



# Naval Installations and Operations: A Federal Perspective

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# Virginia Law



- **Virginia Code, tit. 28.2, chap. 12**
  - **What does the statute say?**
    - Are federal agencies persons under this law?
      - Compare other statutory definitions
  - **Does this law, explicitly or with reasonable certainty, apply to facilities at Navy installations or to Navy operations?**
    - Can any state law bind a federal agency without a clear, unambiguous, and unequivocal waiver of federal supremacy by Congress?
      - The answer to this question is found in federal law

- **Submerged Lands Act**

- **Lands beneath navigable waters belong to the state**

- Exceptions include lands filled or reclaimed by U.S. and structures built in the exercise of navigational servitude

- **Federal retained rights**

- Navigational servitude and powers of control for commerce, navigation, national defense, and international affairs
      - Non-compensable under 5<sup>th</sup> Amd.?
    - Right of first refusal to buy land for national defense purposes
      - Does this provision constrain the preceding provision?

## •Case law, before and after 1953

### – *Commodore Park* and progeny

- Dredging for Navy seaplanes is navigational servitude
- Expanding Navy pier and restricted zone is, too
- Removal of obstructions in Navy operating area also okay

### – **Other Navy cases in Virginia (pre-1945)**

- Construction of pier works at Norfolk
- Dredging the Elizabeth River

### – **Other Navy cases**

- Navy only fueling pier is not navigational servitude

### – **Other recent cases**

- Uncertain how *Commodore Park* would be decided today?

## • **Coastal Zone Management Act**

- **Federal activity affecting a coastal zone must be consistent with state management programs**
  - Federal lands excluded, but it's effects that matter
- **Reserved federal powers**
  - Control over submerged lands, navigation & project funding
- **Consistency to maximum extent practicable**
  - Do retained powers in 43 USC 1314 excuse full consistency?
- **Virginia Submerged Lands Program**
  - State permit not required to demonstrate consistency?