

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Golden Bethune-Hill, *et al.*,

Plaintiffs,

v.

Virginia State Board of Elections, *et al.*,

Defendants.

Civil Action No. 3:14-cv-00852-REP-AWA-BMK

**Defendant-Intervenors' Objections to
Special Master's Final Remedial Plan**

Pursuant to this Court's order of January 22, 2019, ECF No. 353, allowing the parties to file objections to the final remedial plan of the Special Master, Defendant-Intervenors respectfully object as stated below.

The Special Master's Final Remedial Plan consists of "modules" proposed in the Special Master's prior reports, and Defendant-Intervenors have objected to and submitted briefing, evidence, and oral argument regarding all these modules, including in their filing of January 17, 2019, ECF No. 350. The Special Master contends that the final map is "identical" to what he presented in his report of January 7, 2019. ECF No. 355 at 2. Although no block-assignment file of the final plan has been served on the parties or made available on the Division of Legislative Services website, Defendant-Intervenors take the Special Master at his word that his final plan includes no further changes.

Notably, the Special Master has declined to reunite any of the VTDs split in his prior proposals. As Defendant-Intervenors have shown elsewhere, these splits—including multiple splits between the same two districts in a row—reflect transparent racial sorting, at least under the Court’s framework for addressing the 2011 enacted districts.¹ The Special Master responded that the VTD splits are minor and “can be addressed as final technical cleanup,” ECF No. 331 at 29 n.22, but now contends that they should not be reunited. Curing these splits would raise BVAP above 55% in some of the proposed districts.

In all events, because the Special Master has made (or at least claims to have made) no changes, let alone material changes, in his final map, Defendant-Intervenors need not burden the Court with repetition of their arguments against his proposals. Defendant-Intervenors incorporate all their remedial-stage filings by reference and stand by all prior objections and arguments. As stated, the Special Master’s approach, however sincere, is profoundly misguided, and his proposals should be rejected (as should all remedial proposals, with the exception of HB7002).

Defendant-Intervenors, however, will respectfully take this opportunity to remind the Court of its task at this remedial stage—should it choose to proceed at

¹ As has been reiterated many times, Defendant-Intervenors assume the validity of the Court’s prior decision for the sake of argument only. It is certainly possible that race predominated in the Special Master’s districts only by the incorrect understanding of the concept inherent in the Court’s prior decision—but that is the understanding that counts for remedial purposes.

all.² The Special Master's proposals are not similarly situated with a legislatively enacted map. They enjoy no presumption of constitutionality. The Court need not, and must not, evaluate them with "extraordinary caution." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). As a proposal for court implementation, the Special Master's work "will be held to stricter standards than will a state legislature['s]." *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (internal quotations and edits omitted). The Court is therefore duty-bound to scrutinize what is before it with a higher level of care and concern than it applied at the liability phase.

As Defendant-Intervenors represented at the remedial hearing, they are placing the Special Master's credibility at issue. 1/10/19 Hearing Tr. 122–23. As noted before, there are conflicts between his denial of a racial ceiling and the circumstantial evidence, and there are internal inconsistencies within the Special Master's own representations.³ But the Court need not agree with Defendant-Intervenors on these issues to agree that the proposal before it should not be implemented. The cloud of uncertainty and doubt surrounding these proposals is a sufficient basis to reject them. Moreover, the public impact of this proceeding, which affects not only the parties but also millions of Virginia residents, calls for unique

² The Court should, as Defendant-Intervenors stated before, stay remedial proceedings. Alternatively, as Judge Payne proposed, it should afford the political branches a second opportunity to undertake their constitutionally defined role.

³ For example, whereas his initial report represented that lines were altered using racial criteria, *see, e.g.*, ECF No. 323 at 11, he stated at the January 10 hearing that not a *single* line was altered for racial reasons, *see* 1/10/19 Hearing Tr. 69:1–70:18.

care to preserve objective appearances. The telltale signs of racial sorting are self-evident, as is the possibility, if not overt likelihood, of intentional vote dilution (not to mention the palpable public perception that this Court is poised to deliver a plan with a far from neutral partisan tilt in adopting the unaccountable Special Master's proposal⁴). Indeed, the Court apparently intends to change HD75, dropping its BVAP from above to below 55%, even though the Supreme Court held the 55% target in that district to be lawful, thereby damaging minority voting power and contradicting the expert reports showing polarized voting sufficient to support BVAP at 55% or higher. The public deserves better than all of this.

Finally, for the record, Defendant-Intervenors have attached to this filing several exhibits, updated to cover the modules the Court has chosen. Exhibit A contains maps of all districts changed, comparing the enacted districts with the Special Master's final proposals. Exhibit B contains maps showing the racial geography of the Special Master's final proposals. Exhibit C contains compactness

⁴ See, e.g., Graham Moomaw, *Federal court picks redrawn Va. House map that boosts Democrats' chances of taking control*, RICHMOND TIMES-DISPATCH, Jan. 23, 2019, https://www.richmond.com/news/virginia/government-politics/federal-court-picks-redrawn-va-house-map-that-boosts-democrats/article_6b727239-4d46-592d-99c7-f2b544c5e045.html; Denise Lavoie, *Court picks Virginia redistricting plan that helps Democrats*, WASHINGTON POST, Jan. 23, 2019, https://www.washingtonpost.com/national/court-picks-virginia-redistricting-plan-that-helps-democrats/2019/01/23/c7624246-1f2f-11e9-a759-2b8541bbbe20_story.html?utm_term=.bb2ec1d94240; *How Court Plan Would Affect Partisan Lean of Some House Districts*, Virginia Public Access Project <https://www.vpap.org/updates/3177-how-court-plan-would-partisan-lean-some-house-districts/>; see also Objections of Van Williams, ECF No. 356-1.

measures of the Special Master's final proposals. Exhibit D contains district-change metrics for the Special Master's final proposals. Exhibit E contains a chart comparing black voting-age population levels between the Special Master's final proposals and the enacted districts. Exhibit F contains a chart showing the degree of changes by district with incumbency information. Exhibit G contains racially themed maps of certain VTD splits in the Special Master's final plan.

CONCLUSION

For the reasons stated above and in Defendant-Intervenors' other remedial-phase filings, the Court should not adopt the Special Master's final proposal. It should stay proceedings pending further guidance from the Supreme Court. Alternatively, it should adopt HB7002.

Dated: February 1, 2019

Respectfully Submitted,

/s/ Katherine L. McKnight

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2019, a copy of the foregoing was filed and served on all counsel of record pursuant to the Court's electronic filing procedures using the Court's CM/ECF system.

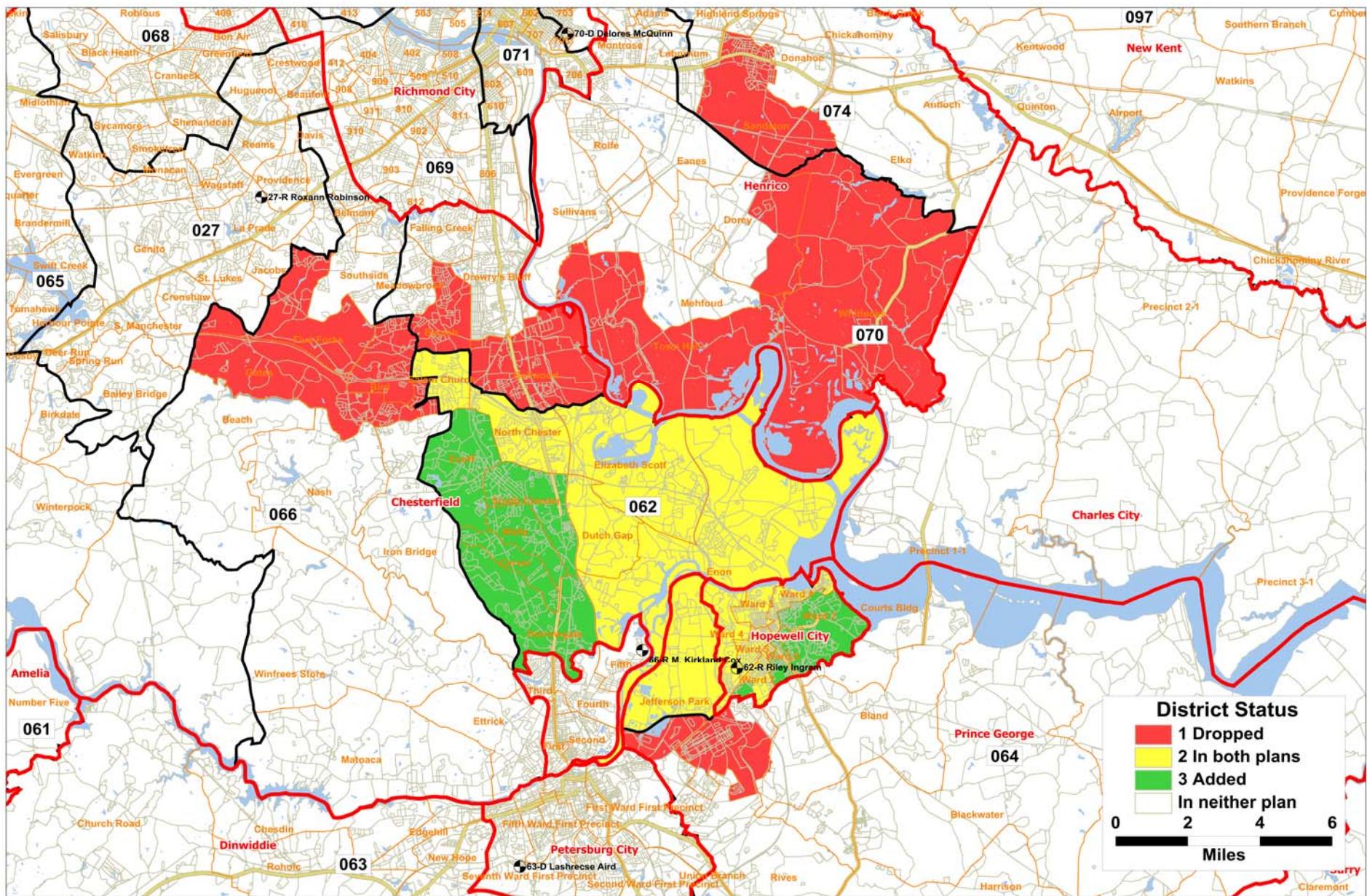
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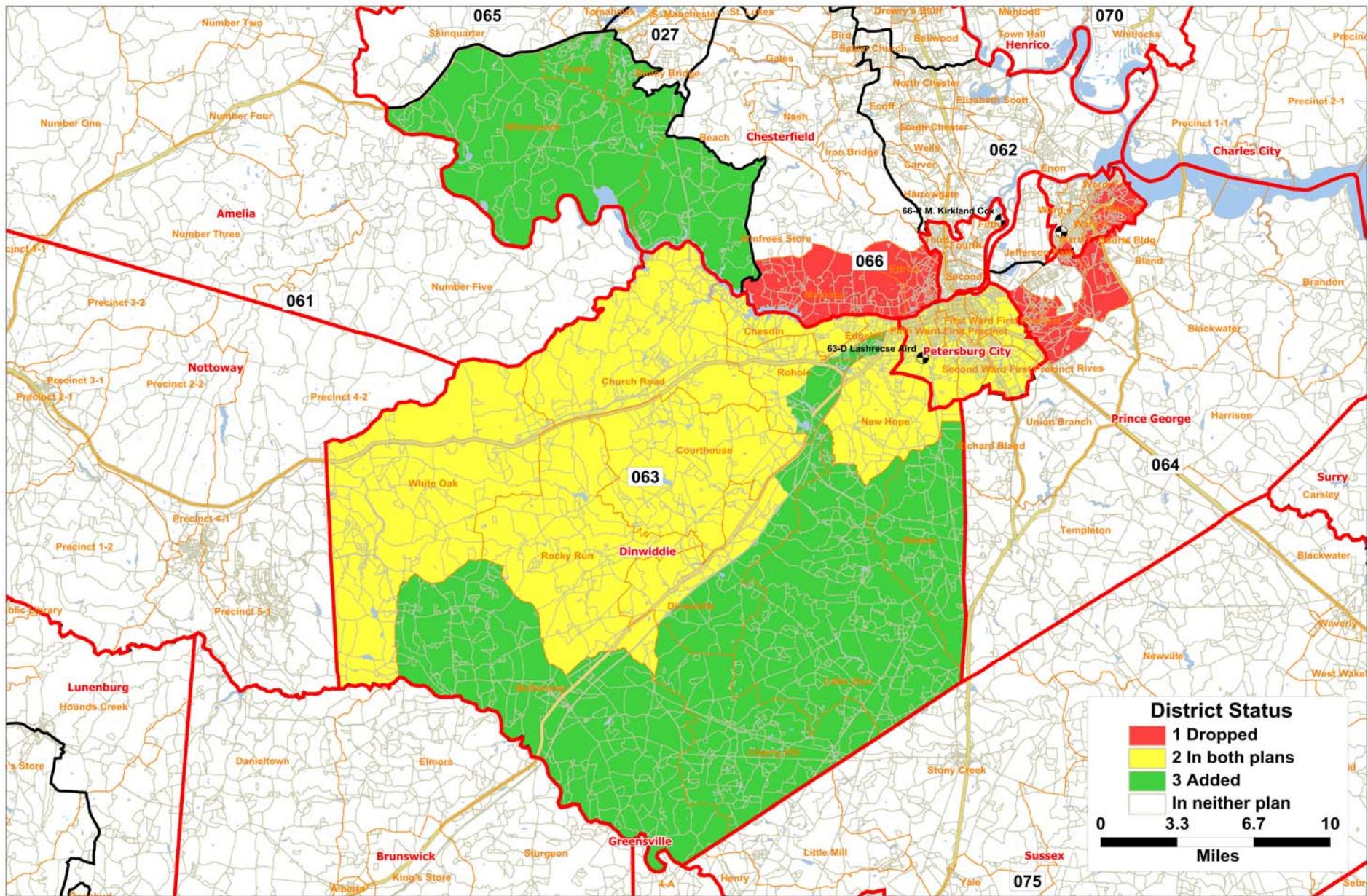
*Attorneys for the Virginia House of Delegates
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EXHIBIT A

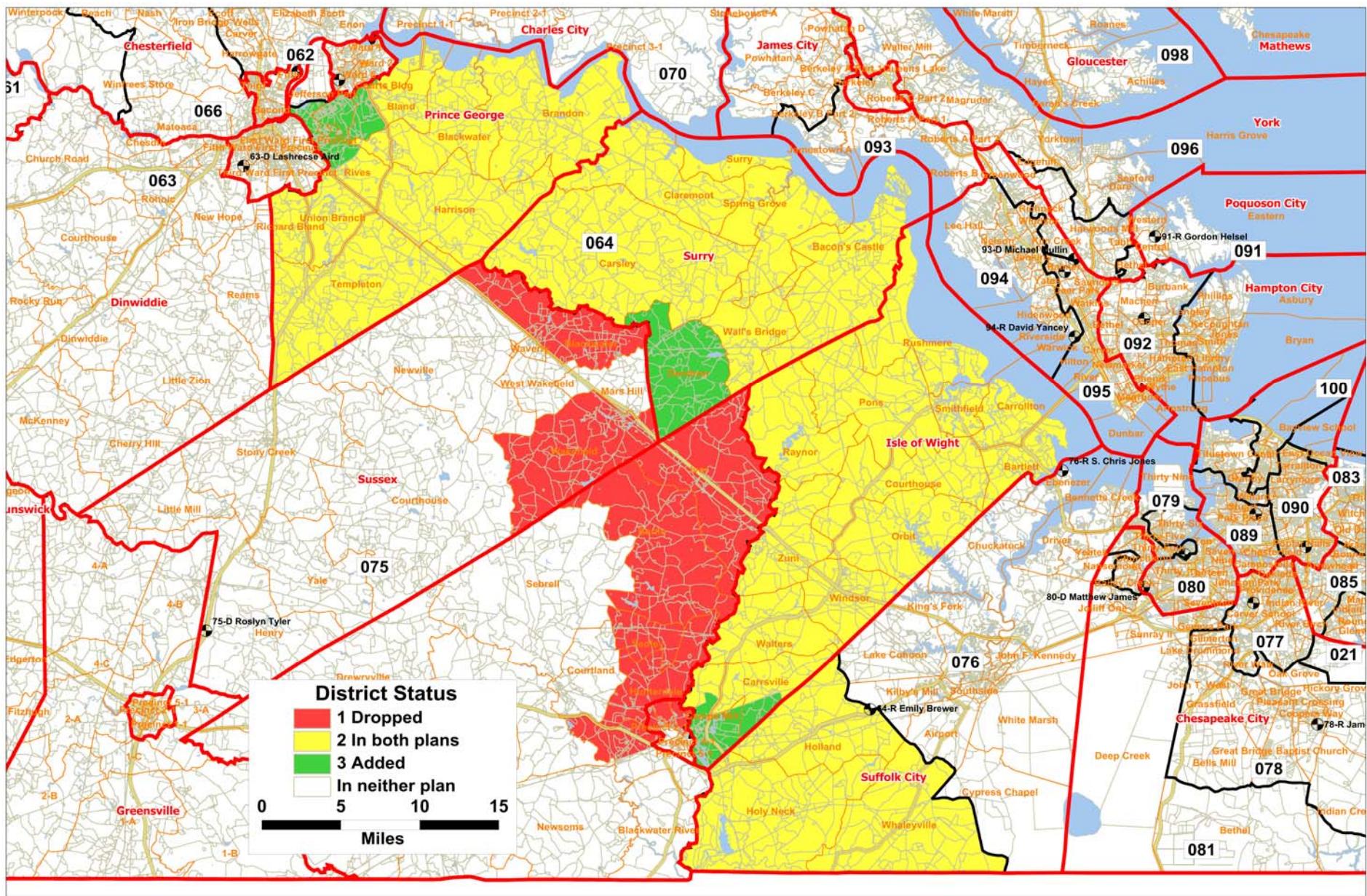
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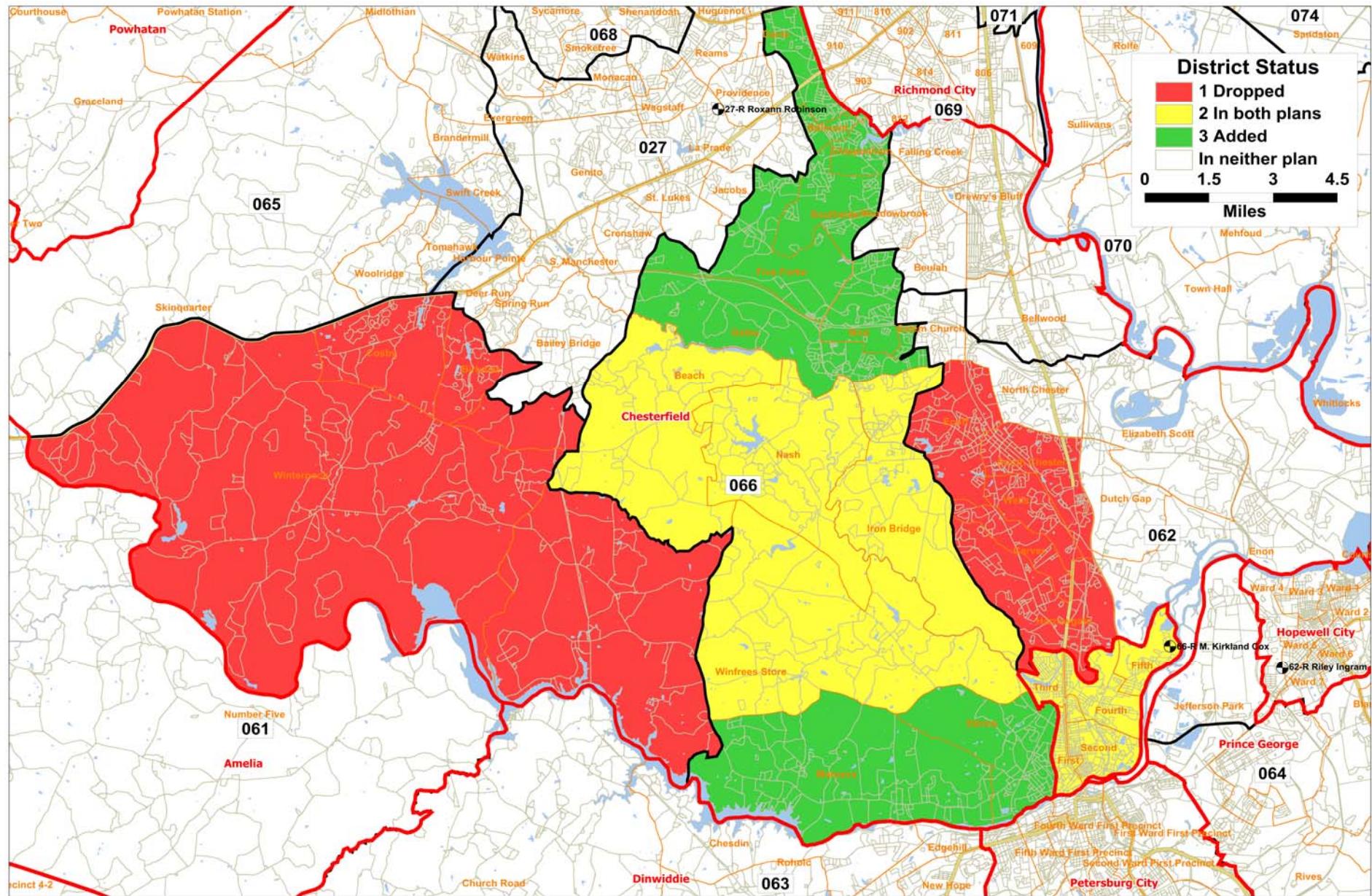
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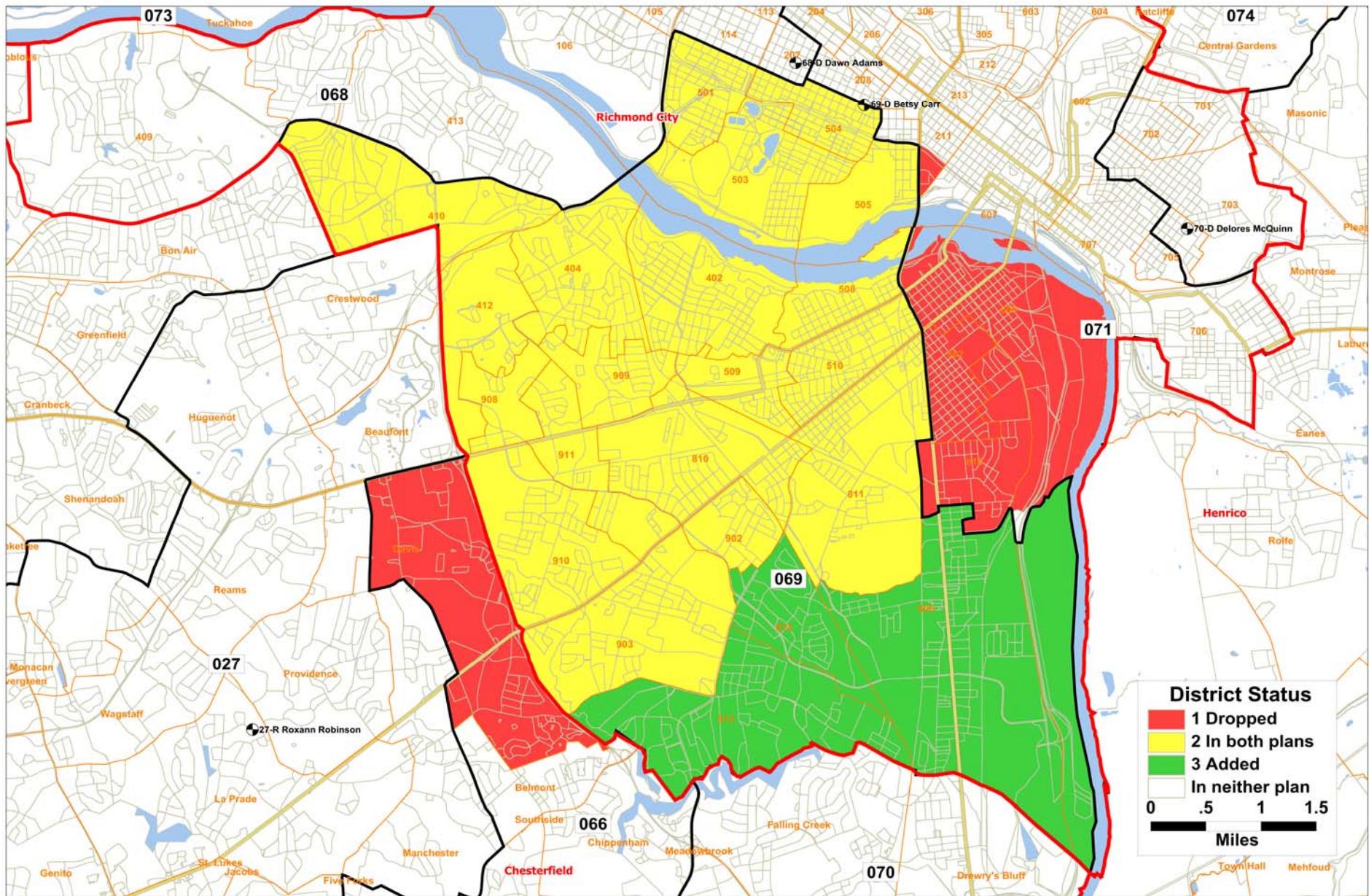
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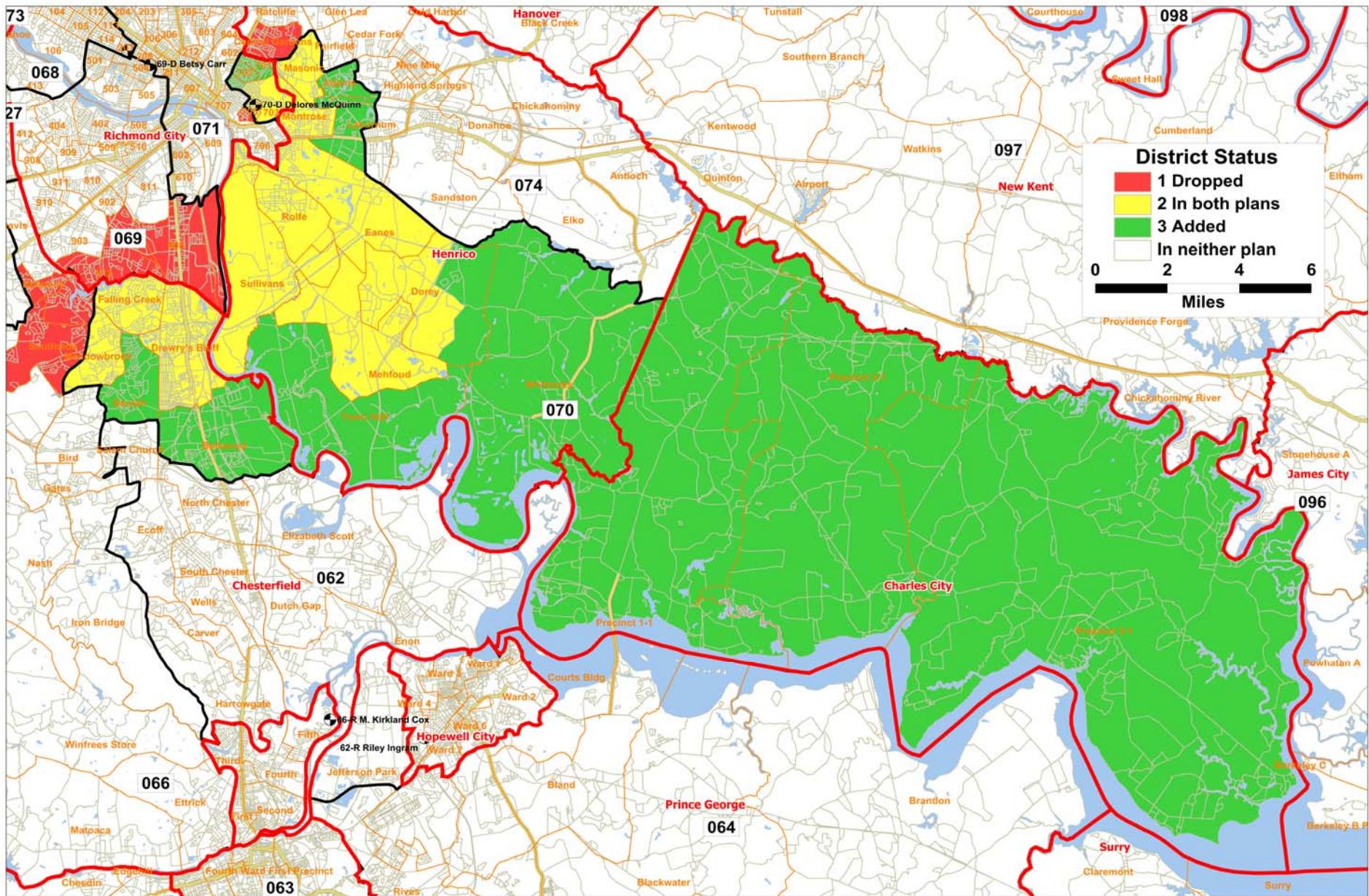
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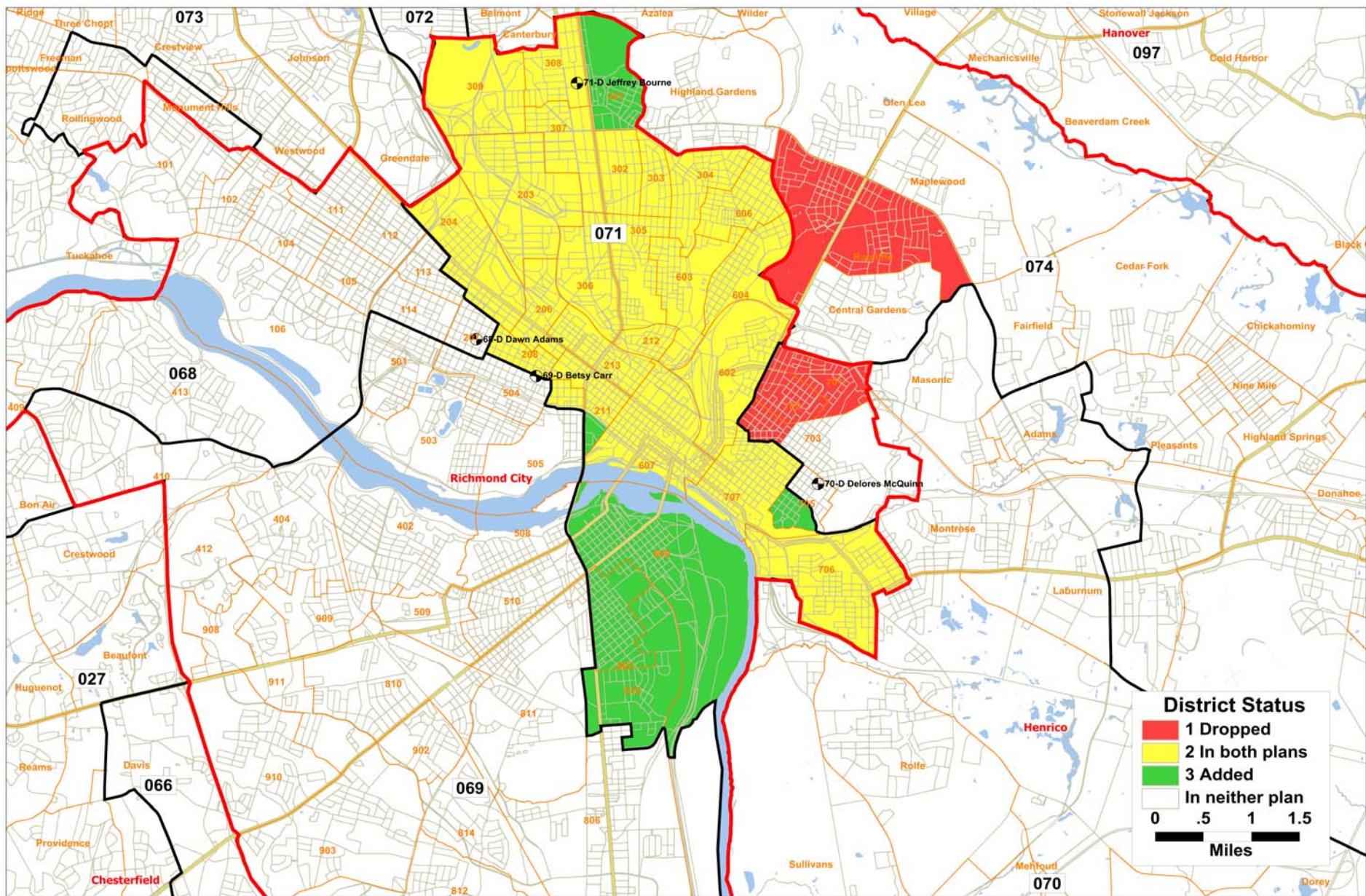
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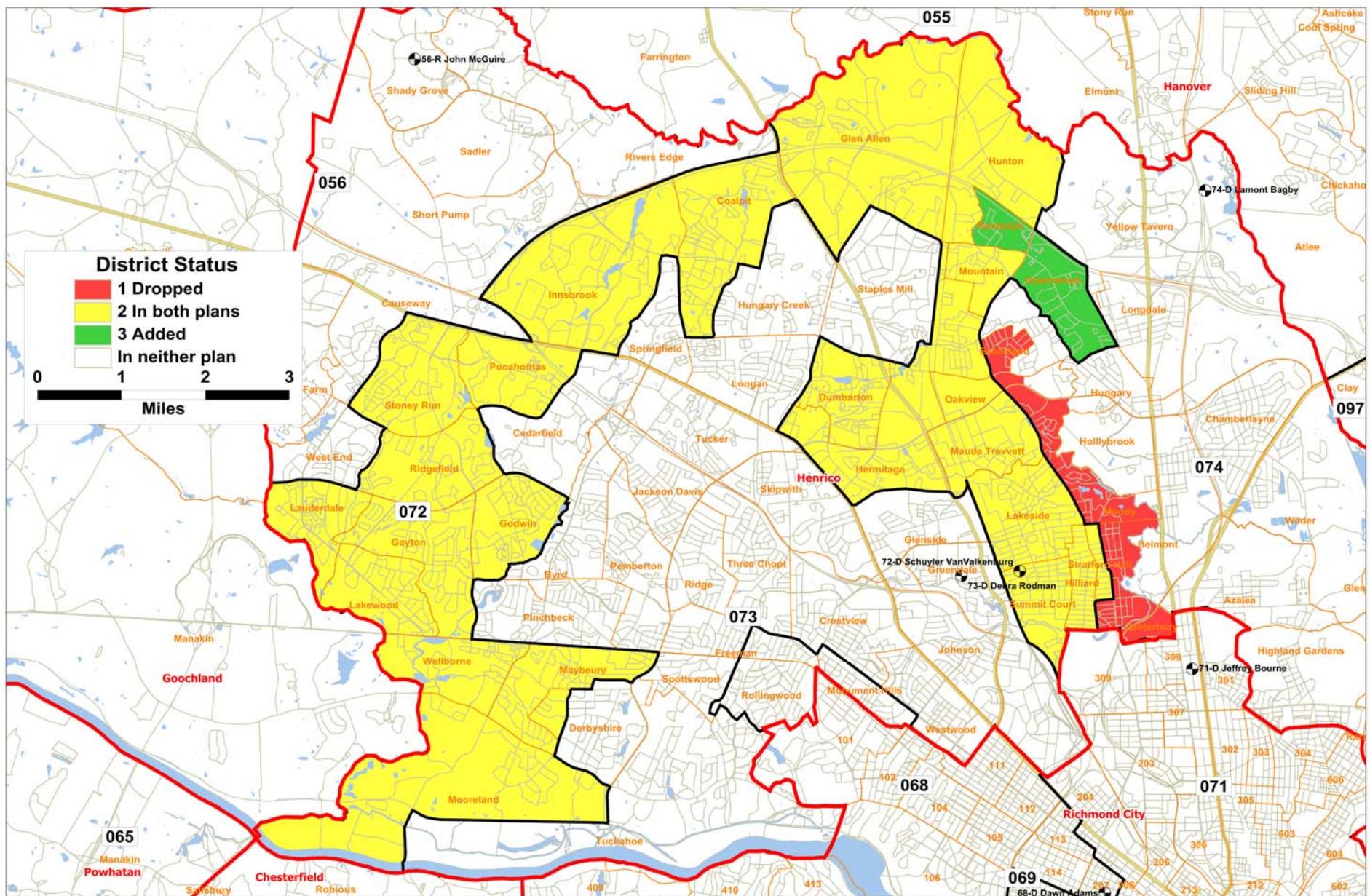
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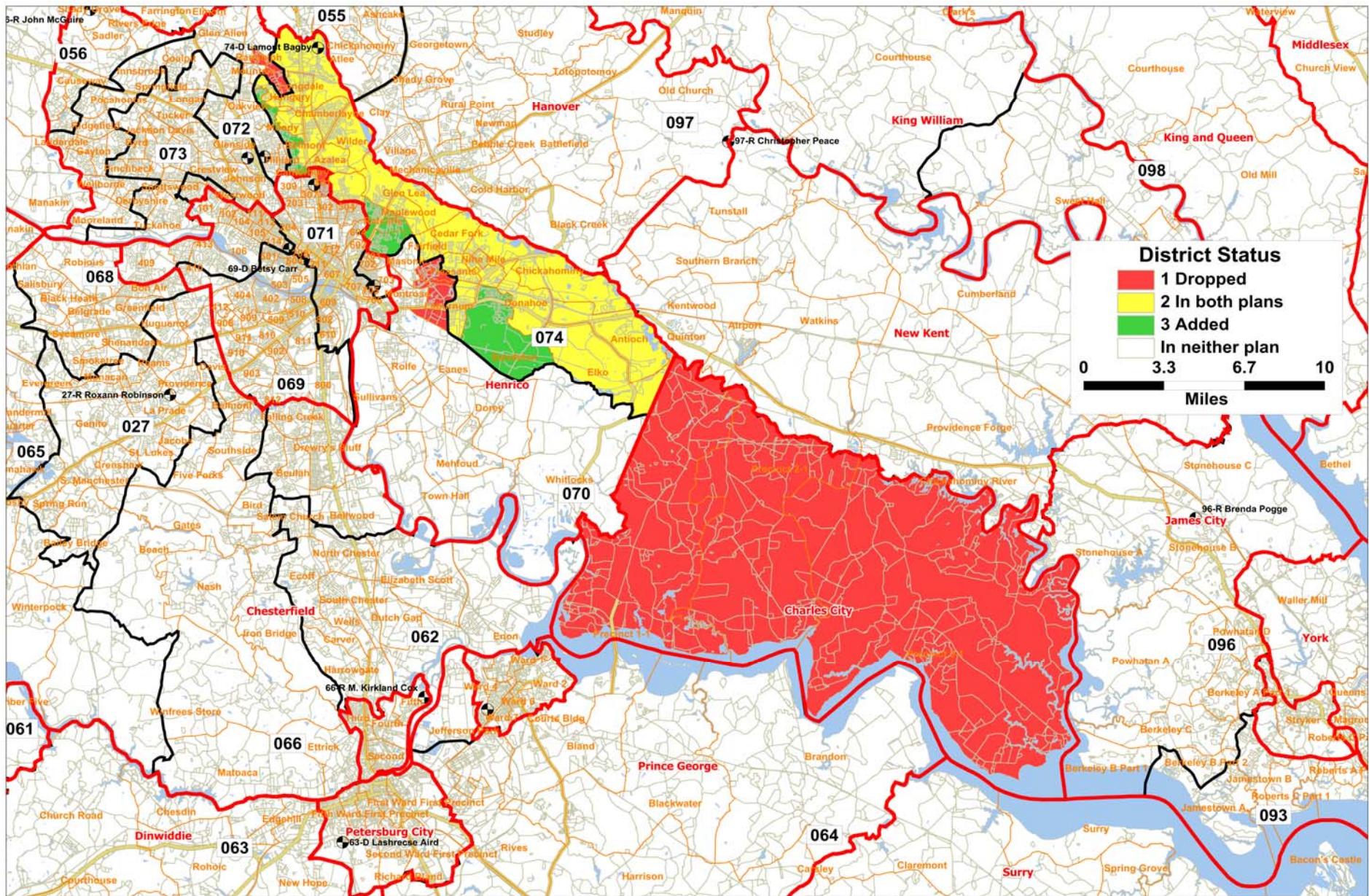
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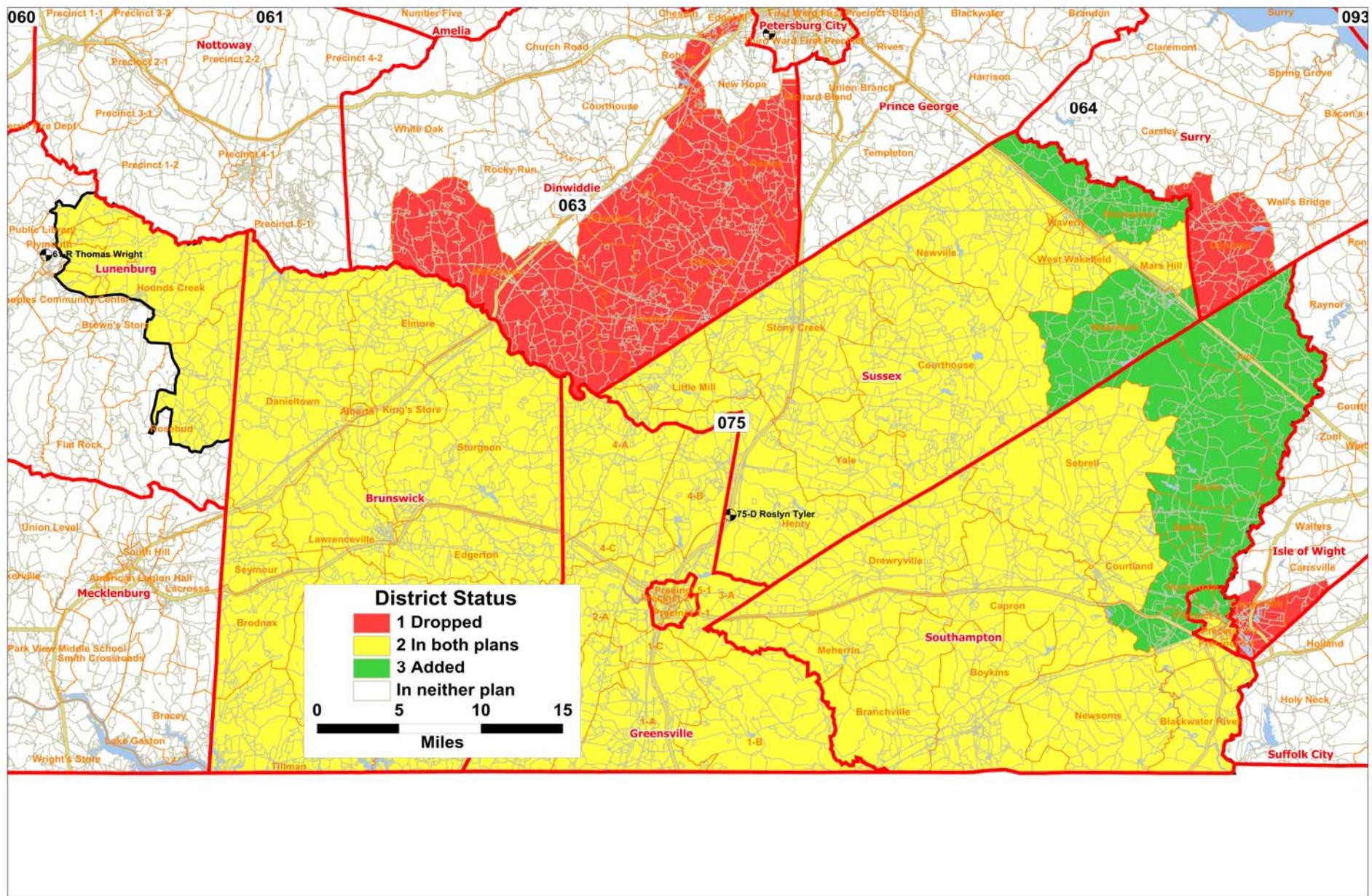
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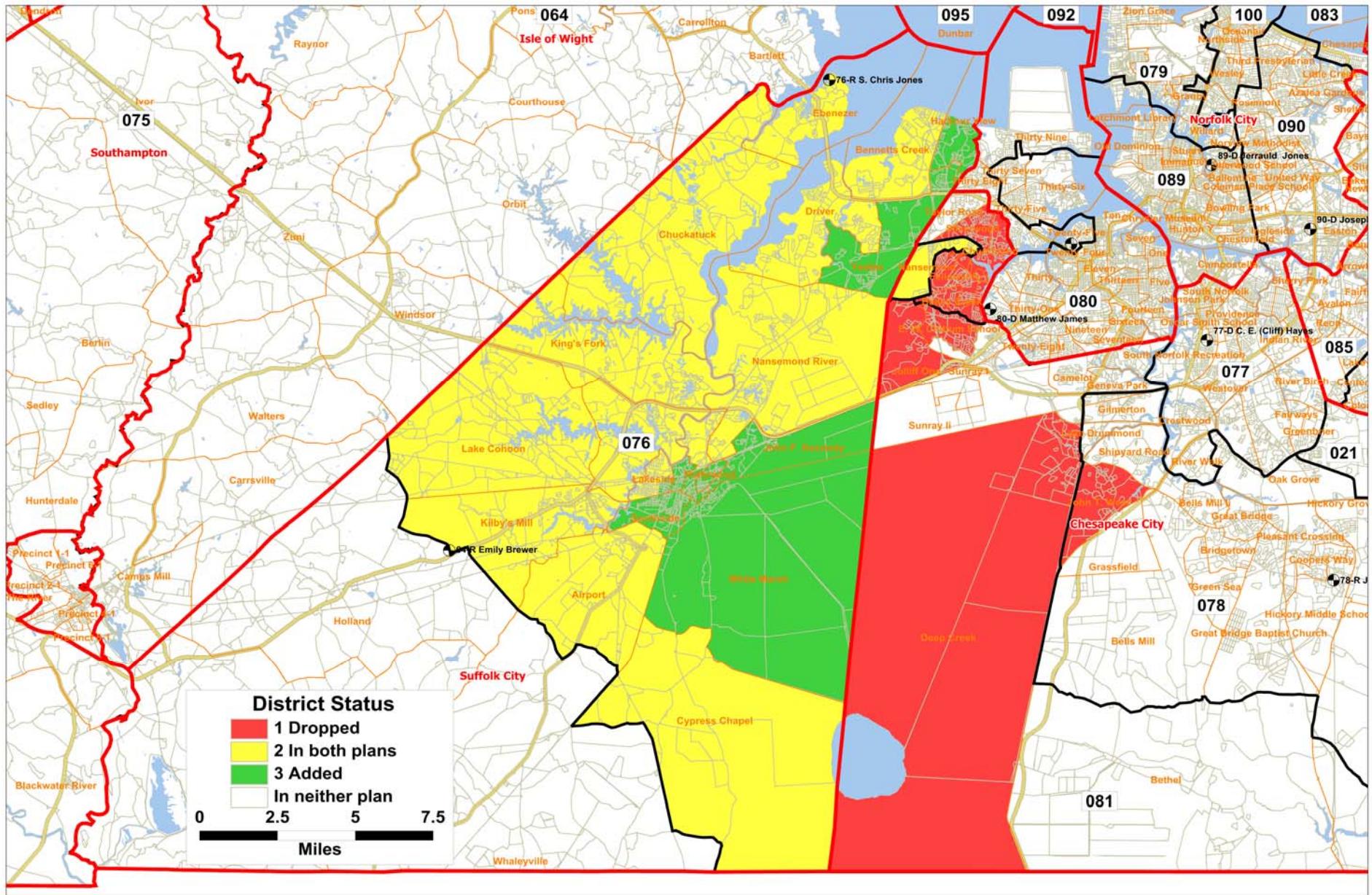
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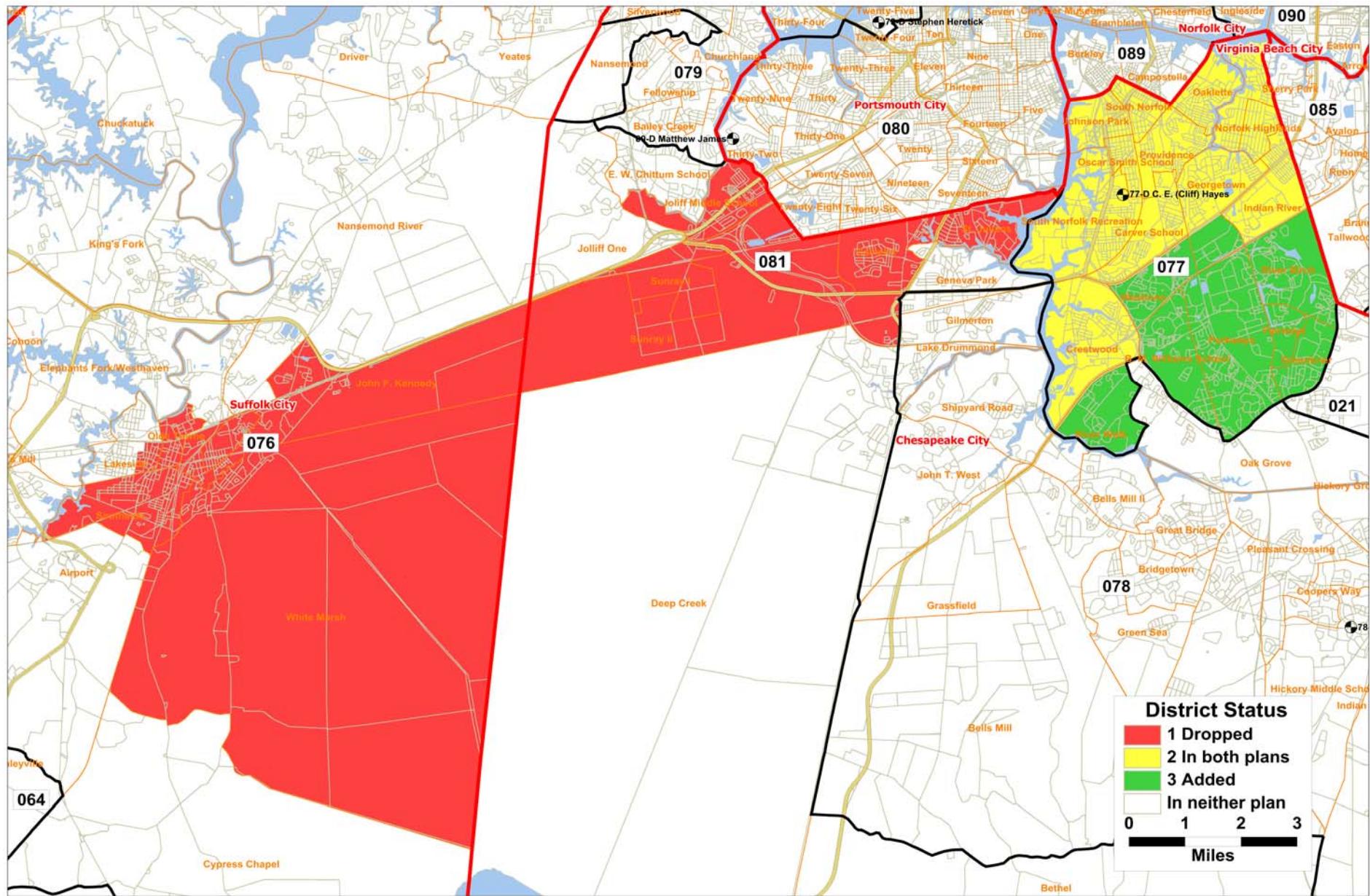
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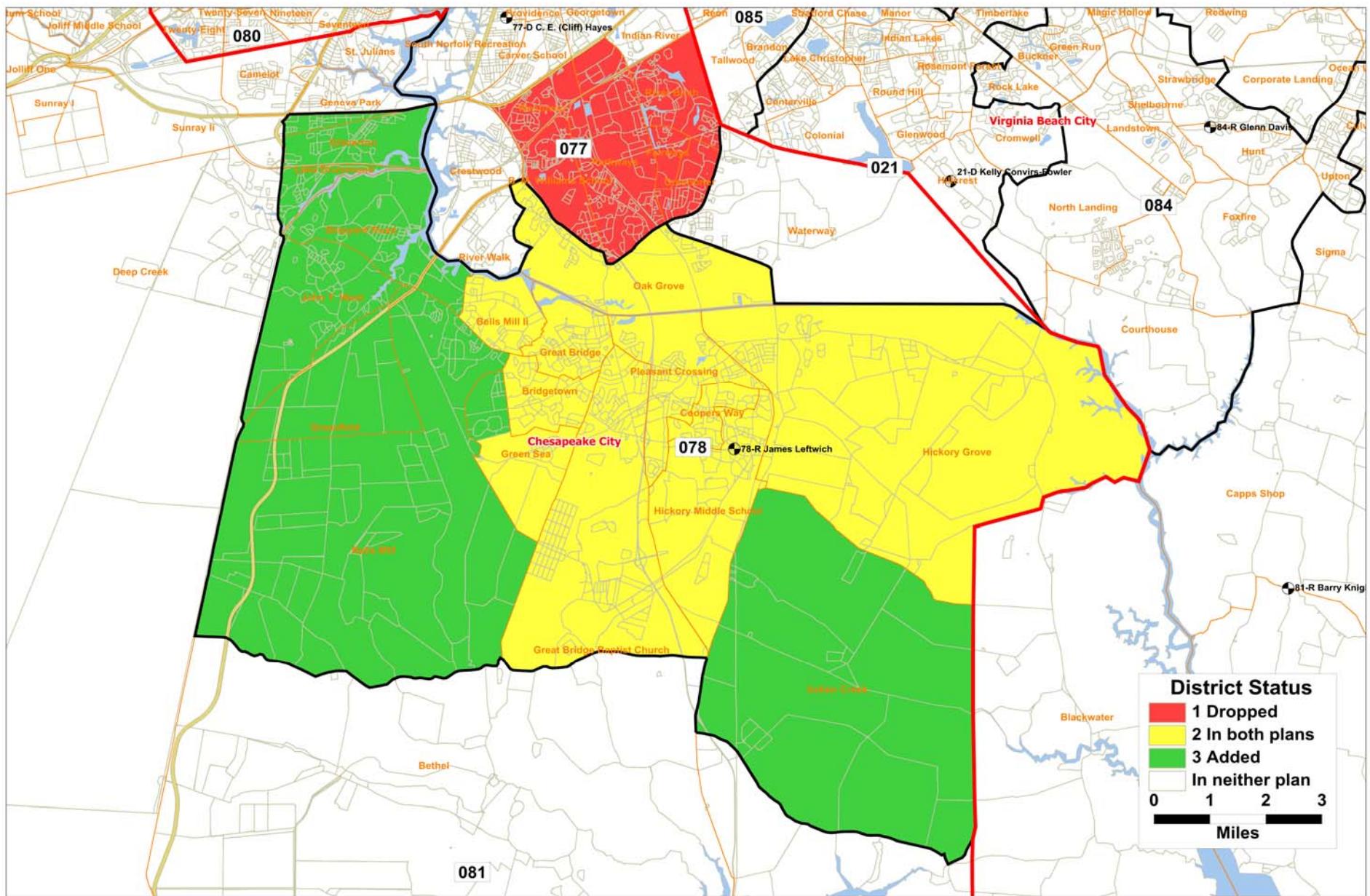
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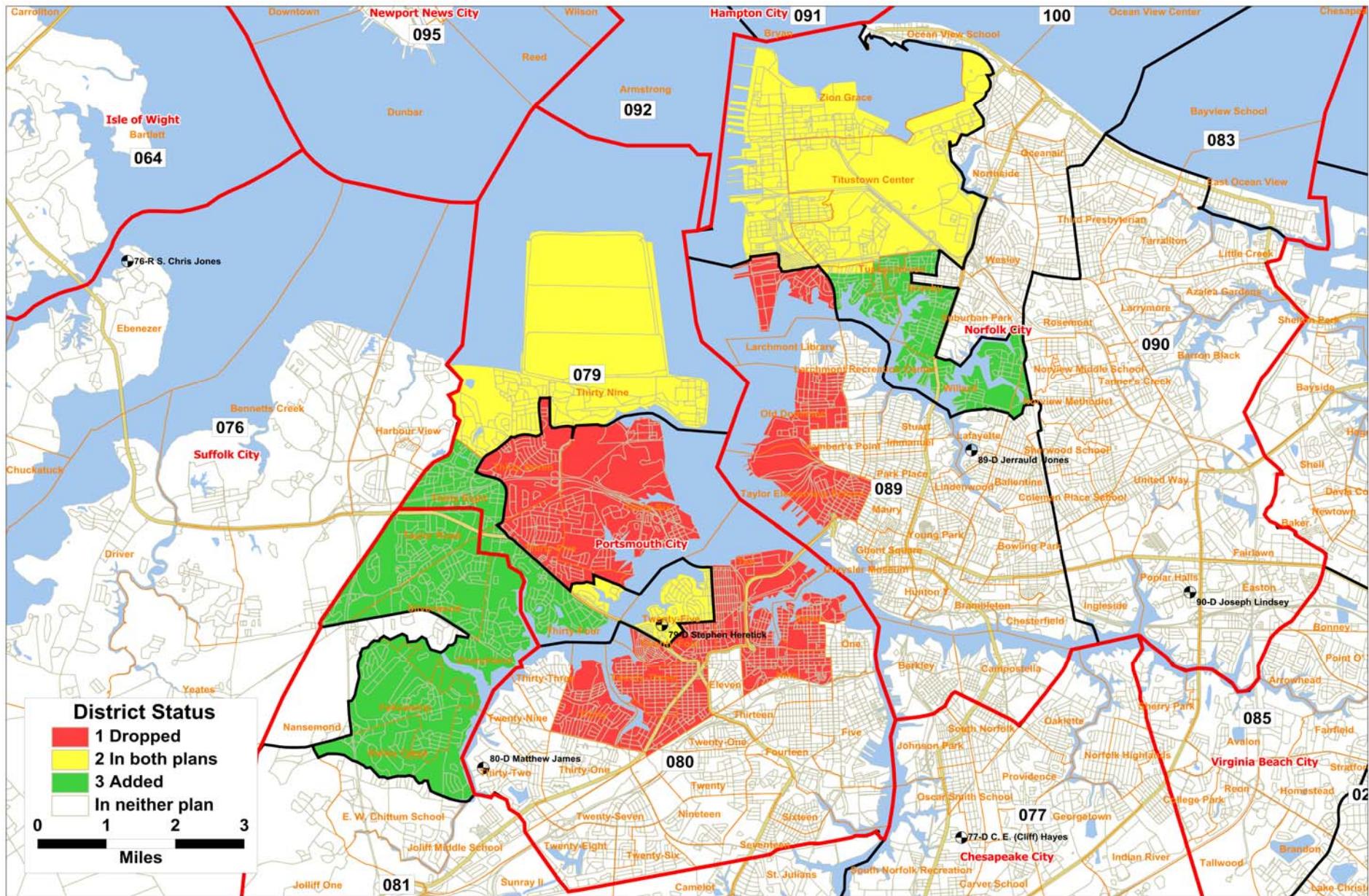
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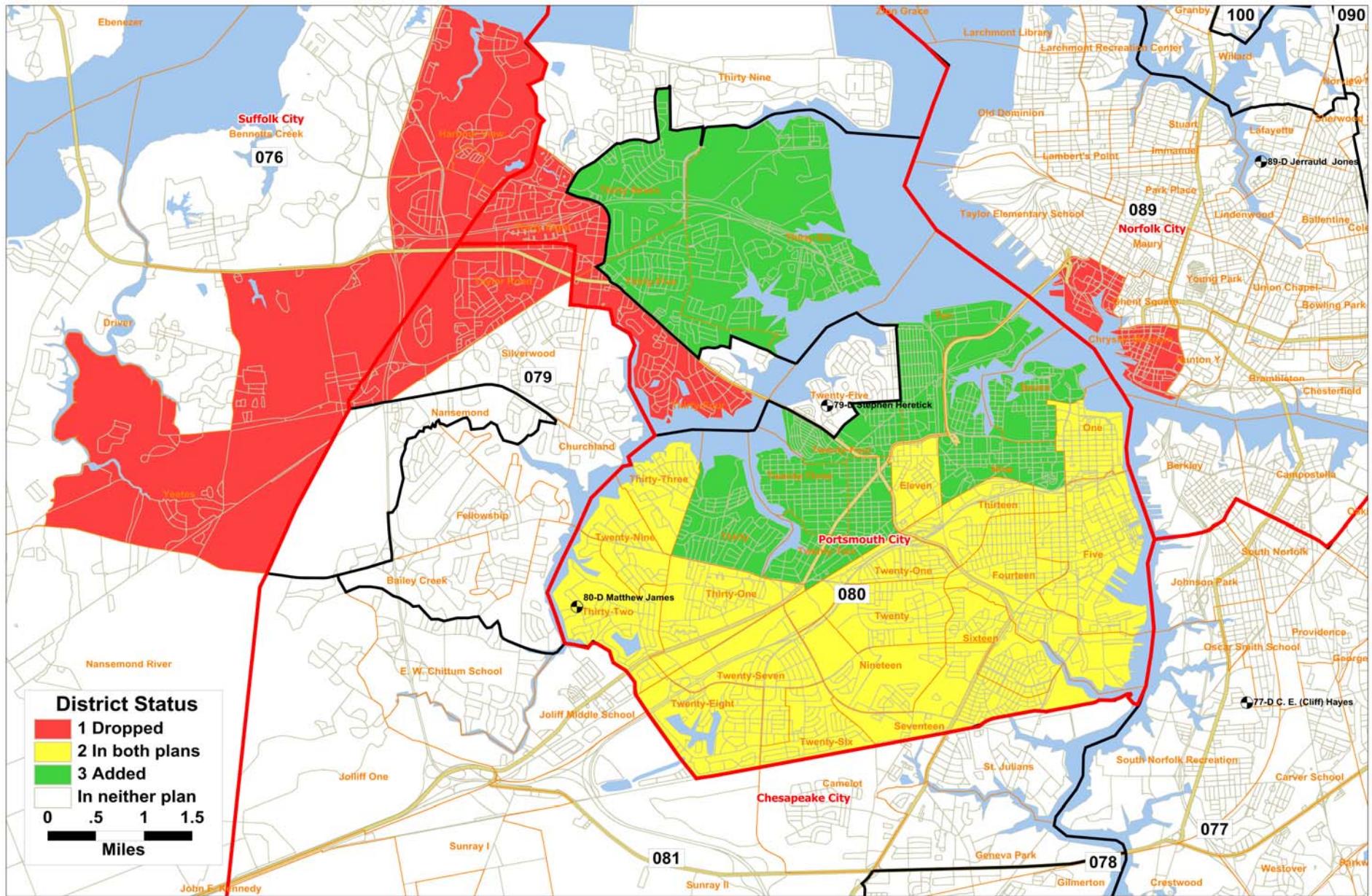
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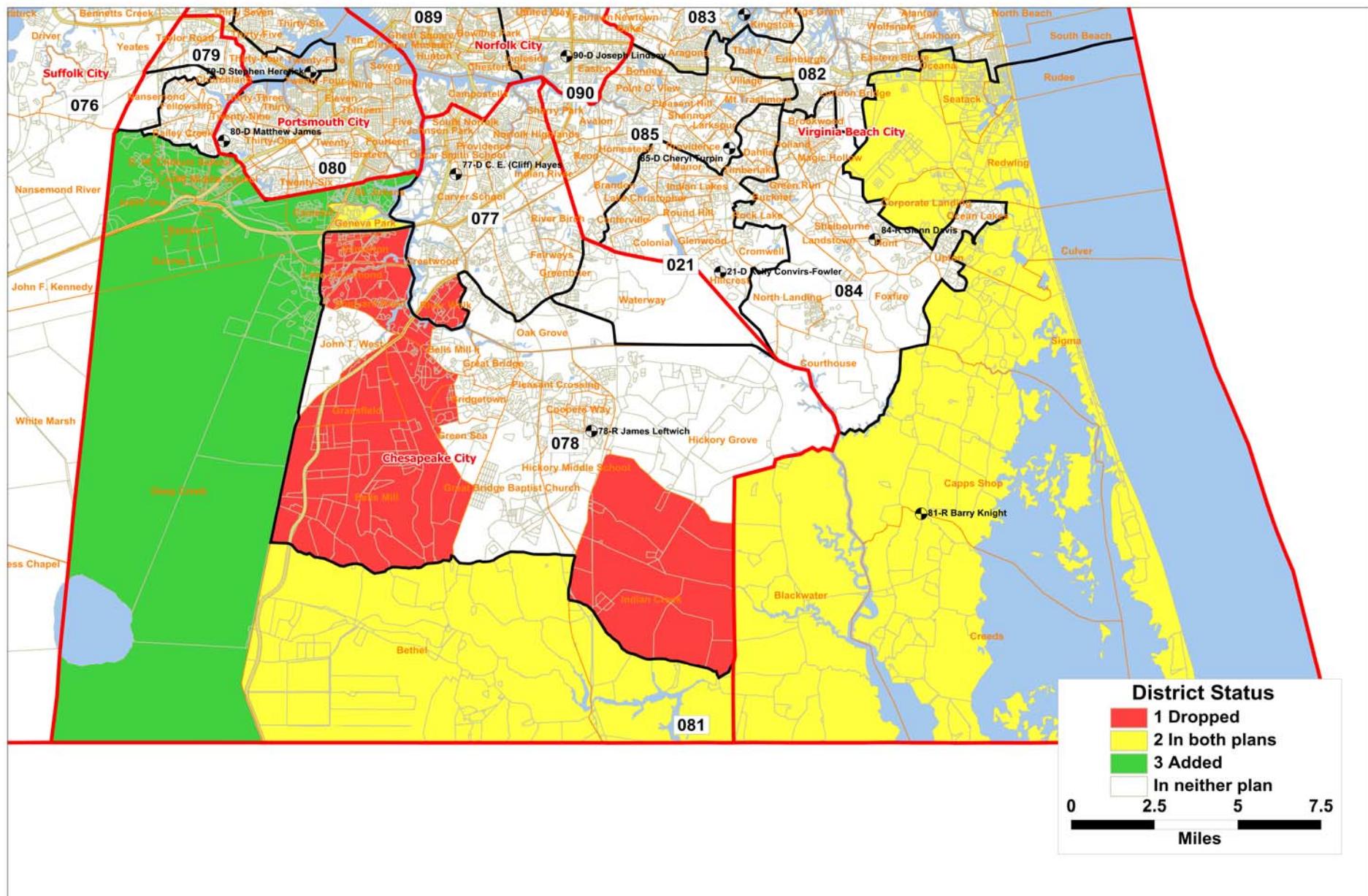
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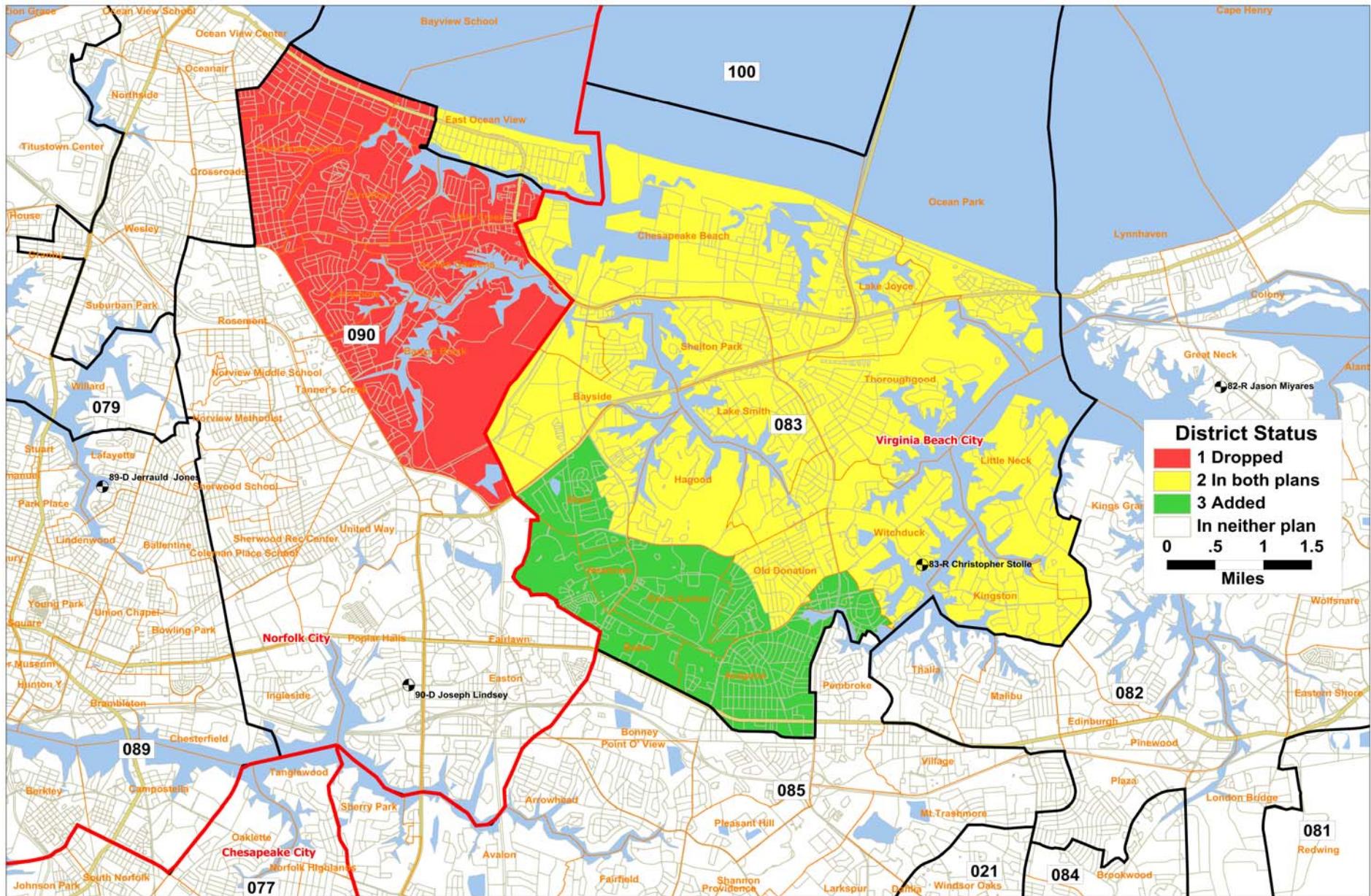
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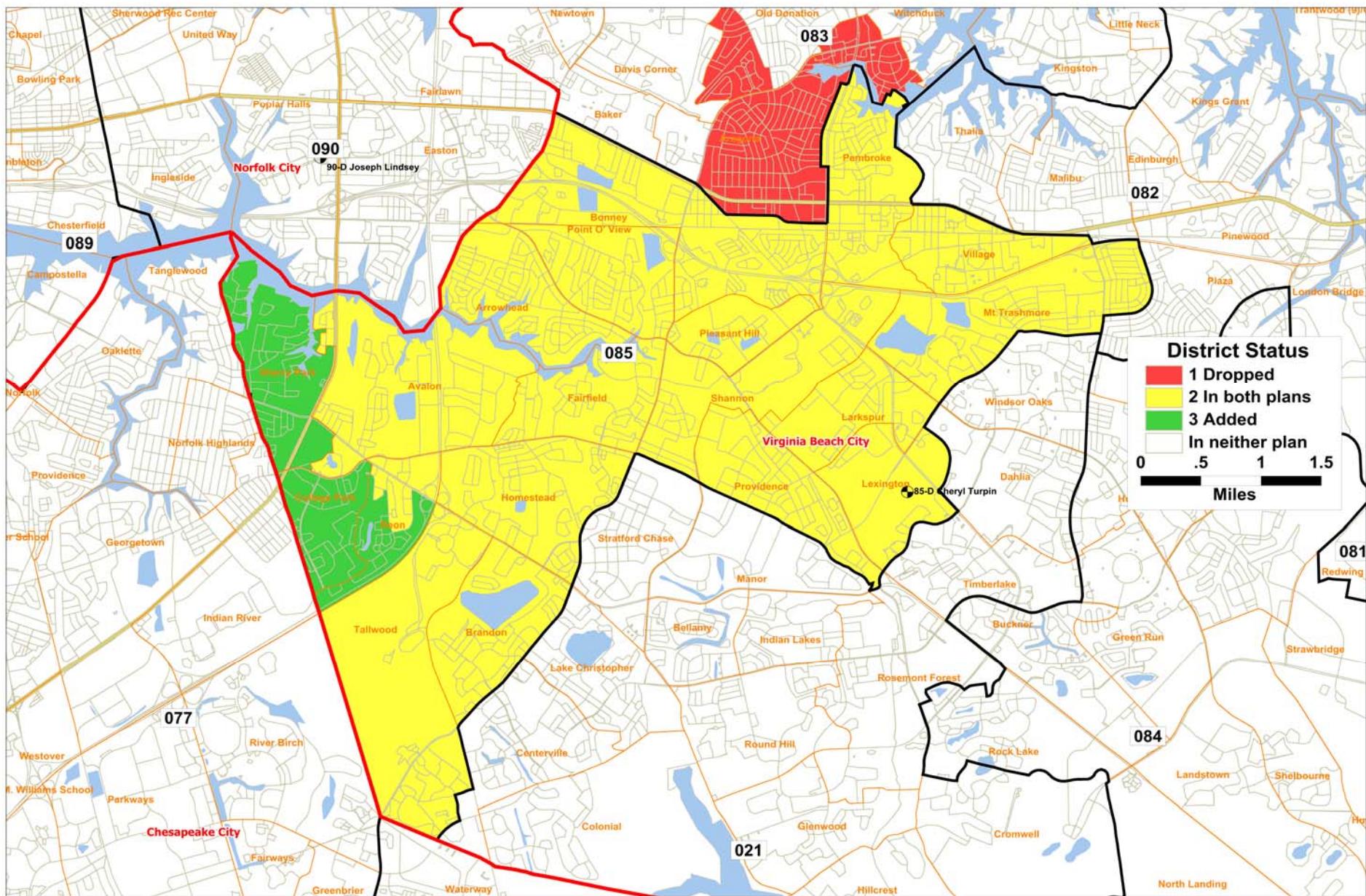
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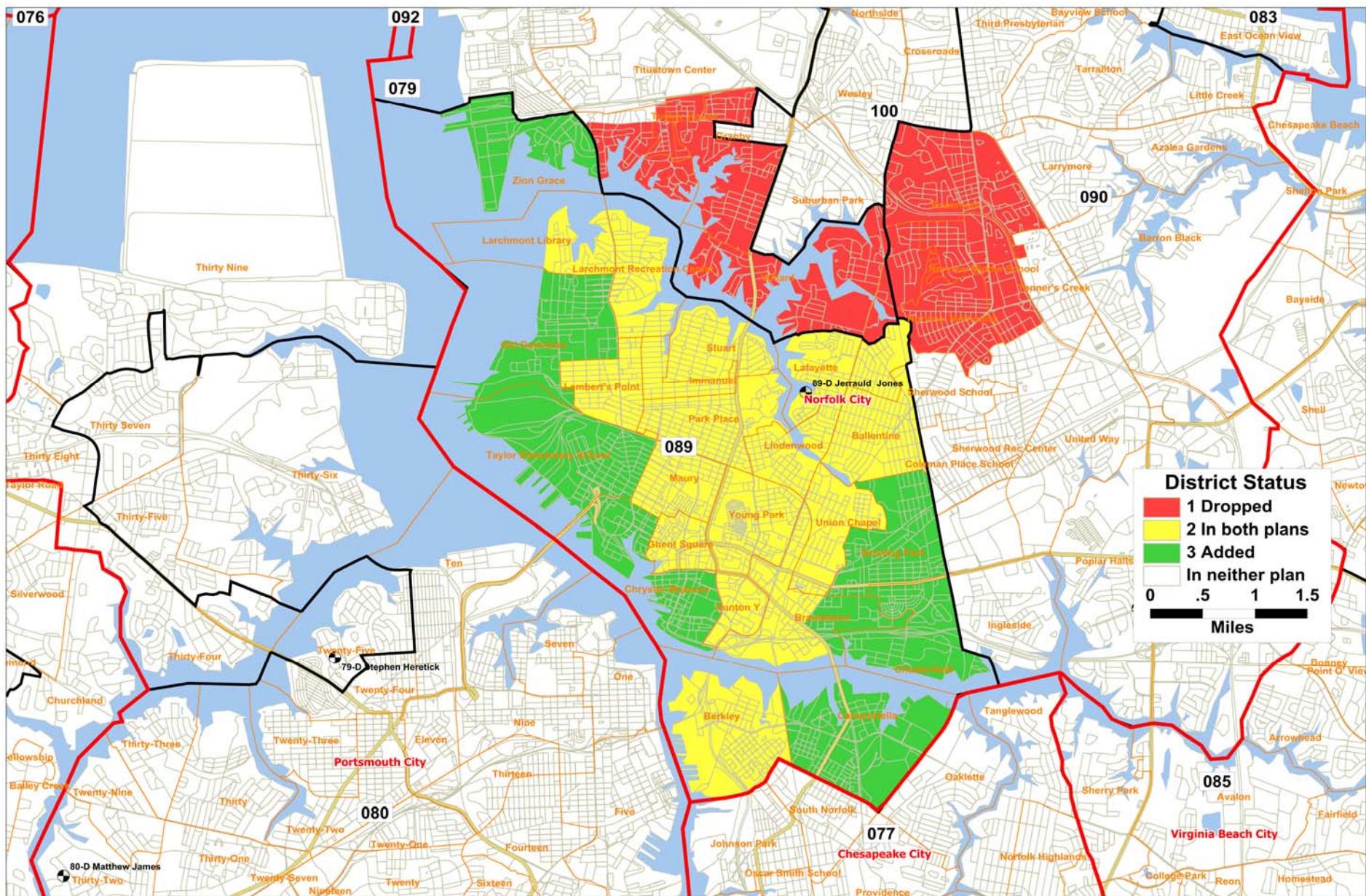
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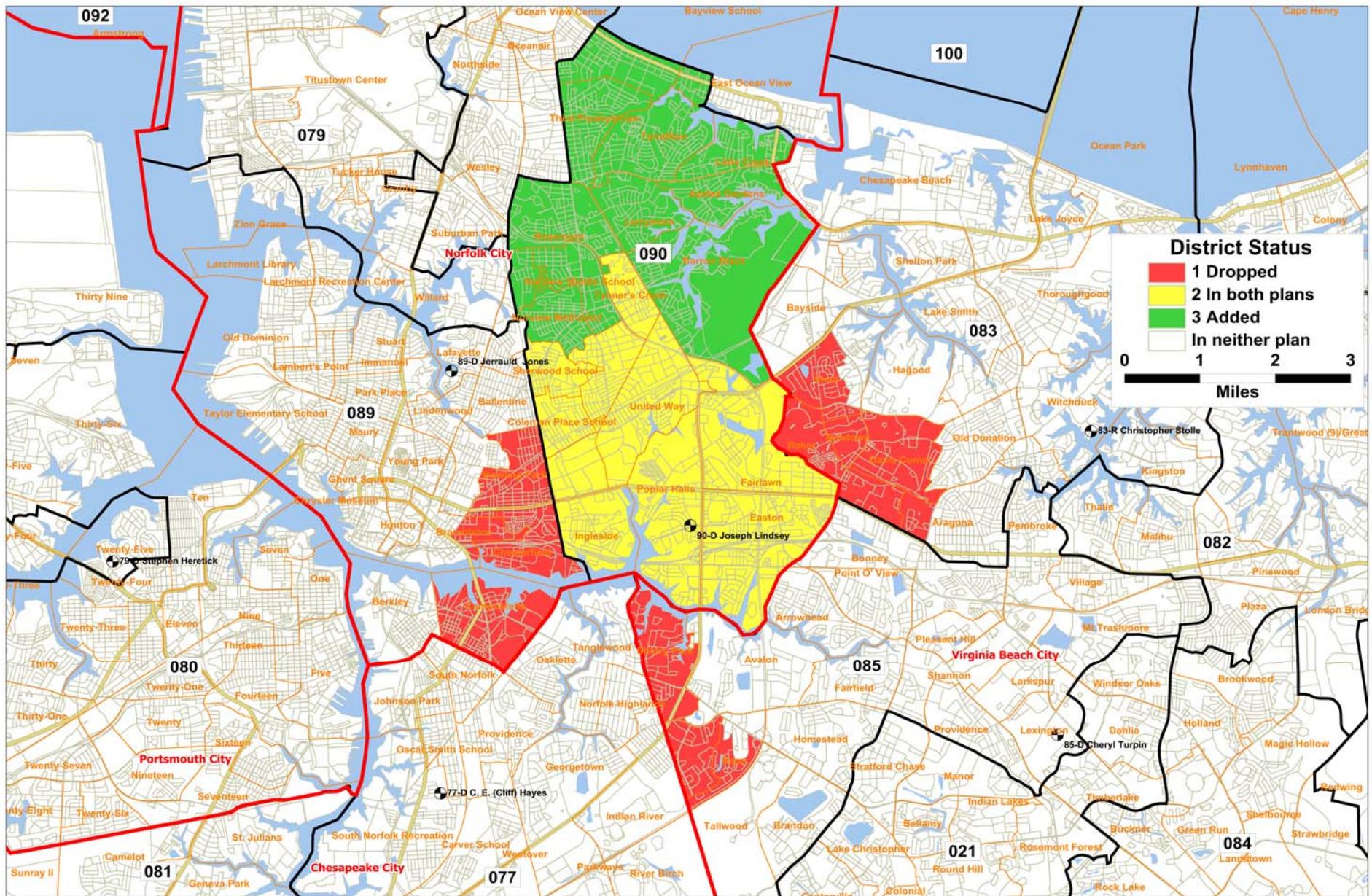
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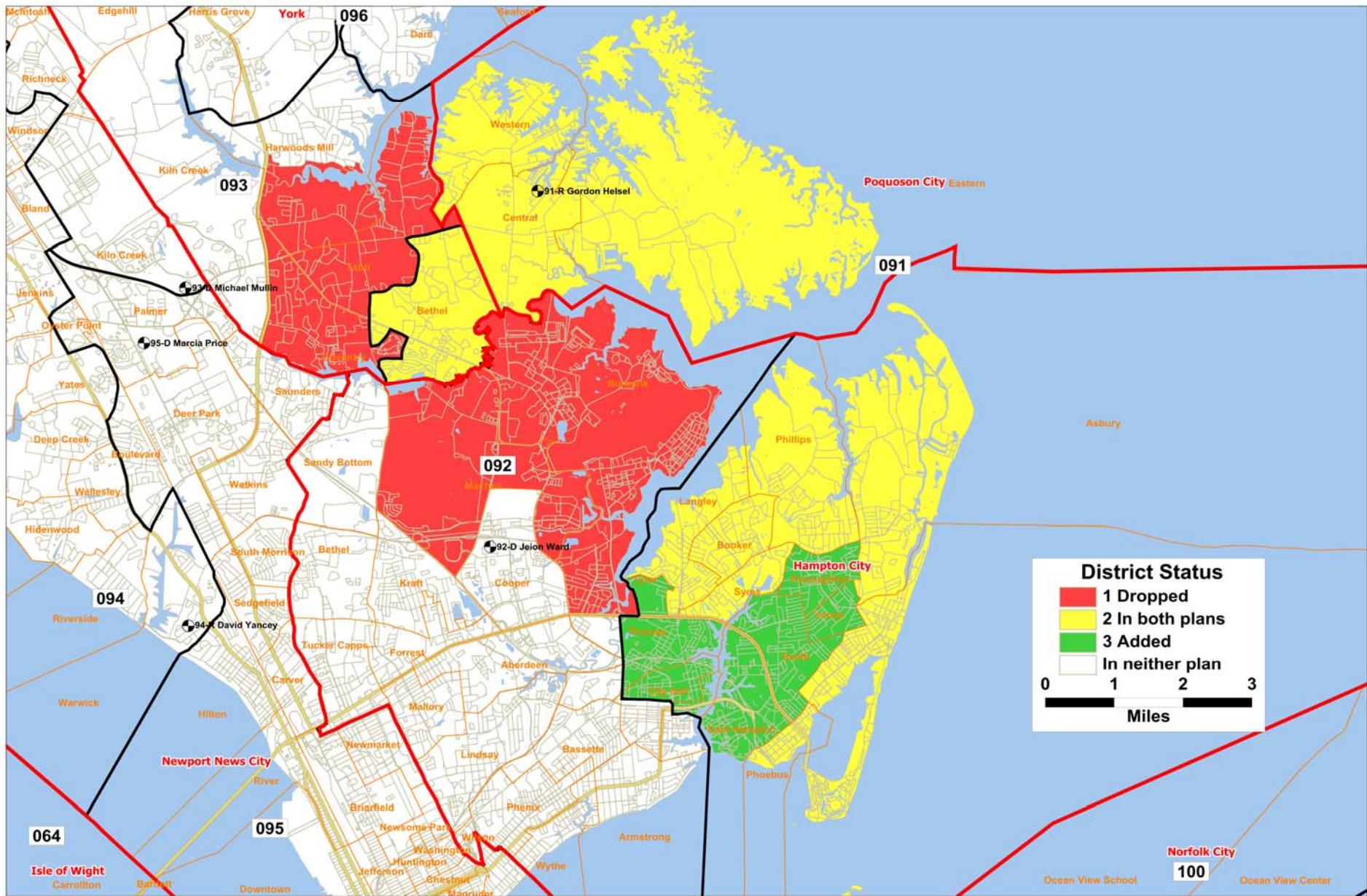
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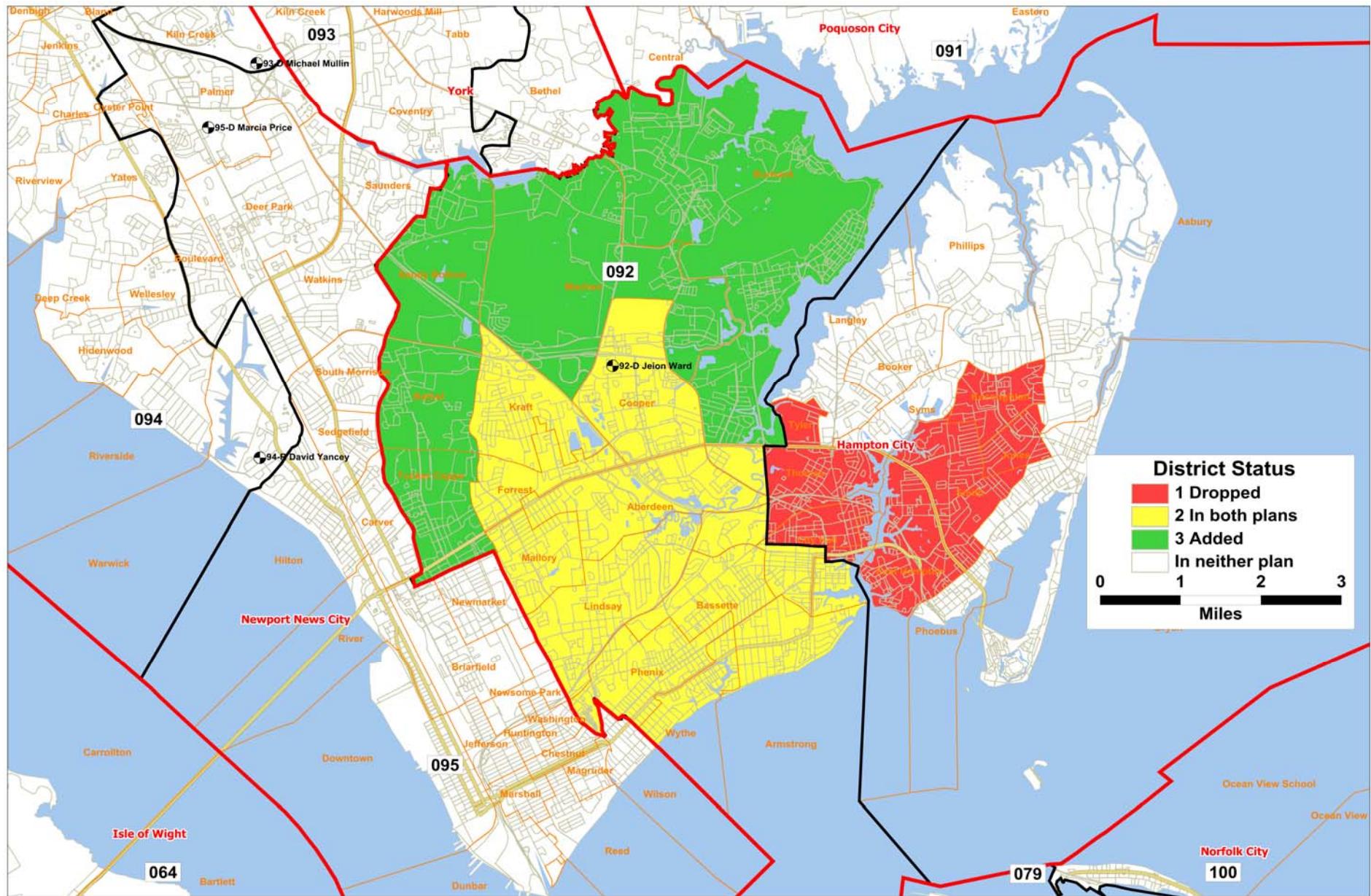
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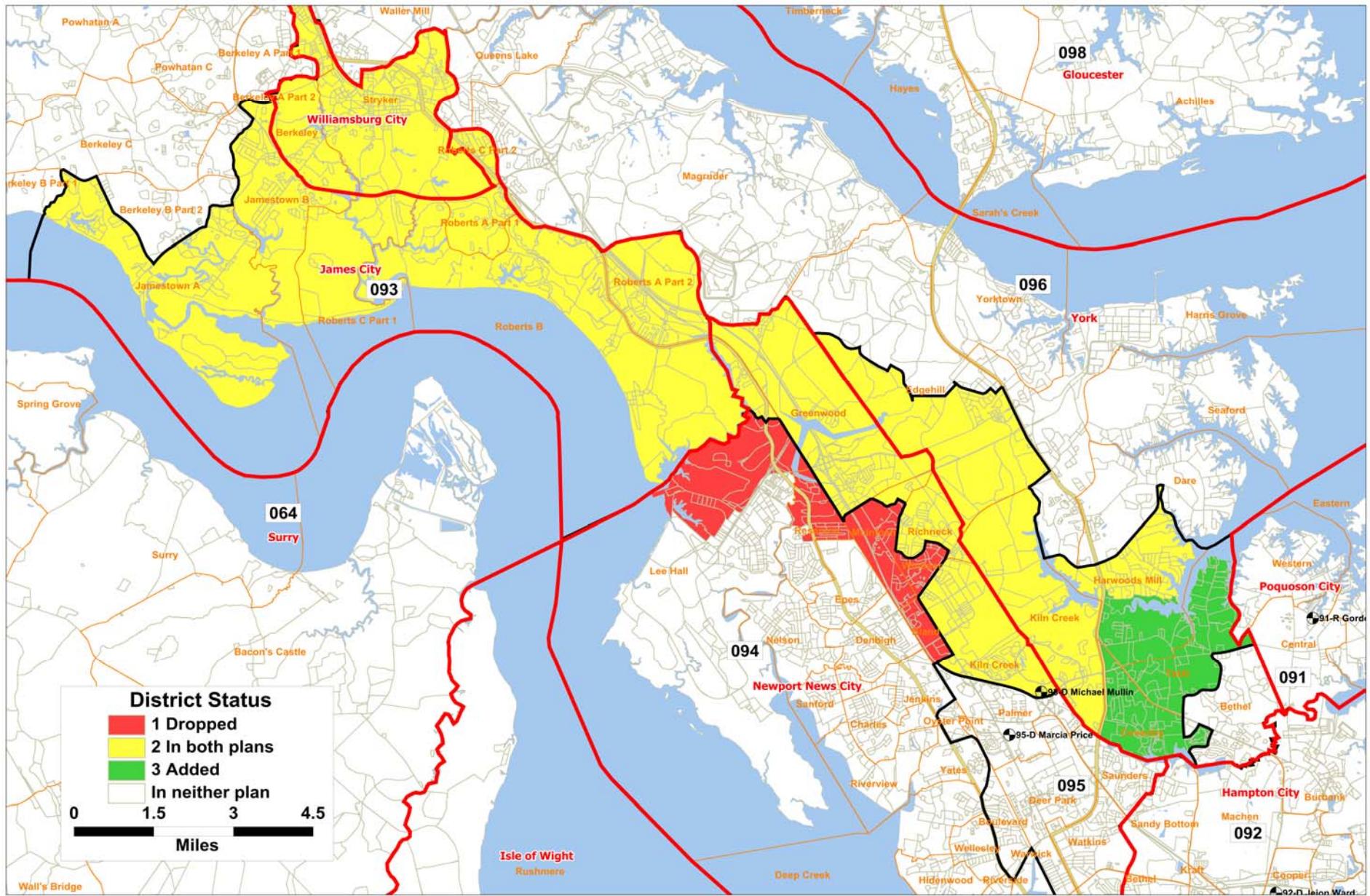
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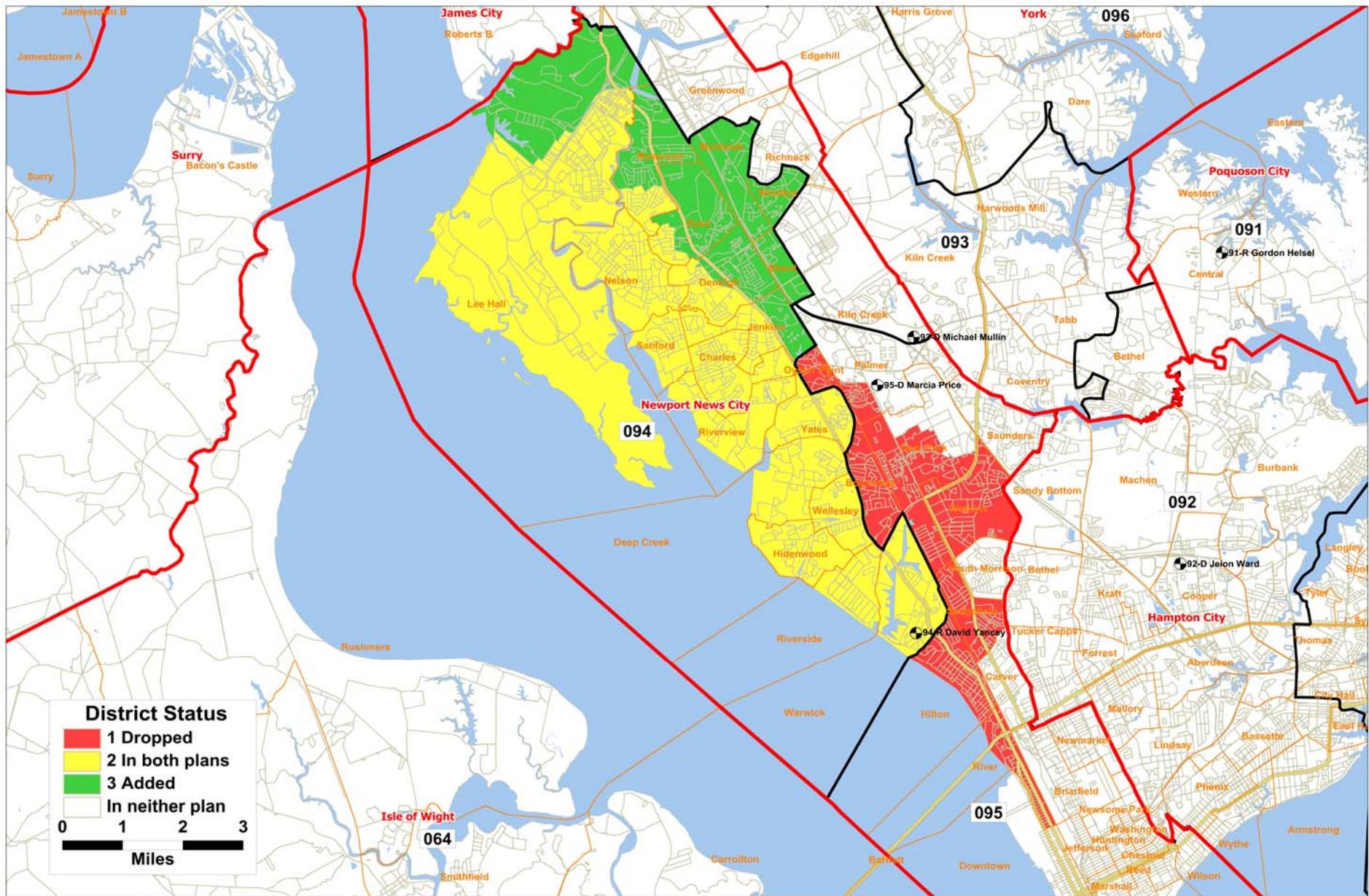
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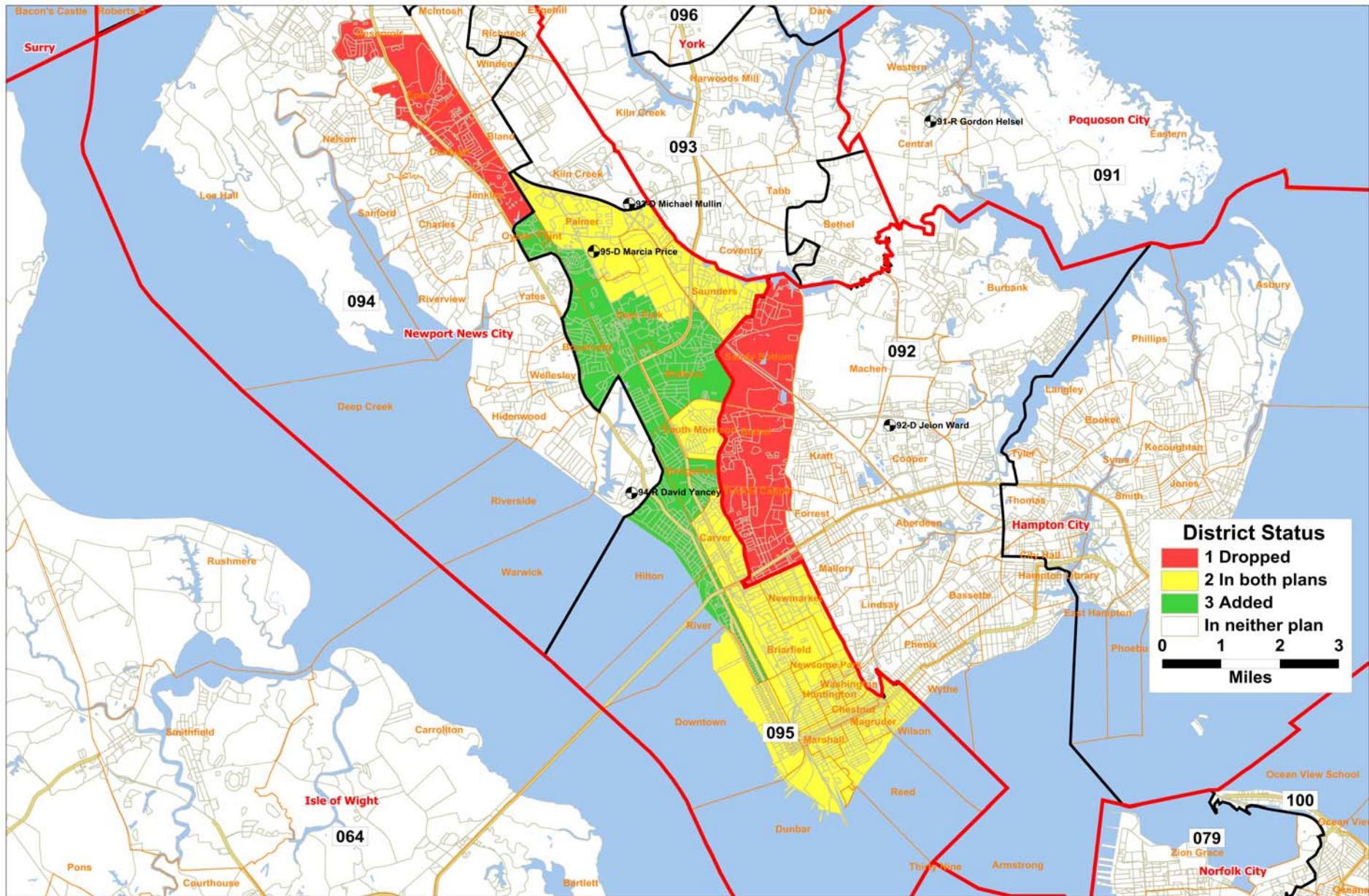
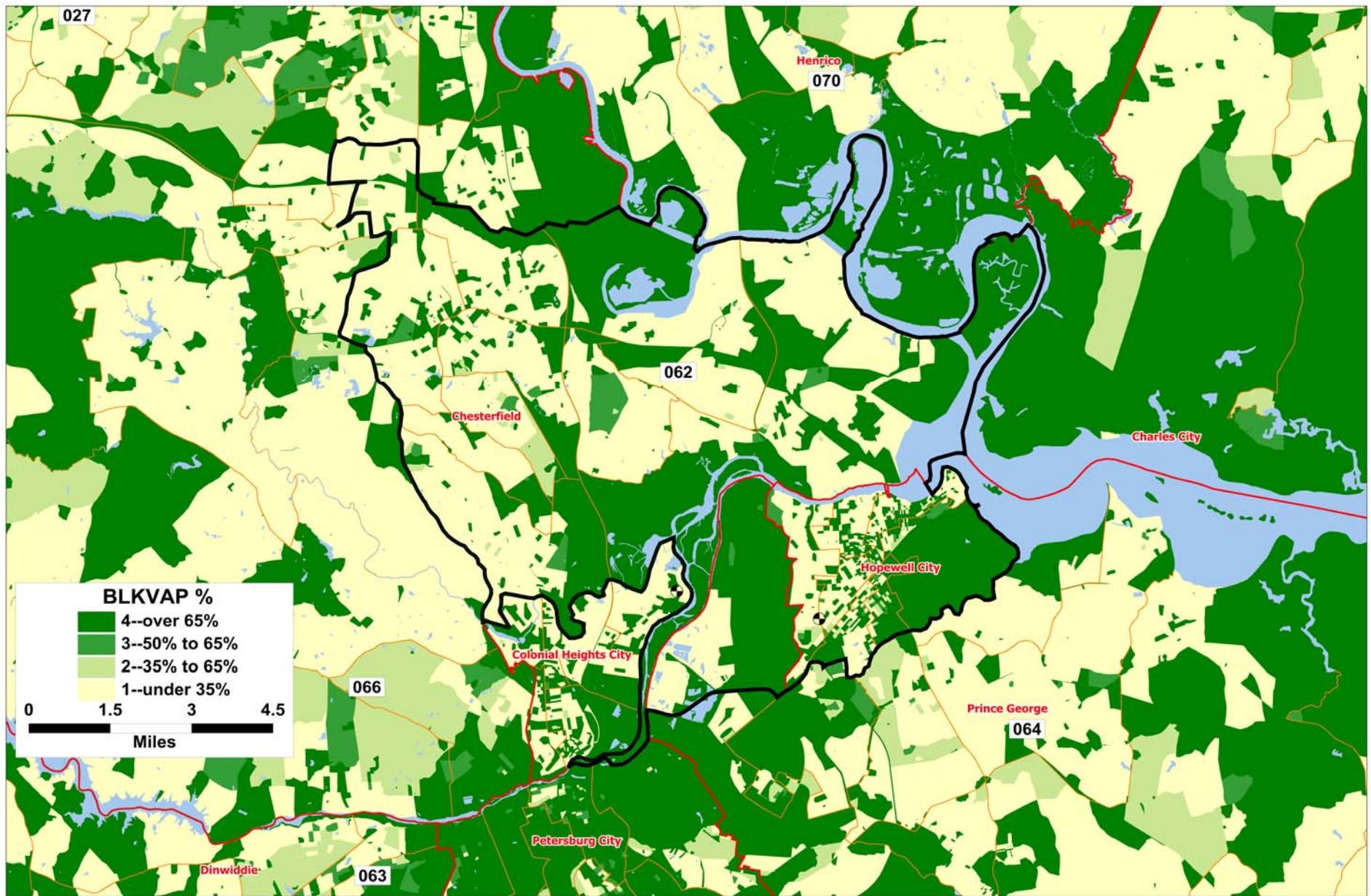
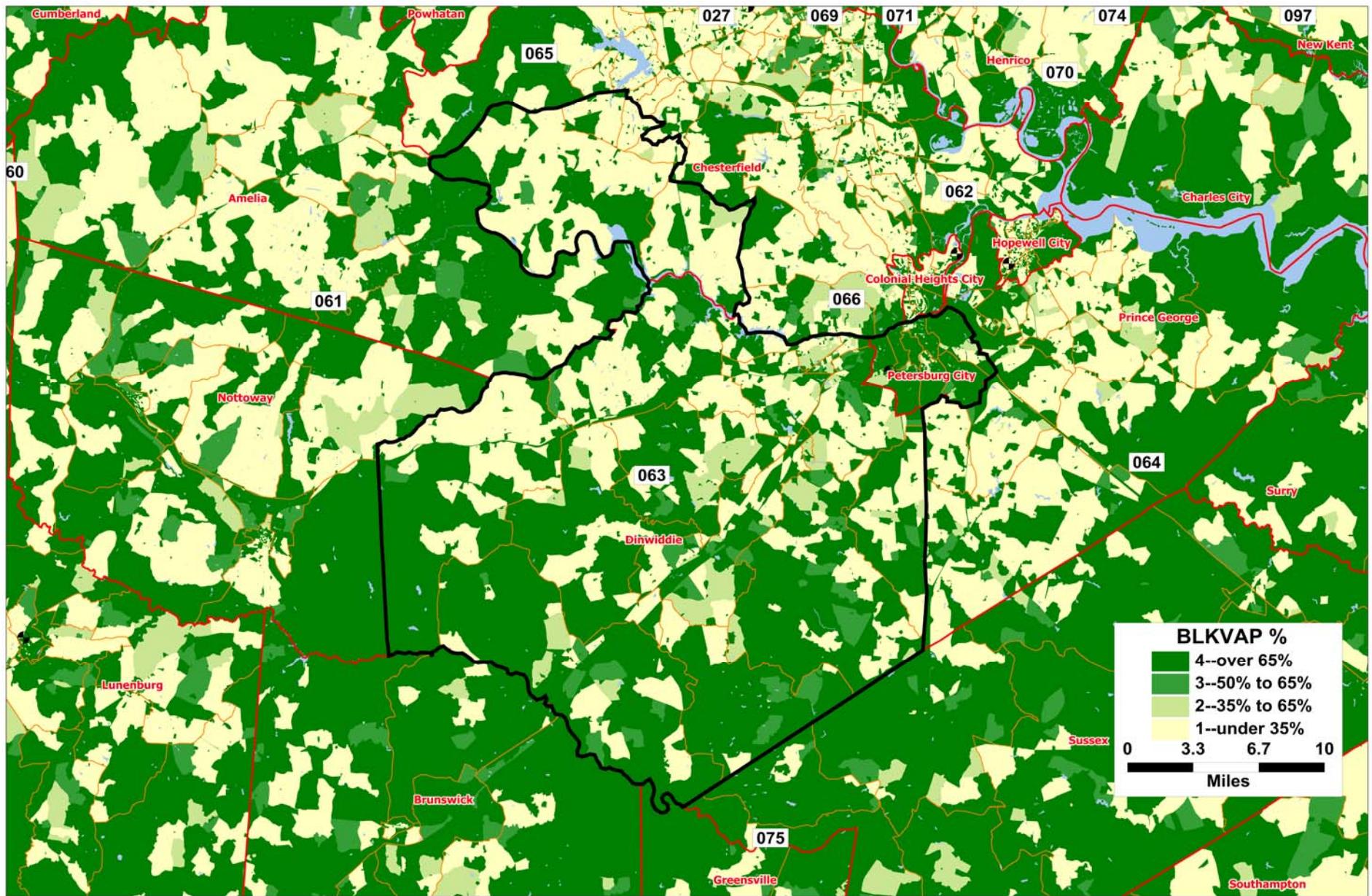


EXHIBIT B

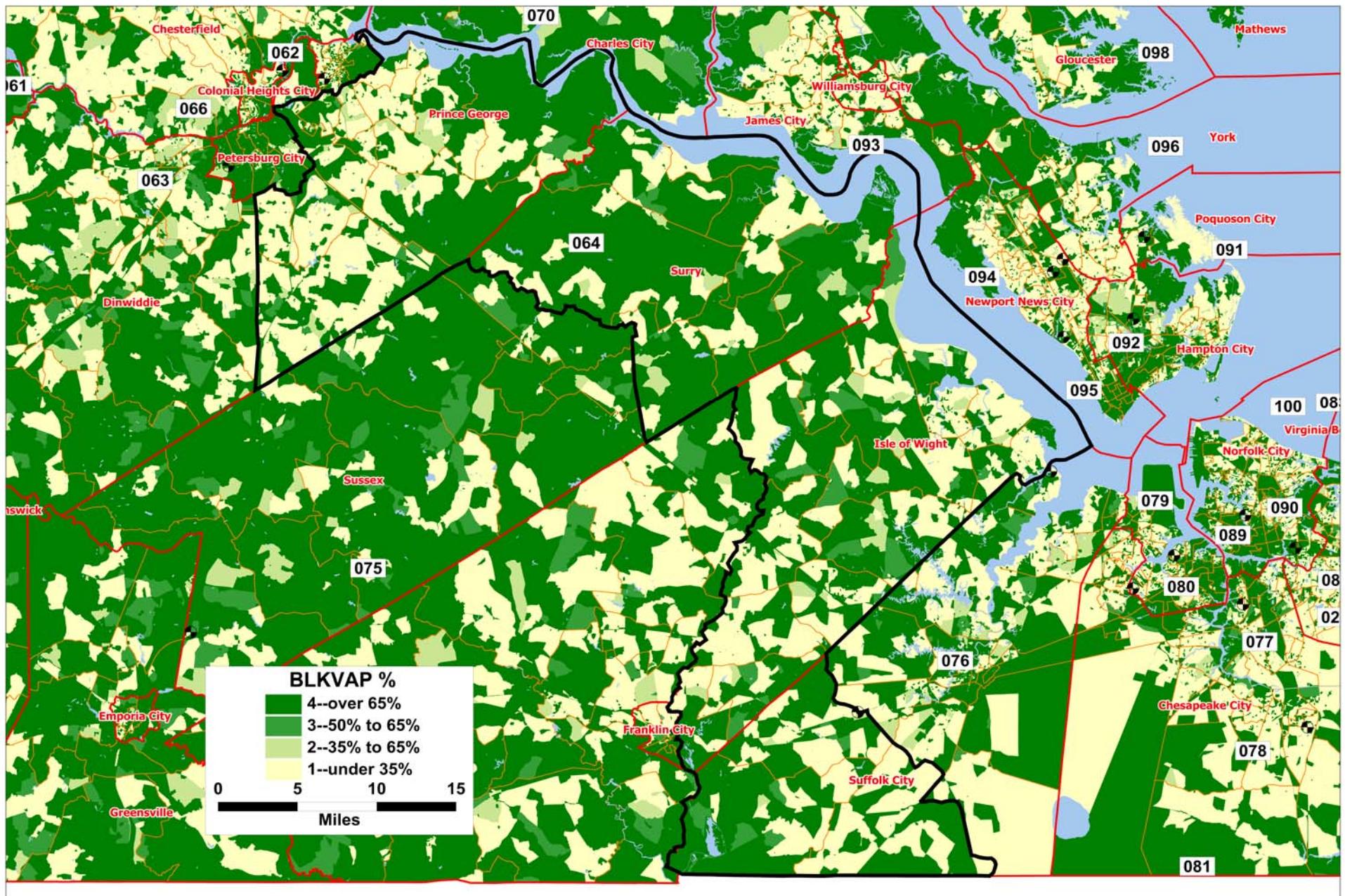
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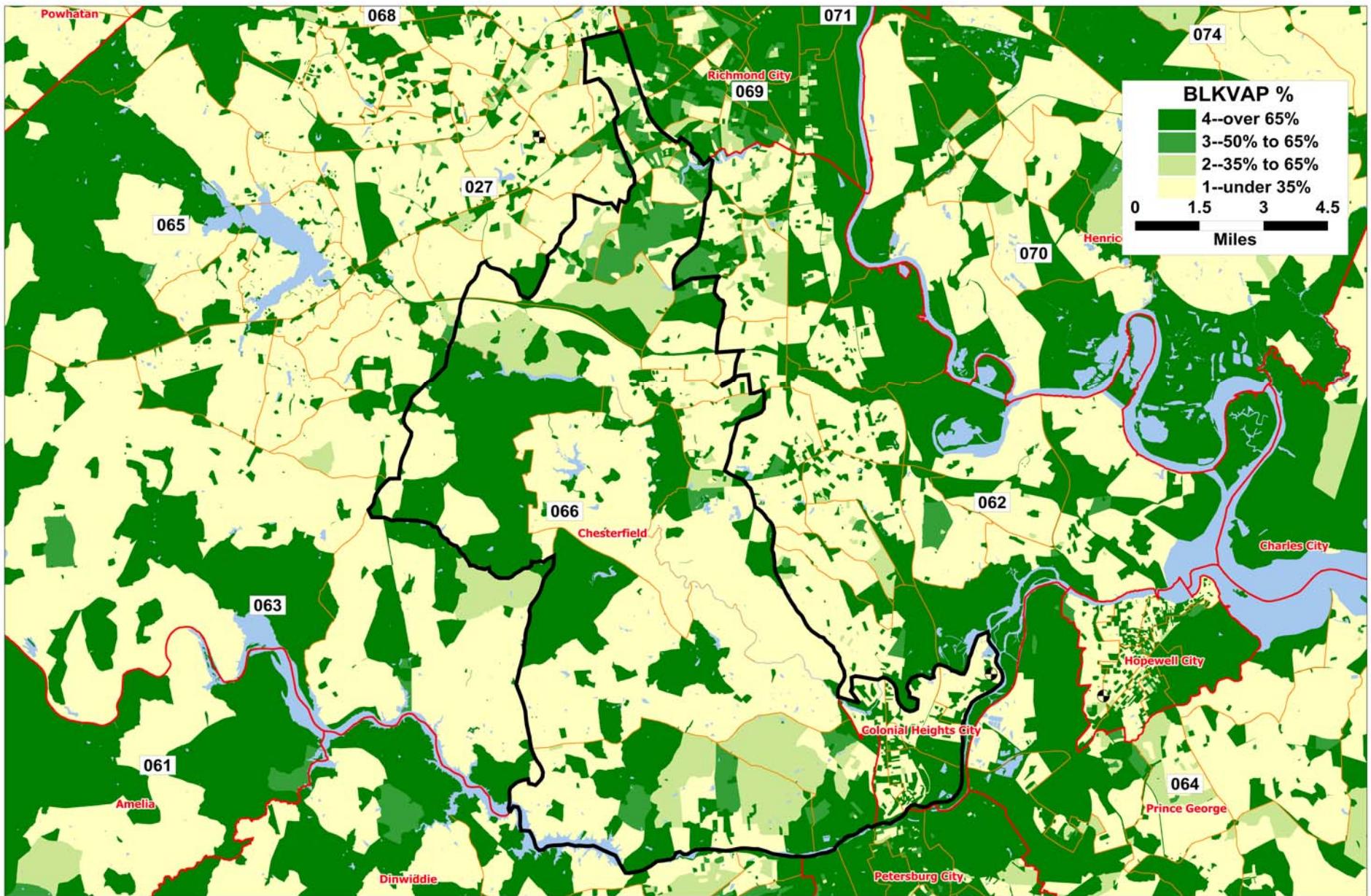
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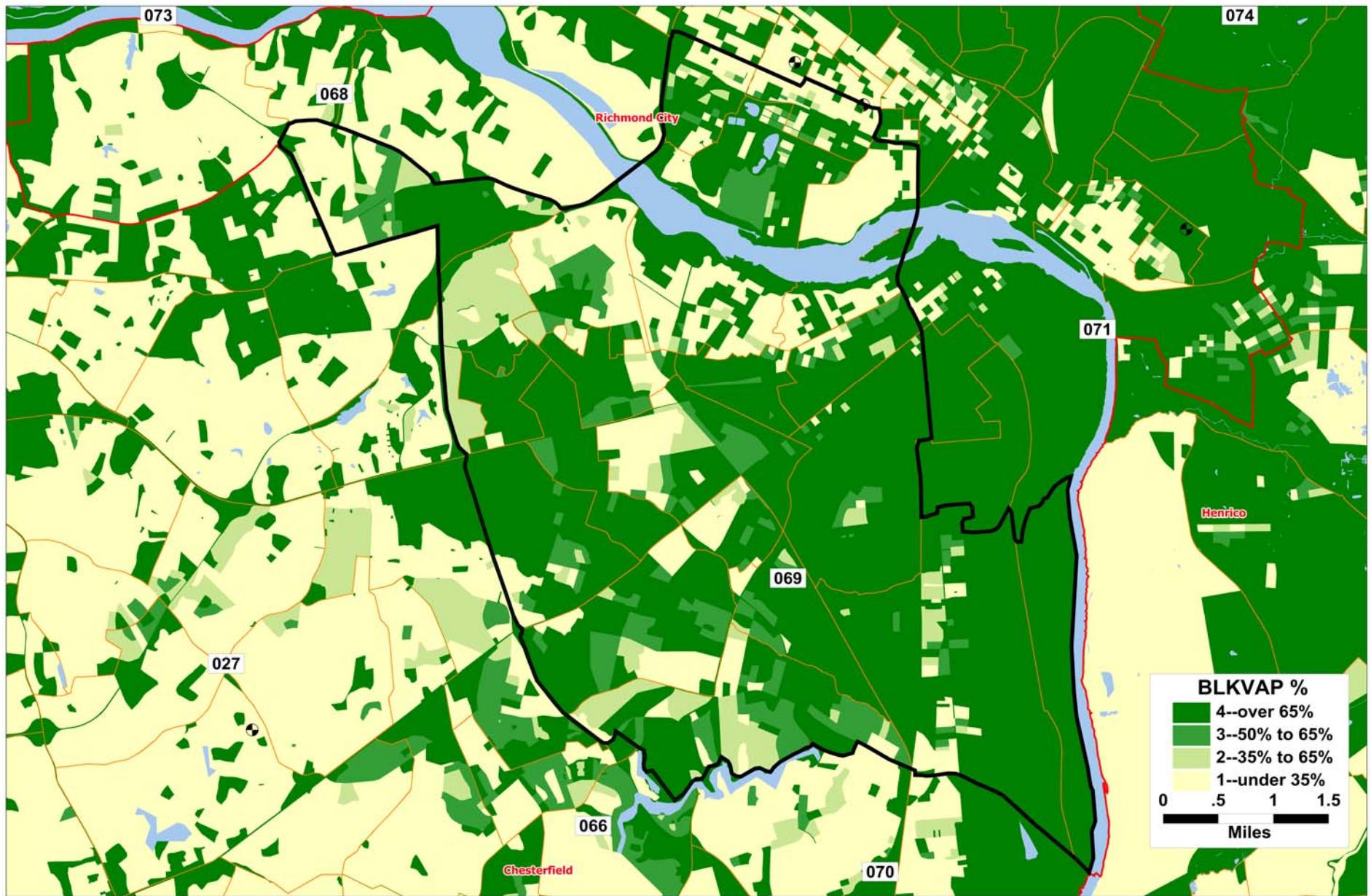
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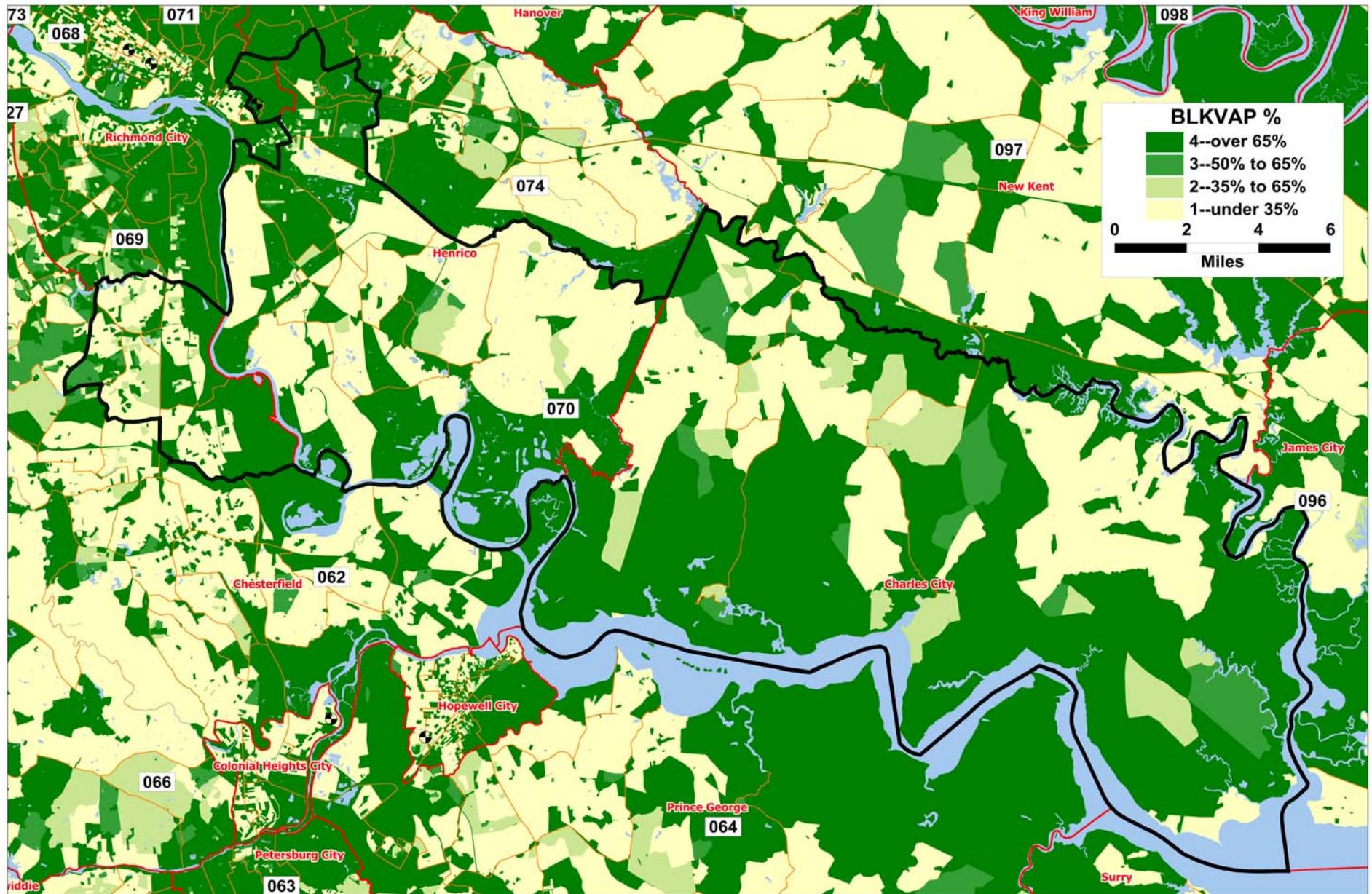
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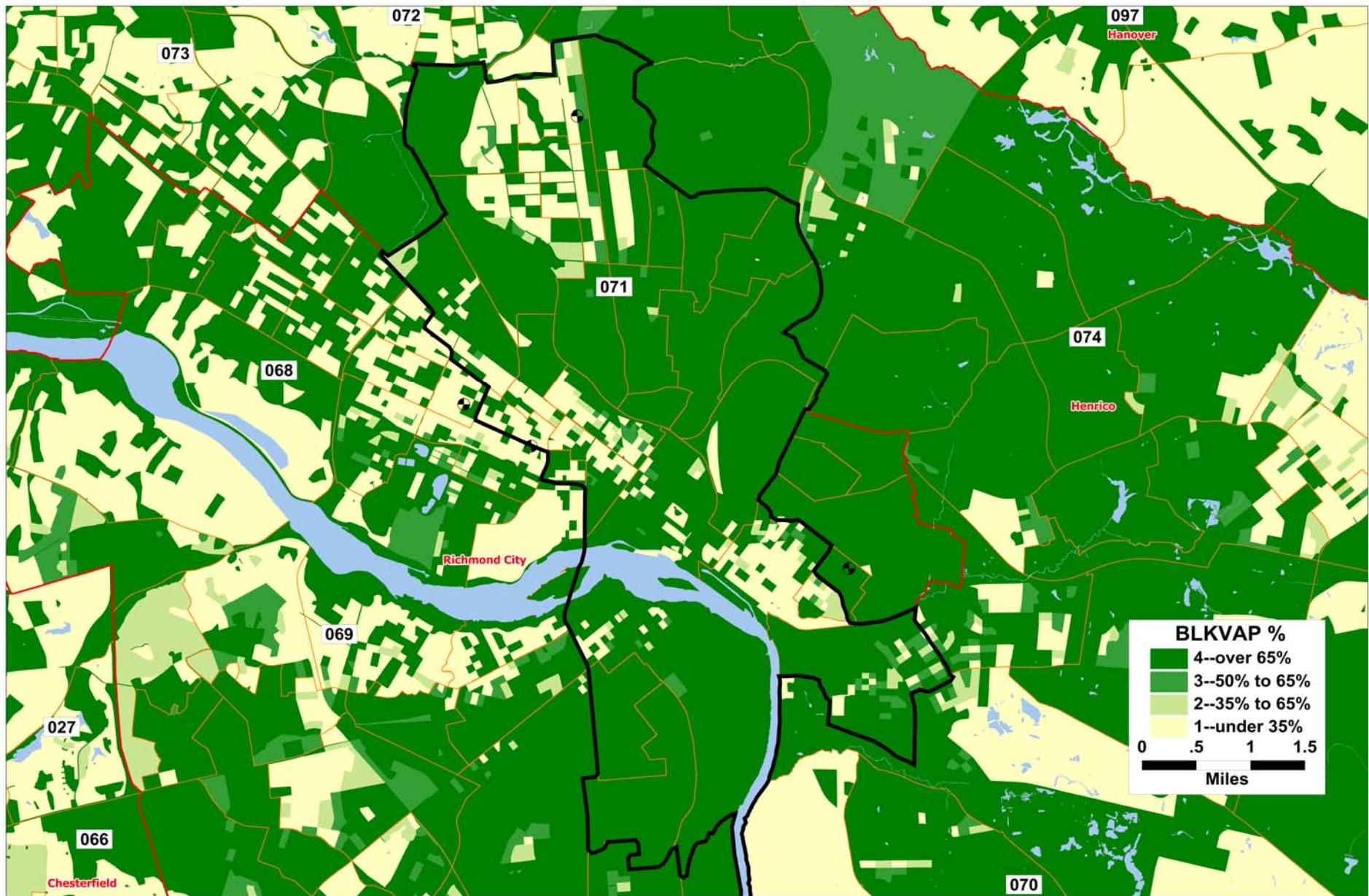
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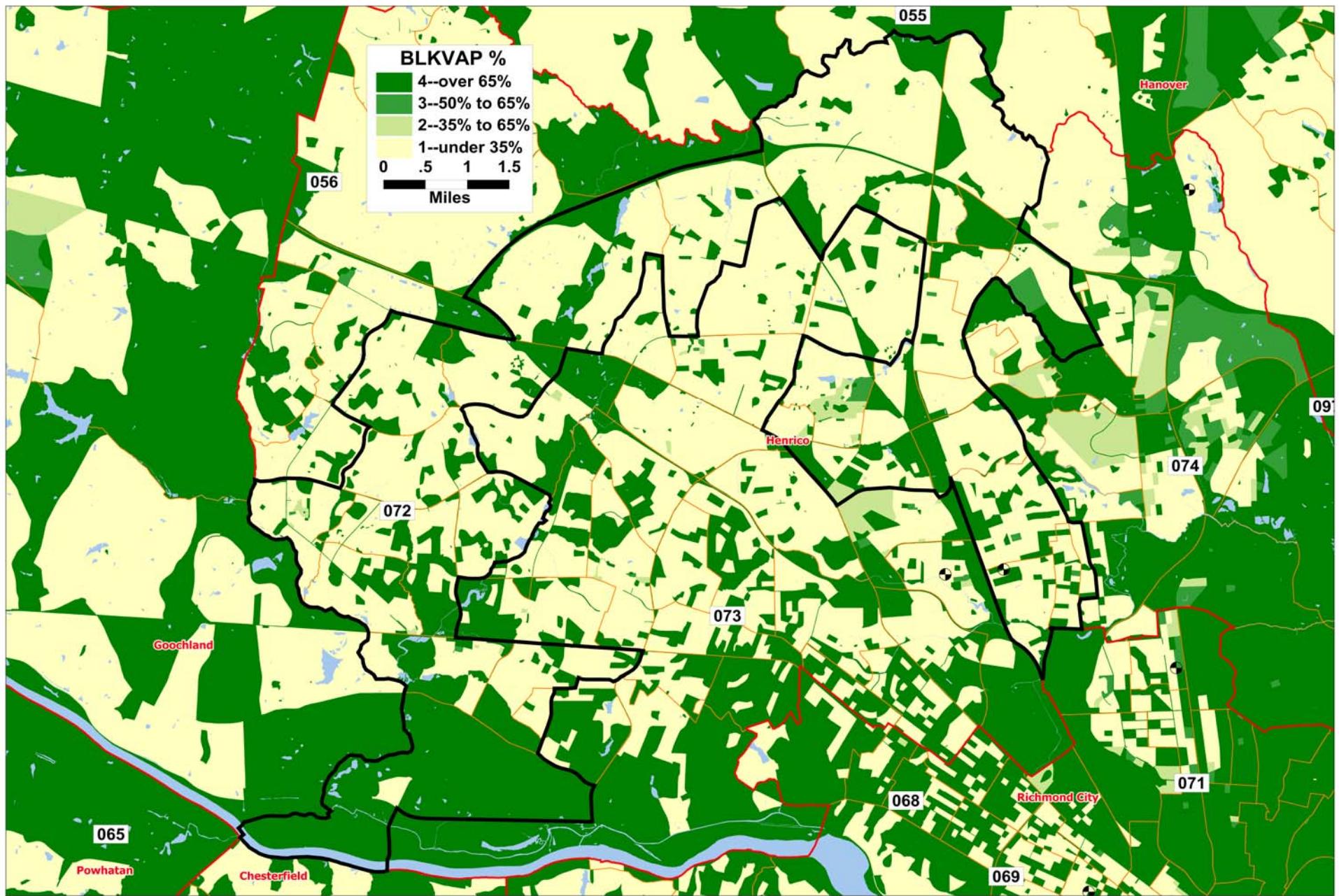
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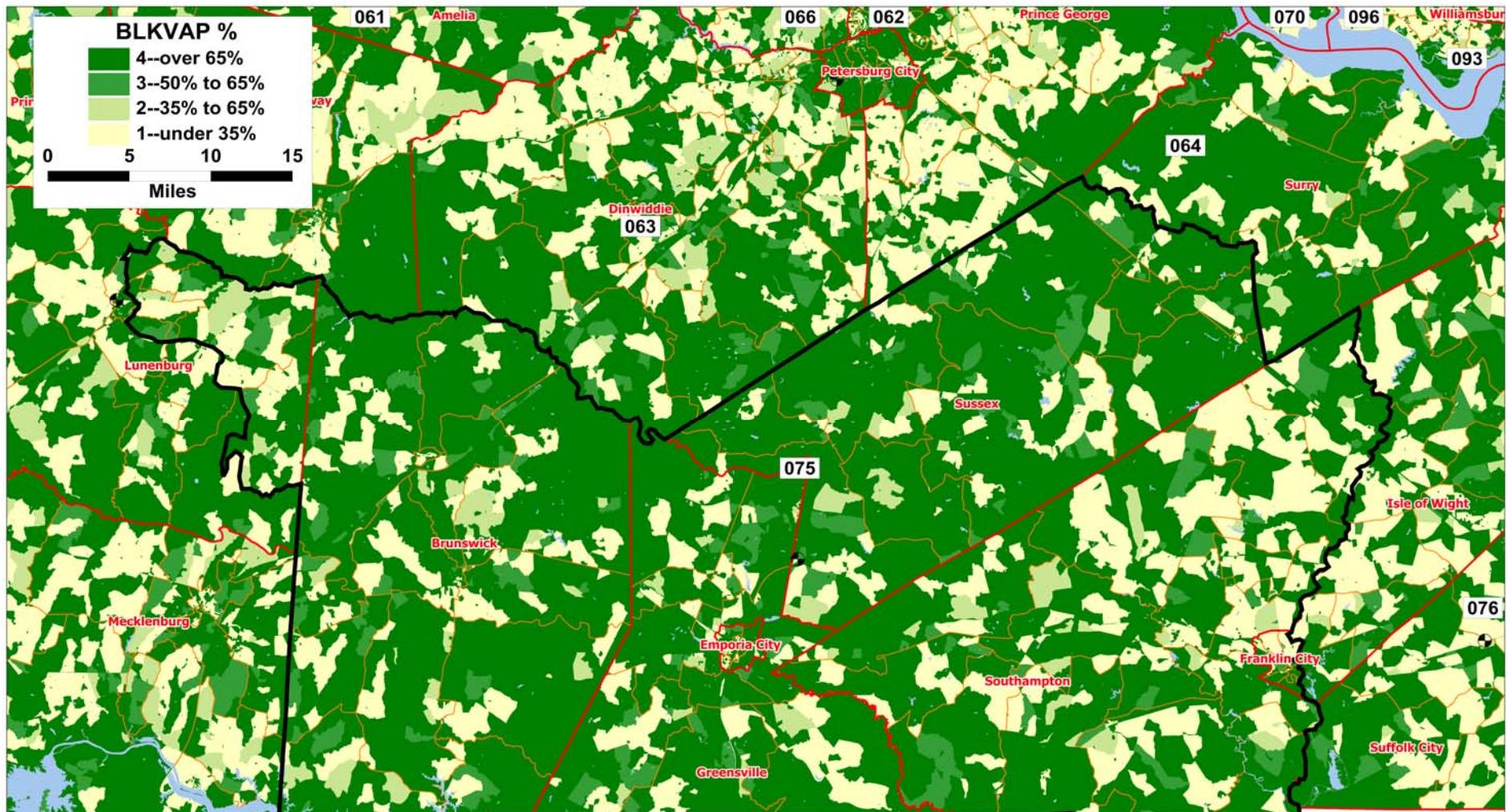
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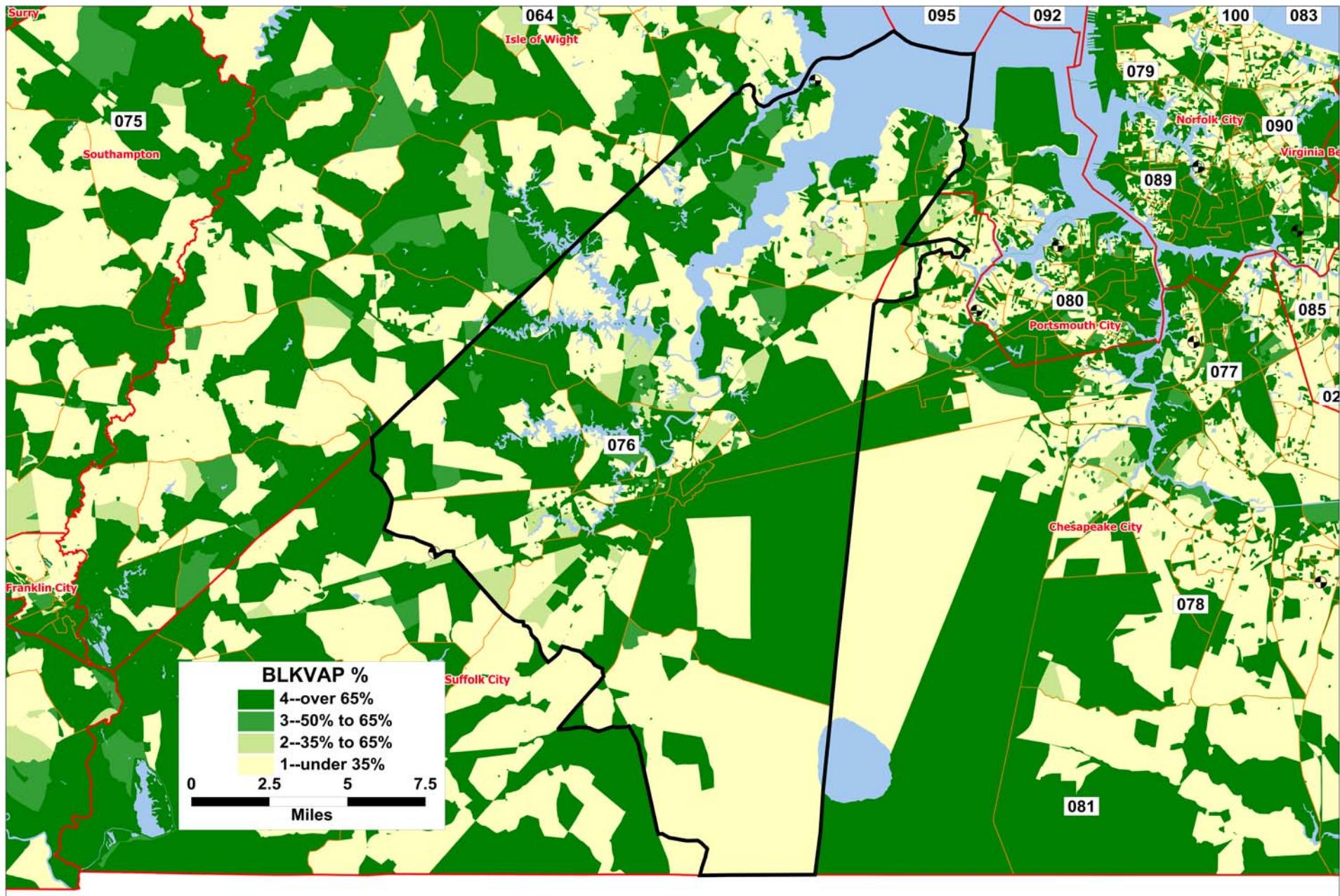
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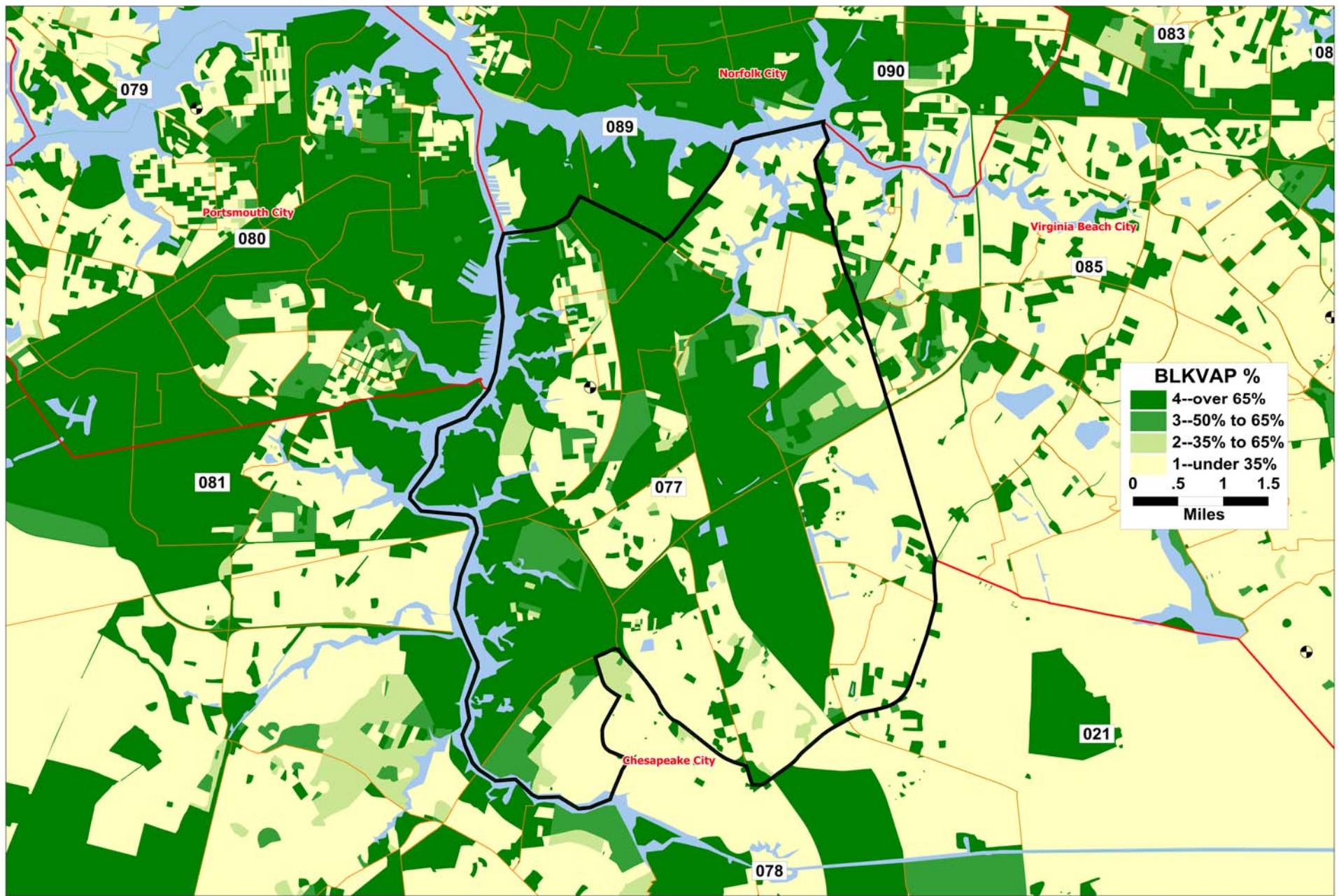
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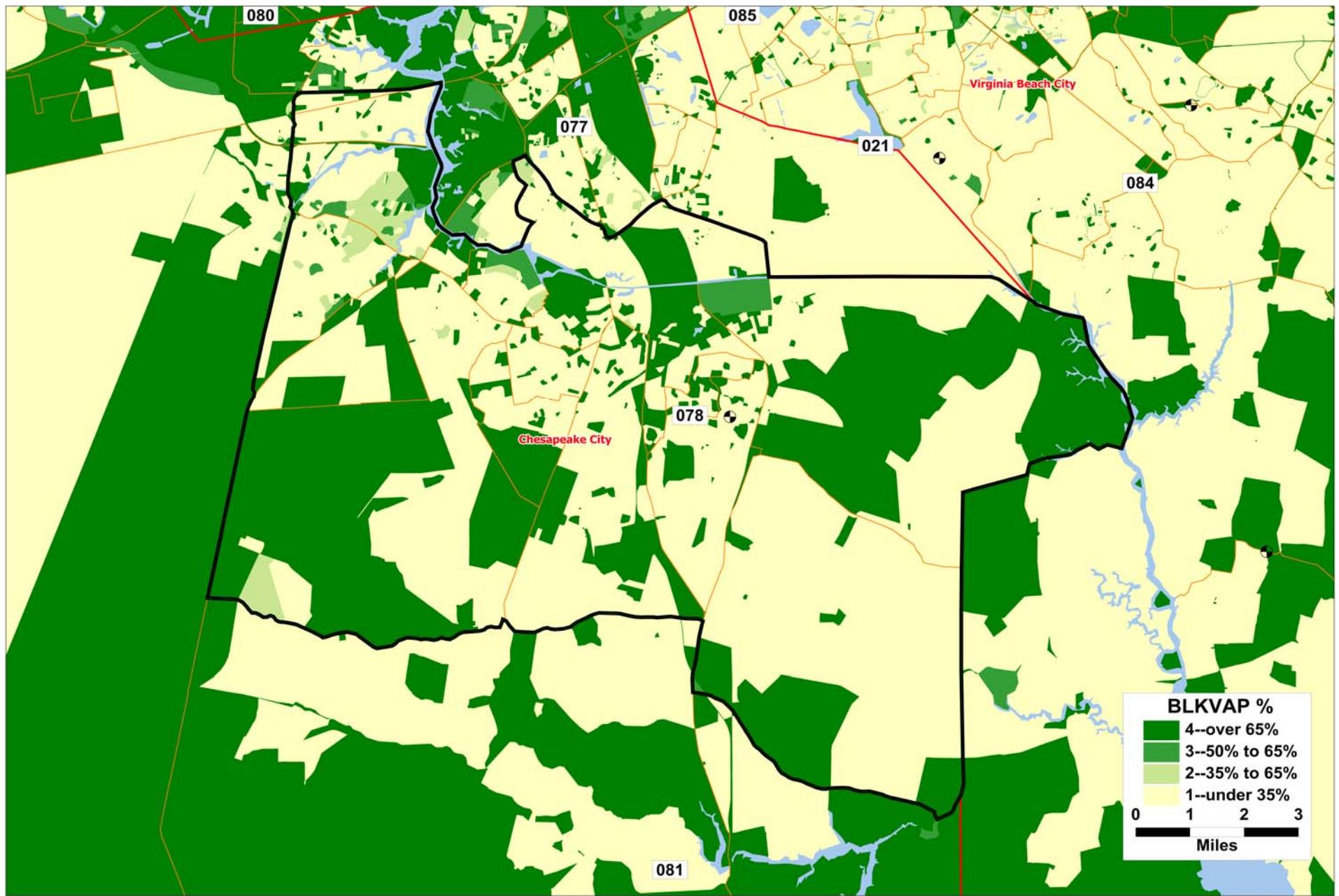
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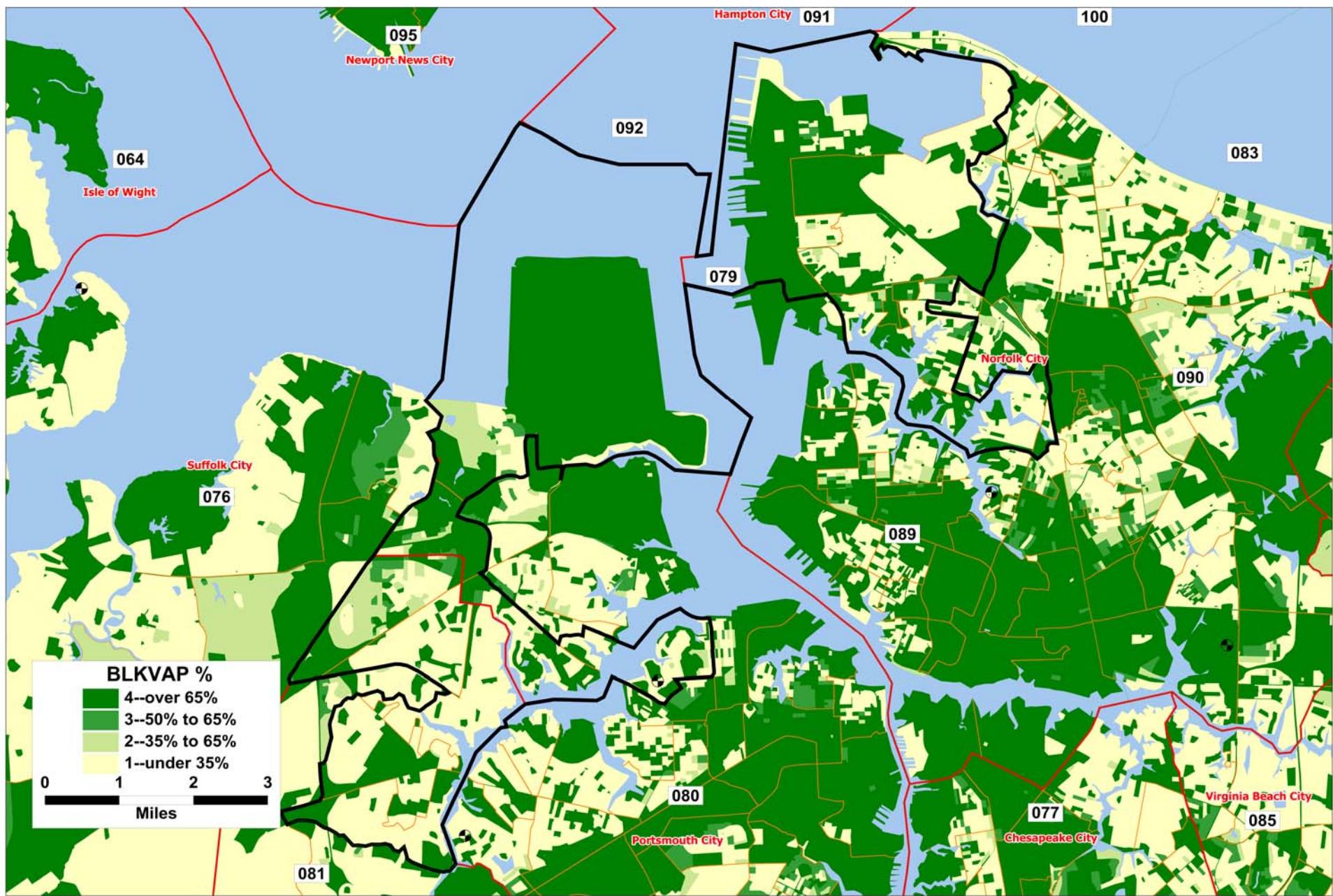
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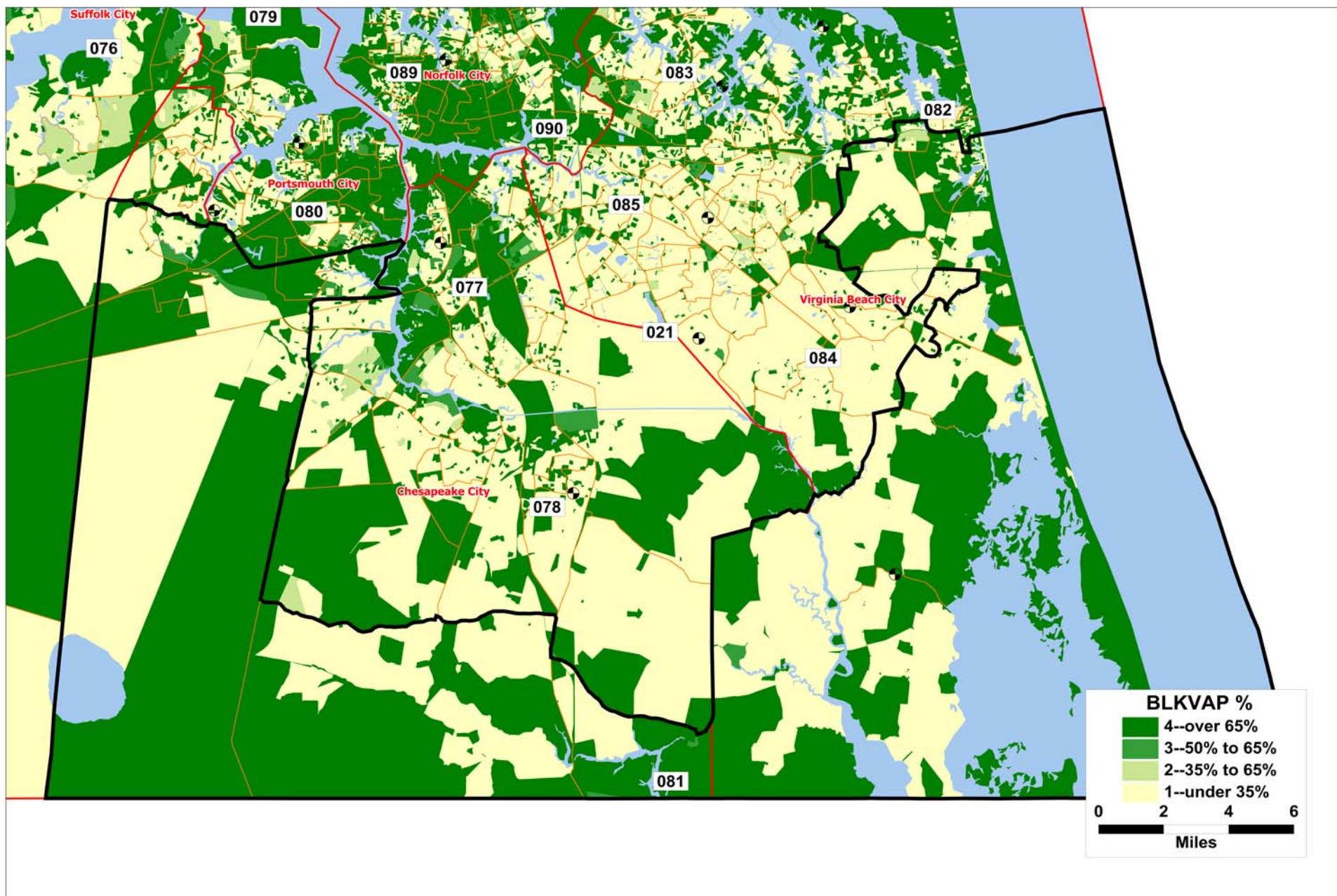
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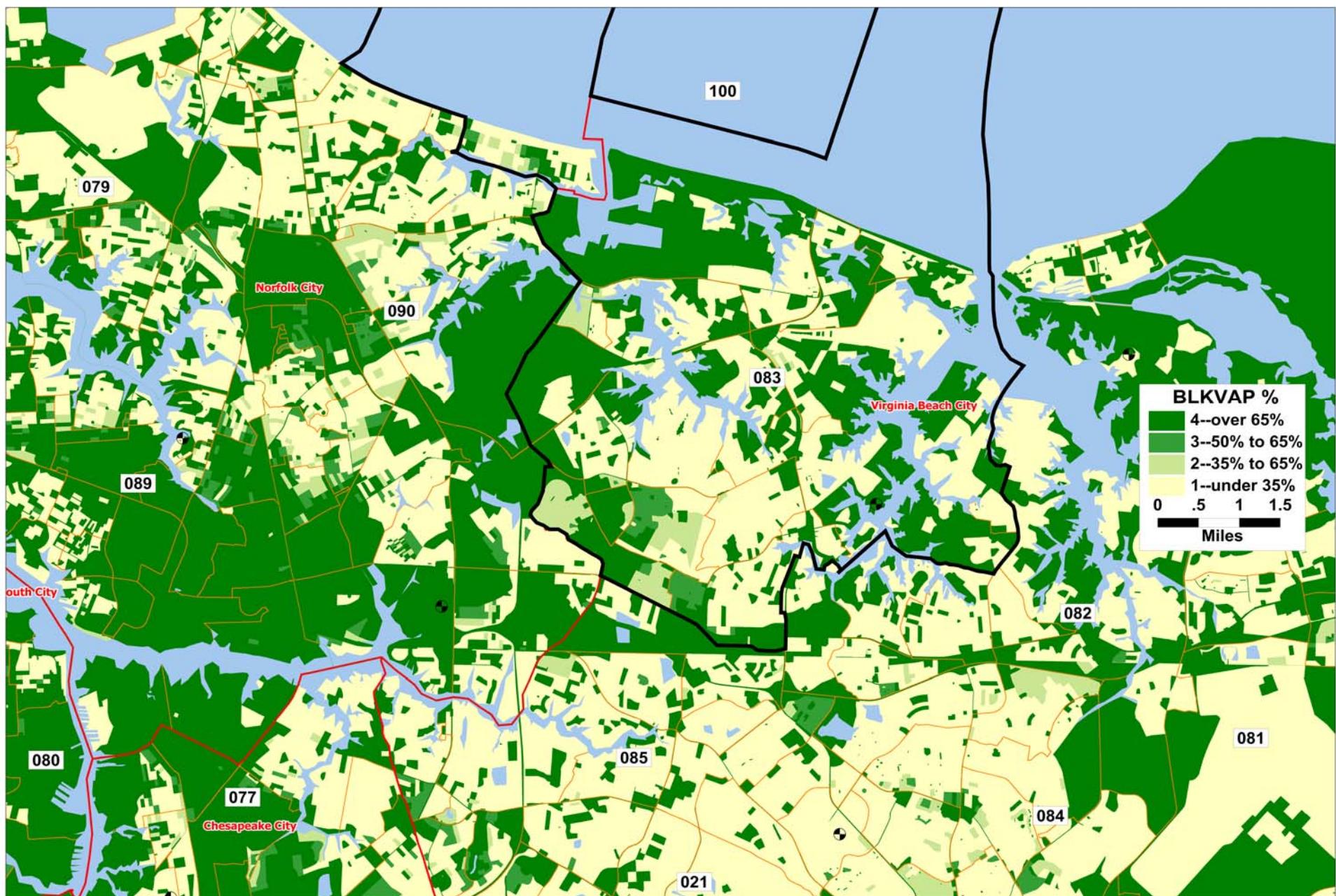
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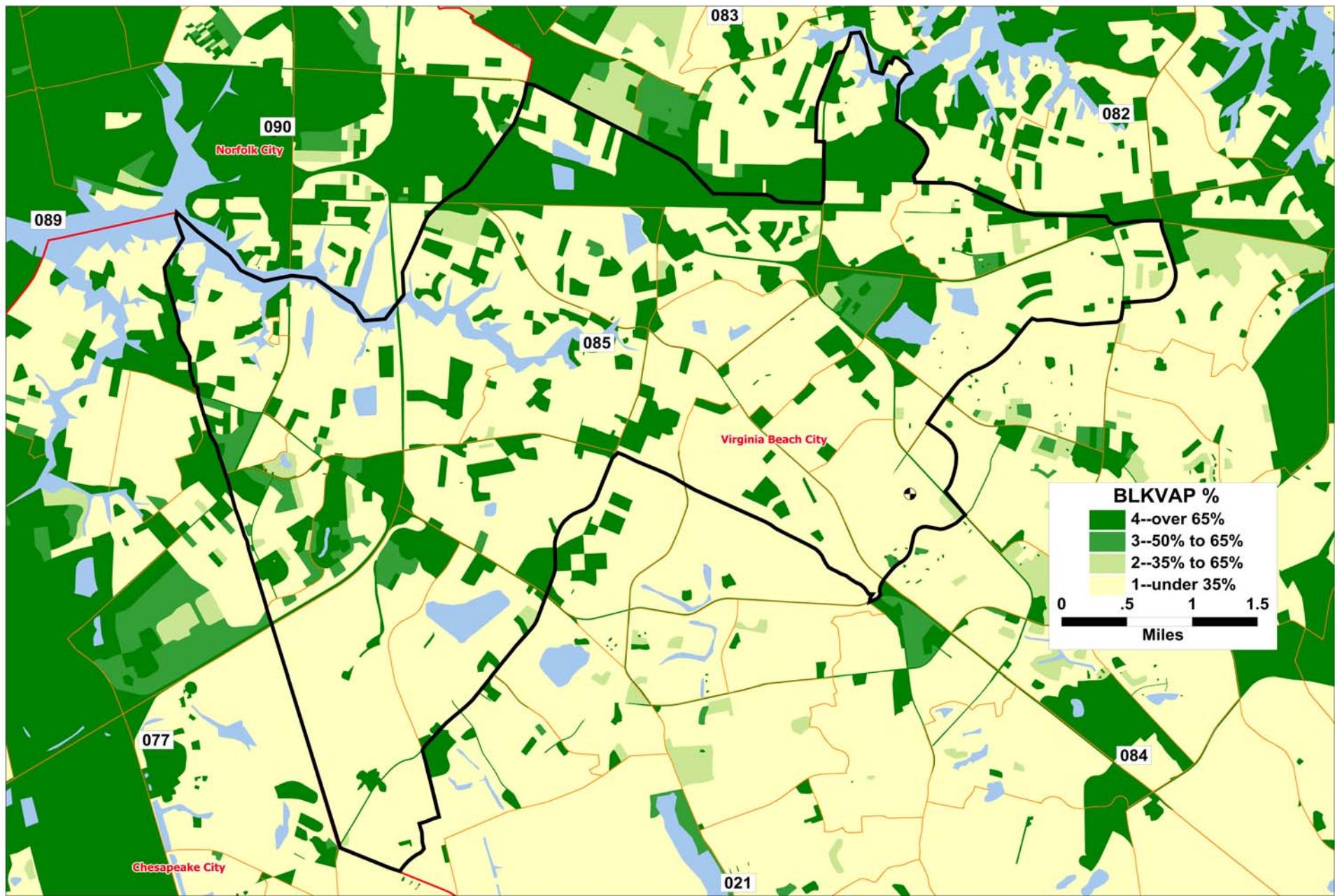
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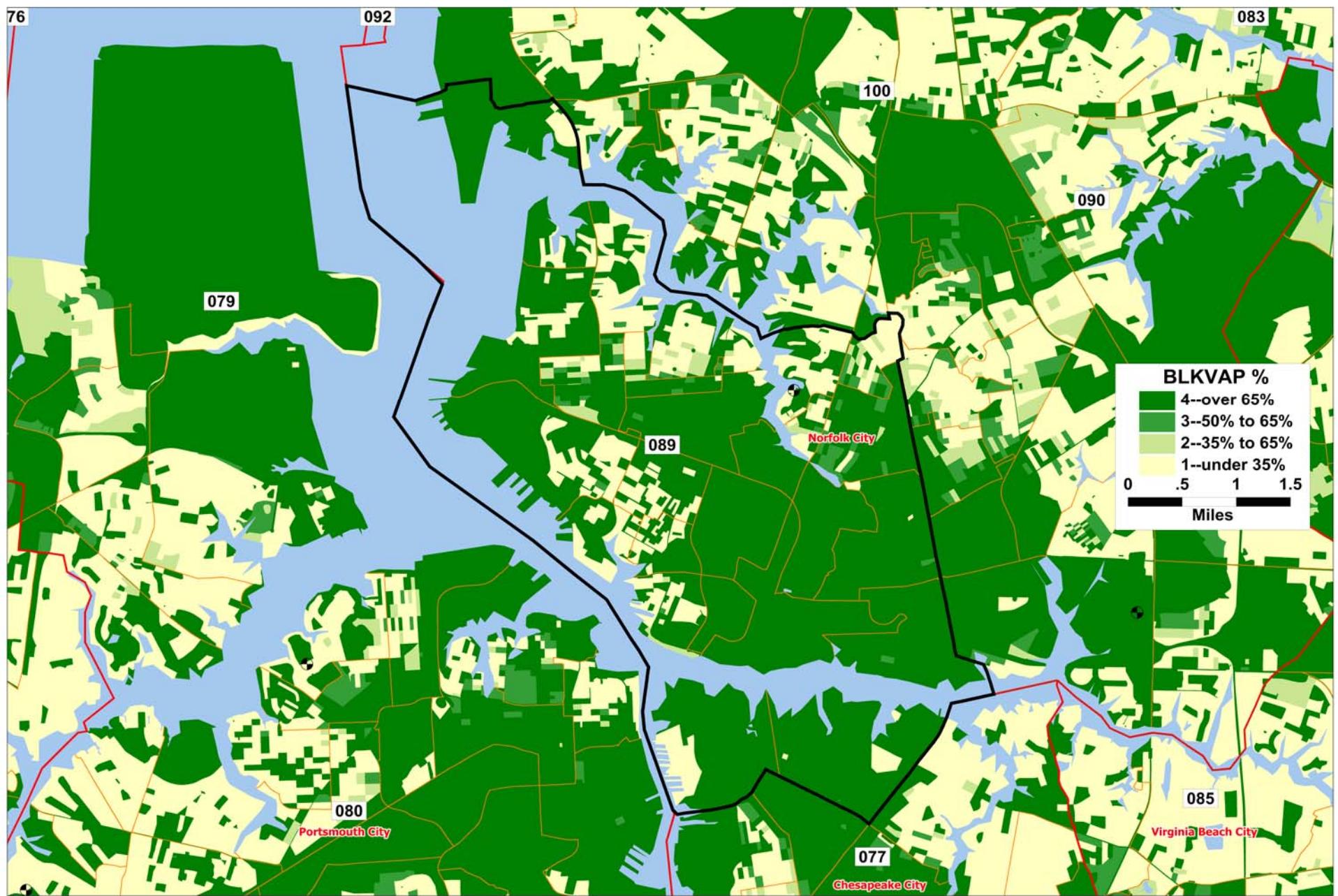
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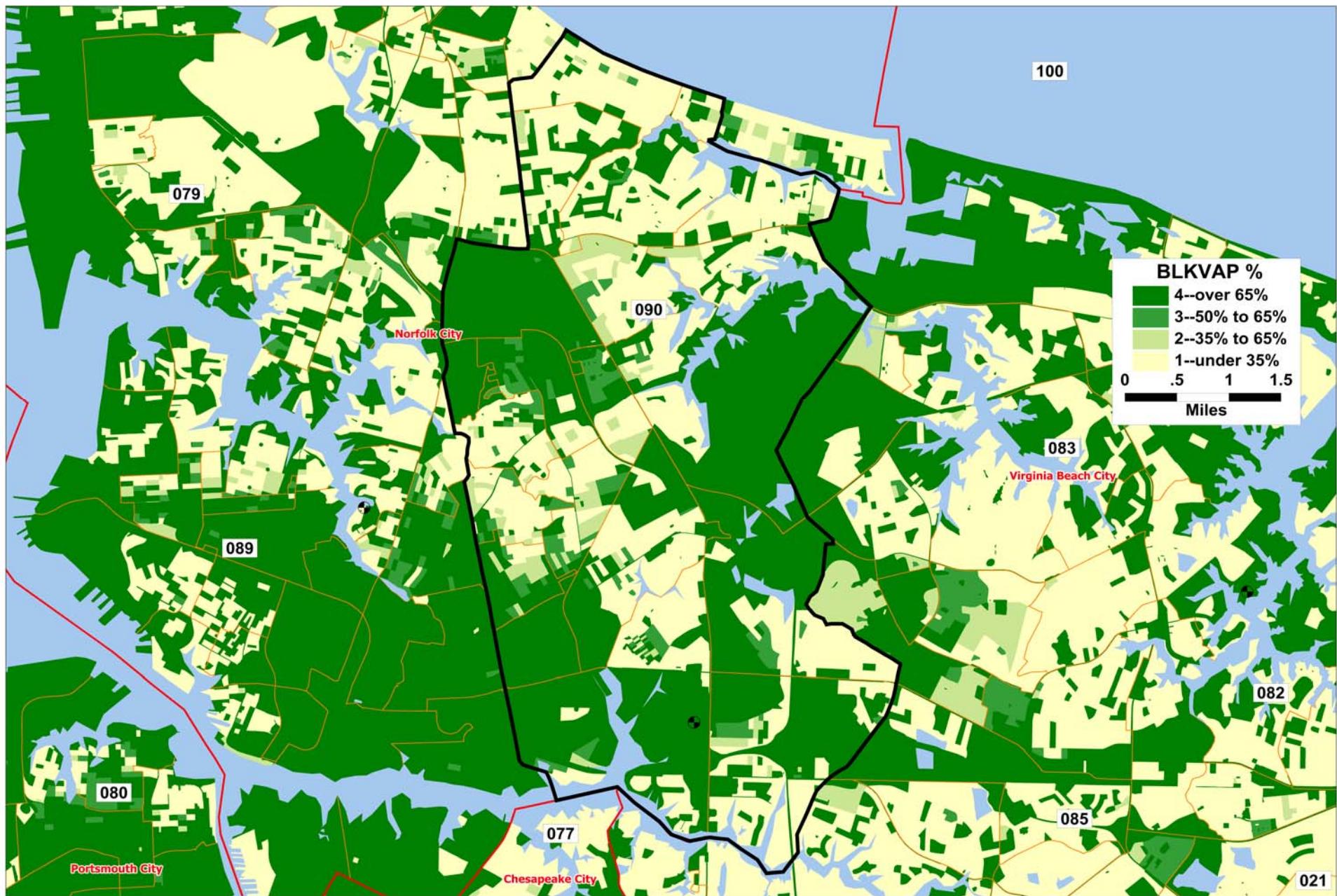
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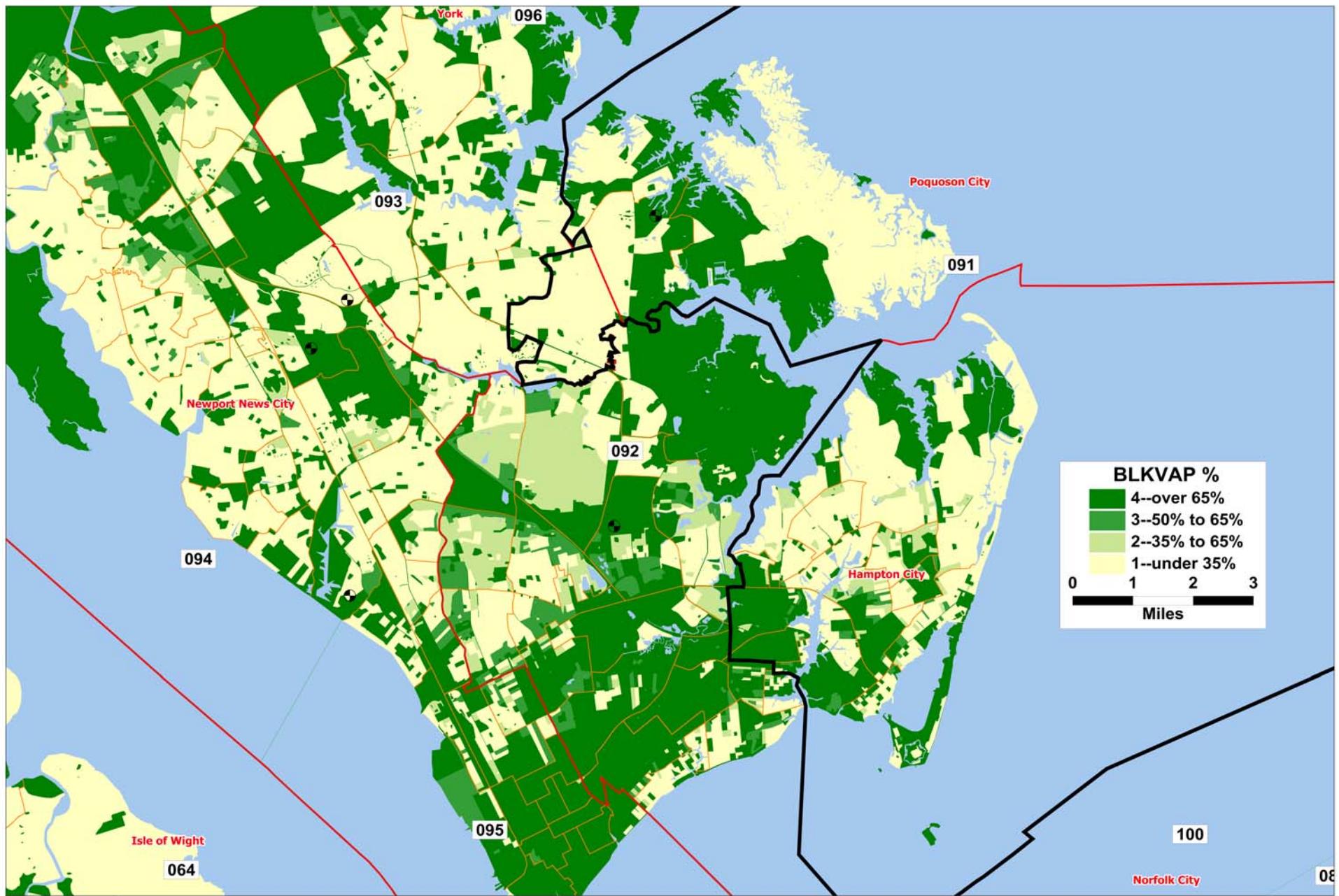
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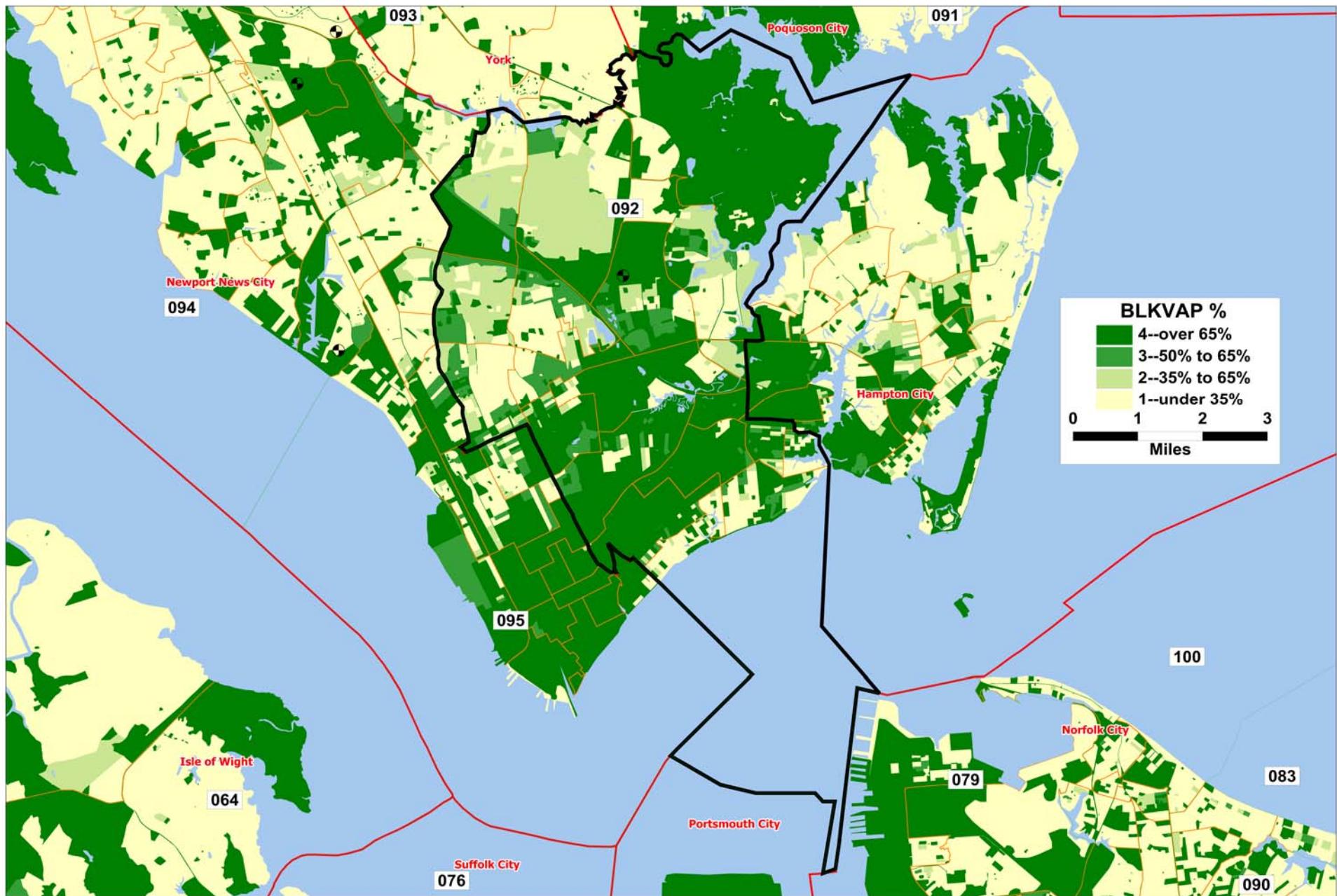
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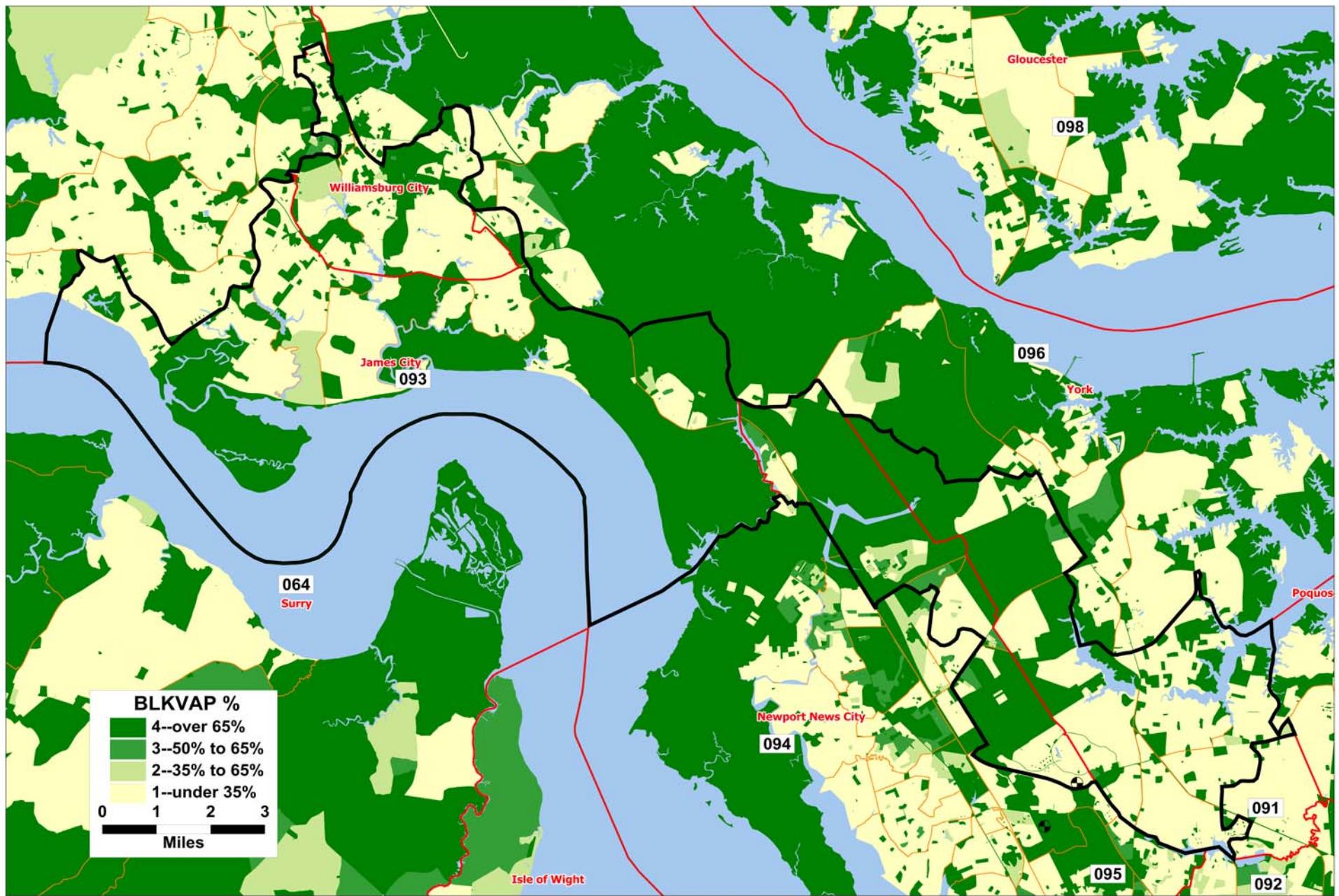
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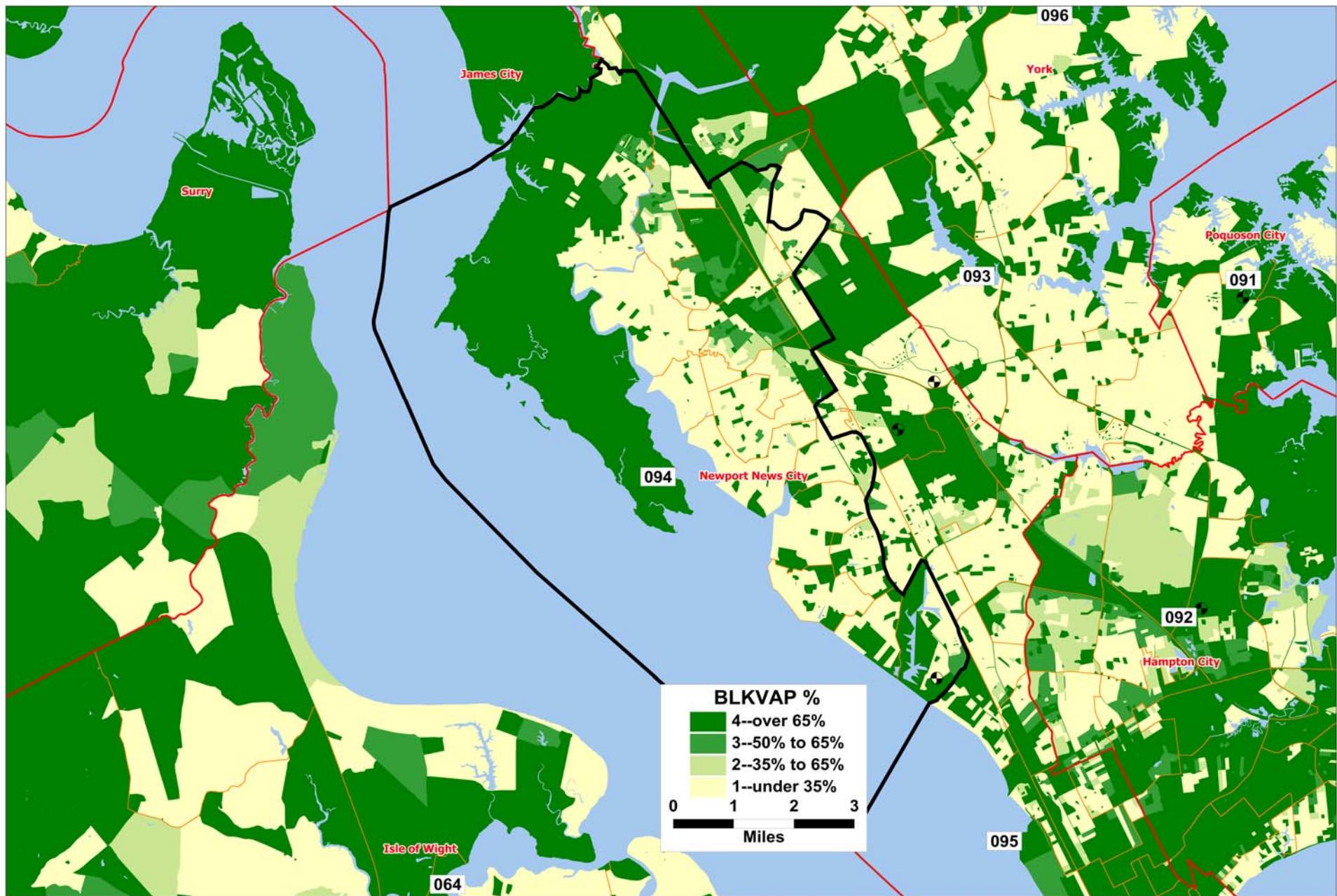
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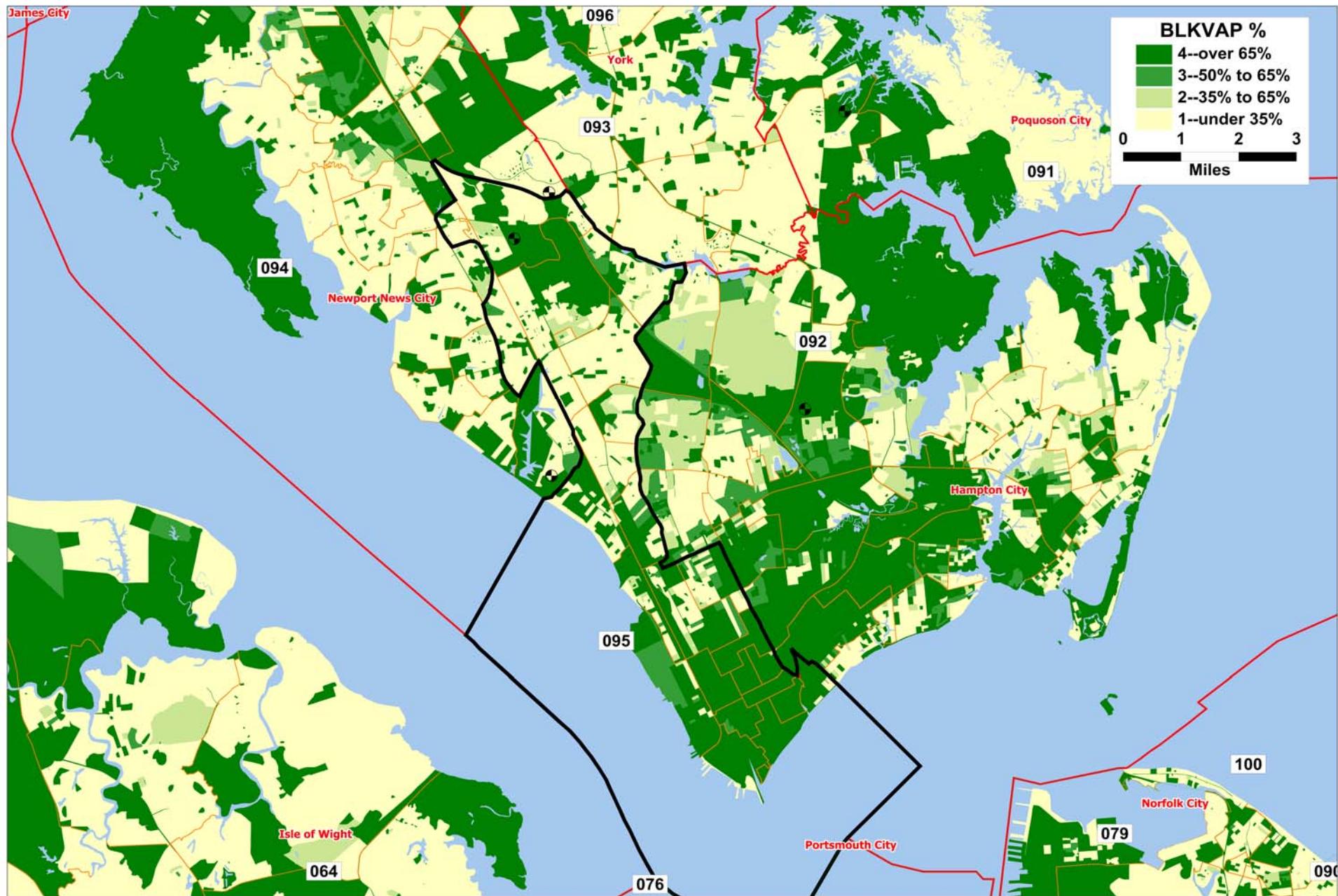


EXHIBIT C

Measures of Compactness

12/14/2018

Sum	N/A	12,194.31	N/A
Min	0.16	N/A	0.08
Max	0.62	N/A	0.55
Mean	0.36	N/A	0.26
Std. Dev.	0.12	N/A	0.10

DISTRICT	Reock	Perimeter	Polsby-Popper
001	0.26	227.35	0.30
002	0.30	93.54	0.18
003	0.28	292.62	0.21
004	0.49	266.02	0.20
005	0.19	263.33	0.17
006	0.27	248.16	0.26
007	0.50	203.47	0.25
008	0.47	181.28	0.26
009	0.35	251.38	0.24
010	0.23	140.16	0.18
011	0.59	39.19	0.26
012	0.39	167.64	0.22
013	0.16	64.78	0.13
014	0.24	177.73	0.16
015	0.55	192.64	0.34
016	0.36	249.09	0.18
017	0.25	113.32	0.09
018	0.62	219.76	0.24
019	0.43	302.85	0.17
020	0.27	310.02	0.15
021	0.42	34.13	0.31
022	0.20	223.41	0.11
023	0.26	164.71	0.15
024	0.44	305.00	0.25
025	0.26	197.21	0.18
026	0.46	125.93	0.36
027	0.35	49.01	0.25
028	0.39	69.89	0.26
029	0.36	158.32	0.21
030	0.53	176.19	0.36
031	0.38	117.22	0.19
032	0.46	33.77	0.31
033	0.33	139.37	0.23
034	0.24	58.59	0.22
035	0.20	36.26	0.19
036	0.43	31.12	0.30
037	0.18	35.13	0.18
038	0.62	20.41	0.45
039	0.35	39.91	0.19
040	0.26	81.40	0.17

DISTRICT	Reock	Perimeter	Popper P1sp919
041	0.36	26.35	0.32
042	0.35	66.68	0.20
043	0.22	35.91	0.21
044	0.43	28.62	0.32
045	0.29	22.76	0.26
046	0.52	13.79	0.55
047	0.41	17.85	0.33
048	0.18	38.72	0.16
049	0.24	22.13	0.16
050	0.46	33.57	0.34
051	0.24	80.97	0.18
052	0.23	33.07	0.25
053	0.46	23.54	0.34
054	0.47	101.20	0.25
055	0.57	174.35	0.28
056	0.34	199.55	0.22
057	0.45	30.99	0.41
058	0.32	226.28	0.19
059	0.30	311.90	0.21
060	0.38	272.68	0.31
061	0.32	382.52	0.17
062	0.48	74.38	0.18
063	0.57	166.78	0.28
064	0.32	274.09	0.19
065	0.37	180.22	0.27
066	0.37	79.68	0.23
067	0.32	37.77	0.25
068	0.36	44.72	0.25
069	0.36	30.95	0.36
070	0.29	158.37	0.16
071	0.20	37.19	0.17
072	0.26	71.51	0.08
073	0.39	50.41	0.15
074	0.19	71.54	0.18
075	0.41	286.99	0.32
076	0.44	86.32	0.45
077	0.55	26.35	0.52
078	0.49	60.35	0.42
079	0.27	67.40	0.11
080	0.55	31.33	0.36
081	0.32	166.00	0.20
082	0.57	57.33	0.45
083	0.50	43.44	0.29
084	0.44	42.22	0.26
085	0.39	29.04	0.30
086	0.35	34.48	0.25
087	0.22	83.36	0.17
088	0.28	157.47	0.13
089	0.38	23.22	0.48
090	0.42	23.56	0.52
091	0.60	70.04	0.44
092	0.33	46.37	0.26
093	0.20	91.56	0.14
094	0.45	40.00	0.52
095	0.25	41.90	0.30
096	0.20	152.09	0.17

DISTRICT	Reock	Perimeter	P11920 Popper
097	0.43	187.56	0.21
098	0.28	260.75	0.26
099	0.27	291.57	0.21
100	0.28	271.25	0.37

EXHIBIT D

DLS 1_ENACTED-HB5005 with VALD_2018-SM-H3C4_H311_H368-H362-H363(2018 inc.)

Plan 1: H311 DLS 1_ENACTED-HB5005

Plan 2: H3C4 VALD_2018-SM-H3C4_H311_H368-H362-H363

Dst	TotalPop	Same Dst	%Same	Diff Dst	%Diff	Member
1	80,508	80,508	100.0	0	0.0	KILGORE, TERRY G. (REP)
2	79,491	79,491	100.0	0	0.0	Foy, Jennifer D. Carroll (Dem)
3	80,583	80,583	100.0	0	0.0	MOREFIELD, JAMES W. 'WILL' (REP)
4	80,446	80,446	100.0	0	0.0	PILLION, TODD E. (REP)
5	80,600	80,600	100.0	0	0.0	O'QUINN, ISRAEL D. (REP)
6	79,608	79,608	100.0	0	0.0	CAMPBELL, JEFFREY L. (REP)
7	80,146	80,146	100.0	0	0.0	RUSH, LARRY N. 'NICK' (REP)
8	80,685	80,685	100.0	0	0.0	HABEEB, GREGORY D. (REP)
9	80,574	80,574	100.0	0	0.0	POINDEXTER, CHARLES D. (REP)
10	80,617	80,617	100.0	0	0.0	Gooditis, Wendy W. (Dem)
11	80,132	80,132	100.0	0	0.0	Rasoul, S. (Sam) (Dem)
12	80,492	80,492	100.0	0	0.0	Hurst, Chris L. (Dem)
13	80,579	80,579	100.0	0	0.0	Roem, Danica A. (Dem)
14	79,407	79,407	100.0	0	0.0	MARSHALL, D. W. 'DANNY', III (REP)
15	80,630	80,630	100.0	0	0.0	GILBERT, C. TODD (REP)
16	79,692	79,692	100.0	0	0.0	ADAMS, LES R. (REP)
17	80,631	80,631	100.0	0	0.0	HEAD, CHRISTOPHER T. (REP)
18	79,450	79,450	100.0	0	0.0	WEBERT, MICHAEL J. (REP)
19	80,080	80,080	100.0	0	0.0	AUSTIN, TERRY L. (REP)
20	79,334	79,334	100.0	0	0.0	BELL, RICHARD P. 'DICKIE' (REP)
21	79,608	79,608	100.0	0	0.0	Convirs-Fowler, Kelly K. (Dem)
22	79,307	79,307	100.0	0	0.0	BYRON, KATHY J. (REP)
23	79,330	79,330	100.0	0	0.0	GARRETT, T. SCOTT (REP)
24	79,678	79,678	100.0	0	0.0	CLINE, BEN L. (REP)
25	80,011	80,011	100.0	0	0.0	LANDES, R. STEVEN 'STEVE' (REP)
26	80,688	80,688	100.0	0	0.0	WILT, TONY O. (REP)
27	79,381	79,381	100.0	0	0.0	ROBINSON, ROXANN L. (REP)
28	79,304	79,304	100.0	0	0.0	THOMAS, ROBERT M. 'BOB' (REP)
29	79,851	79,851	100.0	0	0.0	COLLINS, CHRISTOPHER E. (REP)
30	80,583	80,583	100.0	0	0.0	FREITAS, NICHOLAS J. (REP)
31	79,210	79,210	100.0	0	0.0	Guzman, Elizabeth R. (Dem)
32	80,268	80,268	100.0	0	0.0	Reid, David A. (Dem)
33	80,550	80,550	100.0	0	0.0	LAROCK, DAVE A. (REP)
34	80,722	80,722	100.0	0	0.0	Murphy, Kathleen J. (Dem)
35	80,213	80,213	100.0	0	0.0	Keam, Mark L. (Dem)
36	79,746	79,746	100.0	0	0.0	Plum, Kenneth R. (Dem)
37	80,255	80,255	100.0	0	0.0	Bulova, David L. (Dem)
38	80,758	80,758	100.0	0	0.0	Kory, L. Kaye (Dem)
39	80,710	80,710	100.0	0	0.0	Watts, Vivian E. (Dem)
40	80,729	80,729	100.0	0	0.0	HUGO, TIMOTHY D. (REP)
41	80,792	80,792	100.0	0	0.0	Filler-Corn, Eileen (Dem)
42	79,964	79,964	100.0	0	0.0	Tran, Kathy K. L. (Dem)
43	80,750	80,750	100.0	0	0.0	Sickles, Mark D. (Dem)
44	80,796	80,796	100.0	0	0.0	Krizek, Paul E. (Dem)
45	80,240	80,240	100.0	0	0.0	Levine, Mark H. (Dem)
46	80,333	80,333	100.0	0	0.0	Herring, Charniele L. (Dem)
47	80,757	80,757	100.0	0	0.0	Hope, Patrick A. (Dem)
48	79,492	79,492	100.0	0	0.0	Sullivan, R.C. (Rip), Jr. (Dem)
49	80,609	80,609	100.0	0	0.0	Lopez, Alfonso H. (Dem)
50	80,677	80,677	100.0	0	0.0	Carter, Lee J. (Dem)
51	80,372	80,372	100.0	0	0.0	Ayala, Hala S. (Dem)
52	79,290	79,290	100.0	0	0.0	Torian, Luke E. (Dem)
53	80,049	80,049	100.0	0	0.0	Simon, Marcus B. (Dem)
54	80,155	80,155	100.0	0	0.0	ORROCK, ROBERT D. 'BOBBY' (REP)
55	79,578	79,578	100.0	0	0.0	FOWLER, H. F. 'BUDDY', JR. (REP)
56	79,271	79,271	100.0	0	0.0	MCGUIRE, JOHN J., III (REP)
57	80,778	80,778	100.0	0	0.0	Toscano, David J. (Dem)
58	80,767	80,767	100.0	0	0.0	BELL, ROBERT B., III (REP)
59	79,345	79,345	100.0	0	0.0	FARISS, C. MATTHEW (REP)
60	79,219	79,219	100.0	0	0.0	EDMUND, JAMES E., II (REP)

61	79,792	79,792	100.0	0	0.0	WRIGHT, THOMAS C. 'TOMMY', JR. (REP)
62	79,677	44,856	56.3	34,821	43.7	INGRAM, RILEY EDWARD (REP)
63	79,602	50,537	63.5	29,065	36.5	@Aird, Lashrecse D. (Dem)
64	79,262	67,877	85.6	11,385	14.4	BREWER, EMILY M. (REP)
65	79,364	79,364	100.0	0	0.0	WARE, R. LEE, JR. (REP)
66	79,397	32,511	40.9	46,886	59.1	COX, M. KIRKLAND 'KIRK' (REP)
67	79,633	79,633	100.0	0	0.0	Delaney, Karrie K. (Dem)
68	79,611	79,611	100.0	0	0.0	Adams, Dawn M. (Dem)
69	79,386	65,927	83.0	13,459	17.0	@Carr, Betsy B. (Dem)
70	79,382	48,273	60.8	31,109	39.2	@McQuinn, Delores L. (Dem)
71	80,322	68,394	85.1	11,928	14.9	@Bourne, Jeff M. (Dem)
72	80,764	76,881	95.2	3,883	4.8	VanValkenburg, Schuyler T. (Dem)
73	80,135	80,135	100.0	0	0.0	Rodman, Debra H. (Dem)
74	79,594	63,130	79.3	16,464	20.7	@Bagby, Lamont (Dem)
75	79,295	67,902	85.6	11,393	14.4	Tyler, Roslyn C. (Dem)
76	80,313	49,413	61.5	30,900	38.5	JONES, S. C. 'CHRIS' (REP)
77	79,627	48,632	61.1	30,995	38.9	@Hayes, C. E. 'Cliff', Jr. (Dem)
78	80,475	53,149	66.0	27,326	34.0	LEFTWICH, J. A. 'JAY', JR. (REP)
79	80,243	40,083	50.0	40,160	50.0	Heretick, Steve E. (Dem)
80	80,705	48,717	60.4	31,988	39.6	@James, Matthew (Dem)
81	79,438	53,944	67.9	25,494	32.1	KNIGHT, BARRY D. (REP)
82	80,463	80,463	100.0	0	0.0	MIYARES, JASON S. (REP)
83	79,538	50,680	63.7	28,858	36.3	STOLLE, CHRIS P. (REP)
84	80,281	80,281	100.0	0	0.0	DAVIS, GLENN R., JR. (REP)
85	80,800	72,015	89.1	8,785	10.9	Turpin, Cheryl B. (Dem)
86	80,747	80,747	100.0	0	0.0	Boysko, Jennifer B. (Dem)
87	79,275	79,275	100.0	0	0.0	Bell, John J. (Dem)
88	80,191	80,191	100.0	0	0.0	COLE, MARK L. (REP)
89	79,614	51,724	65.0	27,890	35.0	@Jones, Jerrauld C. 'Jay' (Dem)
90	80,425	34,775	43.2	45,650	56.8	@Lindsey, Joseph C. 'Joe' (Dem)
91	79,229	52,084	65.7	27,145	34.3	HELSEL, GORDON C., JR. (REP)
92	79,689	52,227	65.5	27,462	34.5	@Ward, Jeion A. (Dem)
93	79,211	65,292	82.4	13,919	17.6	Mullin, Michael P. (Dem)
94	79,429	48,529	61.1	30,900	38.9	YANCEY, DAVID E. (REP)
95	80,071	48,474	60.5	31,597	39.5	@Price, Marcia S. 'Cia' (Dem)
96	79,217	79,217	100.0	0	0.0	POGGE, BRENDA L. (REP)
97	79,386	79,386	100.0	0	0.0	PEACE, CHRISTOPHER K. (REP)
98	79,251	79,251	100.0	0	0.0	HODGES, M. KEITH (REP)
99	80,332	80,332	100.0	0	0.0	RANSOME, MARGARET BEVANS (REP)
100	80,037	80,037	100.0	0	0.0	BLOXOM, ROBERT S., JR. (REP)

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 DLS 1_ENACTED-HB5005 with VALD_2018-SM-H3C4_H311_H368-H362-H363(2018 inc.)

Plan 1: H311 DLS 1_ENACTED-HB5005
 Plan 2: H3C4 VALD_2018-SM-H3C4_H311_H368-H362-H363

TotalPop	Same	Dst	%Same	Diff	Dst	%Diff
SUM	8,001,024	7,361,562	92.0	639,462	8.0	

Summary:

1. 75 Districts the same in both plans.
2. 25 Districts different between plans.
3. 1 Districts LT 10% different.
4. 3 Districts GT 50% different.

Note: @ indicates a challenged district. Incumbents as of 2018.

Note: Comparison is based upon identity of district number only.

EXHIBIT E

Table 1. Comparison of BVAP by Plan

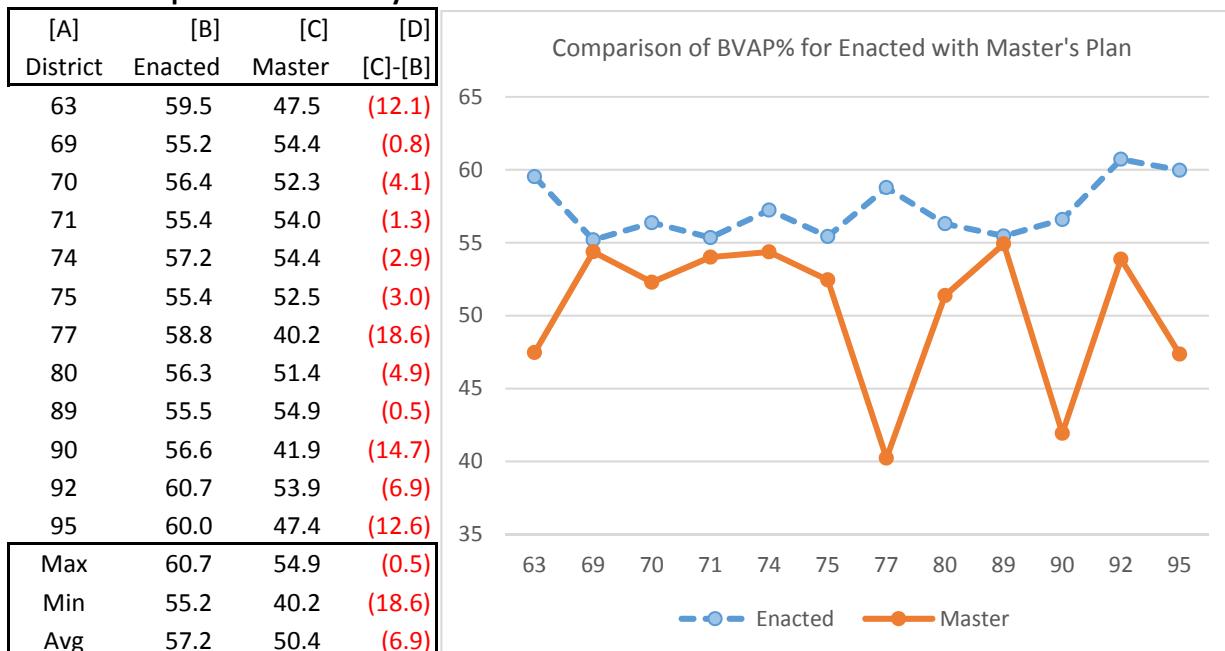


Table 2. Rank of Districts by BVAP%

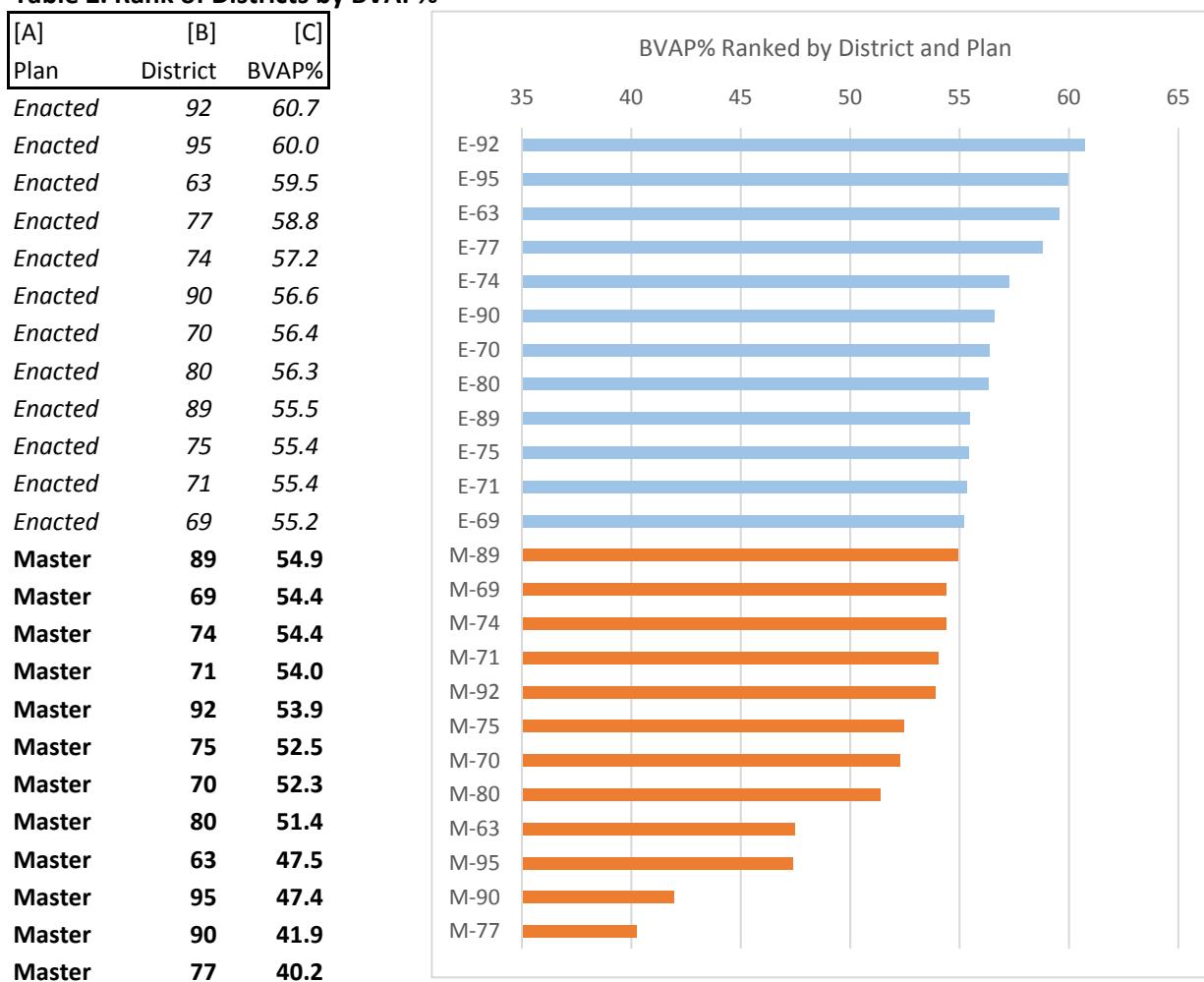
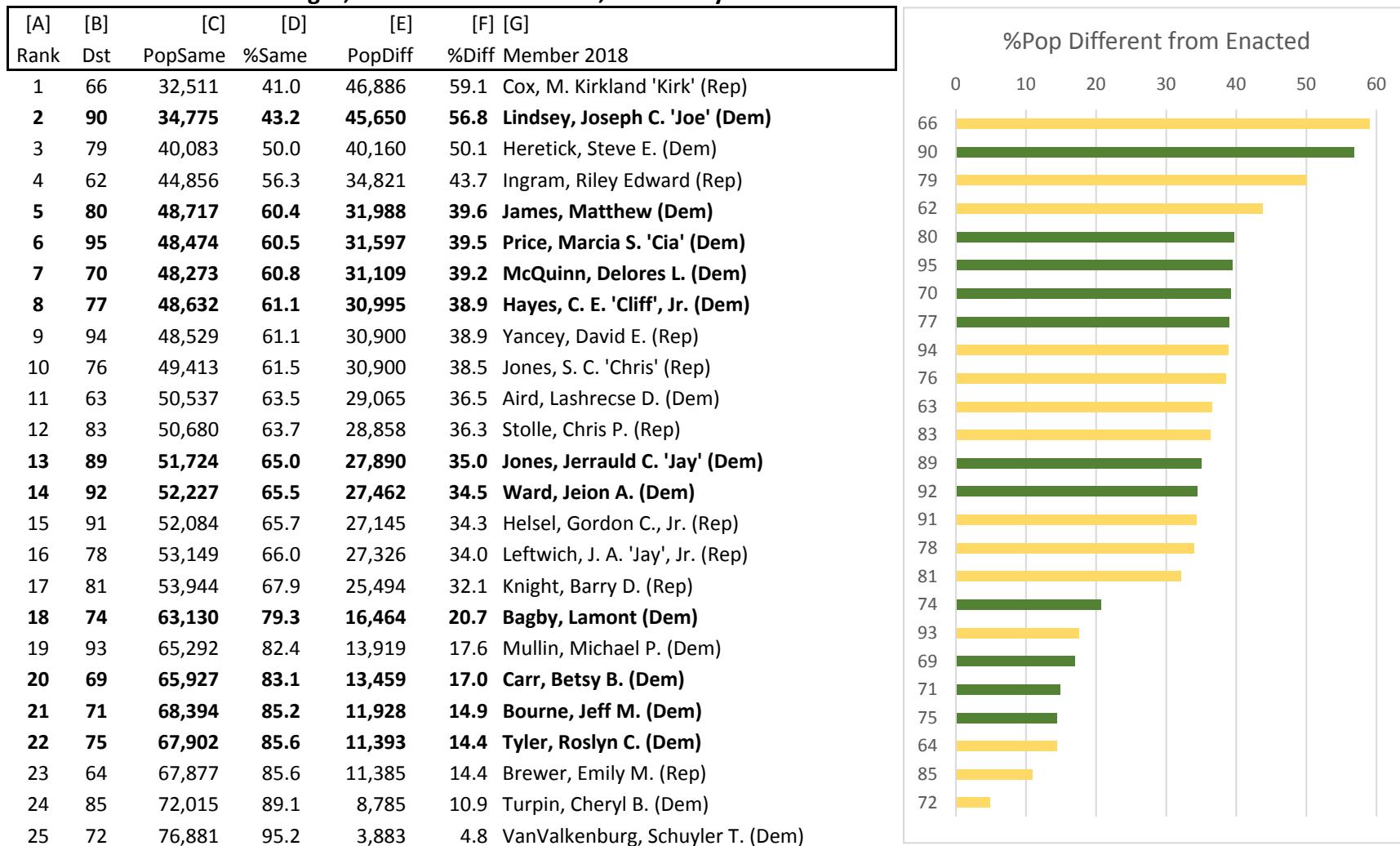


EXHIBIT F

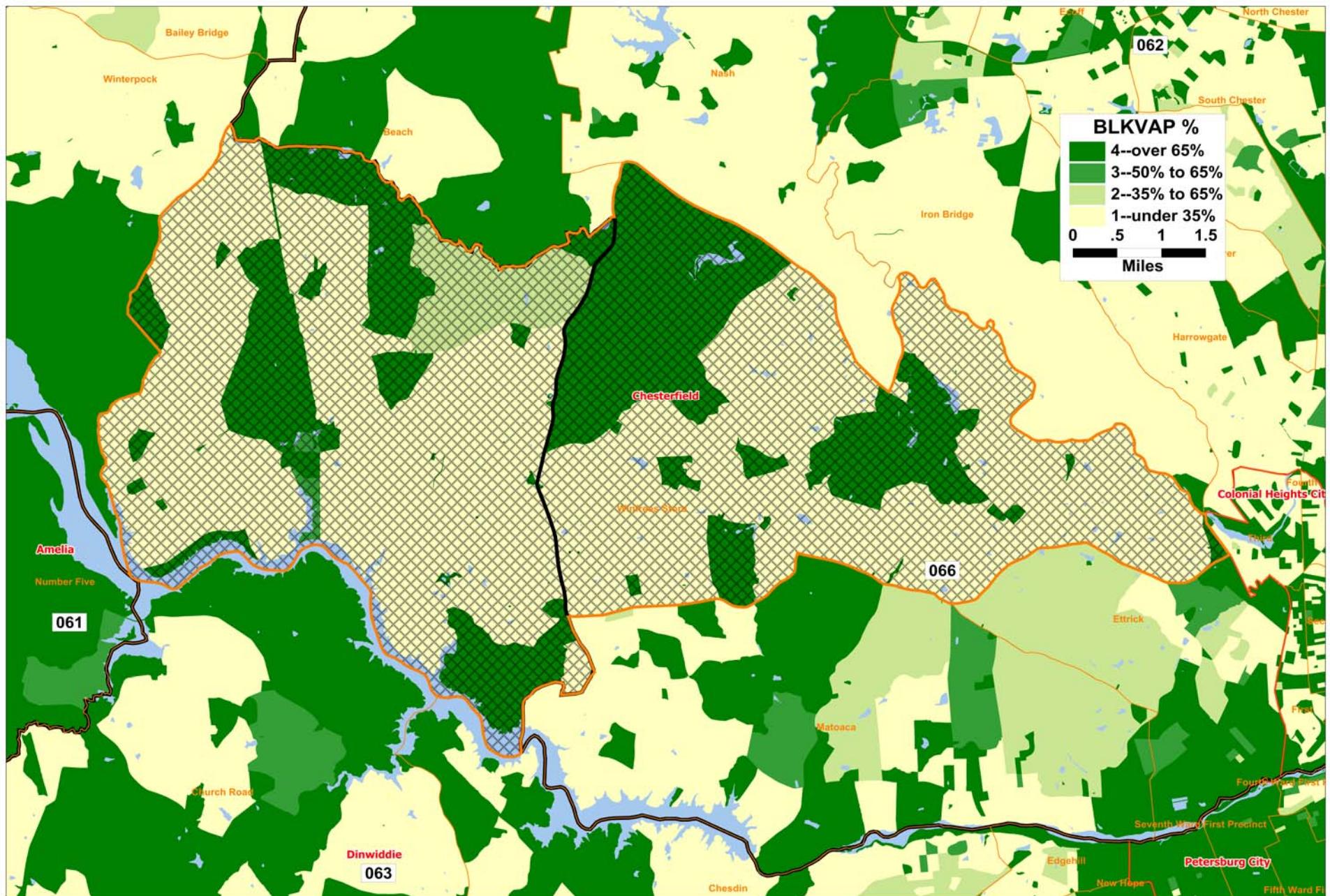
Table 1. Districts with Changes, Enacted with SM-Final, Ranked by %Diff



The 11 challenged districts are highlighted in bold and in green in the chart.

EXHIBIT G

Split VTDs: Winfrees Store-HD63; %Black, SM-Final



Split VTDs: Hampton City-HD92; %Black, SM-Final

