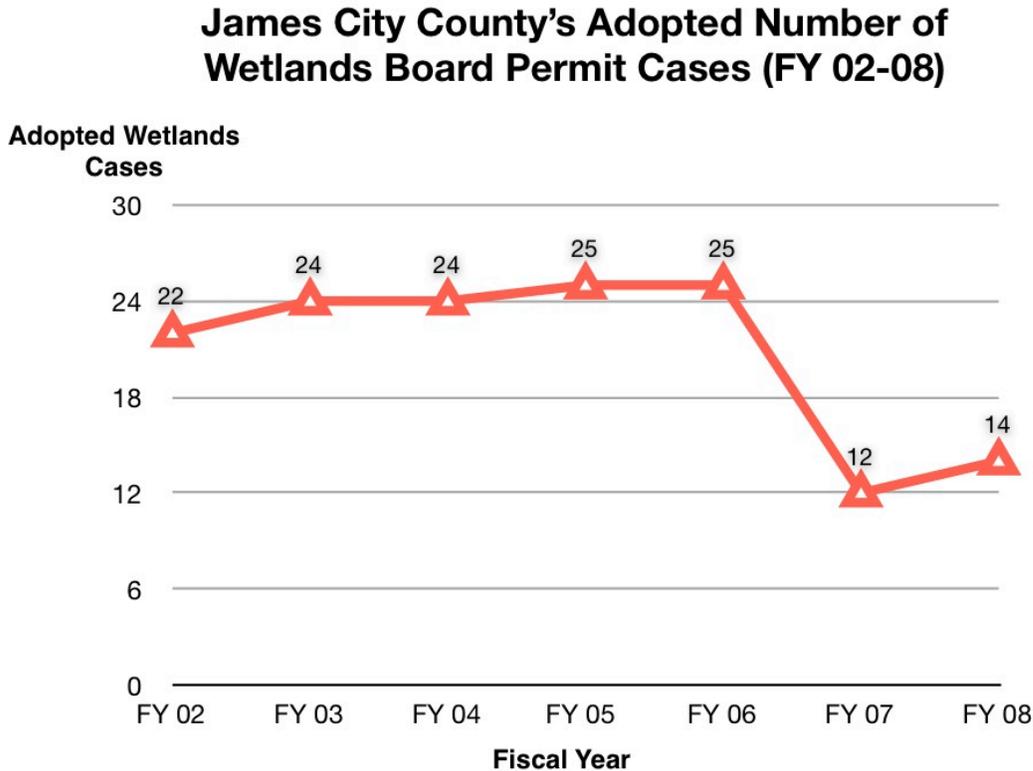
²⁶ "Chesapeake Bay Board," *James City County, Virginia*, accessed December 1, 2013, <http://www.jamescitycountyva.gov/commissions/brd-chesa-bay.html>.

²⁷ "Wetlands Board," *James City County, Virginia*, accessed December 1, 2013, <http://www.jamescitycountyva.gov/commissions/wetlands-board.html>.

²⁸ "Wetlands," *James City County, Virginia*, accessed December 1, 2013, <http://www.jamescitycountyva.gov/resourceprotection/wetlands.html>.

²⁹ "Wetlands Board," *James City County, Virginia*, accessed December 1, 2013, <http://www.jamescitycountyva.gov/commissions/wetlands-board.html>.

Figure 11: James City County's Adopted Number of Wetlands Board Permit Cases



Source: James City County Budgets, FY 02-08

▲ Adopted Number of Wetlands Cases

Similar to many Virginia Tidal Area localities, James City County's budget only provides data by county Department and Division and does not include the specific budget for the Wetlands Board. The division containing the Wetlands Board, the Engineering and Resource Protection Division, received \$960,343 in James City County's FY2013-2014 adopted budget. The total budget for James City County in the FY 13-14 adopted budget was \$165,630,000.³⁰ As a measurement of Wetlands Board activities, James City County's past adopted budgets estimated the expected number of wetlands board cases each year. Figure 11 shows the estimated number of wetlands board cases from the adopted budget for Fiscal Years 2002 through 2008. From FY2002 to FY2008, James City County estimated an average of 21 Wetlands Board permit cases per year. As can be seen in Figure 11, the adopted number of wetlands board cases was consistent until FY2006. In FY2007, the number of adopted wetlands board cases dropped significantly, but rebounded slightly in FY2008.

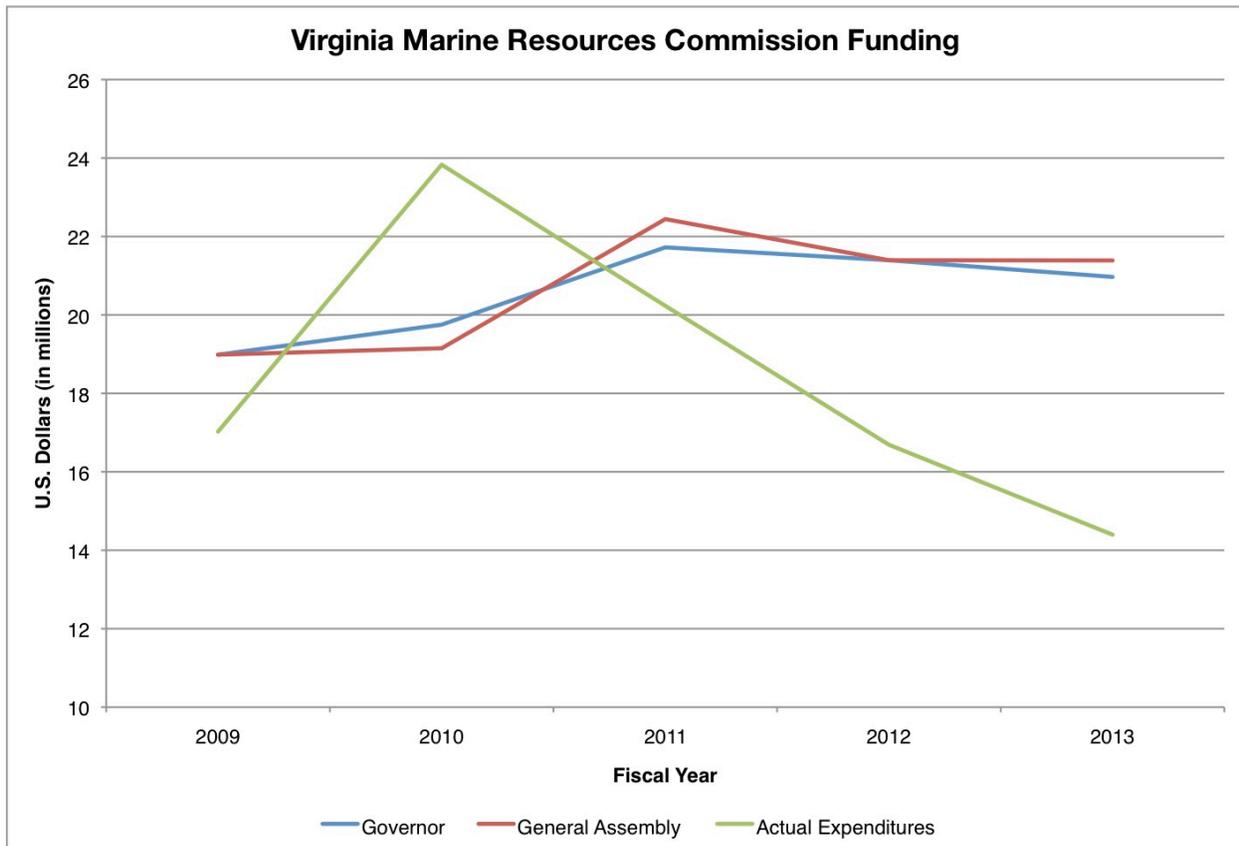
³⁰ "FY 2013-2014 Detailed Summary Expenditures," *James City County, Virginia*, accessed December 1, 2013, http://www.jamescitycountyva.gov/pdf/budgetpdfs/2013-2014AdoptedBudget/Section%20C/Detailed_Summary_Expenditures.pdf

Virginia Marine Resources Commission

The Virginia Marine Resources Commission (VMRC) is the state agency responsible for tidal wetlands regulation in the Commonwealth. It has secondary oversight over localities that have opted to establish wetlands boards and primary permitting responsibility for localities that have not chosen to do so. Its vision statement is a clear statement of its objectives and priorities:

To ensure a healthy, sustainable stock of marine and aquatic resources in the Commonwealth, while successfully balancing the competing needs of the commercial and recreational fishing industries, conserving and improving the habitat and environment of the Chesapeake Bay and its tributaries, and providing a secure and safe environment to all who enjoy the benefits of the Commonwealth's tidal waters.³¹

Figure 12: Virginia Marine Resources Commission Funding



Source: Budget Bills, Commonwealth Data Point. Author's calculations.

³¹ "Agency Strategic Plan- Marine Resources Commission (402)." *Virginia Performs*. Accessed December 2, 2013. <http://vaperforms.virginia.gov/agencylevel/stratplan/spreport.cfm?AgencyCode=402>

For Fiscal Years 2009-2013, the General Assembly has appropriated between \$19 and \$22 million for VMRC.³² The amounts expended, however, significantly differ from the apparent intentions of either the governor or the legislature.³³ In FY2010, it exceeded its appropriation by four million dollars, and for the three fiscal years 2011-2013, VMRC's outlays fell below its allocation; in FY2013 nearly a third of the money allocated to VMRC was not spent.³⁴

This unexpected occurrence has many possible explanations. The General Assembly directed VMRC to look for savings amounting to \$700,249 in FY2009 and \$1,369,285 in FY2010.³⁵ The agency may have received additional directives to limit spending missed by this analysis. Having overspent so much in FY2010, the agency may now be attempting some fiscal restraint so as not to exceed its appropriation again. A portion of VMRC's funding comes from dedicated special revenue accounts- funding streams particular to an agency or program function. The agency may have drawn heavily on one such funding stream at a time when revenues were low, causing the fund to fall below acceptable levels and limiting the monies available to VMRC. The agency's principal costs are for its personnel (see figure 13, below), and the General Assembly has not increased the number of full-time equivalent (FTE) positions allotted to VMRC during this period.³⁶ Given that states usually limit hiring and compensation increases during times of fiscal stress, VMRC may have been appropriated funds for which there is no designated use.

The functions that make up each category in Figure 13 below can be found in Appendix 6.

³² "State Budget- 2013 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2013>. "State Budget- 2012 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2012>. "State Budget- 2011 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2011>. "State Budget- 2010 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2010>. "State Budget- 2009 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2009>

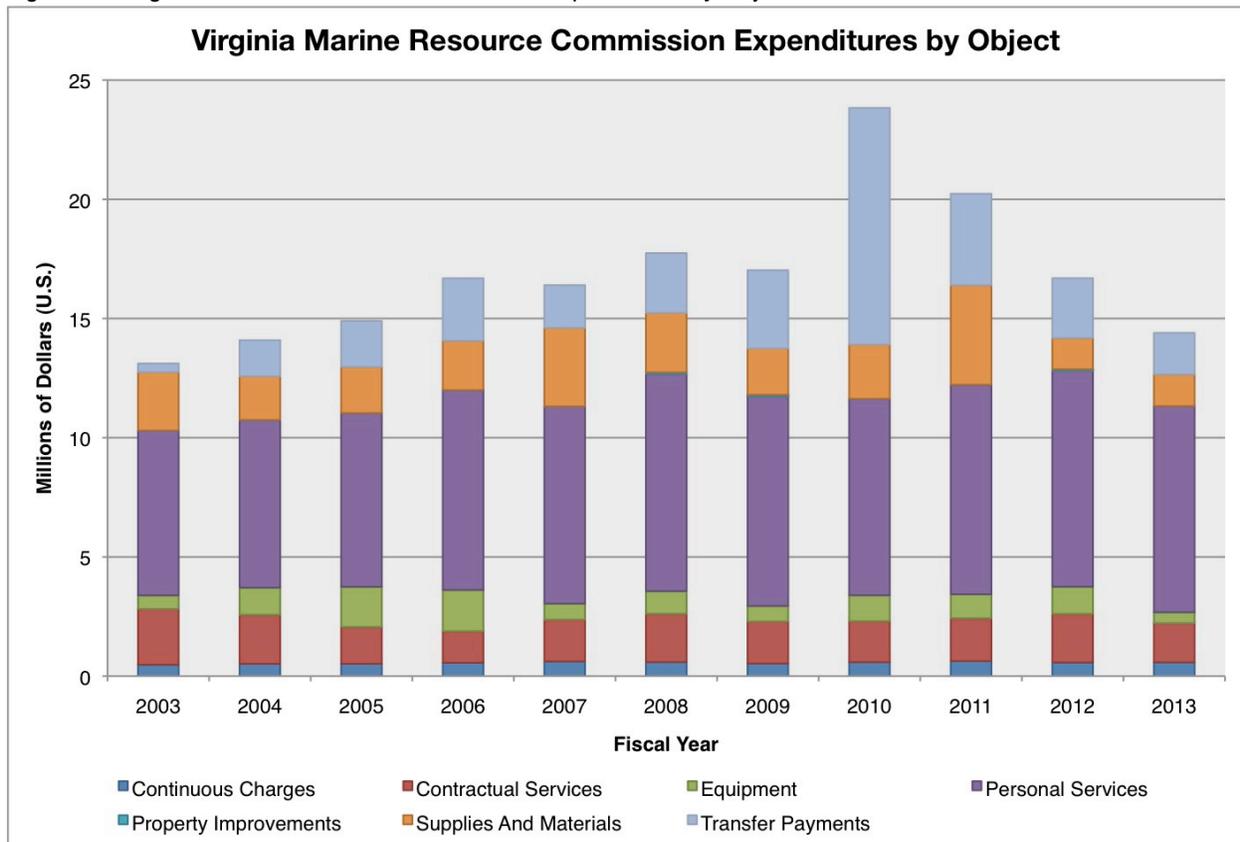
³³ *supra* note 31.

³⁴ "Expenditures by Agency and College." *Commonwealth Data Point*. Accessed December 3, 2013. http://datapoint.apa.virginia.gov/exp/exp_agy.cfm

³⁵ "State Budget- 2010 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2010>. "State Budget- 2009 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2009>

³⁶ *supra* note 31.

Figure 13: Virginia Marine Resources Commission Expenditures by Object



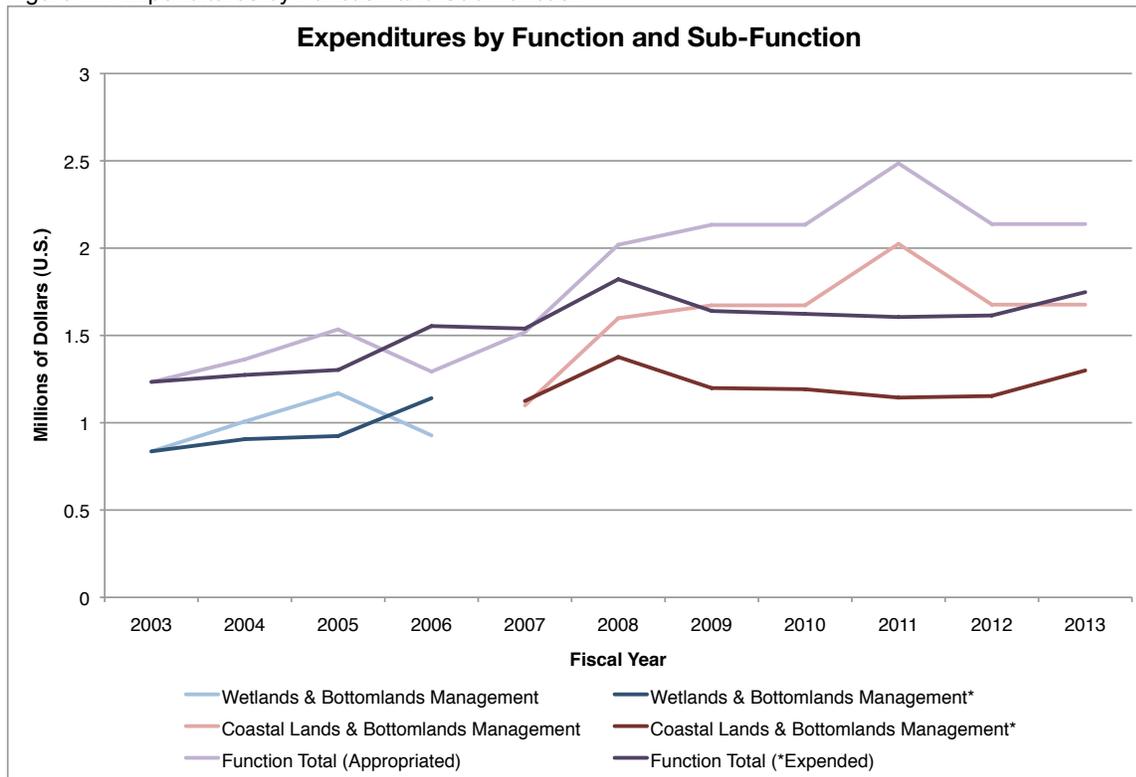
Source: Commonwealth Data Point, Author's Calculations.

Between FY2003 and FY2013, tidal wetlands oversight has been funded through two different program (function) budget lines. Since FY2007, tidal wetlands oversight has been funded through the budget line “Coastal Lands and Bottomlands Management,” which falls underneath the program function “Coastal Lands Surveying and Mapping.” Prior to that year, it was funded through “Wetlands and Bottomlands Management” under the “Coastal Land Management” heading. In each case, there has been another program funded under the same heading: FY2006 and earlier, “Coastal Lands Surveying and Mapping;” FY2007 and later, “Marine Resources Surveying and Mapping.”³⁷

³⁷ “Expenditures by Agency and College: Marine Resources Commission: Resource and Economic Development: Coastal Lands Surveying and Mapping.” *Commonwealth Data Point*. Accessed December 3, 2013. http://datapoint.apa.virginia.gov/exp/exp_agy_fcn_prs_ser.cfm?AGY=68&FCN=5&PRG=510.

The appropriations and expenditures for these categories maintain an overall upward trajectory between FY2003 and FY2013³⁸. During the recent financial crisis, expenditures flattened while appropriations were more volatile, though on the whole increasing. Similar to the agency overall, appropriations for tidal wetlands management have exceeded outlays. See Figure 14, below.

Figure 14: Expenditures by Function and Sub-Function



Source: Commonwealth Data Point, Author's Calculations.

There are three main sources of funding for the Coastal Lands Surveying and Mapping budget function. These are: the General Fund, which is the primary funding stream for Virginia agencies and is funded by general tax revenues; Federal Trust funds,

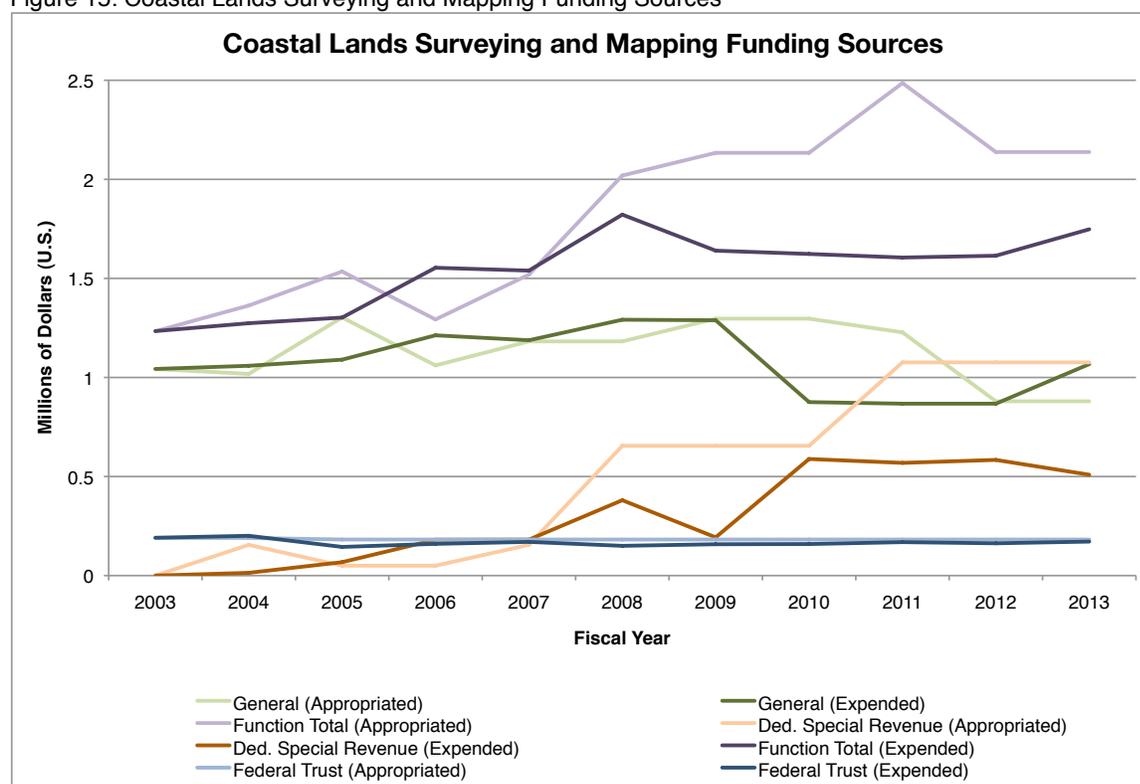
³⁸ *supra* note 31. See also "State Budget- 2008 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2008>. "State Budget- 2007 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2007>. "State Budget- 2006 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2006>. "State Budget- 2005 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2005>. "State Budget- 2004 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2004>. "State Budget- 2003 Session." *Virginia's Legislative Information System*. Accessed December 3, 2013. <http://leg2.state.va.us/MoneyWeb.NSF/sb2003>. "Expenditures by Agency and College: Marine Resources Commission: Resource and Economic Development: Coastal Lands Surveying and Mapping." *Commonwealth Data Point*. Accessed December 3, 2013. http://datapoint.apa.virginia.gov/exp/exp_agy_fcn_prj_ser.cfm?AGY=68&FCN=5&PRG=510.

which are appropriated by the state but come from the federal government; and Dedicated Special Revenue, which is a funding stream particular to the agency’s activities.³⁹

Appendix 3 contains breakdowns of the funding sources the Coastal Lands Surveying and Mapping program and the expenditures for Coastal Lands and Bottomlands Management activities for Fiscal Years 2009-2013. Some of the largest outlays are payroll (which includes salary, overtime, Social Security and Medicare, health care and pension payments); the Department of General Services (office space, transportation); Bank of America; the Virginia Information Technologies Agency; and the U.S. Postal Service.

One explanation for VMRC expending less than its appropriation is that the revenue streams that VMRC draws upon may be historically low due to the economic downturn. As shown below, there is a significant gap between the dedicated special revenue appropriation and the expenditures off of that account. VMRC cannot spend beyond what is presently in that particular fund.

Figure 15: Coastal Lands Surveying and Mapping Funding Sources



Source: Commonwealth Data Point, Author’s calculations.

³⁹ “Expenditures by Fund: General: Marine Resources Commission.” *Commonwealth Data Point*. Accessed December 3, 2013. http://datapoint.apa.virginia.gov/exp/exp_fnd_agy_prg.cfm?AGY=68&FND=General. “Expenditures by Fund: Federal Trust: Marine Resources Commission.” *Commonwealth Data Point*. Accessed December 3, 2013. http://datapoint.apa.virginia.gov/exp/exp_fnd_agy_prg.cfm?AGY=68&FND=Federal%20Trust. “Expenditures by Fund: Dedicated Special Revenue: Marine Resources Commission.” *Commonwealth Data Point*. Accessed December 3, 2013. http://datapoint.apa.virginia.gov/exp/exp_fnd_agy_prg.cfm?AGY=68&FND=Dedicated%20Special%20Revenue.

The dedicated fund at issue is the Marine Habitat and Waterways Improvement Fund. It is funded by miscellaneous revenues and habitat rents and royalties, and is primarily reserved for VMRC.⁴⁰ See Appendix 5 for more information.

While changes in nominal outlays from year to year are informative, the recent recession caused the Commonwealth to cut spending in many areas, not just tidal wetlands oversight. In order to determine if the economic downturn is the primary driver of the decline of spending for tidal wetlands, it is necessary to consider these expenditures as a share of overall spending. Figure 16, below, shows the percent of Resource and Economic Development (RED) funds of the Natural Resources Secretariat (NRS) that are spent on wetlands oversight.⁴¹ The red line represents VMRC's expenditures under the Coastal Lands and Bottomlands Management budget line. The blue line represents the spending of the Water Protection Permitting program at the Department of Environmental Quality (DEQ), which includes the non-tidal wetlands oversight program.

Clearly, as a share of NRS RED expenditures, spending on tidal wetlands oversight has stayed relatively flat, while the analogous program at DEQ declined somewhat since its peak in FY2008.

⁴⁰ "Statewide Revenues by Fund: Dedicated Special Revenue: Marine Resources Commission." *Commonwealth Data Point*. Accessed December 3, 2013.

http://datapoint.apa.virginia.gov/rev/rev_fnd_agy_fnddtl.cfm?FND=09&AGY=68.

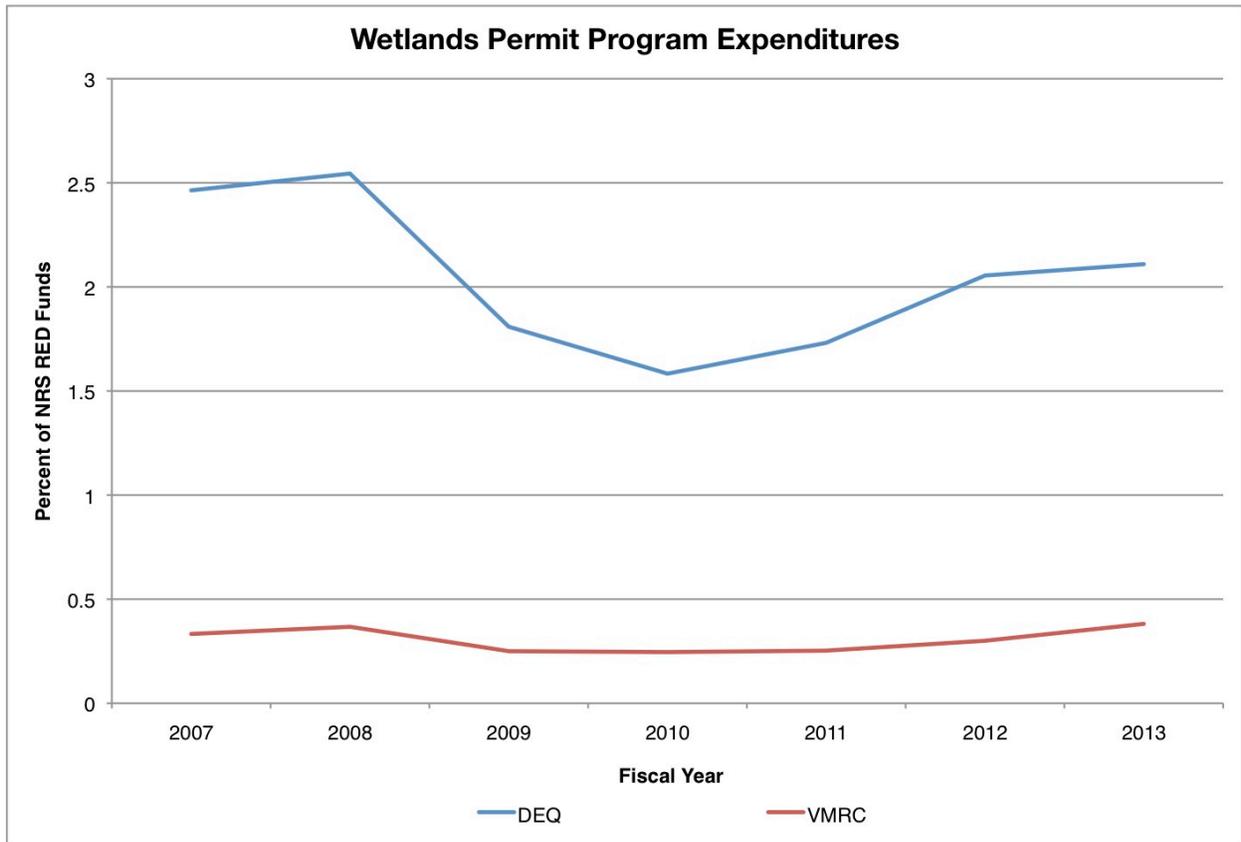
⁴¹ "Expenditures by Secretariat: Natural Resources." *Commonwealth Data Point*. Accessed December 3, 2013.

http://datapoint.apa.virginia.gov/exp/exp_sec_fcn.cfm?SEC=Natural%20Resources. "Expenditures by Program: Resource and Economic Development: Coastal Lands Surveying and Mapping." *Commonwealth Data Point*. Accessed December 3, 2013.

http://datapoint.apa.virginia.gov/exp/exp_fcn_prg_ser.cfm?FCN=Resource%20And%20Economic%20Development&PRG=Costal%20Lands%20Surveying%20And%20Mapping. "Expenditures by Program: Resource and Economic Development: Water Protection Permitting." *Commonwealth Data Point*. Accessed December 3, 2013.

http://datapoint.apa.virginia.gov/exp/exp_fcn_prg_ser.cfm?FCN=Resource%20And%20Economic%20Development&PRG=Water%20Protection.

Figure 16: Wetlands Permit Program Expenditures



Source: Commonwealth Data Point, author's calculations.

Options for Wetlands Oversight Reform

Option 1: Improving the current Tidal Wetlands Program

Virginia is unique in allowing its localities to establish local wetlands boards and directly manage their own tidal wetlands. While Virginia has failed to achieve its goal of no-net loss, there are ways of improving the current system to increase the accountability and effectiveness of the Tidal Wetlands Program.⁴² The Regulatory Fidelity Report provided some valid suggestions of adjusting the education, administration, guidance, and wetlands accounting in the current Tidal Wetlands Program. The recommendations below are based upon the findings of this report and the recommendations of the Fidelity Report.

Recommendation 1: All board members (including staff) should have an education requirement to serve on local wetlands boards.

The Tidal Wetlands Program has no requirement that board members have prior knowledge of wetlands benefits or sustainable wetlands development strategies. It is also not mandatory for board members to attend conferences, information sessions, or meetings to improve their knowledge of the wetlands during their time as board members. Staff members play a critical role in the wetlands permitting process by traveling to permit sites to determine potential impacts on tidal wetlands. Often staff members do not have an education requirement to assist the wetlands boards.⁴³ Knowledge of the benefits of tidal wetlands and the best strategies for wetlands management are critical elements for wetlands boards to make permitting decisions.

While statutory changes would be required to strengthen the Tidal Wetlands Program, a mandatory education requirement can be added to the local ordinance for each wetlands board. One option for reform is for VIMS and VMRC work together to establish a minimum education requirement for all board members and staff. Wetlands boards could be given the freedom to determine if prior wetlands knowledge should be a criteria for board member eligibility. Wetlands boards can also determine if and how often board members should attend education events. As VIMS provides free public wetlands information sessions, VIMS wetlands information sessions can become mandatory for all board members and staff.⁴⁴ As many wetlands boards do not spend their entire budget each year, attendance at wetlands information sessions and conferences should not present a financial hardship. In addition, VIMS provides Wetlands Self Taught Education Units that include both tests and information on tidal wetlands management. The use of Education Units and tests might also be required for all board members and staff.⁴⁵

There are multiple benefits associated with a mandatory education requirement for wetlands board members and staff. In addition to being better informed about the importance of tidal wetlands and effective wetlands development strategies, an educational requirement will strengthen the goals and purpose of the Tidal Wetlands Program. Many of Virginia's environ-

⁴² Center for Coastal Resources Management, *Regulatory Fidelity to Guidance in Virginia's Tidal Wetlands Program* (Virginia Institute of Marine Science, 2012), 48-53.

⁴³ David McIntire (Environmental Codes Compliance Officer), in discussion with the authors, November 2013.

⁴⁴ "Public Programs," *Virginia Institute of Marine Science*, accessed December 2, 2013, <http://www.vims.edu/public/index.php>.

⁴⁵ "Education, Wetlands Self Taught Education Units," *Center for Natural Resources Management*, accessed December 2, 2013, http://ccrm.vims.edu/education/wetlands_selfeds/index.html.

mental programs require additional education and examinations for their members. For example, DEQ's Erosion and Sediment Control Program has an education requirement that all of its members pass an examination with a minimum of 70%.⁴⁶ A specific wetlands education requirement would enforce the perception of the boards as "Wetlands Boards" rather than as "Soil Erosion Boards." Moreover, board members and staff from different localities in the Tidal Area can meet and discuss their experiences and findings with tidal wetlands development. They can share information about their wetlands resources and foster a greater understanding of wetlands protection across the entire Virginia Coastal Zone.

Recommendation 2: Require all Joint Permit Applications (JPAs) to be a uniform template. All JPAs need to be completed and submitted through an Electronic Uniform Permit Template to be processed by VMRC and Local Wetlands Boards.

All wetlands boards require a Joint Permit Application (JPA) for tidal wetlands development, but the procedures for JPAs vary by locality. This recommendation creates a mandatory standardized JPA template across all Virginia wetlands boards. A standardized template would ensure easier and more efficient processing by both VMRC and the local wetland boards.

In addition to a standardized JPA template, VMRC could directly manage all JPAs through an Electronic Uniform Permit Template. An example of an Electronic Uniform Permit System can be seen in the City of Virginia Beach. The City's Permits and Inspections Division uses the online system, ACCELA, for its planning permits. The system allows citizens to easily obtain all planning permit applications and to pay their permitting fees online.⁴⁷ There would probably be a minimum one-time cost to creating both the uniform JPA and the Electronic Uniform Permit Template. The required additional regulation required by VMRC to implement a similar Electronic Permit Template for the JPA processing should not be significant. Minimal staffing requirements would be needed to provide oversight of JPA management and periodically update the JPA template and Electronic Uniform Permit Template. However, a standardized permitting procedure and an electronic permitting process can help VMRC better track JPAs by locality and ensure better quality permit applications.

Recommendation 3: All wetlands boards should provide a full public record of wetlands board activities and include a rationale for all wetlands board permitting decisions.

Most wetlands boards provide their wetlands board minutes and agendas on their local government websites. However, the records and rationale of wetlands board permitting decisions are not always accessible to the public. To improve the transparency in the wetlands board permitting process, all wetlands boards could be required to provide full a public record of their activities and rationale for all permitting decisions on their locality's website. The current advertisement system of putting proposed permitting projects in local newspapers is effective for fostering public awareness. However, tracking wetlands board activities through local newspapers can be difficult. A full public online record would allow concerned citizens to easily access all current and past wetlands board activities and permit processing. Also, providing a rationale for all permitting decisions would allow current wetlands board members to learn from previous

⁴⁶ "Erosion and Sediment Control Training and Certification Program," *Virginia Department of Environmental Quality*, accessed December 2, 2013, http://www.deq.virginia.gov/Portals/0/DEQ/ConnectwithDEQ/Training/ESC/ESC_Training_FAQ.pdf.

⁴⁷ "Permits & Inspections," *City of Virginia Beach, Virginia*, accessed December 2, 2013, <http://www.vbgov.com/government/departments/planning/permits-inspections/pages/default.aspx>.

permit making decisions. The public would have the opportunity to examine the rationale behind wetlands board permitting decisions and become a more-informed citizen body.

There would probably be minimal difficulty in providing a full public record of wetlands boards decisions and their underlying rationale on each locality's website. There would be some additional work for the wetlands boards and their staff to provide the public record and to publish it online. Often, a staff member is present at all wetlands board meetings. One possible solution is to require the attending staff member to keep record of all wetlands board meeting activities and the rationales used in permit making decisions.

Recommendation 4: VMRC and VIMS work together to establish a standardized policy for Tidal Wetlands Mitigation-Compensation and create an online database that tracks Tidal Wetlands Mitigation activities.

Virginia is a partner in the Chesapeake Bay Program and is committed to achieving a no-net loss of its tidal wetlands.⁴⁸ Tracking the loss and gain of wetlands in Virginia's Tidal Area is critical for achieving its no-net loss goal. The Tidal Wetlands Program allows each individual wetlands board to determine if wetlands loss is unavoidable and to collect Mitigation-Compensation payments for each acre of wetlands lost.⁴⁹ VMRC and VIMS could work together to establish a uniform policy for determining if wetlands loss is unavoidable and for collecting Mitigation-Compensation payments. VIMS and VMRC both have extensive knowledge of the value of tidal wetlands and are the best qualified to establish a Mitigation-Compensation procedure that accounts for the cost of wetlands loss to the Commonwealth of Virginia.

Wetlands boards are responsible for making permitting decisions, but VMRC should be responsible for uploading all Mitigation-Compensation data into an electronic database. An electronic database would allow for easier oversight of Mitigation-Compensation funds and better ensure that funds are spent to create new tidal wetlands. DEQ currently uses an electronic database to manage non-tidal wetlands in Virginia. Non-tidal wetlands are tracked with the Non-Tidal Data Query Program. This Program tracks all non-tidal wetlands losses and how the mitigation-compensation money is used to offset wetlands loss.⁵⁰ An electronic database would allow VMRC to better track all tidal wetlands loss in each locality and also check that all wetlands losses were unavoidable. One additional full-time staff member is likely required for tracking and maintaining the electronic database. In addition, VIMS can work with VMRC to ensure high-quality wetlands are created with Mitigation-Compensation funds. VIMS and VMRC should also work together to make adjustments to the Mitigation-Compensation system to ensure Virginia achieves its no-net loss goal.

Option 2: State Permit Program

The Regulatory Fidelity Report suggested that one avenue for improving upon the current regulatory landscape was the development of a new permitting program with

⁴⁸ Center for Coastal Resources Management, *Regulatory Fidelity to Guidance in Virginia's Tidal Wetlands Program* (Virginia Institute of Marine Science, 2012), iv.

⁴⁹ Center for Coastal Resources Management, *Regulatory Fidelity to Guidance in Virginia's Tidal Wetlands Program* (Virginia Institute of Marine Science, 2012), 11.

⁵⁰ "Nontidal Wetlands Data Query Program," Virginia Department of Environmental Quality, accessed December 2, 2013, <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/DataQuery.aspx>.

all authority resting in the Virginia Marine Resources Commission.⁵¹ VMRC would administer a permit program based on technical standards and specifications rather than the current public hearing process. Permit decisions would be based on preferred shoreline management strategies developed by VMRC with assistance from VIMS and the Center for Coastal Resources Management.

A shift of this magnitude would require significant commitment from the governor and the General Assembly. The present scheme stems from the 1972 Tidal Wetlands Act; to implement these changes would require new legislation directing VMRC to take on a stronger role in wetlands oversight and alter, or even end, the role of localities in tidal wetlands management.

The current legislature is unlikely to undertake legislation that would so dramatically change the regulatory landscape in the Commonwealth. Apart from the purpose of such an action- stronger environmental regulation- and the result- centralization of power away from localities and into the state- the additional costs that incurred are likely prohibitive.

The present scheme allows for minimal expenditures on the part of the state agency, as most of the permitting decisions are issued by citizen board members. Professionalizing this activity would require Virginia to incur significant budgetary obligations (see Tables 1, 2, below). As a centralization of state power of this type would be unprecedented in recent memory, it is difficult to get an accurate estimate of the resources necessary for VMRC to implement the described permitting program.⁵² Therefore, the estimates below are from a 2012 DEQ study examining the costs and benefits of DEQ acting as the sole permit issuer for all Clean Water Act permits.⁵³ These two estimates- of 6 additional full-time equivalent employees and of 40 additional full-time equivalent employees- should give a rough estimate of what would be required to administer this program on a day-to-day basis.

⁵¹ Center for Coastal Resources Management, *Regulatory Fidelity to Guidance in Virginia's Tidal Wetlands Program* (Virginia Institute of Marine Science, 2012), 38.

⁵² John McGlennon, James City County Board of Supervisors, personal correspondence with author. November 2013. Sandy Wanner, former James City County manager, personal correspondence with author. November 2013.

⁵³ *Study of the Costs and Benefits of State Assumption of the Federal 404 Clean Water Act Permitting Program*. (Department of Environmental Quality, 2012), Appendix B, C.

Table 1: Cost of 6 Additional FTE

	Year 1	Year 2	Year 3	Year 4	Year 5
Salaries and Benefits	\$150,140	\$375,359	\$450,420	\$450,420	\$450,420
Information Technology	\$5,362	\$11,254	\$10,711	\$9,636	\$9,636
Furniture	\$8,500	\$12,750	\$4,250	\$0	\$0
Training	\$19,000	\$18,900	\$44,100	\$9,000	\$9,000
Travel	\$7,950	\$12,225	\$18,750	\$18,750	\$18,750
Public Notices	\$19,000	\$36,500	\$35,500	\$19,000	\$19,000
Field Equipment	\$1,000	\$1,500	\$500	\$600	\$600
Total	\$210,952	\$468,488	\$564,231	\$507,406	\$507,406

Source: DEQ 404 Study, author's calculations. Note: These estimates represent the change in resources required when shifting from 40 to 46 FTE. Costs that were the same across all scenarios (40 FTE, 46 FTE, 48 FTE) were reproduced at the amount incurred at 40 FTE.

Table 2: Costs of 40 Additional FTE

	Year 1	Year 2	Year 3	Year 4	Year 5
Salaries and Benefits	\$1,160,450	\$2,593,890	\$3,044,310	\$3,044,310	\$3,044,310
Information Technology	\$2,037,533	\$1,076,103	\$570,688	\$164,238	\$164,238
Furniture	\$59,500	\$85,000	\$25,500	\$0	\$0
Training	\$62,900	\$100,800	\$44,200	\$49,500	\$49,500
Travel	\$20,175	\$73,575	\$92,325	\$92,325	\$92,325
Public Notices	\$19,000	\$36,500	\$35,500	\$19,000	\$19,000
Field Equipment	\$3,500	\$8,000	\$3,000	\$2,900	\$2,900
Total	\$3,363,058	\$3,973,868	\$3,815,523	\$3,372,273	\$3,372,273

Source: DEQ 404 Study.

In addition to operational costs, the new paradigm would necessitate other one-time or periodic costs. First, VMRC would have to develop a preferred shoreline management strategy. In 2005, when the General Assembly was considering a bill to require VMRC to “maintain and update maps for each locality in the Commonwealth that delineate all areas determined to be wetlands,” the Department of Planning and Budget estimated that the yearly cost of doing so would be \$6.8 million, with a one-time equipment cost of \$4.5 million⁵⁴. While not precisely analogous, this analysis might serve as a possible top-line number for the cost of the development of the new strategies. Secondly, VMRC would have to develop a new permit program. Versions of both of these activities

⁵⁴ “Department of Planning and Budget: 2005 Fiscal Impact Statement: Bill Number: HB2645.” *Virginia Legislative Information System*. Accessed December 3, 2013.

<http://leg1.state.va.us/cgi-bin/legp504.exe?051+oth+HB2645F122+PDF>.

are included in the 2011 Living Shorelines Bill (S. 964).⁵⁵ It is possible that the outcomes produced by that legislation could be used to forward this goal.

Option 3: Moving oversight of tidal wetlands to DEQ

In order to consider all options for addressing the current state of wetlands oversight in Virginia, transferring the responsibilities of tidal wetlands permitting from the Virginia Marine Resources Commission to the Virginia Department of Environmental Quality must be considered. Since DEQ already is in charge of non-tidal wetlands in Virginia, this agency-level structural change may streamline efforts in wetlands oversight overall, however such change may present significant administrative challenges.

Looking to a past example of agency-responsibility transfer provides useful indicators as to what this particular change might look like, and such an example is readily and recently available. Effective July 2, 2013, DEQ assumed stormwater permitting responsibilities previously held under the umbrella of the Virginia Department of Conservation and Recreation (DCR).⁵⁶ Governor Bob McDonnell's Commission on Government Reform and Restructuring Report from November 21, 2011 called for streamlining and strengthening the process for obtaining water quality permits by consolidating the programs in DEQ and DCR under the umbrella of a single agency. The specific recommendation read:

The Commission recommends moving all water quality programs from the Department of Conservation and Recreation to the Department of Environmental Quality by first moving MS4 individual and general permits with 2012 legislation. The legislation should include direction to move the remainder of water quality programs the following year, pending an administrative review and submission of a plan to the legislative committees.⁵⁷

The same commission recommended other agency and responsibility consolidations, including a merger of the Department of Game and Inland Fisheries and the Department of Conservation and Recreation. In that case, the Commission recommended creating a work group to evaluate such a consolidation.⁵⁸

The Assessment of the Organization of Water Quality Programs in Virginia, issued by the Natural Resources Secretariat in November 2012, noted that point source pollution activities are regulated by DEQ, while non-point source pollution activities are regulated by DCR. This is similar to the division of wetlands permitting responsibilities, given that DEQ oversees non-tidal wetlands permitting, while VMRC oversees tidal wetlands permitting. The consolidation of the permitting functions of water quality programs would, the Assessment argues,

⁵⁵ Center for Coastal Resources Management, "Living Shorelines Legislative Initiative Items within Virginia Senate Bill 964." *Virginia Institute of Marine Science*. Accessed December 3, 2013. http://ccrm.vims.edu/livingshorelines/policy_legislation/index.html.

⁵⁶ John W. Daniel and Lynne C. Rhode, "Virginia DEQ to Become Lead Stormwater Agency," July 16, 2013, http://www.martindale.com/environmental-law/article_Williams-Mullen_1886766.htm.

⁵⁷ "Report to the Governor," Governor McDonnell's Commission on Government Reform & Restructuring, November 21, 2011, http://www.reform.virginia.gov/docs/11-21-11_Report.pdf, p. 21.

⁵⁸ "Report to the Governor," p. 22.

enable consistent planning, policies and procedures for all VPDES permit programs. Existing regional office permit, compliance and enforcement resources could be leveraged to manage EPA program concerns. A single point for the regulated community, citizens and federal agencies would also streamline the permit process, improve customer service, and streamline Virginia's reporting obligations to the EPA.⁵⁹

The Assessment also argues that single agency oversight would allow the opportunity to create and provide comprehensive long-term strategic planning.⁶⁰ The Water Division Director with DEQ, Melanie Davenport, said, "From an efficiency and effectiveness perspective it makes a lot of sense to merge the programs. There are many intersections among data, staff, and permitting expertise."⁶¹ These intersections may also hold true for wetlands permitting decisions.

An article by John W. Daniel and Lynne C. Roade of Williams Mullen identifies potential issues with the stormwater permitting responsibilities merger, noting "that the transition of regulatory responsibilities and associated resources from DCR to DEQ may not be an entirely easy one, particularly in the short-term."

Below is a list of potential benefits and costs that were reported prior to the DCR/DEQ stormwater permitting merger. Many of these benefits and costs might mirror those that will occur as a result of a DEQ/VMRC wetlands permitting merger.

Potential Benefits:

- Streamlines by creating a single point of contact for the regulated community
- Makes communications less duplicative and simpler
- Creates a smoother working relationship with the Environmental Protection Agency
- Improves long-term and strategic planning for stormwater and wastewater issues
- Enhances data management
- Enhances collaboration and coordination between water quality and permitting and TMDL requirements
- Allows for more comprehensive management of water quality improvement fund grants, cost-share program funding, and other nonpoint and point source financial assistance⁶²

Potential Costs:

- Creates staffing issues stemming from underfunded budgets and ongoing staff vacancies
- Negatively affects permitting time frames and agency communication and accessibility for permittees

⁵⁹ Secretary of Natural Resources, "Assessment of the Organization of Water Quality Programs in Virginia," November 2012, <http://leg2.state.va.us/dls/h&sdocs.nsf/execsummaryreport/RD3312012>.

⁶⁰ "Assessment of the Organization of Water Quality Programs in Virginia."

⁶¹ "Virginia DEQ to Become Lead Stormwater Agency."

⁶² "Virginia DEQ to Become Lead Stormwater Agency."

- Causes conflict and friction between different management and staff philosophies as the agency responsibilities come into contact with one another⁶³

To be sure, merging the responsibilities of one state agency into another presents significant challenges. Potentially ending or heavily reforming the local wetlands boards, which could be part of implementing this recommendation, would face several major hurdles. The current state legislature would likely bristle at efforts to remove local control over permitting decisions. Still, such bureaucratic restructuring is hardly without precedent. Even in recent Virginia history, examples of merging or transferring state agencies and state agency responsibilities are abundant. As part of his 2012 Government Reform Initiatives, Governor Bob McDonnell merged seven agencies into others. Entire departments were merged into others. For example, the Department of Rehabilitative Services was merged into the Department for the Deaf and Hard of Hearing, and the Department of Correctional Education was merged into the Department of Corrections. Merging VMRC's wetlands oversight function into DEQ is not even as broad as an entire departmental merger. The high level of activity in this sphere demonstrates the appetite for combining functions in this way, which underscores the feasibility of such a transfer of responsibilities in Virginia.

⁶³ "Virginia DEQ to Become Lead Stormwater Agency."
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Conclusion

In order to continue to lay the groundwork for wetlands management reform in Virginia, this paper offers a comprehensive analysis of the resource capability of the current wetlands regulatory structure in Virginia to conduct oversight of the wetlands permitting process. An analysis of available wetlands board budgetary and administrative data highlights possible explanatory factors for the varying levels of adherence to VIMS guidance among wetlands boards. From the evidence presented, it is clear that simply providing additional resources should not yield greater oversight of Virginia's tidal wetlands. Further analysis of VMRC's administrative capacity and budgetary structure gives observers a rough estimation of the feasibility of implementation of oversight reform options, including two made by VIMS in the Regulatory Fidelity Report.

Recommendations for further study

While completing this analysis, it became clear that a number of additional avenues of inquiry exist. The following projects, if undertaken, would achieve greater understanding of tidal wetlands oversight and the opportunities to improve upon the existing regulatory structure:

- Full cost-benefit analysis of each option for regulatory reform
- Comprehensive map of the regulatory framework
- Valuation of Virginia's tidal wetlands in comparison to what the Commonwealth spends on wetlands oversight