

York River Use
Conflict Committee
Report and
Recommendations

September 17

2008

The York River Use Conflict Committee was established to explore the public policy question facing many rural coastal local governments: "to what extent will future development of coastal communities rely on the opportunities presented by a coastal environment and what public policies will govern such opportunities?"

A dialog on
public
policy
alternatives
for
managing
use conflict



Virginia Coastal Zone
MANAGEMENT PROGRAM



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Executive Summary

Background

As the Middle Peninsula continues to transition from a less rural to a more suburban community, public policies that currently serve as management tools for near-shore land, public water bodies, and water use rights and privileges must adapt. Conflicts are becoming increasingly common between waterfront property owners, watermen, boaters, recreational fishermen, sportsmen, aquaculture industries, and others seeking to use the Commonwealth's water resources. The historical balance between working waterfronts and residential development is shifting to predominantly residential waterfront. Infrastructure to support working waterfronts and the economic opportunities they provide is disappearing.

In response to this transition, the Middle Peninsula Planning District Commission ("MPPDC") and its member localities, in partnership with Virginia Sea Grants' Coastal Community Development Program and Virginia Department of Environmental Quality's Coastal Zone Management Program, undertook a study to enable local governments to identify and determine the issues and conflicts that are affecting the waterfront.

Guiding Principles and Recommendations

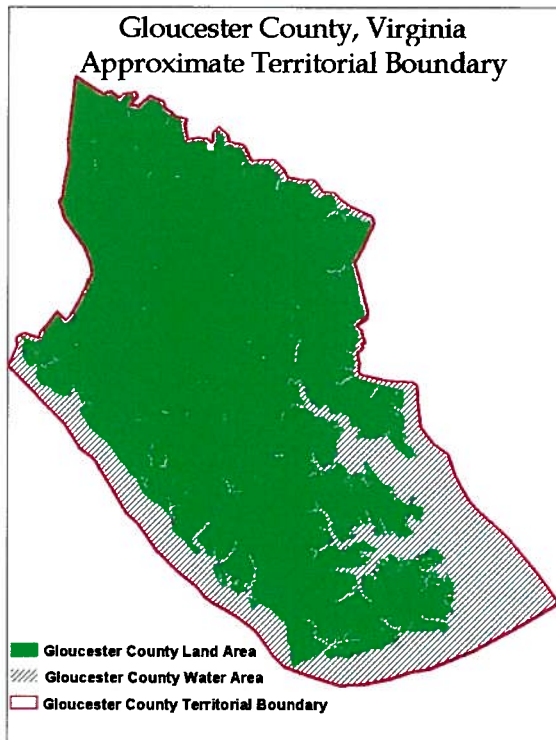
For the purposes of this study, use conflict can be loosely defined as:

Conflict generated when two or more people desire to do different activities in the same area at the same time.

One of the most important aspects to managing use conflict is acknowledging jurisdictional boundaries. It is well documented, but not well articulated, that Gloucester County's jurisdiction covers all terrestrial (land area and features), aquatic (water area and features) and air (atmospheric area and features) within its boundaries.

Together these areas form the sum total of the locality's jurisdiction (territorial boundary), in which Gloucester County has the rights and powers delegated to it by the Commonwealth of Virginia.

Recommendation 1 – *Gloucester County Board of Supervisors should develop a Coastal Living Policy. Much of use conflict is due to an overall lack of understanding about living in a coastal community. The intention of this policy is to educate residents about coastal living in Gloucester from an economic, cultural, social, environmental, and regulatory perspective.*



Recommendation 2 – *Gloucester County Board of Supervisors should map and identify the County's Land, Air and Water Territorial boundaries in the County's Comprehensive Plan and supporting maps. Identifying the County's authority to manage uses within its territorial boundary will frame the basis for managing conflict by establishing spatial areas for management consideration.*

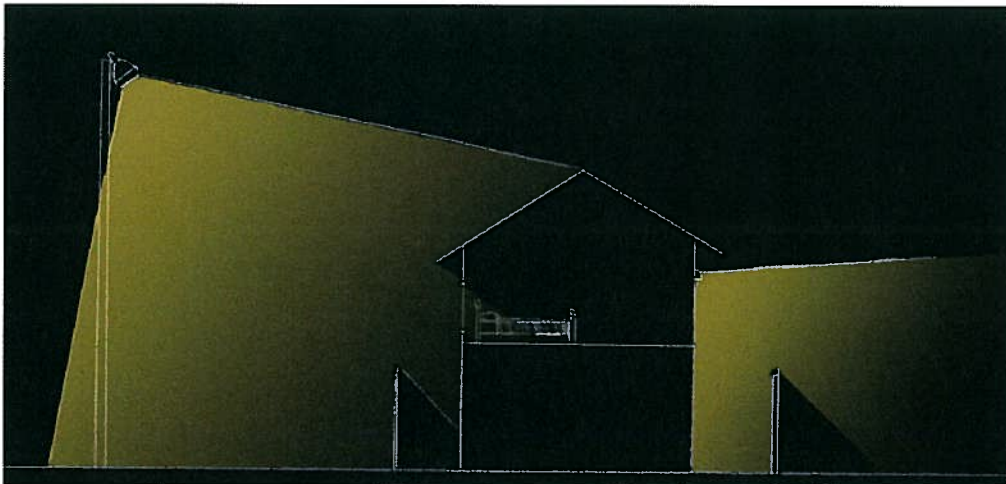
LAND AREA + AIR AREA + WATER AREA = LOCAL JURISDICTION

Recommendation 3 - Gloucester County Board of Supervisors should take no action at this time to manage or regulate the aquaculture industry within its jurisdiction. The Virginia Marine Resources Commission recently promulgated regulations regarding aquaculture and time is needed to determine whether the regulations resolve use conflicts regarding this relatively new industry.



Recommendation 4 - Gloucester County Board of Supervisors should develop a policy for the protection of working waterfront infrastructure. Public waterfront access points, together with recreational and commercial fishing industries and related support facilities, should be sustained at various points throughout Gloucester County.

Recommendation 5 - Gloucester County Board of Supervisors should develop a Waterfront Outdoor Lighting Ordinance. Light pollution, caused by overly bright and poorly designed lighting, is causing nighttime light trespass problems for waterfront users. Many Virginia localities have enacted lighting ordinances to solve this growing and serious problem.





Recommendation 6 - *Gloucester County Board of Supervisors should adopt an ordinance restricting floating homes. It is simply a matter of time before these vessels arrive in the County and the County should be proactive in protecting its residents and waters.*

Recommendation 7 - *Gloucester County Board of Supervisors should develop a master plan for public access infrastructure to ensure equal water access for all user groups to the waterways within Gloucester County.*

Acknowledgments

The Middle Peninsula Planning District Commission would like to acknowledge the individuals and organizations that participated in the process of developing this report. These include:

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Without the participation of these individuals, this Report would not be possible. Their assistance is greatly appreciated.

The Virginia Coastal Zone Management Program at the Virginia Department of Environmental Quality and Virginia Sea Grant Coastal Communities and Development Program provided funding for this project.

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This production is a product of the MPPDC Coastal Technical Assistance Program and was funded by Virginia's Coastal Zone Management Program of the Department of Environmental Quality through Grant #NA07NOS4190178 Task 93.01 of the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resources Management, under the Coastal Zone Management Act of 1972, as amended.



Virginia Coastal Zone
MANAGEMENT PROGRAM



Section 1: Introduction

Project Purpose

The 2006 Board of Commissioners of the Middle Peninsula Planning District Commission developed a consensus of the area's highest legislative and policy priorities.¹ Through its Legislative Program Development Process, water use conflict was identified as the top priority for 2007. The Commission is concerned about how the rights and privileges of all Virginians to access, utilize, and view Public Trust Doctrine common areas are considered fairly and equitably within public policy. The recommendations of the York River Use Conflict Committee will serve as a reference for the development of future public policy in Gloucester County, future legislative and policy positions to be advocated by the Commission, and to inform others, particularly state officials, of the Commission's positions.

Objectives and Methodology

The establishment of the York River Use Conflict Committee (Committee) was driven by the increase in water and land use conflicts across the Middle Peninsula. The selection of the project locality and project study area was formalized after consultation with the Chief Administrative Officers of the nine Middle Peninsula local governments. Gloucester County was extended the opportunity to address use conflict issues. The Gloucester County Board of Supervisors took action on February 6, 2007 by formalizing the existence of the Use Conflict Committee. Staff to the Middle Peninsula Planning District Commission and the Gloucester County Board of Supervisors appointed Committee members representing various use

¹ The Commission has nine member localities, including the counties of Gloucester, Mathews, Middlesex, King William, King & Queen, and Essex, and the towns of Tappahannock, West Point and Urbanna. The Commission website can be found at <http://www.mppdc.com>.

conflict perspectives. The Committee was established to gain an understanding of the land and water assets and associated user conflicts between various user groups. The approach would allow for a representative study of the Middle Peninsula and to make recommendations for possible new public policy to help local government address use conflict. The north shore of the York River, from the George P. Coleman Bridge to the Guinea Marshes, formed the Committee's study area ("Study Area").

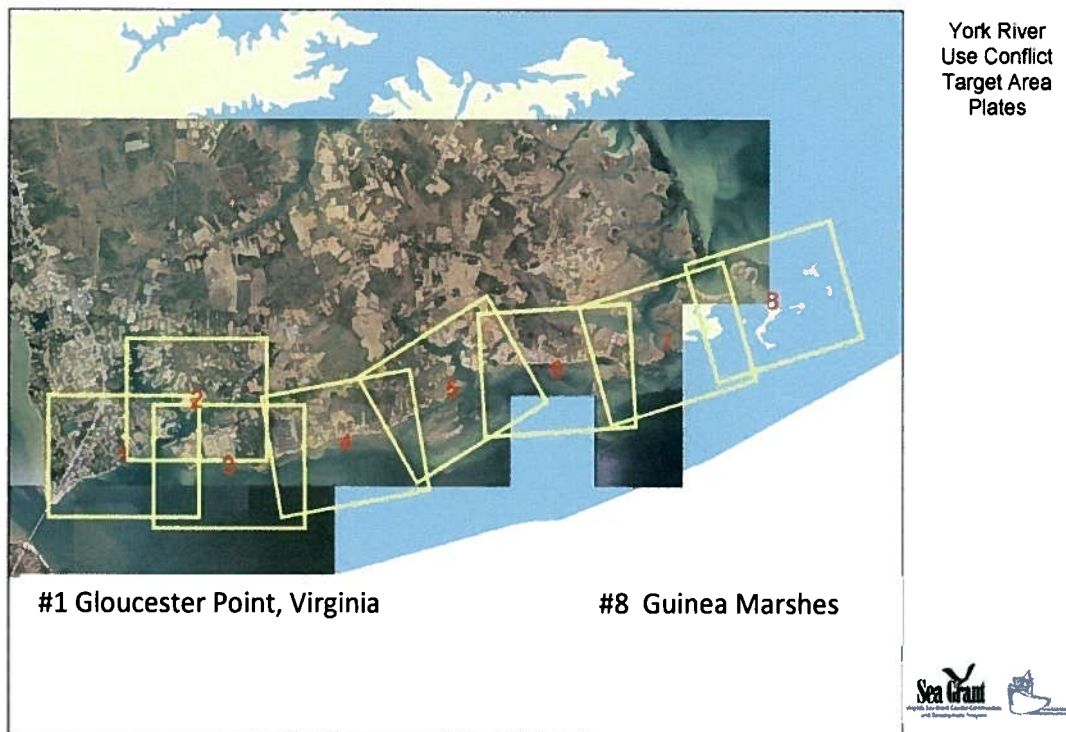
Specifically, the Committee was asked to:

1. Determine the features and uses as they currently exist and historically existed.
2. Identify what conflicts exist or could exist for the study area.
3. Determine what is or could be causing the conflicts.
4. Discuss how conflicts could be mitigated.
5. Recommend public policy that could manage the conflict.

Section 2: York River Use Conflict Committee Approach

Approach for Analysis

Numerous waterfront communities within the Middle Peninsula are transitioning from less rural to more suburban settings. This results in landside and waterside use conflicts between watermen, boaters, recreational and commercial fishermen, sportsmen, aquaculture industries, waterfront property owners, and others. Telltale signs of these conflicts are present in Gloucester County. The active, but diminishing, commercial fishing industry faces competition for space and revenue with entrepreneurs, dramatic increases in waterfront property values, and on-going development and privatization of the waterfront. In order to gain a better understanding of existing uses and conflicts along the York River, the Study Area was chosen to serve as a representative area of the increasing landside-waterside use conflicts in the Middle Peninsula as a whole.



The MPPDC and NOAA's Virginia Sea Grant Coastal Communities and Development Program (VA Sea Grant) funded and co-sponsored a Use Conflict Public Forum held in January 2006 at Achilles Elementary School in Gloucester County. The Forum offered the general public an opportunity to discuss elements and locations of use conflict that are important to the county and its residents. Information collected at the public forum was used as a foundation to support the work of the Use Conflict Committee.

Additionally, Virginia Sea Grant funded the development of a Geographic Information System (GIS) analysis of the Study Area in Gloucester County.² The north shore of the York River, from the George P. Coleman Bridge to the Guinea Marshes formed the study boundary. Spatial data collected related to a number of topics, including water-dependent uses, current regulations regarding use standards and zoning of waterways, existing infrastructure and proposed public improvements adjacent to and within conflict zones, and sensitive and significant habitats, such as wetlands and shellfish areas, that could be impacted by transitioning uses.

² GIS map products are available by contacting the Middle Peninsula Planning District Commission.

Section 3: York River Use Conflict Committee Work

As with most committees, the Use Conflict Committee members have different educational backgrounds and life experiences, and they bring to the table a mixture of cultural, social and economic values. They understand issues differently depending on their personal experiences and perspectives. For meaningful communication to occur, members must agree on and understand the meanings of the words that are important to discussions.

By its very nature, the knowledge gap among the membership of the Committee was wide, and the self interests of members initially seemed at odds with one another. All members of the Committee, however, acknowledged the need to gain a common understanding of the uses of the York River and the existing policies and regulations that influence them. This education process occurred over the summer of 2007 and centered on the resource text "Boss of the Waterfront." The text was jointly developed with funding from the Virginia Sea Grant Community Development Program and Virginia Coastal Zone Management Program. It includes a comprehensive compilation of existing state and local codes and agency regulations, as well as jurisdictional illustrations of the York River Study Area. The GIS analysis consists of comprehensive maps of the existing uses, demographics, and designations of the York River Study Area.

During facilitated meetings, comprehensive homework assignments, and a field trip to a commercial aquaculture operation, the Committee gained significant understanding of the contents of the "Boss of the Waterfront," as well as each other's perspectives and interests and the Study Area itself. Facilitated meetings ensured that all participants were able to express their views and that all use conflicts were discussed. Issues not relevant to the work of the Committee were recognized but set aside. Homework assignments were developed to

allow Committee members to report on the use conflicts most familiar to them and then move into research of areas less familiar.

Ultimately, the members taught each other and learned together as the summer progressed. A site visit to an existing commercial harvesting operation allowed Committee members unfamiliar with this “use” to experience it firsthand.

Throughout the education process, the Committee identified questions and terminology issues that were researched and answered by staff. This established a use of terminology common to the entire group (Appendix A). Additionally, the Committee learned about use conflict situations and varying policy responses from examples across the nation.

The Committee worked in small groups to analyze the Study Area GIS plates. Each group used a regulatory self help worksheet to analyze the information and better understand each part of the Study Area.

York River Use Conflict Learning the Regulations through Case Studies	
Name of Regulation §15.2-3105 Boundaries to embrace wharves, piers, decks, and certain other structures.....	
Real World Experience/Scenario Where Regulation Applies	
What Works Well?	Where Are Challenges?
Other Regulations Involved	
Applicable Technical Terms	

Through research and discussions, the group identified use conflict situations for every code and regulation in the “Boss of the Waterfront” text. This brought legal language of the codes and regulations into real life situations and case studies. After identifying case studies, the group discussed the different perspectives of the use from the land side to the water side and how they intersect and potentially conflict.

The Committee's education phase culminated with a discussion of three questions: "Who should manage use conflict?" "What is the appropriate use?" and "Who should determine the appropriate use?"

Photographs of different recreational, commercial, and residential uses were illustrated for this discussion and use conflict regulations from other states were discussed. In the end, the Committee created a matrix of the use conflicts it identified in preparation for the next project phase of framing the public policy question "Who should manage use conflict?"

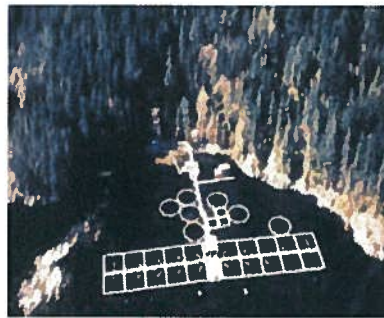
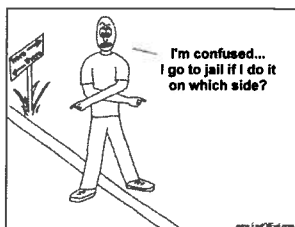


Illustration of various recreational, commercial, and residential uses



Section 4: Who Should or May Manage Use Conflict?

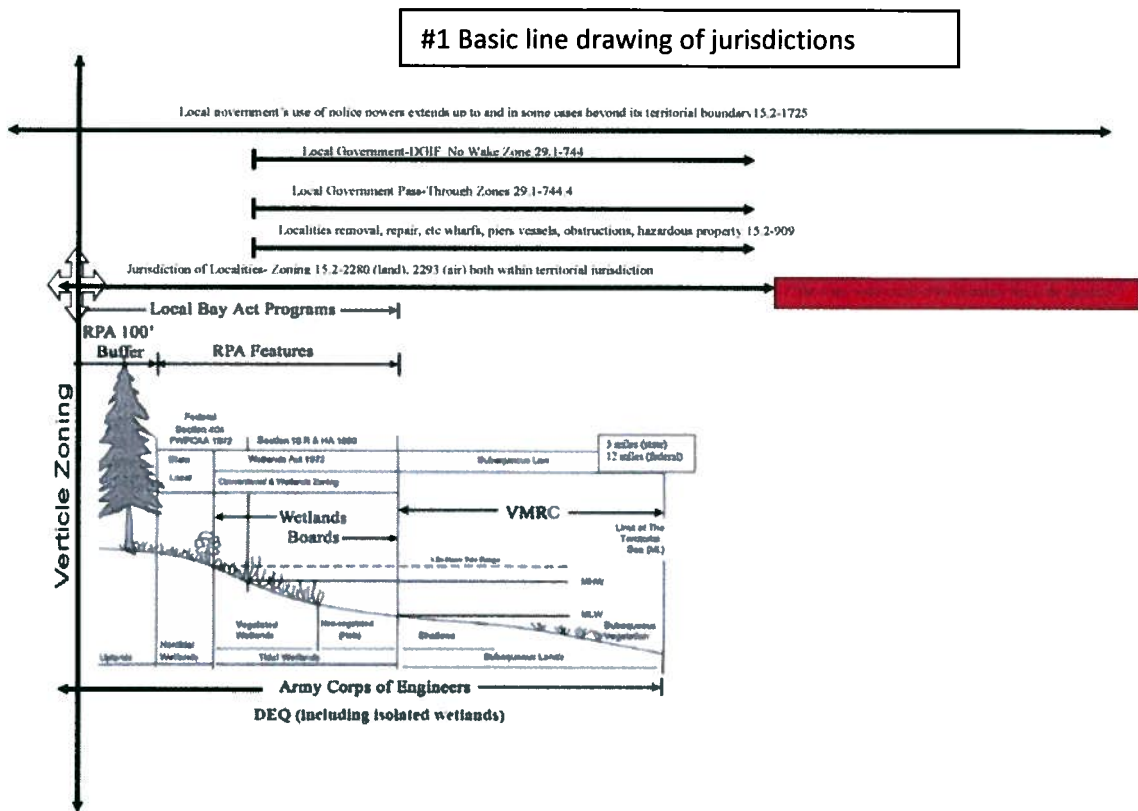


Recognizing and understanding jurisdiction is a fundamental question facing local governments struggling with managing use conflict. Within the coastal landscape, especially within the area commonly referred to as the “riparian zone” (interface area between the land and the water), multi-jurisdictional regulatory overlap exists. It was, therefore, important for the Committee to understand the legal framework which allows federal, state and local governments and agencies to manage water related uses.

The Committee learned that Virginia is a Dillon Rule State, whereby the General Assembly grants certain rights to a locality. The locality has no authority beyond those rights, which exist until such time as the General Assembly rescinds the enabling legislation.

Underlying state and local laws and regulations regarding the Commonwealth’s waterways is the Public Trust Doctrine. It holds that certain resources are preserved for public use, and that the government is required to maintain them for the public’s reasonable use. Virginia Code section 28.2-1205, for example, states that Virginia Marine Resource Commission (VMRC) must consider, among other things, the “public trust doctrine” and the Virginia Constitution when making decisions regarding the Commonwealth’s bottom or sub-aqueous lands. VMRC must balance the various public uses, which can and often do conflict with one another.

Overlapping jurisdiction can cause confusion with elected officials, government staff and the general public. Due to this complex regulatory nature, planimetric drawings (basic line drawings as illustrated below) of multi-jurisdictional overlap within the riparian zone are very complicated and complex.



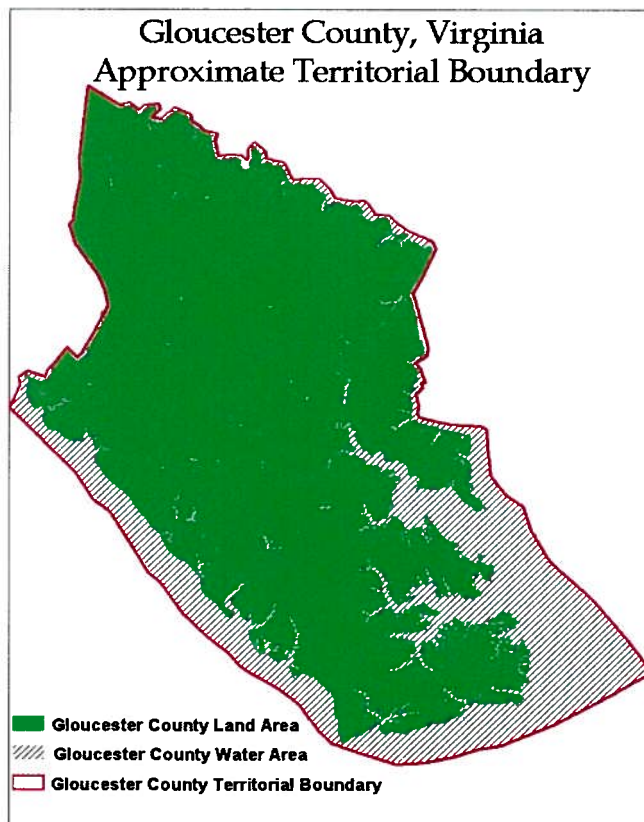
Another example of land based regulatory overlap was used to help frame the discussion and educate committee members. For example:

A landowner who gets a septic permit from the Virginia Health Department does not have the right to build a home. Local zoning and building permits are still needed and are issued by another regulatory process. Similarly, VMRC issuing a permit for aquaculture activity does not remove the

right of a locality to assert a regulatory framework for managing this use within its jurisdiction.

Another example is that in order to build a pier over state waters, a landowner consults with VMRC and applies for a wetlands permit from the local wetlands board. Moreover, local governments require building, electrical and plumbing permits for uses on a pier. Local government can tax “off-shore” improvements, such as riprap and other shoreline structural control infrastructure. Local governments also tax personal property related to the use of the pier, such as boats.

The Committee came to recognize the importance of advancing the notion of jurisdiction within public policy documents. It studied public policy documents, including the Virginia Administrative Code and the Gloucester County Code, and identified many examples of enabled rights to manage “use” within the territorial boundary of a jurisdiction, including over water. The Committee concluded that



Gloucester County has jurisdiction over both “internal” waterways as well as areas extending out to the middle of rivers shared with other localities and into the Chesapeake Bay. The County’s combined (air, land, and water) territory is depicted on the map titled “Gloucester County, Virginia Approximate Territorial Boundary.”

The Committee identified several existing state laws and local ordinances which support the position that a county's territory includes the waters surrounding its land. More specifics related to jurisdiction and managing use from the Virginia Code (*statutory law*) and the Virginia Administrative Code (*state agency rules*) can be found in Appendix B³.

Example 1: Virginia Code § 15.2-2280 - Zoning ordinances generally

Virginia Code section 15.2-2280 allows a locality, by ordinance, to classify its territory into zoning districts. Within such districts, it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. *The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts,*

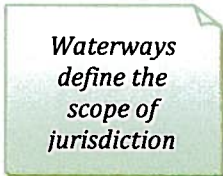
³ By making this recommendation, the Committee is not taking any position regarding what powers and rights the locality may have within its territory. As discussed in this Report, a locality's powers and rights are limited to those delegated to it by the state legislature under the Dillon Rule. In addition, certain uses within the water may be subject to the sole jurisdiction of state and federal government or regulatory agencies. While the Committee's recommendation will make it easy to determine whether a use conflict on the water is within the locality's territory, whether the locality has the authority to manage the conflict is a separate issue which must be decided on a case-by-case basis and with the advice of legal counsel.

yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or

4. The excavation or mining of soil or other natural resources.

(emphasis added) Thus, Section 15.2-2280 is an example of enabling legislation from the Commonwealth that provides a locality with authority over water.

Example 2: Gloucester County Code Chapter 21 - Watercraft and Water Safety



*Waterways
define the
scope of
jurisdiction*

This ordinance was adopted by the Gloucester County Board of Supervisors on June 7, 1983 (Appendix C). Under the ordinance, the County regulates vessels operating in waters within the County's jurisdiction.

Section 21-1 titled "Definitions" articulates the concept of the spatial relations of the ordinance:

Channel shall mean the path of deeper water in a waterway that is normally followed by larger and deeper draft vessels. Channels may be dredged or determined by generally accepted practice.

Operate shall mean to navigate, cause to be propelled or otherwise use a vessel.

Person shall not mean or be interpreted to include any law-enforcement officer while acting in the lawful discharge of his duties to the extent that his actions might or would otherwise constitute a violation of section 21-2 or section 21-3 hereinafter.

Vessel shall mean every description of watercraft, other than seaplanes, used or capable of being used as a means of transportation on water.

Wake shall mean the swells, wave wash or displacement waves created by moving vessels.

Waterways shall mean *all bodies of water* within the territorial limits of Gloucester County upon which a vessel may operate.

Wharf shall mean an artificial structure into a body of water from the shore, to be used for the reception of boats and watercraft.

(emphasis added). Spatial relations are an important concept because they set a precedent for a jurisdiction-territorial boundary within a local government management framework. The ordinance defines the reach of local government by articulating the who, what, when, how and where of its coverage. Chapter 21 recognizes the enabled right to manage use within its jurisdiction which includes the waterways.

Sections 21-2 through 21-12, of the ordinance articulate the principles of use management and define “acceptable behavior.” Chapter 21 manages use by defining:

- How fast one can go
- What actions one can cause
- How one must conduct one self
- What one may do
- Where one might do something
- What one can and cannot do
- What public facilities are available
- What the locality will do
- To what extent the locality will protect citizens
- How enforcement will be handled
- What are the civil penalties

Example 3: Gloucester County Code Article II. Regulations Governing Public Parks and Recreation Facilities

Gloucester County code Section 13.5-24 Bathing and Swimming and Section 13.5-25 Boating were adopted by the Gloucester County Board of Supervisors on March 5, 2002 (Appendix C). Under the ordinance, the County regulates among other activities the ability of citizens to swim and wade and operate, tie or moor a boat in waters within the County's jurisdiction.

Section 13.5-24. Bathing and swimming.

Swimming or wading of any type, kind, or description is prohibited in Beaverdam Reservoir and Park. At Gloucester Point Beach no person shall swim, bathe, or wade in any waters or waterways in or adjacent to any public area, except in such places as are designated therefore and in compliance with such regulations as are herein set forth or hereafter adopted. No person shall go in or on any waters or place customarily designated for the purpose of swimming or bathing, or congregate there, when such activity is prohibited by the appropriate county employee. No person shall erect, maintain, use or occupy on or in any beach or bathing area any tent, shelter or structure of any kind. (Ord. of 3-5-2002)

Section 13.5-25. Boating.

No person shall bring into or operate any watercraft upon any waters designated as a public swimming or bathing area, unless during a sailing regatta or other activity sponsored or authorized in writing by the director. No person shall tie or secure any watercraft to a marker or piling used to designate a protected swimming or bathing areas. Water-skiing or using personal watercraft, as such term is defined in Section 29.1-700, Code of Virginia, 1950, as amended, within fifty (50) feet

of boat launching areas, piers, cofferdams, docks, mooring areas, or within one hundred (100) feet of designated swimming areas is prohibited. Operation at Beaverdam Reservoir and Park of any internal combustion engine of any description whatever, especially of a gasoline-powered engine for propulsion of any boat, regardless of size is prohibited. Operation of any wind-propelled vessel, including, but not limited to, a sailboat or windsurfer is prohibited. Operation of any electric motor vessel that has not been licensed by the Commonwealth of Virginia, or, operation of any vessel without a U.S. Coast Guard approved flotation device for each and every person on board is prohibited.
(Ord. of 3-5-2002)

Example 4: Virginia Code § 29.1-744.4 - "Pass-through" zones; local ordinances; penalties.

Virginia Code section 29.1-744.4 allows a locality, after providing notice to the Department Game and Inland Fisheries, to pass an ordinance to:

establish "pass-through" zones in any portion of a waterway within its territorial limits where congestion of watercraft traffic routinely poses a significant safety risk to persons in such designated area. The ordinance shall provide that while in a pass-through zone, operators of watercraft shall maintain a reasonable and safe speed and shall be prohibited from stopping, anchoring, loitering, or otherwise engaging in recreational activity. The locality shall clearly identify pass-through zones by buoys or other markers that conform to the general requirements as established by the Board for similar buoys or markers. The locality may provide for enforcement and penalties, not to exceed a Class 4 misdemeanor, for the violation of the ordinance.

Example 5: Virginia Code § 15.2-909 - Authority to require removal, repair, etc., of wharves, piers, pilings, bulkheads, vessels or abandoned, obstructing or hazardous property.

Virginia Code section 15.2-909 allows a locality to pass an ordinance requiring a landowner to:

remove, repair or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead or *any other structure or vessel* which might endanger the public health or safety of other persons, or which *might constitute an obstruction or hazard to the lawful use of the waters within or adjoining such locality.* (emphasis added)

Prioritization Process

As the Committee settled in agreement that local government has a right to manage certain uses within its jurisdiction, which includes the locality's waters, the focus turned towards identifying and prioritizing different use conflicts within the Study Area. The Committee utilized two processes for prioritizing conflicts. The first process involved analyzing the relationships between ten units of local, state and federal jurisdiction⁴ and various combinations of use categories: Commercial

⁴ Gloucester County, Virginia, Virginia Department of Conservation and Recreation's Chesapeake Bay Local Assistance Division, Federal Emergency Management Agency United States Army Corp of Engineers, Virginia Department of Environmental Quality, Virginia Department of Game and Inland Fisheries, Virginia Department of Health's Division of On-Site Sewer and Water Services, Virginia Department of Health's Division of Shellfish Sanitation, Virginia Marine Resources Commission, and Gloucester County Wetlands Board.

and Residential Uses; Recreational and Residential Uses; and Commercial and Recreational Uses. The Committee struggled with determining a consensus of who could manage various use conflicts under the scenarios presented. This process helped the Committee understand the issues but did not lead the Committee to prioritize or address them.

A second process utilized a matrix to identify the use conflict “issue area” and then presented two perspectives: one in favor of the use and the other in opposition of the use. Committee members were then asked “What should local government do about the conflict?” An example of the matrix follows:

Example Matrix

Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Residential Property Owners -v- Commercial Pier Use	Homeowner concerns of sight, smell, noise, time of use etc	Commercial pier supports an important part of the economy	<p>**Incorporate areas for commercial piers and working waterfront in long range Comp Plan as both a land use and as preservation of the rural character of the area, economic generator and part of the cultural fabric of the community that needs to be preserved.</p> <p>***appropriate zoning for commercial piers and other water based activities so that the land uses can be separated and buffered. By creating a zone which identifies specific permitted uses, including commercial piers and aquaculture activities the public and adjoining land owners are aware of the potential uses permitted on the site.</p> <p>*****Regulate pier use with ordinances: regulate it in terms of the hours of operations, excessive noise levels, pollutants, trash and waste product disposal/accumulation, etc</p> <p>If the pier was in existence prior to</p>	10	2	3

Each Committee member was asked to prioritize the importance of the conflict and what was the priority for addressing the conflict. The matrix results provide an overview of the Committee's full assessment of use conflict and management (Appendix D). The results also served as the foundation for understanding how local government might handle conflict and identified prioritization of conflict issues.

As part of the prioritization discussion, the Committee explored how other local, state and federal governments have handled similar conflicts. Some examples include (Appendix G):

- Alachua County, Florida Water Management Strategies
- Monroe County, Florida Plan to preserve and protect working waterfronts
- Regulation of Floating Houses in Seattle, Washington
- Jet-ski ordinances in San Juan, Washington, San Francisco County, California, and localities in New York
- No Net Loss Policy for Commercial Waterfront Lands in Martin County, Florida
- Marine Zoning in the Florida Keys National Marine Sanctuary

Section 5: Conflict Recommendations

Committee Statement, Recommendations and Action Steps

Committee recommendations reflect compromise and coalition building. The recommendations were unanimously agreed upon, although some consensus building was needed. Gloucester County, as with much of the Middle Peninsula, is experiencing the loss and redevelopment of waterfront marine facilities and their associated businesses and employment. A limited supply of waterfront land and an increasing demand by different uses is the driving force behind the apparent change and conflict.

The largest challenge facing local government is recognizing and balancing the needs and expectations of upland property owners against the loss of a coastal maritime identity and the working waterfront infrastructure. Such infrastructure includes commercial marinas, boatyards, wet and dry storage, fish houses, commercial fishing vessel dockage, and marine-related industries such as boat dealers, boat repair and maintenance services, commercial fishing, and tourism. The current trend is towards non-water-dependent uses (e.g., residential development and condominiums) and exclusive use (e.g., private marinas).

The Committee unanimously agreed that Gloucester County is losing its rural coastal character and that future growth should be slow and smart. The County must preserve the coastal cultural identity that makes Gloucester County a special waterfront community.

To help address these issues, the York River Use Conflict Committee recommends the following:

RECOMMENDATION 1 - Develop and Adopt a Coastal Living Policy.

A consistent theme during the Committee's work was the need for education and awareness among the various users of the riparian zone regarding the competing uses and their affect on one another. Committee members agreed that conflict is often a product of uncertainty and misunderstanding. Conflict can be lessened, if not avoided entirely, when individuals are made aware of the multiple uses of the waterfront as early as possible.

For example, a purchaser of waterfront property should be made aware before buying the property that Gloucester County has a rich heritage with commercial and recreational fisheries. Such activities are promoted and protected by the County and the Commonwealth. Early morning crab boats, pound nets, and now aquaculture activities, are and will be part of the mixed use of the riparian zone (near shore). Likewise, commercial users of the water should be aware that the rights of landowners to view, access and enjoy the water, including aesthetic values, are also promoted and protected.

While this may seem obvious, it is not. The Committee members engaged in a learning process about the multiple uses of the water which led them to understand and better accept uses that they initially viewed with skepticism and concern. Other localities have prepared and distributed such educational materials. For example, two communities in Maine have produced "working waterfronts" brochures in conjunction with NOAA and the Sea Grant program. Dorchester County, Maryland has developed a real-estate disclosure statement to help preserve coastal culture. *See* (Appendix E).

The Committee strongly believes that Gloucester County should adopt measures to ensure that its current, new and potential residents are aware of the multiple uses of the riparian zone and their impacts on

the natural environment. To that end, the Committee recommends that the County adopt a Coastal Living Policy.

ACTION STEPS

The Gloucester Board of Supervisors should direct the county attorney and planning staff to develop a Coastal Living Policy similar to the Maine and Maryland examples (appendix E) for adoption consideration. The policy should include, but not be limited to, the following concepts:

1. Develop a coastal living information document to be included in the property tax assessments mailed to County residents. The Committee recognizes the need to work with the Commissioner of Revenue.
2. Develop a coastal living brochure to be distributed at various community gatherings.
3. Develop a coastal living section in the Comprehensive Plan.

Such materials may include:

- Discussion of the coastal value system of living in Gloucester County
- Discussion of the importance of a vibrant coastal economy
- Discussion about natural resource based industries: farming, fishing, and silviculture
 - Sights
 - Sounds
 - Smells
 - Hours of operation
- Discussion about public services and public infrastructure in a coastal locality
- Discussion about what riparian rights are and are not
- Responsible use of coastal resources

- Discussion about the Public Trust Doctrine
- Discussion about water based recreation uses, such as
 - Duck hunting
 - Speckled trout fishing
 - Crabbing
 - Clamming
 - Swimming
 - Gill netting
 - Boating
 - Sailing
 - Jet skiing

RECOMMENDATION 2 - Denote Gloucester County's Land, Air and Water Territorial Boundary in the County's Comprehensive Plan and supporting maps.

As stated above, a critical step in handling use conflicts is to illustrate the local government's territorial boundaries. This is necessary for several reasons. First, the local government cannot identify and implement solutions to use conflicts if it is uncertain whether the uses are within its jurisdiction. Second, residents need to know who to turn to when conflicts arise. Third, water and land uses are often subject to the overlapping jurisdictions of federal, state and local governments and regulatory entities or agencies, all of which need to know what each other is doing.

Existing state statutes and County regulations, along with historical documents and practices, make clear that the County's territory encompasses land, air, and water (horizontally and vertically). The territory should be expressly identified and mapped.

ACTION STEPS

The Board of Supervisors during the 2008 Comprehensive Plan Process should include an element in the Comprehensive Plan that all

appropriate comprehensive plan, land use and zoning maps shall denote land, air and water areas within the territorial boundaries of the County.

RECOMMENDATION 3 - Gloucester County should take no action regarding aquaculture but instead monitor and evaluate how the VMRC's new regulations address the use conflicts associated with this relatively new industry.

The primary use conflict discussed by the Committee was aquaculture, particularly the growing of oysters in metal cages placed in the riparian zone. Aquaculture has recently been a hot topic in Gloucester County and in the Chesapeake Bay area, and many of the Committee members are either involved with aquaculture or are property owners concerned about it. The discussions about aquaculture involved almost all of the conflict issues addressed by the Committee and served as a focal point for the Committee's work on identifying conflict issues and possible solutions. A more detailed statement regarding the Committee's discussions regarding aquaculture is attached as Appendix F.

The Committee decided to take no position on aquaculture for at least two reasons. First, in 2007, VMRC promulgated regulations governing temporary protective enclosures for shellfish. See 4 VAC 20-1130-10 *et seq.*⁵ These regulations were the result of a VMRC *ad hoc* committee established to review, revise and discuss the proposed regulations. Many of the conflict issues on this topic were discussed by the VMRC *ad hoc* committee and are reflected in the regulations. The Use Conflict Committee believes that there needs to be time to allow the regulations to be applied before it can be determined whether or not the regulations adequately address the issues.

⁵ A copy of the regulations can be found at <http://www.mrc.virginia.gov/regulations/fr1130.shtm>.

Second, the growing of oysters in cages (on a commercial scale) is a relatively new industry in the Chesapeake Bay area. It should be noted that the West Point based Chesapeake Corporation during the 1930's and 1940's developed and experimented with techniques for off-bottom oysters growing. Chesapeake Corporation had 11,000 tar dipped baskets which rested on creosoted sills that stretched over three miles at the mouth of Queens Creek on the York. Restaurants paid as high as \$12 a bushel for these cage grown oysters. The Queens Creek farm was called "Sea-Rac Farm" and had a registered trade name of "Sea Rac" oysters and were marketed as "fancy half shells. In 1943 the farm was moved to the Weeks Creek on the Rappahannock River and grew off bottom Oysters in racks on the Rappahannock.



13. Men at work thinning out Sea-Rac oysters while they are exposed at low tide in Queen Creek near Williamsburg. This is the "farm" at which The Chesapeake Corporation grew prime oysters for gourmet tables.

However, today's growers, landowners and other water users are still learning about the process and how it may or may not affect them. The industry is currently small. The conflicts have been relatively few. Time is needed to determine the nature and scope of any conflicts based on actual experience.

The Committee, therefore, recommends that for now Gloucester County take no action regarding aquaculture. If and when the need arises, it can do so.

ACTION STEPS

The County should continue to evaluate and monitor the aquaculture industry regarding actual conflicts with other water users and take action in the future as necessary.

RECOMMENDATION 4 - Develop and adopt a policy to protect and preserve working waterfronts.

The Committee strongly believes that working waterfronts should be protected and preserved, particularly those related to traditional uses such as fishing, crabbing and oystering. With property values significantly increasing for waterfront property, working waterfronts that are lost will be difficult to replace. Commercial water uses are an important part of the mix in the community, and they require land based activities to survive.

Many of the owners of key pieces of working waterfront infrastructure are nearing retirement or are of retirement age and will eventually consider alternative management strategies. The committee is concerned that should key institutions close or be re-developed, the loss of coastal cultural identity would be a significant loss to the community.

ACTION STEPS

The Board of Supervisors should develop and adopt a “No Net Loss” policy to protect both public access and water related industries. This means that at the very least the County should seek to maintain the same level of working waterfronts as currently exist. The policy should include at least the following:

- (a) Inventory existing working waterfronts, including commercial marinas, boatyards, wet and dry storage, fish houses, commercial fishing vessel dockage, and marine-related industries such as boat dealers, boat repair and maintenance services, commercial fishing, public and semi-public access sites (sites that are privately owned where by the owner allows public access). Consult with local watermen to assist with site identification;
- (b) Examine the feasibility of using transfer and/or purchase of development rights to address the “No Net Loss” goal (for example, the County could buy development rights on privately owned marinas to keep them from being redeveloped into condominiums);
- (c) Focus on the commercial nodes of water-dependent marine-related uses throughout the County to purchase outright with potential lease-back to fishing cooperatives or other industry partnerships;
- (d) Develop viable partnerships with the private sector to help preserve the working waterfront;
- (e) Explore a countywide bond issue as a source of funding to improve existing public boat ramps to enhance boating access; and
- (f) Continue to utilize the Middle Peninsula Chesapeake Bay Public Access Authority as a tool for local government to address working waterfront infrastructure conversion issues.

RECOMMENDATION 5 - Develop a Waterfront Outdoor Lighting Ordinance.

During its work, the Committee learned about the growing problem of light pollution, not only on the waterfront but across the country. Excessive lighting threatens the ability of future generations to see the beautiful night sky. The projection of light towards the sky by overly bright and poorly designed outdoor lighting fixtures has already degraded the night sky and leads to the more localized problems of glare and light trespass.

Nationally, the loss of America's dark areas where night sky views are unhindered by artificial light has accelerated since the end of World War II. Recent articles on night sky visibility state that already two-thirds of Americans cannot see the Milky Way from their backyards. If that is not alarming enough, computer models project that remaining "dark areas" in the American West will be lost completely in approximately twenty years. There are three forms of light pollution along the waterfront of concern; the brightening of the night sky along the waterfront, the uncomfortable brightness of waterside light source when viewed against a dark background, and the spilling of dock light beyond the boundary of the property into a neighbor's yard.

Many of the Committee members had experienced problems with overlit piers and buildings on the water. The Committee agrees that correcting light problems is relatively simple and inexpensive. It involves the replacement over time of existing light fixtures with fixtures designed to reduce wasted light. The most common shoreland lights are attached to piers, homes, garages, and other structures on waterfront residential property.

Light pollution ordinances have been adopted by numerous localities across the country, including at least seven localities in Virginia.⁶ An

⁶ See Virginia Outdoor Lighting Task Force (VOLT) website at <http://www.volt.org>.

outdoor lighting control ordinance restricts lighting types, when they can be used, and other factors relating to qualities of lighting used. A waterfront ordinance minimizes the three serious problems along our shorelands:

Glare: When we see a distant point of light across the water, we are seeing light from the fixture itself rather than what the fixture is meant to illuminate. Poorly-designed or poorly installed lighting causes glare that can severely hamper the vision of boaters and landowners.

Light Trespass: Light trespass is a light fixture on one property that illuminates an adjacent or nearby property. Light trespass is not a legal concept, but rather a description of the nuisance effect of improperly aimed lights on someone else's property. Because the waterfront is unobstructed, water reflects glare from shoreland lights over the water to trespass on distant properties.

Sky Glow: Much of our exterior lighting shines directly upward, causing the sky above our cities to glow and washing out our view of the dark night sky. Artificial light placed at the shoreland is free to carry across the water for long distances.

ACTION STEPS

The Board of Supervisors should direct the County Attorney, Director of Planning and the Director of Codes Compliance to develop and present for adoption a waterfront outdoor lighting ordinance. The ordinance will be intended to reduce the problems created by improperly designed and installed outdoor lighting along the riparian area of the waterfront. It is intended to eliminate problems of glare, minimize light trespass, and help reduce the energy and financial costs of outdoor lighting by establishing regulations which limit the area that certain kinds of outdoor-lighting fixtures can illuminate and by limiting the total allowable illumination along the waterfront. Appropriately regulated and properly installed outdoor lighting will

contribute to the safety and welfare of waterfront residents, boaters and watermen.

RECOMMENDATION 6 - Gloucester County should adopt a policy restricting the use of floating homes.

There has been a noticeable increase in some areas of people living on “boats” that are more like floating homes than traditional boats. The floating homes can cause serious problems for adjacent landowners, other water users, and the local government. The vessel residents sometimes use County services without paying County taxes. There are serious issues with waste disposal. Adequate vessel putout facilities do not exist across the waterways of the County. The vessels obstruct water views and water uses and can be a serious eyesore affecting property values and the viewshed of upland property owners. The Committee recognizes the economic importance of appropriate vessels moored in appropriate places.

The Committee recommends that the Gloucester County Board of Supervisors proactively address this issue before it inevitably arrives.

ACTION STEPS

The Board of Supervisors should direct staff of the Planning Department and the County Attorney to form a study committee (membership should include, but not limited to a marina owner, water front property owner, commissioner of revenue, public works, and codes compliance) to consider the following and draft a proposed ordinance restricting floating homes in the County:

- What is a floating home
- When should local government become concerned about management issues
- What public services should or could be required
- How might these homes be taxed
- Definition of transience

- Discussion of visual appealing versus visually appalling
- Use of zoning as a tool to manage areas of moorage
- Recommendations for a policy to restrict floating homes in Gloucester County

The ordinance should be finalized and adopted by the Gloucester County Board of Supervisors.

RECOMMENDATION 7 - Gloucester County should develop a master plan for public access infrastructure to ensure safe and equal access for all user groups to the waterways within Gloucester County.

One of the most important assets of the County is the waterfront. The Committee believes that County residents should have access to the water. As shoreland development continues, public access points can get squeezed out, and the opportunities for increasing public access decrease.

ACTION STEPS

Develop a county wide master plan for public access infrastructure. The County should continue to work with the Middle Peninsula Chesapeake Bay Public Access Authority to develop a master plan. The plan should consider the following, but not be limited to:

- a. Inventory, preserve, protect, and enhance all existing public access opportunities, sites, and facilities along the shoreline.
- b. Consider linking access points or nodes throughout the waterfront of Gloucester using a variety of economic and commercial activities (e.g., shoreline restaurants and attractions, boat tours, ecotours) and transportation modes (e.g., bus, water taxis, bicycles, boats). People should be made aware of access points via improvements in signage and information about public transportation to these destinations, which may offer a mix of uses.

- c. Transform parcels of the shoreline currently planned for more intense development into space for activities that are water-dependent or water-related with green space that enhances habitat and public access.
- d. Encourage the use of waterfront property for habitat restoration, public access, or where appropriate, job-producing, water-dependent commercial activity that is compatible with environmental protection.
- e. Plan for future opportunities for new public recreational and educational experiences on public lands, causeways, and public parks abutting the shoreline. Public lands include local, state, and federal access points. Responsible use of the waterfront is subject to carrying capacity. In addition, infrastructure in these areas should accommodate existing and future public needs.
- f. Work with the Department of Conservation and Recreation, Virginia Marine Resource Commission and the Department of Game and Inland fisheries to ensure project coordination and implementation.

Conclusion

Use conflict management will become more complex as Gloucester County transitions from a rural to a more suburban community. Using political will, courage, and consistency Gloucester County can successfully manage this transition.

By implementing these action steps, Gloucester County will establish policies and procedures for managing use conflict, maintain the working marine industry and its various components, continue its commitment to the history and culture that makes Gloucester unique, and maintain a valuable resource that is essential to Gloucester's quality of life. The York River Use Conflict Committee recommends that the Gloucester Board of Supervisors demonstrate leadership and enact these recommendations from this report.