

## “Naval Installations and Operations: A Federal Perspective”

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Using theoretical examples, Mr. Parsons took a closer look at state and federal laws. (With regard to decisions made under the Submerged Lands Act and case law, much of that activity comes out of the Navy in Hampton Roads and the Coastal Zone Management Act.)

- Has 6-page outline to include on Web
- VA Code, title 28.2, ch. 12: What does statute say? Are federal agencies “persons” under this law?
  - No real definition of what a person is in this part of code; government and government agencies/state;
    - Does not specify federal government

Submerged Lands Act:

- Lands beneath navigable waters belong to the state
  - Filled or reclaimed by US are excepted
- Federal retained rights
  - Navigational servitude and control for commerce, navigation, national defense, and int’l affairs
  - Right of first refusal to buy land for national defense

Mr. Parsons stated that a great deal of naval-owned lands in Hampton Roads is *filled* land. Navy ownership of these lands has not been challenged.

The question, “Can the Navy impose navigational servitude?” is a question of federal law. (States will be heard, but decision resorts to federal level.) The most prominent examples are highways and tunnels built for purpose of commerce.

Does this mean that any time the Navy builds piers for aircraft carriers, operating equipment, etcetera on Submerged Lands for national defense use, it needs to purchase that land because it is a “taking”?

Other cases/examples he reviewed, briefly:

- Commodore Park on Mason Creek
  - Got federal appropriation to dredge in Willoughby Bay for seaplanes
    - Case went to Supreme Court: feds get to do it, don’t have to pay; under commerce clause
- Yorktown, oyster grounds near long Naval pier, restricted area
  - Court says okay, citing commerce clause
- Removal of obstructions in Navy operating area also allowed
- Older cases: Bailey case in Norfolk, commerce servitude; dredging Eliz R (Navy won)
  - San Francisco: fuel pier is NOT navigational servitude

With regard to the CZMA: How hard a look do we take at Virginia law and the statute to demonstrate consistency with it?

- Federal submerged land not statutorily within coastal zone, but effects are important and must be consistent with state management programs
- Reserved federal powers: control over SL, navigation and project funding

- Consistency to maximum extent practicable: do retained powers excuse full consistency?  
Not if other federal law explicitly says we don't have to
- Virginia Submerged Lands Program: state permit not required to demonstrate consistency

He cited another case, Friends of the Earth v. the Navy:

Is state permit required? The court said the Navy needs to comply with the water quality focus of the state permit. It did not require the Navy to get permission from a state agency to build on submerged land owned by the State of Washington.

In concluding, Mr. Parsons stated that there remain many issues of interpretation, and that inter- and intra-agency disagreements occur frequently.

Mr. Parsons' views do not necessarily represent the position of the Department of the Navy or the Department of Defense.