MEMORANDUM

TO: MPBPAA

FROM: Lewis Lawrence, Acting-Executive Director

DATE: November 29, 2011

RE: December 9th PAA Meeting

This announcement serves as notice to call a meeting of the Public Access Authority on Friday, December 9, 2011 at or about 11:00 a.m. The meeting will be held in the MPPDC Regional Board Room in Saluda.

Following this update the remainder of the meeting will include normal PAA agenda items.

If you have any questions, please call (804-758-2311) or email me at (LLawrence@mppdc.com) at your convenience.

AGENDA

1. Welcome and Introductions
2. Approval of October 2011 Minutes
3. Financial Report
4. Public Comment
5. Discussion of Williams Wharf Easement
6. Update on Grant Award-National Parks Service: Mathews Heritage Park Management Plan
7. Working Waterfronts
   a. Defining a working waterfront
   b. Discussion of national definition
   c. Local representatives needed
8. Update on Legal Issue: CELCP ROW
9. Other Business
10. Chairman Observations
12. Adjourn
1. Welcome and Introductions
The Middle Peninsula Chesapeake Bay Public Access Authority held its meeting in the Middle Peninsula Planning District Commission Board Room in Saluda, Virginia, at 11 a.m. on October 5, 2011.

Chairman Louise Theberge called the meeting to order. Members and Alternates present were David S. Whitlow, Essex County Administrator; Carlton Revere, Middlesex County Board of Supervisors; Steve Whiteway Mathews County, Louise Theberge, Gloucester County, Doris Morris, King and Queen Board of Supervisors, and John Edwards, Town of West Point, Trent Funkhouser King William county. Also present were Lewis Lawrence, Acting Executive Director of the Middle Peninsula Planning District Commission; Harrison P. Bresee III, Regional Economic Planner of the Middle Peninsula Planning District Commission, and Capt. Alan Alexander.

2. Approval of April 2011 Minutes
Chairman Louise Theberge requested a motion to approve the April 2011 minutes. Mr. Whitlow moved that the minutes be approved. Mr. Revere seconded the motion. Motion carried by unanimous vote.

3. Financial Report
Chairman Louise Theberge requested a motion to approve the April 2011 Revenue and Expenditure Report. Mr. Revere moved that the Report be approved. Mr. Whitlow seconded the motion. Motion carried by unanimous vote.

4. Public Comment
N/A

Capt. Alexander provided a quick overview of the community need for developing Eco Tourism in the Middle Peninsula and his difficulty in finding public access sites for Green in/Green out Kayak and Canoe Tours. Mr. Lawrence reminded the Authority that the intent of the PAA was to provide for multiple public access uses of PAA lands, including eco-tours. David S. Whitlow motioned that Capt. Allen work with staff to develop a plan for his business to use PAA lands for eco tours consistent with existing plans and policies of the PAA. Steve Whiteway seconded the motion. Vote passed with one abstention from Doris Morris.

6. Discussion - Middle Peninsula Shallow Water Dredging and Regional Sediment Management Plan
Mr. Lawrence provided a lengthy overview of the Shallow Water Dredging and Regional Sediment Management Plan and User Guide to Dredging in Tidewater Virginia. PAA Directors discussed: options for funding the plan; Tom Murray’s (VIMS-Sea Grant) boating study for Middlesex County; and what the Phase II option should be (aka “the next step). The Commission asked staff to explore if Tom Murray could research the funding options that other localities across the country had explored. Steve
Whiteway made a motion to accept the plan. Carlton Revere seconded the motion. The motion passed unanimously.

7. Announcement of Working Waterfront Coalition proposal funded
Mr. Lawrence discussed this proposal and its history. For many Virginia rural coastal communities, there is a strong need to maximize the potential of the waterfront as a driver for economic vitality. However, market forces, changing demographics, and increasing tax burdens on waterfront properties are increasingly driving a transition of waterfront properties toward residential or recreational uses. In addition, regulatory changes affecting marine fisheries management are impacting water dependent industries and working water fronts. If access to the waterfront is limited or severed, commercial and recreational fishermen, researchers, and other water-dependent businesses will have fewer options to successfully make a living from the tidal waters of the Commonwealth, including the Seaside on the Eastern shore. As a result, many rural Chesapeake Bay and Seaside communities are challenged to maintain their identity and are shifting away from water-dependent employment, causing economic and cultural changes that can limit economic diversification opportunities and fundamentally alter the nature of the communities themselves. These challenges are particularly acute in both rural Chesapeake Bay and Seaside coastal communities. In response, Accomack-Northampton PDC, Northern Neck PDC Middle Peninsula PDC, Middle Peninsula Chesapeake Bay Public Access Authority, Northern Neck Chesapeake Bay Public Access Authority and Marine Advisory Services at VIMS collectively propose to form a Rural Chesapeake Bay-Seaside Working Waterfront Coalition.
Mr Lawrence will continue to update the Authority as needed.

8. Update on Legal Issue: CELCP
The Authority discussed the need to support traditional uses in the Dragon, including silviculture and hunting. PAA Directors indicated a need to support silviculture and hunting activities and are in agreement to discuss allowing access for silviculture and hunting.

9. Other Business
None

10. Chairman Observations
Chairman Louise Theberge stated that she would be on vacation in December.

11. Next Meeting
The next meeting of the Middle Peninsula Chesapeake Bay Public Access Authority is scheduled for Thursday, December 9th, 2011 at 11:00am

12. Adjournment
Chairman Theberge requested a motion to adjourn the meeting. Mr. Revere moved that the motion be approve; Mr. Whitlow, seconded the motion. Meeting was adjourned.
# Revenue and Expenditure Report by Project

**Middle Peninsula Planning District Commission**

**Period** 07/01/11 to 10/31/11

**Run Date:** 11/04/2011  
**Run Time:** 2:17:05 pm  
**Page 17 of 25**

## Project Code & Description

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<th>Project Code</th>
<th>Description</th>
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## Revenues

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**Revenues**
103,343.25 75,670.81 500.12 28,846.82 104,517.63 -1,174.38 101.14%

## Expenses

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<th>Code</th>
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<th>Budget</th>
<th>Prior Year</th>
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**Expenses**
97,690.01 75,670.81 1,323.24 4,537.68 80,208.49 17,481.52 82.11%

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**Project Expenses:**
97,690.01 75,670.81 1,323.24 4,537.68 80,208.49 17,481.52 82.11%

## Project Balance

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**Project Balance:**
5,653.24 0.00 -823.12 24,309.14 24,309.14
NOTE TO TITLE EXAMINERS: This open-space easement contains restrictions on permitted uses and activities on the property described below that run with the land and are applicable to the property in perpetuity.

Prepared by and return to:
R. Lee Stephens Jr.
Spotts Fain PC
Post Office Box 70
Irvington, Virginia 22480


Insurer: [Fidelity National] Title Insurance Company is insuring this instrument

This open-space easement contains restrictions on permitted uses and activities on the property described below that run with the land and are applicable to the property in perpetuity.

Recitals:

R-1  Grantor is the owner in fee simple of real property situated in Mathews County, Virginia ("County"), containing in the aggregate 4.53 acres, more or less, as further described below (the "Property"), and desires to give and convey to Grantee a perpetual open-space easement over the Property as set forth herein.

R-2  Grantee is a body politic formed by the General Assembly, and would be a holder under the Open Space Land Act. See Middle Peninsula Chesapeake Bay Public Access Authority Act (2002), Code of Virginia (1950), as amended ("Va. Code Ann."). § 15.2-6600 et seq. The mission of this Authority is to ensure that waterfront property remain available to the citizens of Middle Peninsula, which includes the County of Mathews.

R-3  Grantee is a public body, as defined by Va. Code Ann. § 10.1-1700, and a "qualified organization" and "eligible donee" under § 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations) (the "I.R.C.") and
Treasury Regulation § 1.170A-14(c)(1), and Grantee is willing to accept a perpetual open-space easement over the Property as set forth herein.

**R-4** By Deed of Easement dated November 22, 2004, and recorded in Deed Book 312, Page 142 among the land records of the Circuit Court of Mathews County, Virginia, Grantor conveyed to DCR a conservation easement over Tax Map Parcel 29-A-220 (0.40 acres+);

**R-5** By Deed of Easement dated November 12, 2009, and recorded as Instrument No. 09-1863 among the land records of the Circuit Court of Mathews County, Virginia, Grantor conveyed to DHR a conservation easement over Tax Map Parcel 29-A-219 (0.85 acres+);

**R-6** Both DCR and DHR acknowledge the protections being placed on the entire Property by this Easement, appreciate the efficiencies of a single holder on this one location, and desire to transfer their conservation easements to the Middle Peninsula Chesapeake Bay Public Access Authority (“MP-PAA”), and the MP-PAA desires to accept such transfer under the Virginia Open-Space Land Act;

**R-7** Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§ 10.1-1700 through 10.1-1705 of the Code of Virginia (1950), as amended, (the “Open-Space Land Act”), provides “that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic and scenic areas, and to conserve land and other natural resources” and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land.

**R-8** Pursuant to §§ 10.1-1700 and 10.1-1705 of the Open-Space Land Act, the purposes of this Easement (as defined below in Section I) include retaining and protecting open-space and natural resource values of the Property, and the limitations on division, residential construction and commercial and industrial uses contained in Section II ensure that the Property will remain perpetually available for open-space use, all as more particularly set forth below.

**R-9** Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, §§ 10.1-1701 through 10.1-1702 of the Code of Virginia (1950), as amended, declares it to be the public policy of the Commonwealth of Virginia (“Commonwealth”) to encourage preservation of open-space land and authorizes the Grantee to hold real property or any estate or interest therein for the purposes of preservation of lands in the Commonwealth.

**R-10** As required under § 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County’s Comprehensive Plan adopted on January 18, 2011. The Property’s location is not within an area that is designated for growth on the County’s future land use map.

**R-11** This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in I.R.C. § 170(h)(1) as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999, Va. Code Ann.§ 58.1-510 et seq.
This Easement is intended to be a grant “exclusively for conservation purposes” under I.R.C. § 170(h)(1)(c), because it effects “the preservation of open space (including farmland and forest land)” under I.R.C. § 170(h)(4)(A)(iii). Specifically, the preservation of open space on the Property is pursuant to clearly delineated state governmental conservation policies and will yield a significant public benefit.

This open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:

(i) Land conservation policies of the Commonwealth as set forth in:

a. § 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth’s policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, §§ 58.1-510 through 58.1-513 of the Va. Code Ann. cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth’s unique natural resources, wildlife habitats, open spaces and forest resources;

d. The Chesapeake Bay Preservation Act (Chapter 21 of Title 10.1, §§ 10.1-2100 to 10.1-2116 of the Va. Code Ann.) for the protection of the Chesapeake Bay. The Chesapeake Bay Local Assistance Board has adopted regulations concerning the use and development of certain lands within the Tidewater region called the Chesapeake Bay Preservation Area, which, if improperly developed, may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries;

e. Virginia’s Wetlands Act (Chapter 13 of Title 28.2, §§ 28.2-1300 through 28.2-1320 of the Va. Code Ann.), which restricts and regulates the use of vegetated and non-vegetated wetlands, and empowers localities to establish wetlands boards to review and decide on permit requests;

f. Virginia’s Real Property Tax Act (Chapter 32, of Title 58.1, §§ 58.1-3230 through 58.1-3244 of the Va. Code Ann.), which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open-space use; and

g. Grantee’s formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth. Grantor believes that, pursuant to Treasury Regulation § 1.170A-14(d)(4)(iii)(B), such review and acceptance of this Easement by Grantee tends to establish a clearly delineated governmental conservation policy required by I.R.C. § 170(h)(4)(A)(iii)(II), and;
(ii) Land use policies of the County as delineated in:

a. The Mathews County Comprehensive Plan 2030 (“Plan”), adopted on January 18, 2011, to which Plan the restrictions set forth in Section II of this Easement (the “Restrictions”) conform, contains planning themes to preserve “environmental quality to enhance the quality of life for residents and visitors” and to protect “the unique environmental features of the County” along with “[i]ncreased cooperative approaches and initiatives to enhance the economy through heritage tourism, ecotourism, aquaculture, and working waterfront business development that complements the environment;”

b. The Plan encourages historic preservation for the benefits it provides and states “Mathews County has a rich history that dates back to early Colonial times with relatively few documented properties listed on the National Register of Historic Places. Much of the charm of the County is tied to its maritime heritage and its role as a center for small community commerce. Not only is County history important for residents to understand their community and provide a ‘sense of place,’ County history also is important from a tourism perspective that can substantially aid the local economy;”

c. Chapter IV of the Plan outlines opportunities for public recreation within the County, which includes Williams Wharf Landing (“Wharf”), and states that “[p]ublic access to …waterfront areas is of special interest to governmental officials and to residents of Mathews County.” Also outlined in Chapter IV, is the County’s blueways trial system (“Blueway”) that includes the East River, which is a “recreational asset for non-motorized watercraft that serves not only residents, but also many visitors;” and

d. Chapter IV of the Plan further states that the Center for Coastal Resources Management at Virginia Institute of Marine Science (“VIMS”) along with others has been “working on the Mathews Maritime Heritage Trail which will showcase the valued coastal landscape and maritime history of the County.”

R-14 This Easement will advance the Virginia Outdoors Plan prepared by the Virginia Department of Conservation and Recreation, which provides that the Commonwealth’s Statewide Strategic Plan “directs the preservation and enhancement of Virginia’s natural and historic resources” and therefore, the Virginia Outdoors Plan recommends localities “make an effort to identify historic…and landscape resources for full enjoyment.” To emphasize the boost to tourism which may occur from historic preservation, the Virginia Outdoors Plan cites the 2006 Virginia Outdoors Survey, wherein it was determined that “visiting historic sites is the 2nd most popular outdoor recreation activity for Virginians.”

R-15 The conservation values realized by protection of the Property by this Easement are as follows, as an illustration and without limitation:

(i) Park and Recreational.

a. Public access for motor-less, water-oriented recreation, e.g., rowing, fishing, viewing of the East River;
b. The Property routinely hosts events open to the general public for sailing, biking, swimming, and community celebrations;

c. [Embellish]

(ii) Educational and Scientific.

a. The general public will be able to see and experience in person the East River and the Chesapeake Bay;

b. The Community Boathouse to be erected on the Property will feature energy efficiencies, which will be monitored by the County’s school children and become part of the curriculum available at the high school and community colleges of the region;

c. [Embellish]

(iii) Scenic.

a. Occupying a peninsula jutting into the East River with 1,200’ of frontage on the water, the Property is visible to the public from the East River and provides scenic enjoyment of the shoreline to the public.

b. The Property will also provide scenic enjoyment of the East River out to the Chesapeake Bay for the visiting public.

c. [Embellish]

(iv) Historical.

a. Williams Wharf has been one of the centers of maritime activity in Mathews County since Colonial times. The historic Wharf was a port of entry and central commercial hub for Mathews that predates the County’s court house. From 1869 through 1935, this location served the surrounding community in a variety of uses including a tobacco port, customs facility, mercantile, post office, shipyard, steamboat dock, oyster shucking and canning house, and public landing. Many current activities held at the Wharf have displays and signage that promote visitors’ awareness of the Wharf’s rich and important history.

b. From 1650 to 1750, Williams Wharf was a significant site for the exportation of tobacco and the importation of English goods. The Customs House established at the Wharf was a subsidiary of the Customs House at Yorktown. In the late 1700s, Williams Wharf was home to several warehouses and many ships sailed into the East River to unload their cargoes of coffee, tea, spices, silk and other luxuries.

c. From 1802 to 1844, Mathews was an official port of entry for the registration and enrollment of United States and foreign vessels and during this period over 10,000 vessels called at the port of the “East River”. The Customs House at Williams Wharf was the center of all maritime activities.
d. Williams Wharf was a regular stop for steamboats for the Old Dominion Line which ran to Norfolk, Baltimore and Richmond and carried passengers, goods and mail. The postmaster at Williams Wharf distributed most of the mail delivered via steamboat to the other post offices throughout the County.

e. One original frame building, constructed in the classical Greek Revival architectural style, built in 1869-1870 and known as the B. Williams & Co. Store (“Store”); which building was listed in the Virginia Landmarks Register on March 19, 2009 and the National Register of Historic Places on June 3, 2009 because of its historical, architectural, and archaeological significance.

f. The Store is adjacent to and augments the established four-acre public access open-space waterfront park known as Williams Wharf Landing.

g. The Store occupies the site of the original customs house and was owned and operated by two women, Bettie and Mary L. Williams, and served as the Wharf’s store for selling goods arriving by ship.

h. Williams Wharf also served as a destination of the James Adams floating theatre in the early twentieth century, the inspiration for the musical *Showboat*.

i. In the 20th century, Williams Wharf was home to a number of commercial operations including a marine railway, Billups Oysters, three oil companies and a marine repair business.

j. Grantee acquired the Store with the intention of preserving it as a centrally located museum and educational center in combination with the Wharf for the benefit of the public; and

k. The Store and Wharf provides a historic destination that can be accessed by either land or water and it is a commutable distance by the East River Blueway to the Mathews Mainstreet district and Court House area, which is currently the County’s only historic district.

R-16 This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in Section I below and in these recitals such as:

(i) Park and Recreational. [Embellish]

(ii) Educational and Scientific. [Embellish]

a. Visitors to the Property will learn and appreciate the importance of protection of waterfront property and how they can improve the watershed and the Chesapeake Bay;

b. The Store’s inclusion with the Wharf will expand the educational opportunities for local schools and promote a sense of pride and appreciation for the significant historical role it played in local, Virginia and American history;
(iii) Scenic. [Embellish]

a. This Easement contributes to the scenic local and regional landscape in general, which attracts tourism and commerce to the area and enhances the quality of life for area residents and the general public;

(iv) This Easement protects a significant historic resource for the enjoyment and education of present and future generations. Protection of scenic view of historic resources, which the Property surrounds, to promote “economic development, heritage tourism, education, community identity and smart growth”, these resources “connect Virginians to their heritage, enrich the quality of their lives, and fuel the economic engine that keeps Virginia thriving”. Virginia Outdoors Plan, of the Department of Conservation and Recreation;

(v) The Store is the oldest of the four historic structures at the Wharf and will provide not only a significant museum quality historic perspective of the Wharf and the County history, but also public access to the County’s designated Blueways;

(vi) The planned preservation and restoration of the Store’s original appearance and layout will combine with its contents to provide a visitor with a more authentic impression of the Wharf, the County, and Chesapeake Bay history. Small craft and launch facilities are available to take advantage of physically experiencing and navigating the County’s Blueways;

(vii) This Easement protects the Property from excessive development, soil disturbance, and pollution on the Property which reduces the degradation of the scenic and natural character of the area; and

(viii) This Easement protects the watershed resources of the Property thus enhancing water quality in the East River, which is a tributary of the Chesapeake Bay, and in turn, improves the downstream aquatic and riparian habitats of great ecological and economic importance.

R-17 Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II.

R-18 Grantee has determined that the Restrictions set forth in Section II will preserve and protect in perpetuity the conservation values of the Property and will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement.

R-19 Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

GRANT OF EASEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant and convey to Grantee an open-space easement in gross (this “Easement”) over, and the right in perpetuity to restrict the use of, the Property, consisting
of 4.53 acres, more or less, conveyed in gross not by acre, located in the Chesapeake Magisterial District of Mathews County, Virginia, fronting on both the East River and State Route 614, to-wit:

**Tax Map 29-A-219 (B. Williams Store):**

All that certain piece or parcel of land beginning at an iron pipe found on the northern right-of-way of State Route 614. Said pipe being located approximately 1.05 miles southwest of the intersection of said State Route 614 and State Route 14 and being the southeast corner of the property herein described. Thence, along said State Route 614, South 51° 26’ 40” West 184.06 feet to an iron pipe found. Thence, South 35° 59’ 50” West 29.01 feet to an axle found. Thence, departing said State Route 614, along the property now or formerly of County of Mathews, North 43° 40’ 00” West 129.36 feet to an iron pipe found. Thence, continuing North 43° 40’ 00” West 31 feet more or less to the edge of water of the East River. Thence, along the edge of water of the said East River in a northeasterly direction 220 feet more or less to a point. Thence, departing the East River along property now or formerly of Stephen E. and Linda K. Wilson, South 41° 43’ 45” East 18 feet more or less to an iron rod found in an iron pipe found. Thence, continuing South 41° 43’ 45” East 170.02 feet to an iron pipe found. Said pipe being the point and place of beginning and containing 0.85 acres more or less.

Being all that same piece or parcel of land conveyed to Mathews County Land Conservancy by Instrument No. 09-982, dated May 5, 2009 and recorded in the Clerk’s Office of the Circuit Court of the County of Mathews, Virginia on June 16, 2009, and as shown on a plat of survey made by Gordon L. Jones, Certified Land Surveyor, entitled “Plat Showing a Survey of the Land to be Conveyed to Mathews County Land Conservancy located in the Chesapeake District of Mathews County, Virginia”, dated May 4, 2009, and recorded on June 16, 2009 in Plat Cabinet 1, Slide 50, Hanger 499 in the aforementioned Clerk’s Office.

**Tax Map 29-A-220 (Former Trible Oil)**

All that certain lot, piece or parcel of land, with improvements thereon and appurtenances thereunto belonging, being designated as “Parcel C 0.40 Ac. +/-” on that plat of survey dated June 27, 1995, made by Keller, Lewis and Associates, P.C. stamped and signed by Wayne E. Lewis, Land Surveyor, a true copy of which plat is recorded in the aforesaid Clerk’s Office in Plat Book 20, page 71. Reference is here made to the plat for a complete and accurate description of the land conveyed.

Being the same land conveyed unto Mathews County Land Conservancy by deed from the County of Mathews, dated __________, 2011 and recorded in the aforesaid Clerk’s Office as Instrument No. ________________.

**Tax Map Parcels 29-A-221 and 29-A-222**

All those two certain lots, pieces or parcels of land, with the improvements thereon and appurtenances thereunto belonging, lying and being in the
Chesapeake Magisterial District of Mathews County, Virginia, containing 1.65 acres, be the same more or less, and 1.70 acres, be the same more or less, and being more fully and accurately designated as “Parcel A” and “Parcel B” respectively on that plat of survey dated June 27, 1995, made by Keller, Lewis and Associates, P.C. stamped and signed by Wayne E. Lewis, Land Surveyor, a true copy of which plat is recorded in the aforesaid Clerk’s Office in Plat Book 20, page 71. Reference is here made to the plat for a complete and accurate description of the land conveyed.

Being the same land conveyed unto Mathews County Land Conservancy by deed from Mathews County, dated __________, 2011 and recorded in the aforesaid Clerk’s Office in Deed Book ____ at Page ___.

The Property is shown as Tax Map Parcels 29-A-219, 29-A-220, 29-A-221 and 29-A-222 among the land records of the County. The Property is surveyed and depicted on that certain plat entitled “[Williams Wharf Landing],” by Jason H. Miles, L.S., dated __________ __, 201__, attached hereto as Exhibit A and made a part hereof. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I - PURPOSE

The purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the Restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are described in the above recitals, are documented in the Documentation Report described in Section IV below and include the Property’s open-space, scenic, natural, historic, scientific and recreational values and its value as land preserved for rural uses. Pursuant to the Virginia Land Conservation Foundation’s Conservation Value Review Criteria the further purpose of this Easement is preservation of land for agricultural use, natural habitat and biological diversity, watershed preservation, and historic preservation.

Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement or the conservation values herein protected shall be conducted on the Property.

SECTION II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

2.1. DIVISION. Separate conveyance of a portion of the Property or further division or subdivision of the Property is prohibited.

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions or subdivisions of the Property, provided that Grantee approves such adjustments, is made party to any
deed creating a boundary line adjustment, and at least one of the following conditions is met:

2.1.1. The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or

2.1.2. The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Directors of Grantee.

2.2. **BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.**

2.2.1. With regard to the current Tax Map Parcel 29-A-219 (B. Williams Store), no buildings structures, roads or utilities, other than the following, are permitted on that parcel:

2.2.2. The historic Store which exists at the time of this Easement;

2.2.3. The modern frame garage which exists at the time of this Easement;

2.2.3.1. The seawall which exists at the time of this Easement;

2.2.3.2. The brick columns flanking the driveway which exists at the time of this Easement;

2.2.3.3. The concrete curb/wall property surround which exists at the time of this Easement;

2.2.4. With regard to Tax Map 29-A-220 (Former Trible Oil):

2.2.4.1. No building or structure over 60 feet high may be built on the Property

2.2.4.2. All lights on the Property must be shielded and directed so they only shine on the Property except for lights need for navigation.

2.2.5. Temporary structures to accommodate archaeological activity and site protection as allowed in Section 2.6 may be constructed on the Property provided that (i) no such temporary structure shall be erected on the Property unless the proposed site of such structure has previously been tested for archaeological significance and approved by Grantee; (ii) no such temporary structure shall remain on the property for longer than two (2) years without written approval of Grantee; and

2.2.6. The site plan approved by the County for Williams Wharf, attached hereto and made a part hereof as Exhibit 2.2.6 (the “Site Plan”), allows for structures to be erected, infrastructure to be installed, and landscaping to be planted. The Site Plan construction shall be permitted under this Easement; and

2.2.7. Private and public roads to serve permitted buildings or structures may be constructed and maintained, subject to the prior written approval of Grantee; and

2.2.8. Public or private utilities to serve permitted buildings or structures may be constructed and maintained. The location of any new utility lines on the Property (except over existing rights-of-way) shall be subject to the prior written approval of Grantee. Public or private utilities that do not serve the Property shall not cross the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Property and gives its
prior written approval for such construction and maintenance, which approval shall take into consideration the visibility and other impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve such public or private utilities; and

2.2.9. Grantor shall have the right to reconstruct historic buildings, outbuildings or structures which are documented through professional historical or archaeological investigation to have been located on the Property. Any such reconstruction of documented historic buildings, outbuildings or structures listed in this Section 2.2 shall not exceed the original dimensions as documented. Any such reconstruction shall be completed according to and consistent with the then applicable Secretary of the Interior’s Standards for Reconstruction.

2.2.10. In the event that any other building or structure, including the Store, is destroyed or damaged by causes beyond Grantor’s reasonable control including fire, flood, storm, earth movement, or other acts of God, to such an extent that in the opinion of Grantee the building’s historic integrity is irremediably compromised, nothing herein shall obligate the Grantor to reconstruct the building or structure or return it to its condition prior to such calamity.

2.2.11. Notwithstanding anything herein to the contrary, any and all buildings and structures permitted by the County pursuant to that certain site plan dated October 12, 2011, 3-SP-06, may be constructed and maintained and replaced.

2.3. HISTORIC AND ARCHITECTURAL CHARACTER OF STORE.

2.3.1. Except as provided by Section 2.2.11, Grantor agrees at all times to maintain the interior and exterior of the Store in the same or better structural condition and state of repair as that existing on the effective date of this Easement and according to any changes or modifications that have been approved in writing by Grantee after the effective date of this Easement. Grantor’s obligation to maintain shall require replacement, repair, and/or reconstruction by Grantor whenever necessary to preserve the Store in substantially the same structural condition and state of repair as that existing on the date of this Easement according to any changes or modifications that have been approved in writing by Grantee after the effective date of this Easement.

2.3.2. The repair, replacement, and/or reconstruction necessary to comply with Section 2.3.1 shall be done in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and Guidelines for the Treatment of Cultural Landscapes (36 C.F.R. 68), as these may be amended from time to time (hereinafter the “Secretary’s Standards”).

2.3.3. For the purposes of Section 2.3.1, the obligation to maintain and repair shall mean the use by Grantor of like materials applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Store. In fulfilling their maintenance obligation under subparagraph (a) above, Grantor shall not make changes in
appearance, materials, and workmanship from that existing prior to the maintenance and repair without the prior written approval of Grantee.

2.3.4. No cleaning, repointing, waterproofing, or painting of the exterior masonry of the buildings or structures listed under Section 2.2 shall be undertaken unless the prior written approval of Grantee shall have been obtained.

2.3.5. The historic Store identified under Section 2.2.2 shall not be demolished or removed from the Property, nor shall it be altered, restored, renovated, extended, or increased or decreased in height, except in a way that would, in the opinion of Grantee, be in keeping with the historic character of the Property and consistent with the Secretary’s Standards and provided that the prior written approval of Grantee to such actions shall have been obtained. No other building or structure shall be constructed, altered, restored, renovated, extended, or demolished except in a way that would, in the opinion of Grantee, be in keeping with the Conservation Values of the Property, and provided that the prior written approval of Grantee to such actions shall have been obtained. The location, size, and design of any new building or structure are subject to the prior written approval of Grantee.

2.3.6. The character-defining historic interior architectural spaces and elements of the Store, including mantels, windows, window frames, doors, door frames, crown molding, decorative plasterwork, stairs, staircases, baseboards, interior woodwork and trim, chair rails, floorboards, wainscoting, and hardware, shall not be altered or removed from the Property without the prior written approval of Grantee. The following interior decorative elements shall be maintained in their present form and location and not modified in any way without permission from Grantee: original pine floor boards and the pair of early double wood and glass doors with a five-pane transom above at the main south entrance.

2.4. ARCHAEOLOGICAL AND CULTURAL RESOURCES. Ground disturbing activity or earth removal may require archaeological survey or investigation, if, in the opinion of the Grantee, such ground disturbing activity or earth removal may impact archaeologically significant deposits, sites, or features on the Property. Such archaeological survey or investigation may be undertaken on the Property only if a scope of work for such survey or investigation is reviewed and approved in writing in advance by Grantee and only if said survey or investigation is performed in accordance with the Secretary of the Interior’s Standards for Archaeology and Historic Preservation and under the supervision of a professionally qualified archeologist. Any such survey or investigation shall be designed to protect, preserve or recover archaeologically significant deposits, sites, or features in the area of the proposed ground disturbing activity. Artifacts and objects of antiquity professionally excavated from archaeological deposits, sites, or features on the Property shall be treated, curated, and preserved according to the Virginia Department of Historic Resources State Collection Management Standards (March 22, 2007). Notwithstanding the aforesaid, any Artifacts and objects of antiquity professionally excavated shall remain the property of the Grantor and remain with the Property or shall be donated to an appropriate museum. The Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Property from looting, vandalism, erosion, mutilation, or destruction from any cause.
2.5. **PUBLIC ACCESS.** Grantor shall make the Property accessible to the public on a REASONABLE BASIS. TO DISCUSS WITH GRANTOR AND GRANTEE. NO NIGHT ACCESS, BUT UNFETTERED ACCESS DURING DAYLIGHT UNLESS AN EVENT GOING ON.

2.6. **COMMERCIAL ACTIVITIES.** No residential, commercial or industrial use shall be made of the Property except for such uses which are consistent with keeping and using the Property as an active part of the community by preserving its natural and historic attributes, by continuing is natural and historic uses, its traditional provision of public access to the East River, and by using the Property for educational programs directly related to its historical, environmental, cultural and economic values to the community. [From ¶4 of DCR easement] Notwithstanding anything in this Easement to the contrary, Grantor may charge fees for use of the Property or its facilities.

2.7. **HORTICULTURAL MANAGEMENT.** Trees and vegetation on the Property shall be maintained in accordance with sound horticultural practices, and initiated and performed in such a way as to prevent damage to the buildings and structures listed in Section 2.2. In addition, the primary objectives of horticultural stewardship shall be to: (i), improve wildlife habitat, (ii) maintain a scenic forest, (iii) protect uncommon biological communities or natural areas, (iv) conserve soil and water, or (v) preserve historical and cultural resources. Commercial timber harvesting shall be prohibited on the Property.

2.8. **GRADING, BLASTING, FILLING AND MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except as required in the construction of permitted buildings, structures, roads, and utilities as described in Section 2.2. Generally accepted non-commercial agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings, structures, roads, and utilities as described in Section 2.2. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property without the prior written approval of Grantee.

Surface mining, subsurface mining, mining by any other method, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited.

2.9. **TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property.

2.10. **SIGNS.** Display of billboards, signs, or other advertisements is not permitted on or over the Property without the consent of the Grantee, other than signs not exceeding three (3) square feet in size for any or all of the following purposes: (i) to state the name and/or address of the owners or Property including the display of the Grantee’s name advising of ownership of the Easement granted herein; (ii) to advertise the sale or lease of the Property; (iii) to provide information necessary for the normal conduct of any permitted business or activity on the Property; (iv) to provide notice necessary for the protection of the Property; or (v) to give directions to visitors.
SECTION III – ENFORCEMENT

3.1. **RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor’s representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor’s representative being given at the earliest practicable time.

3.2. **ENFORCEMENT.** Grantee, in accepting this Easement, commits to protecting the conservation purposes of the Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (i) to require restoration of the Property to its condition at the time of the donation; (ii) in Grantee’s discretion, to require restoration of the Property to its condition prior to a violation of the terms hereof, provided that such prior condition was in compliance with the restrictions and consistent with the purpose of this Easement; (iii) to recover any damages arising from non-compliance; and (iv) to enjoin non-compliance by temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and attorney’s fees, in addition to any other payments ordered by the court. Grantee’s delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (i) caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor’s control or (ii) resulting from prudent action taken by Grantor to avoid, abate, prevent or mitigate such damage to or changes in the condition of the Property from such causes. Nothing in this Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee.

SECTION IV – GENERAL PROVISIONS

4.1. **DOCUMENTATION.** Grantor has made available to Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift, and documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report describes the condition and character of the Property at the time of the gift. The Baseline Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the Baseline Documentation Report contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation § 1.170A-14(g)(5)(i).
4.2. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner’s interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

4.3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record) including, but not limited to, any mortgages or deeds of trust not subordinated to this Easement.

4.4. **ACCEPTANCE.** Grantee accepts this conveyance pursuant to Va. Code Ann. § 15.2-6606(13), which acceptance is evidenced by the signature of a Director by authority granted by Grantee’s Board of Directors.

4.5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

4.6. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purpose of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in I.R.C. § 170(h)(1) and Treasury Regulation § 1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

4.7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way.
4.8. NOTICE TO GRANTEE AND GRANTOR.

4.8.1. For the purpose of giving notices hereunder the current address of Grantee is 125 Bowden Street, Post Office Box 125, Saluda, Virginia 23149, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently Post Office Box 306, Mathews, Virginia 23109-0306.

4.8.2. Grantor shall notify Grantee in writing at or prior to closing on any inter vivos transfer, other than a deed of trust or mortgage, of all or any part of the Property.

4.8.3. In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property (the purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purpose of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement).

4.8.4. Failure of Grantor to comply with these requirements shall not impair the validity of the Easement or limit its enforceability in any way.

4.9. TAX MATTERS. The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in Treasury Regulation § 1.170A-13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

4.10. NO MERGER. Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

4.11. ASSIGNMENT BY GRANTEE. Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (ii) the transferee then qualifies as an eligible donee as defined in § 170(h)(3) of the IRC as amended and the applicable Treasury Regulations.

4.12. GRANTEE’S PROPERTY RIGHT. Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The values applicable for purposes of the calculations required by this Section 4.11 shall be the values finally determined for purposes of any federal income tax deduction allowed with respect to the conveyance of this Easement.
4.13. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of § 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.

4.14. **EXTINGUISHMENT.** Notwithstanding the provisions of § 10.1-1704 of the Open-Space Land Act, should an attempt be made to extinguish this Easement in whole or in part, such extinguishment can be carried out only by judicial proceedings and only if in compliance with § 10.1-1704 and I.R.C. § 170(h) and applicable Treasury Regulations. In a sale or exchange of the Property subsequent to and resulting from an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section 4.11, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.

4.15. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property’s conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement’s perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purpose of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement as a “qualified conservation contribution” or “interest in land”, (v) affect the status of Grantee as a “qualified organization” or “eligible donee”, or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk’s Office for the Circuit Court of the County of Mathews, Virginia.

4.16. **JOINT OWNERSHIP.** If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entireties, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth herein.

4.17. **SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

4.18. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.

4.19. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth, resolving any ambiguities or questions of the validity of specific provisions in order to give maximum effect to its conservation purpose.

4.20. **RECORDING.** This Easement shall be recorded in the land records in the Clerk’s Office for the Circuit Court of the County of Mathews, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
4.21. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

4.22. **CONSENT OF ADDITIONAL GRANTORS.** Additional Grantors each join in the execution of this deed to evidence its consent to the assignment and conveyance of this perpetual gift of easement to the citizens of Mathews County and the Commonwealth.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]
GRANTOR:

MATHEWS COUNTY LAND CONSERVANCY, a Virginia nonstock corporation

By: James William Smith
Its: President

COMMONWEALTH OF VIRGINIA
CITY/county OF ______________________, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of __________ 2011 by James William Smith as President of the Mathews County Land Conservancy, a Virginia nonstock corporation, on behalf of the corporation.

(SEAL)

Notary Public

My commission expires: _________
Notary Commission ID: _________
Accepted:

GRANTEE:

MIDDLE PENINSULA CHESAPEAKE BAY PUBLIC ACCESS AUTHORITY, a public body

By: ____________________________________________

Its: ____________________________________________

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF ______________________, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of __________ 2011 by ______________________ as ______________ of the Middle Peninsula Chesapeake Bay Public Access Authority, a public body, on behalf of the authority.

____________________________________(SEAL)

Notary Public

My commission expires: __________

Notary Commission ID: __________
Consented:

COUNTY:

[Whatever style Richard Harfst specifies]
Consented:

THE COMMONWEALTH OF VIRGINIA BOARD OF CONSERVATION AND RECREATION

By: David A. Johnson
Its: Director

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF ___________________, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of __________, 201__ by David A. Johnson, Director, Commonwealth of Virginia Department of Conservation and Recreation, on behalf of the Commonwealth of Virginia Board of Conservation and Recreation.

(SEAL)

Notary Public

My commission expires: _________
Notary Commission ID: _________
Consented:

THE COMMONWEALTH OF VIRGINIA
BOARD OF HISTORIC RESOURCES

By: Kathleen S. Kilpatrick
Its: Director

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF __________________, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of __________,
201_ by Kathleen S. Kilpatrick, Director, Commonwealth of Virginia Department of Historic
Resources, on behalf of the Commonwealth of Virginia Board of Historic Resources.

(SEAL)
Notary Public

My commission expires: __________
Notary Commission ID: __________
Exhibit A

Plat Attached Following This Sheet

[Full-sized plat recorded in Plat Cabinet __, Slide ___, Hanger ____]
United States Department of the Interior

NATIONAL PARK SERVICE
Northeast Region
U.S. Custom House
200 Chestnut Street
Philadelphia, PA 19106-2878

IN REPLY REFER TO:

L7423 (NER - NRSCRA)
Mathews Heritage Park - Land Management Plan

OCT 27 2011

Mr. Lewis Lawrence
Middle Peninsula PDC
P.O. Box 286
Saluda, VA 23149

Dear Mr. Lawrence:

Congratulations! The National Park Service, Rivers Trails and Conservation Assistance Program (RTCA), is very pleased to announce an award of technical planning assistance to the Middle Peninsula Chesapeake Bay Public Access Authority. RTCA is proud to provide staff support to assist you in the development of a management plan for the Mathews Heritage Park. Thanks for your excellent application and inviting our participation with your effort.

Ursula Lemanski will be the RTCA project manager for your project and can be reached at 703-431-7728 or ursula_lemanski@nps.gov. Our assistance will be provided during the 2012 federal fiscal year (October 1, 2011 to September 30, 2012). Ursula will be contacting you in the next few weeks to begin the process of developing a project work plan. The work plan will articulate the desired outcomes of our partnership, as well as specific goals, tasks, roles and a timeline to realize tangible on-the-ground success.

RTCA recognizes that community-based planning projects often take more than one year to complete, especially those that involve consensus building around diverse perspectives. If project goals and outcomes are not realized this fiscal year, you may request another year of NPS assistance by submitting a letter requesting continued assistance by August 1, 2012.

We look forward to working with you over the next year to advance the opportunities for recreation, education, and conservation stewardship in Mathews. If you have any questions or comments, please feel free to contact me at 215-597-6477 or david_a_lange@nps.gov.

Sincerely,

David A. Lange, Program Leader
River, Trails and Conservation Assistance Program

cc:
Bob Campbell, Chesapeake Bay Gateways Program
Working Waterfront Definitions

1) “Representative Pingree’s bill defines water-dependent commercial activities to include “commercial fishing, recreational fishing, tourism, aquaculture, boatbuilding, transportation,” as well as, somewhat ambiguously, “many other water-dependent businesses.” H.R. 2548, 111th Cong. (May 21, 2009).

2) “The infrastructure and places where commercial fisherman, charter fishing captains, tour boat operators, recreational fishermen, boat builders, and many other small businesses conduct their business.” (Murray, Tom; VSG, 3/29/2011.)

From H.R.3109 -- Keep America’s Waterfronts Working Act of 2011
(3) The term `working waterfront' means real property (including support structures over water and other facilities) that provides access to coastal waters to persons engaged in commercial fishing, recreational fishing businesses, boatbuilding, aquaculture, or other water-dependent, coastal-related business and is used for, or that supports, commercial fishing, recreational fishing businesses, boatbuilding, aquaculture, or other water-dependent, coastal-related business.
H.R.3109 -- Keep America's Waterfronts Working Act of 2011 (Introduced in House - IH)

HR 3109 IH

112th CONGRESS
1st Session
H. R. 3109

To amend the Coastal Zone Management Act of 1972 to require establishment of a Working Waterfront Grant Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

October 5, 2011

Ms. PINGREE of Maine (for herself, Mr. ANDREWS, Mr. BLUMENAUER, Ms. BORDALLO, Mrs. CAPPS, Mrs. CHRISTENSEN, Mr. CONNOLLY of Virginia, Mr. FARR, Mr. FILNER, Mr. KEATING, Ms. LEE of California, Mr. MCINTYRE, Mr. MORAN, Mr. PIERLUISI, Mr. QUIGLEY, Ms. SLAUGHTER, Mr. TONKO, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Coastal Zone Management Act of 1972 to require establishment of a Working Waterfront Grant Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Keep America's Waterfronts Working Act of 2011'.

SEC. 2. WORKING WATERFRONT PROGRAM.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by adding at the end the following:

`WORKING WATERFRONT GRANT PROGRAM
Sec. 320. (a) Findings and Purpose-
  (1) The Congress finds the following:
    (A) Water-dependent commercial activities are the economic and cultural heart of many coastal communities. These activities include commercial fishing, recreational fishing businesses, tourism, aquaculture, boatbuilding, transportation, and many other water-dependent businesses.
    (B) Water-dependent commercial activities depend on coastal access in the form of docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling, repair, and construction facilities, commercial fishing facilities, and other support structures on, over, or adjacent to navigable bodies of water.
    (C) The coastal zone across the United States is experiencing rising property values and taxes, and related development pressure, as more people move to the coastal zone, and as coastal areas experience a demographic shift favoring wealthier citizens.
    (D) Privately owned access areas for water-dependent commercial activity in many States are under increasing threat from private residential development and other conversion.
    (E) Loss of access for water-dependent commercial activity would have economically and culturally devastating consequences for many coastal communities.
  (2) The purpose of this section is to preserve, protect, and expand coastal access for persons engaged in water-dependent commercial activities including commercial fishing, recreational fishing businesses, aquaculture, boatbuilding, or other water-dependent coastal-related businesses.

(b) Grant Program-
  (1) The Secretary shall establish a Working Waterfront Grant Program, in cooperation with appropriate State, regional, and other units of government, under which the Secretary may make a grant to any coastal state for the purpose of implementing a working waterfront plan approved by the Secretary under subsection (c).
  (2)(A) Subject to the availability of appropriations, the Secretary shall award matching grants under the program to coastal states with approved working waterfront plans through a regionally equitable, competitive funding process in accordance with the following:
    (i) The Governor, or the lead agency designated by the Governor for coordinating the implementation of this section, where appropriate in consultation with the appropriate local government, shall determine that the application is consistent with the State's or territory's approved coastal zone plan, program, and policies prior to submittal to the Secretary.
    (ii) In developing guidelines under this section, the Secretary shall consult with coastal states, other Federal agencies,
other interested stakeholders with expertise in working waterfront planning.

` (iii) Coastal states may allocate grants to local governments, agencies, or nongovernment organizations eligible for assistance under this section.

` (3) In awarding a grant to a coastal state, the Secretary shall consider--

` (A) the economic and cultural significance of working waterfront to the coastal state;
` (B) the demonstrated working waterfront needs of the coastal state as outlined by a working waterfront plan approved for the coastal state under subsection (c), and the value of the proposed project for the implementation of such Plan;
` (C) the ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other government units, landowners, corporations, or private organizations;
` (D) the potential for rapid turnover in the ownership of working waterfront in the coastal state, and where applicable the need for coastal states to respond quickly when properties in existing or potential working waterfront areas or public access areas as identified in the working waterfront plan submitted by the coastal state come under threat or become available;
` (E) the impact of the working waterfront plan approved for the coastal state under subsection (c) on the coastal ecosystem and the users of the coastal ecosystem; and
` (F) the extent of the historic connection between working waterfronts and the local communities within the coastal state.

` (4) The Secretary shall approve or reject an application for such a grant within 60 days after receiving an application for the grant.

` (c) Working Waterfront Plans-

` (1) To be eligible for a grant under subsection (b), a coastal state must submit and have approved by the Secretary a comprehensive working waterfront plan in accordance with this subsection or be in the process of developing such a plan and have an established working waterfront program at the State or local level.

` (2) Such plan--

` (A) must provide for preservation and expansion of access to coastal waters to persons engaged in commercial fishing, recreational fishing businesses, aquaculture, boatbuilding, or other water-dependent, coastal-related business;
` (B) shall include--

` (i) an assessment of the economic, social, cultural, and historic value of working waterfront to the coastal state;
` (ii) a description of relevant State and local laws and regulations affecting working waterfront in the
geographic areas identified in the working waterfront plan;
(iii) identification of geographic areas where working waterfronts are currently under threat of conversion to uses incompatible with commercial fishing, recreational fishing businesses, aquaculture, boatbuilding, or other water-dependent, coastal-related business, and the level of that threat;
(iv) identification of geographic areas with a historic connection to working waterfronts where working waterfronts are not currently available, and, where appropriate, an assessment of the environmental impacts of any expansion or new development of working waterfronts on the coastal ecosystem;
(v) identification of other working waterfront needs including improvements to existing working waterfronts and working waterfront areas;
(vi) a strategic and prioritized plan for the preservation, expansion, and improvement of working waterfronts in the coastal state;
(vii) for areas identified under clauses (iii), (iv), (v), and (vi), identification of current availability and potential for expansion of public access to coastal waters;
(viii) a description of the degree of community support for such strategic plan; and
(ix) a contingency plan for properties that revert to the coastal state pursuant to determinations made by the coastal state under subsection (g)(4)(C);
(C) may be part of the management program approved under section 306;
(D) shall utilize to the maximum extent practicable existing information contained in relevant surveys, plans, or other strategies to fulfill the information requirements under this paragraph; and
(E) shall incorporate the policies and regulations adopted by communities under local working waterfront plans or strategies in existence prior to the date of enactment of this section.
(3) A working waterfront plan--
(A) shall be effective for purposes of this section for the 5-year period beginning on the date it is approved by the Secretary;
(B) must be updated and re-approved by the Secretary before the end of such period; and
(C) shall be complimentary to and incorporate the policies and objectives of regional or local working waterfront plans as
in effect before the date of enactment of this section or as subsequently revised.

(4) The Secretary may--
(A) award planning grants to coastal states for the purpose of developing or revising comprehensive working waterfront plans; and
(B) award grants consistent with the purposes of this section to States undertaking the working waterfront planning process under this section, for the purpose of preserving and protecting working waterfronts during such process.

(5) Any coastal state applying for a working waterfront grant under this title shall--
(A) develop a working waterfront plan, using a process that involves the public and those with an interest in the coastal zone;
(B) coordinate development and implementation of such a plan with other coastal management programs, regulations, and activities of the coastal state; and
(C) if the coastal state allows qualified holders (other than the coastal state) to enter into working waterfront covenants, provide as part of the working waterfront plan under this subsection a mechanism or procedure to ensure that the qualified holders are complying their duties to enforce the working waterfront covenant.

(d) Uses, Terms, and Conditions-
(1) Each grant made by the Secretary under this section shall be subject to such terms and conditions as may be appropriate to ensure that the grant is used for purposes consistent with this section.
(2) A grant under this section may be used--
(A) to acquire a working waterfront, or an interest in a working waterfront; or
(B) to make improvements to a working waterfront, including the construction or repair of wharfs, boat ramps, or related facilities.

(e) Public Access Requirement- A working waterfront project funded by grants made under this section must provide for expansion or improvement of reasonable and appropriate public access to coastal waters at or in the vicinity of a working waterfront, except for commercial fishing or other industrial access points where the coastal state determines that public access would be unsafe.

(f) Limitations-
(1) Except as provided in paragraph (2), a grant awarded under this section may be used to purchase working waterfront or an interest in working waterfront, including an easement, only from a willing seller and at fair market value.
(2) A grant awarded under this section may be used to acquire working waterfront or an interest in working waterfront at less than
(3) No Federal, State, or local entity may exercise the power of eminent domain to secure title to any property or facilities in connection with a project carried out under this section.

(g) Allocation of Grants to Local Governments and Other Entities-

(1) The Secretary shall encourage coastal states to broadly allocate amounts received as grants under this section among working waterfronts identified in working waterfront plans approved under subsection (c).

(2) Subject to the approval of the Secretary, a coastal state may, as part of an approved working waterfront plan, designate as a qualified holder any unit of State or local government or nongovernment organization, if the coastal state is ultimately responsible for ensuring that the property will be managed in a manner that is consistent with the purposes for which the land entered into the program.

(3) A coastal state or a qualified holder designated by a coastal state may allocate to a unit of local government, nongovernmental organization, fishing cooperative, or other entity, a portion of any grant made under this section for the purpose of carrying out this section, except that such an allocation shall not relieve the coastal state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the coastal state’s approved working waterfront plan.

(4) A qualified holder may hold title to or interest in property acquired under this section, except that--

(A) all persons holding title to or interest in working waterfront affected by a grant under this section, including a qualified holder, private citizen, private business, nonprofit organization, fishing cooperative, or other entity, shall enter into a working waterfront covenant;

(B) such covenant shall be held by the coastal state or a qualified holder designated under paragraph (2);

(C) if the coastal state determines, on the record after an opportunity for a hearing, that the working waterfront covenant has been violated--

(i) all right, title, and interest in and to the working waterfront covered by such covenant shall, except as provided in subparagraph (D), revert to the coastal state; and

(ii) the coastal state shall have the right of immediate entry onto the working waterfront.

(D) If a coastal state makes a determination under subparagraph (C), the coastal state may convey or authorize the qualified holder to convey the working waterfront or interest in working waterfront to another qualified holder.
(E) Nothing in this subsection waives any legal requirement under any Federal or State law.

(h) Matching Contributions-

(1) Except as provided in paragraph (2), the Secretary shall require that each coastal state that receives a grant under this section, or a qualified holder designated by that coastal state under subsection (g), shall provide matching funds in an amount equal to at least 25 percent of the total cost of the project carried out with the grant.

(2) The Secretary may waive the application of paragraph (1) for any qualified holder that is an underserved community, a community that has an inability to draw on other sources of funding because of the small population or low income of the community, or for other reasons the Secretary considers appropriate.

(3) A local community designated as a qualified holder under subsection (g) may utilize funds or other in-kind contributions donated by a nongovernmental partner to satisfy the matching funds requirement under this subsection.

(4) As a condition of receipt of a grant under this section, the Secretary shall require that a coastal state provide to the Secretary such assurances as the Secretary determines are sufficient to demonstrate that the share of the cost of each eligible project that is not funded by the grant awarded under this section has been secured.

(5) If financial assistance under this section represents only a portion of the total cost of a project, funding from other Federal sources may be applied to the cost of the project. Each portion shall be subject to match requirements under the applicable provision of law.

(6) The Secretary shall treat as non-Federal match the value of a working waterfront or interest in a working waterfront, including conservation and other easements, that is held in perpetuity by a qualified holder, if the working waterfront or interest is identified in the application for the grant and acquired by the qualified holder within 3 years of the grant award date, or within 3 years after the submission of the application and before the end of the grant award period. Such value shall be determined by an appraisal performed at such time before the award of the grant as the Secretary considers appropriate.

(7) The Secretary shall treat as non-Federal match the costs associated with acquisition of a working waterfront or an interest in a working waterfront, and the costs of restoration, enhancement, or other improvement to a working waterfront, if the activities are identified in the project application and the costs are incurred within the period of the grant award, or, for working waterfront described in paragraph (6), within the same time limits described in that paragraph. These costs may include either cash or in-kind contributions.
(i) Limit on Administrative Costs- No more than 5 percent of the funds made available to the Secretary under this section may be used by the Secretary for planning or administration of the program under this section.

(j) Other Technical and Financial Assistance-
   (1) Up to 5 percent of the funds appropriated under this section may be used by the Secretary for purposes of providing technical assistance as described in this subsection.
   (2) The Secretary shall-
      (A) provide technical assistance to coastal states and local governments in identifying and obtaining other sources of available Federal technical and financial assistance for the development and revision of a working waterfront plan and the implementation of an approved working waterfront plan;
      (B) provide technical assistance to States and local governments for the development, implementation, and revision of comprehensive working waterfront plans, which may include, subject to the availability of appropriations, planning grants and assistance, pilot projects, feasibility studies, and other projects necessary to further the purposes of this section;
      (C) assist States in developing other tools to protect working waterfronts; and
      (D) collect and disseminate to States guidance for best storm water management practices in regards to working waterfronts.

(k) Reports-
   (1) The Secretary shall-
      (A) develop performance measures to evaluate and report on the effectiveness of the program under this section in accomplishing the purpose of this section; and
      (B) submit to Congress a biennial report that includes such evaluations, an account of all expenditures, and descriptions of all projects carried out using grants awarded under this section.
   (2) The Secretary may submit the biennial report under paragraph (1)(B) by including it in the biennial report required under section 316.

(l) Authorization of Appropriations- There are authorized to be appropriated to the Secretary to carry out this section $25,000,000 for fiscal year 2012, $50,000,000 for fiscal year 2013, and $75,000,000 for each of fiscal years 2014 and 2015.

(m) Definitions- In this section:
   (1) The term `qualified holder' means a coastal state or a unit of local or coastal state government or a non-State organization designated by a coastal state under subsection (g).
   (2) The term `Secretary' means the Secretary, acting through the National Oceanic and Atmospheric Administration.
(3) The term `working waterfront' means real property (including support structures over water and other facilities) that provides access to coastal waters to persons engaged in commercial fishing, recreational fishing businesses, boatbuilding, aquaculture, or other water-dependent, coastal-related business and is used for, or that supports, commercial fishing, recreational fishing businesses, boatbuilding, aquaculture, or other water-dependent, coastal-related business.

(4) The term `working waterfront covenant' means an agreement in recordable form between the owner of working waterfront and one or more qualified holders, that provides such assurances as the Secretary may require that--

(A) the title to or interest in the working waterfront will be held by a grant recipient or qualified holder in perpetuity, except as provided in subparagraph (C);

(B) the working waterfront will be managed in a manner that is consistent with the purposes for which the property is acquired pursuant to this section, and the property will not be converted to any use that is inconsistent with the purpose of this section;

(C) if the title to or interest in the working waterfront is sold or otherwise exchanged--

(i) all working waterfront owners and qualified holders involved in such sale or exchange shall accede to such agreement; and

(ii) funds equal to the fair market value of the working waterfront or interest in working waterfront shall be paid to the Secretary by parties to the sale or exchange, and such funds shall, at the discretion of the Secretary, be paid to the coastal state in which the working waterfront is located for use in the implementation of the working waterfront plan of the State approved by the Secretary under this section; and

(D) such covenant is subject to enforcement and oversight by the coastal state or by another person as determined appropriate by the Secretary.'.