

MINUTES

Commission Meeting

June 23, 2009

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 2600 Washington Avenue, Newport News, Virginia with the following present:

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
William E. Laine)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
John E. Tankard, III)	
David Grandis	Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Mgmt. Div.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Erik Barth	Head, MIS
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Alicia Nelson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt., Manager, Sr.
Laura Lee	Fisheries Mgmt. Specialist
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
David Drummond	Marine Police Officer
Gerald Pitt	Marine Police Officer

Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Rob Butler	Surveyor
Bradley Reams	Project Compliance Tech.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell

Other present included:

Hon. Angela Leary	Tom Leary	Maurice Kleinman	John Harris
Sam Pinello	Clay Holcomb	Bruce Harwicke	Pete Peterson
John Veneziano	Gayle E. Hicks	Jim Wilson	Peter W. McGurl
Rebecca Francese	Keal Jurman	Stephen Wolz	James Brawley
Carol Garrison	Fred Olverson	John Boone	Fred Whitley
Miles Pocta	Bob Livengood	Chris Frye	Deborah Painter
Bill Riddick	Hank Jones	Matt Sturdevant	Ted Butler
John Bidden	Ellis W. James	Susan Gaston	Kenny Pearson
William H. Kirby	Paul H. Herrick	Michael P. Curley	H. J. Tiggle
Nina McClung	Jeff Bonney		

and others.

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Commissioner Bowman called the meeting to order at approximately 9:34 a.m. All of the Associate Members were present.

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At the request of Commissioner Bowman, Associate Member Fox gave the invocation and Bob Grabb, Chief, Habitat Management, led the pledge of allegiance.

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda.

Bob Grabb, Chief, Habitat Management, stated that they had an additional page two item, 2J, Hampton Parks and Recreation, #08-1542.

Commissioner Bowman announced that Item 5, the presentation by Senator Wagner on the Senate Bill, would be delayed as one of his speakers for the presentation had not yet arrived. Commissioner Bowman announced again that the individual had now arrived and the item would be heard as originally scheduled.

Mr. Grabb explained that for Item 11, Department of Conservation and Recreation, #09-0431 a request had been made by the protestant that a continuance be granted until the July Commission meeting.

Commissioner Bowman asked Lt. Col. Rhodes of Law Enforcement if there would any repeat offenders. Lt. Col. Rhodes responded none.

Commissioner Bowman asked for a motion to approve the amended agenda. **Associate Member Robins moved to approve the agenda, as amended. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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MINUTES: Commissioner Bowman asked for a motion for the approval of the May 26, 2009, if there were no changes or corrections. **Associate Member Holland moved to approve the minutes, as circulated. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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Commissioner Bowman swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

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2. PERMITS (Projects over \$50,000 with no objections and with staff recommendation for approval).

Bob Grabb, Chief, Habitat Management Division, explained that there was an additional item 2J. He proceeded to summarize the ten page two items, 2A through 2J, for the Board. His comments are a part of the verbatim record.

There were no questions of staff.

Commissioner Bowman opened the public hearing. There were no public comments. The public hearing was closed. He asked for action by the Board.

Associate Member Holland moved to approve items 2A through 2J. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.

2A. VIRGINIA ELECTRIC & POWER CO., #09-0229, requests authorization to install 259 linear feet of new 500 kV electrical transmission line a minimum of 40 feet above multiple stream crossings in Warren County, Rappahannock County, Culpeper County, and Fauquier County, and install two (2) 4-foot by 16-foot temporary timber mats in Tin Pot Run for construction access as part of Phase II of the Meadow Brook to Loudoun project between the Appalachian Trail in Warren County and Bristers Junction in Fauquier County. Staff recommends a royalty in the amount of \$777.00 for the encroachment over 259 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Royalty Fees (encroach 259 lin. ft. @ \$3.00/lin. ft.).....	\$777.00
Permit Fee.....	\$100.00
Total Fees.....	\$877.00

2B. DEPARTMENT OF CONSERVATION AND RECREATION, #09-0558, requests permission to install six (6) armor stone breakwaters (180 ft, 180 ft, 158 ft, 137 ft, 88 ft and 118 ft long by approximately 30 feet wide) extending a maximum of 120 feet channelward of mean low water and nourish behind the breakwaters with approximately 13,000 cubic yards of beach quality sand, install 901 linear feet (6 sections)of 16-foot wide riprap sill extending a maximum of 40 feet channelward of mean low water and nourish behind the sill with 6,300 cubic yards of beach quality sand to be sprigged with vegetation adjacent to Westmoreland State Park situated along the Potomac River in Westmoreland County.

Permit Fee.....	\$100.00
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2C. RETREAT AT BENNETT'S CREEK, LLP, #08-0798, requests authorization to construct a community-use pier, consisting of a fixed 30 foot square deck, upon which would be constructed a 20-foot square open-sided gazebo structure, and to which would be attached by gangway access, two floating pier sections of 152.7 feet and 183.3 feet respectively, each with floating finger piers creating 22 wetslips at the applicant's proposed retirement community along Bennetts Creek in the City of Suffolk. Recommend a royalty in the amount of \$18,630.00 for the encroachment over 12,420 square feet of State-owned subaqueous bottomlands at a rate of \$1.50 per square foot.

Royalty Fees (encroach 12,420 sq. ft.. @ \$1.50/sq. ft.).....	\$18,630.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$18,630.00

2D. DICKENSON COUNTY BOARD OF SUPERVISORS, #05-0179, requests reactivation, modification and extension of their previously issued permit for the construction of four pedestrian clearspan bridges, each measuring 13' in width and 44', 85', 40' and 120' in length, across Cane Branch and the Pound River to facilitate construction of the Haysi-Breaks Trail in Dickenson County. Recommend approval with a three-year permit extension.

No applicable fees – permit reactivation, modification and extension

2E. U.S. ARMY CORPS OF ENGINEERS, #09-0526, requests authorization to hydraulically place up to 90,000 cubic yards of dredged material, per dredge cycle, from the maintenance of Ramshorn Channel, a portion of the Waterway on the Coast of Virginia (WCV) in a previously used 1,000 foot by 1,000 foot overboard spoil site in Outlet Bay in Northampton County. Staff recommends a time-of-year restriction be imposed from April 15 through September 30 to protect spawning shellfish and water birds.

Permit Fee.....	\$100.00
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2F. CLAY HOLCOMB, #09-0379, requests authorization to expand the existing Chesapeake Boat Basin Marina by extending the main dock 247 feet channelward with an 80-foot T-head and adding multiple finger piers and mooring piles to create an additional 42 wet slips, five (f) of which will include uncovered boat lifts, at commercial property at the end of Waverly Avenue at Kilmarnock Wharf in Lancaster County. Recommend approval with the inclusion of the marina management and fuel spill contingency plans provided in the application.

Permit Fee.....	\$100.00
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2G. MATHEWS COUNTY, #09-0454, requests authorization to construct 289 linear feet of riprap revetment surrounding the New Point Comfort Lighthouse located in the Chesapeake Bay near New Point in Mathews County. The stone from the existing revetment is proposed to be used as core material with larger stone used as armor material to create a 46 foot wide revetment with a height of 12 feet above mean low water.

Permit Fee.....	\$100.00
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2H. WILLIAM ROYALL, #09-0452, requests authorization to construct a 12-foot by 50-foot concrete private boat ramp with a 90-foot long tending pier, two (2) 50-foot long riprap groins, and a total of 475 linear feet of riprap sill with 1,650 cubic yards of sandy material placed landward of the sill as beach nourishment and to support the planting of 8500 square feet of wetland vegetation adjacent to his property situated along Wilson Creek at 5704 Paynes Point Road in Gloucester County. Recommend approval with a royalty of \$100.00 for the encroachment of the beach nourishment on 2,000 square feet of State-owned submerged land at a rate of \$0.05 per square foot.

Royalty Fees (beach nourishment 2,000 sq. ft. @ \$0.05/sq.ft.).....	\$100.00
Permit Fee.....	\$100.00
Total Fees.....	\$200.00

2I. PERDUE GRAIN AND OILSEED, LLC, #09-0176, requests a modification to their previously issued permit to allow for the installation of a new timber pile dolphin, along with the repair and/or relocation of four existing dolphins at their existing grain-loading facility located on Hoskins Creek in the Town of Tappahannock. Recommend approval and an encroachment royalty of \$22.00 for the encroachment of the project over 11 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

Royalty Fees encroachment 11 sq. feet @ \$2.00.....	\$22.00
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2J. HAMPTON PARKS AND RECREATION, #08-1542, requests authorization to modify their previously authorized permit to include the installation of 41 linear feet of riprap impacting 13 square feet of State-owned submerged land in front of the existing timber bulkhead on the west side of the existing boat ramp at Sunset Creek at Hampton.

No applicable fees – permit modification.

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3. CONSENT ITEMS: (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission’s Board).

A. OLVERSON'S LODGE CREEK MARINA, #09-0736, requests after-the-fact authorization to retain five (5) commercial tending piers ranging in length from 29 to 59 feet in their as built configuration adjacent to the marina's "B Dock" situated along Lodge Creek in Northumberland County. The applicant has agreed to a civil charge of \$1,200.00 in lieu of further enforcement action.

Bob Grabb, Chief, Habitat Management, gave the presentation. His comments are a part of the verbatim record. Mr. Grabb explained the extent of the unauthorized activity and reviewed the permit history for the facility.

Mr. Grabb said that Mr. Olverson should have been aware of the need for permits to authorize the construction, so staff felt that represented a moderate degree of non-compliance in this case. Based on that, staff recommended, and the applicant had agreed to pay, a \$1200.00 civil charge in lieu of any further enforcement action. Staff recommended that the Commission agree to accept the civil charge and approve retention of the finger piers.

There were no questions of staff.

Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Civil Charge (After-the-fact).....	\$1,200.00
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- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** No closed meeting was necessary.

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- 5. **BRIEFING ON SB 1350** (Ch 766 Acts 2009) by Senator Frank W. Wagner and VCERC's efforts to promote commercial wind energy development projects in Virginia's offshore waters by Dr. George Hagerman (Virginia Tech) and Megan McCluer (DOE).

Senator Frank Wagner, Virginia General Assembly, was present and his comments are a part of the verbatim record. Senator Wagner provided the introduction to the topic to be discussed and the part to be played by VMRC and the Governor's support in this effort.

Dr. George Hagerman, Virginia Tech, was present and his comments are a part of the verbatim record. He reviewed a PowerPoint presentation of the study that he and others had done regarding alternative sources of energy. He said the Commission Board members would be provided a copy of the presentation.

Steve Walls, Office of the Governor, was present and his comments are a part of the verbatim record. Mr. Walls explained that this effort was being done through VMRC. He stated that two developers were already expressing interest. He said that Virginia wanted to catch up with other States along the East coast. He added that other information was available to help VMRC.

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(Note: Item 6 and Item 7 were heard as one item.)

- 6. **HAMPTON ENGINEERING SERVICES, #08-0446**, requests authorization to hydraulically dredge approximately 228,850 cubic yards of State-owned bottom material from an existing sand terrace off Factory Point in the Chesapeake Bay and to use the beach quality sand as fill for the restoration of the previously existing beach and spit between the Grandview Nature Preserve and the existing island at Factory Point at the mouth of the Back River, mechanically dredge 8,870 cubic yards of State-owned bottom material from the Wallace Creek channel to achieve maximum depths of minus seven (-7) feet below mean low water, and mechanically maintenance dredge 16,305 cubic yards of state-owned bottom material from the main channel in the Back River and the Long Creek channel to achieve maximum depths of minus seven (-7) feet below mean low water in the main channel and minus five (-5) feet below mean low water in the Long Creek channel.

Permit Fee.....	\$100.00
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- 7. **CITY OF HAMPTON, #08-1413**, requests authorization to install five breakwaters ranging in size from 145 linear feet to 500 linear feet and nourish the area behind the breakwaters with beach quality sand dredged under application VMRC #08-0446 to protect the restored beach and spit at Factory Point situated along the Chesapeake Bay and the Back River.

Permit Fee.....	\$100.00
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Elizabeth Murphy, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. Murphy explained that the project site is located at the mouth of the Back River. The breach at Factory Point occurred in 1997 after severe storms. Today, the island was approximately 2,500 feet from the Grandview Nature Preserve area. The City stated in their application that they had three main goals for this project: improving navigation, restoring beach and dune habitat, and reducing wave impacts in Back River.

Ms. Murphy stated that the City proposed a two-part project. One part included the restoration of the breach which involved hydraulically dredging an offshore sand terrace

and using the beach quality sand to restore the point, as well as mechanically dredging three Back River channels to improve navigation. The other part of the project included shoreline protection for the restored breach area involving the construction of breakwaters and beach nourishment.

Ms. Murphy explained that approximately 166,150 cubic yards of material would be hydraulically dredged from the borrow area in the Chesapeake Bay to depths of minus five (-5) feet below mean low water. The applicant had asked for a one-foot tolerance, so the maximum depth proposed was minus six (-6) feet below mean low water. Dredging to this depth would result in a maximum amount of 228,850 cubic yards of sandy material being removed. The sandy dredged material would then be pumped into the breach and will be graded into a beach and dune system. The dunes would be sprigged with beach grass and the City had developed a recreational management plan for the beach area. Five low-profile breakwaters would be installed and backfilled with a portion of the sandy dredged material from the borrow area to protect the restored beach area.

Ms. Murphy said that navigational improvements would be achieved through the dredging of three existing channels. The Wallace Creek channel was proposed to be widened by 50 feet for a total channel width of 100 feet in order to accommodate vessel traffic and avoid impacts to SAV. It was proposed to be dredged to a maximum depth of minus seven (-7) feet below mean low water. The Long Creek channel would be maintenance dredged to achieve maximum depths of minus five (-5) feet below mean low water. The proposed maximum depth for the Back River Main Channel was minus seven (-7) feet below mean low water. The channel depths requested reflect the applicant's request for one-foot tolerance. Dredged material from the channels would be mechanically removed, transferred from a barge to a staging area, and disposed of at an approved upland facility. While the contractor hired by the City would make the final offloading and disposal site decisions, the only viable offload sites in the area were Bell Isle Marina and Wallace's Marina. The City planned to advise prospective contractors that the dredged material must be taken to the City landfill, Higgerson Buchanan site in Chesapeake, or Rice's Pit in Hampton once that site received DEQ approval.

Ms. Murphy stated that from the beginning of discussions about this project, impacts to SAV were the major concern associated with the proposed dredging. The SAV beds in the Back River were currently recovering from a Chesapeake Bay-wide die-off in 2005, and staff could not support impacts to these areas. When the application was originally submitted in 2008, dredging impacts to SAV were on the magnitude of almost 4 acres. While the City proposed mitigation for these impacts, staff and VIMS felt very strongly that the channels could be realigned to avoid the majority of these impacts. As a result, Hampton's consultants worked to change the channel alignments. SAV impacts from the current proposal were now 0.23 acres resulting from widening the Wallace Creek channel. This impact was being mitigated for at a ratio of 3:1, as recommended by NOAA Fisheries and VIMS.

Ms. Murphy said that the City of Hampton submitted a SAV Mitigation plan for impacts in Back River on May 6, 2009. A total of 5.6 acres of mitigation was proposed, which encompassed the loss of 0.23 acres of SAV from Wallace's Channel and 9.2 acres of essential fish habitat (EFH) from the borrow area. Under the plan, VIMS would establish a single plot for seeding along the north shore of the James River in an area where SAV beds were established in 1997 and 1998.

Ms. Murphy explained that originally the proposed project did not include the offshore breakwaters. Staff and other reviewing agencies expressed concern that without protection the restored beach would continue to be vulnerable to erosion and the project would not appear to be justified. In response, the City and their consultants developed the breakwater design. They consulted with VIMS regarding the design and VIMS felt the design was appropriate for the site conditions.

Ms. Murphy stated that how the restored beach area would be used was also an issue that needed to be addressed. The City had updated their Resource Management Plan for Grandview Nature Preserve which would include the restored breach area. It included restoring and maintaining habitat, protecting critical habitat from excessive or inappropriate public use, and enhancing public awareness of resources in the area. Specifically, a no wake zone would be established and posted along the northeastern and northern end of Factory Point to be in effect from June through August, there would be a seasonal prohibition of dogs on the beach from April 1 through September 15, and the Factory Point island would be closed to all public visitation from April 1 to September 15 to protect nesting birds. From April 1 to September 15 beach visitors would be directed to use the restored breach southeast of Factory Point during this time.

Ms. Murphy said the federal and State threatened Northeastern Beach Tiger Beetle was documented in the project area. The U.S. Fish and Wildlife Service reviewed the project and determined that it was not likely to jeopardize the continued existence of the species. They recommend a time-of-year restriction from June 1 to September 15 of any year in order to minimize the impacts to the species.

Ms. Murphy explained that the federally listed threatened Piping Plover had historically nested in the project area. Annual surveys conducted from 1986 through 2008, however, had not documented any breeding plovers. Since they had not nested at the site recently, U.S. Fish and Wildlife Service did not believe the project would adversely affect that species.

Ms. Murphy further explained that the Department of Game and Inland Fisheries and NOAA Fisheries originally recommended a time-of-year restriction from April 1 to November 30 to protect the federal and State threatened Loggerhead sea turtle and the federal and State endangered Kemp's Ridley sea turtle. Due to the shallow depths in the borrow area off Factory Point and the use of a hydraulic pipeline dredge which was not known to cause direct impacts to sea turtles, NOAA and DGIF determined that a time-of-year restriction would not be necessary.

Ms. Murphy said that the City was expected to send their Phase 1 historic resources draft report to the Virginia Department of Historic Resources (VDHR) by mid-June. The City was aware that VDHR might request additional information and/or provide comments that might impact the project design. An archaeological assessment was conducted by Archaeological & Cultural Solutions, Inc. in August 2007. While the assessment found no sites within a 1-mile radius of the project area, there was the potential for traces of a fish processing factory that existed in the area in the last half of the nineteenth century to be found.

Ms. Murphy stated that in the Shoreline Permit Application Report for VMRC #08-0446 VIMS stated that the proposed channel dredging realignment avoided an important SAV bed which was greatly preferred over the originally proposed alignment. They also recommended a time-of-year-restriction for dredging in the offshore borrow area from July 1 through September 15 to avoid peak blue crab spawning season. In their Shoreline Permit Application Report for VMRC #08-1413 VIMS stated that the breakwater system and nourishment with planting was the preferred approach for protecting the restored beach, and that the current design was expected to be more sustainable than the originally proposed design.

Ms. Murphy also stated that staff had also received several letters in support of the project.

Ms. Murphy said that no other agencies or organizations had commented on the project.

Ms. Murphy said that while staff initially had concerns about SAV impacts related to the dredging portion of the project, as well as, concerns over public use of the restored beach and dune area, the City of Hampton had worked to address all of the issues raised throughout the public interest review process. As a result, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of restoration of the Factory Point breach, construction of breakwaters to protect the restored area, and the dredging of the Back River channel, Wallace Creek channel, and Long Creek channel to improve navigation in the area.

Ms. Murphy stated that if approved, staff recommended a time-of-year restriction from July 1 through September 15 to avoid impacts during the blue crab spawning season and from June 1 through September 15 to minimize impacts to tiger beetles. In this case staff believed that impacts associated with the project should be temporary in nature and the dredged areas should recover. The new beach should provide some habitat and habitat protection, as well as, help reduce wave impacts in the Back River during storm events. It was unlikely that restoration would have any affect on the flooding that occurs during storm events. Staff felt this was recognized by the City staff and their consultants, but it might be not understood by residents in the area.

James P. Peterson, Assistant City Manager for the City of Hampton, was sworn in and his comments are a part of the verbatim record. Mr. Peterson stated that he was representing

the City of Hampton and its citizens. He said the City had gone through all the necessary steps at the local government level and with citizens. He stated that the Habitat Management staff had been very helpful with the dual process with the Corp of Engineers.

Mr. Peterson thanked the Commission for its support by its funding of the fishing pier at Buckroe. He stated that everyone was invited to come out and use it.

Commissioner Bowman asked for any public comments. There were none. He asked for a motion.

Associate Member Robins stated that based on the information provided he moved to approve the projects with the staff recommendations. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.

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Due to a sudden electrical outage, a ten-minute recess was called at approximately 10:48 a.m. in order to check whether the electronic equipment was working properly. The meeting was reconvened at approximately 10:57 a.m.

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- 8. **WADE VAUGHN #09-0045**, requests authorization to construct a 301-foot long by 5-foot wide, open-pile private pier to include a 19-foot by 20-foot L-head platform; 47 linear feet of 5-foot wide catwalk pier; and a 17-foot by 35-foot open-sided boathouse roof with lift extending from the applicant's property, Lot #137 within the Lawnes Point on the James subdivision through an easement over vegetated wetlands owned by the Lawnes Point on the James Property Owners Association along Lawnes Creek in Isle of Wight County.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Stagg explained that the project is located within the Lawnes Point subdivision along Lawnes Creek a tributary to the James River near the idle reserve fleet in Isle of Wight County. The center of the creek is also the boundary between Isle of Wight and Surry counties. The Department of Game and Inland Fisheries Hog Island Wildlife Management Area, Carlisle Tract is located along the opposite shoreline. There is Game Department public boat ramp at the Carlisle Track near the mouth of the creek. Additionally, the Wildlife Management Area includes a parcel immediately adjacent to the Lawnes Point subdivision at the mouth of the creek known as the Stewart Tract. There were also other privately owned parcels across the creek from the development upstream of the Wildlife Management area. The creek through this area is 200' to 400'

wide with channel depths varying between -8 and -22 feet at mean low water. The mouth of the creek, however, is much shallower with a controlling depth of approximately -3.0 feet at mean low water.

Mr. Stagg said that the applicant was seeking authorization to construct a non-riparian pier, with boat lift and open-sided boathouse, that would cross a marsh area that is owned by the Lawnes Point on the James Homeowners Association. This common area, which appeared to include the majority of the marsh along Lawnes Creek, varied in width from 15 feet to 2,500 feet. When the subdivision was recorded, the area was described as "open space." The marsh area at the applicant's property, however, was only about 25 feet wide.

Mr. Stagg reminded the Commission that this was the same marsh area where the original developer used large track mounted equipment to mow the marsh grass and to traverse small waterways through the marsh resulting in significant impacts to the marsh and submerged lands within the small waterways.

Commissioner Bowman asked about the distance by road to the boat ramp. Mr. Stagg said it was approximately 10 miles.

Mr. Stagg stated that it now appeared that the lots that were initially being sold in this portion of the subdivision along Lawns Creek were being marketed as waterfront lots. After staff received a number of calls from prospective buyers about the ability to construct piers from these lots, staff met with representatives of the developer and Isle of Wight County staff, as well as, the attorneys representing the developer and the County to discuss this issue. Everyone involved now understood that none of the lots extended to mean low water and the lots were in fact water-view and not waterfront.

Mr. Stagg said that the developer had maintained, however, that it had always been their intent to allow lot owners the right to build private pier structures across the marsh to provide access to the creek. Staff noted that if that was their intent, the easiest avenue would have been to merely plat the lots such that they granted ownership to mean low water. Since the subdivision plat was already approved and recorded, however, they opted to record a new plat granting 57 easement lines to allow for pier structures to be built to the creek for each lot. The county had indicated that this action did not require any change in zoning.

Mr. Stagg explained that there was currently a permitted community-use pier in Lawnes Creek constructed between lots 121 and 122 near the upstream portion of the subdivision, but downstream of the applicant's proposed pier. Staff believed, at the time that the proposed pier was undergoing permit review, it was to be the sole pier serving the water-view lots along Lawnes Creek. It should also be noted that the lots within the subdivision that front along the James River do extend down to mean low water. As such, those lot owners were afforded the opportunity to construct individual private piers, as authorized by the Code of Virginia, but subject to review by the Commission.

Mr. Stagg said that Mr. Vaughn, who was the purchaser of lot 137, was the first in what staff anticipated would eventually be numerous additional requests along this reach of shoreline within the same subdivision requesting similar permit authority for private piers. In fact, staff already had one other request for a proposed pier at lot 140, which was just upstream of Mr. Vaughn's lot. That application is currently considered incomplete. As such, although this project was not protested, staff believed it would be inappropriate to issue administrative approval for the proposed pier, without Commission direction, considering the fact that there are a total of fifty-six similar easement lines connecting non-riparian lots to Lawnes Creek. It has been made clear to the applicant that, as proposed, his pier and boathouse do not meet the permit exemption for private piers provided by the Code of Virginia and a permit was required. In this instance, staff believed Mr. Vaughn's pier must be viewed as part of one large project to include the potential for fifty-seven piers along this section of Lawnes Creek, some of which would need to cross as much as 2,500 feet of marsh. Therefore, the total cumulative impact of the piers and their use must be considered.

Mr. Stagg stated that to properly evaluate Mr. Vaughn's proposal, staff requested information related to the easement itself and ownership of the marsh area over which the easement was being granted, as well as, information regarding eventual deed language for the width of any riparian area being granted for the construction of any piers and boathouses within those granted riparian waters over State-owned subaqueous lands. Staff also requested that Mr. Vaughn provide the width of the creek at this location, as well as, the water depths to assist in determining if any hazard to navigation would occur if the pier and boathouse were constructed, as proposed. While no navigation line or private pierhead line had been established for Lawnes Creek, staff believed the current request would not be a navigation hazard.

Mr. Stagg noted that while depths within the creek were adequate for motorized boating, the mouth of the creek tended to have significant shoaling that would prevent navigational access by deep draft vessels. Based upon depth information obtained by the Engineering/Surveying Department during a field reconnaissance, the controlling depth at the mouth of the creek was approximately -3.0 feet at mean low water or less. The approximate tidal range at this location was 2.0 feet. Therefore, staff believed that the maximum draft vessel that could safely enter and exit the creek even at periods of high tide would be five (5) feet. With this depth restriction, it appeared to staff that the establishment of a pierhead line at the -5.0 mean low water contour was warranted for the creek.

Mr. Stagg said that staff had not received any objections from any of the adjacent property owners or the public at large. The Department of Conservation and Recreation provided comments indicating that the project was acceptable, provided certain criteria of the Chesapeake Bay Preservation Act were followed. In their Shoreline Permit Application Report, VIMS stated that the preferred approach from an integrated marine environmental viewpoint would be the construction of community piers that would serve multiple users. They had also noted that the proposed pier was from a non-riparian

property. As noted earlier, VMRC issued a permit for a community pier along this reach of shoreline. That community pier had since been constructed. The less preferred approach, according to VIMS, in the event a private pier to serve a non-riparian property can be justified, was locating the pier where there was little or no vegetation and ensuring the pier was of an appropriate height to be above any vegetated wetlands thus reducing any shading impacts. No other agencies had commented on the project.

Mr. Stagg noted that staff normally recommended that developers agree to deed restrictions to prevent private piers in subdivisions when they sought a community-use pier structure. However, in this instance, given the fact that the marsh was a common area and the lots did not extend to mean low water, staff was lead to believe that the only pier that would be constructed within Lawnes Creek would be the sole existing community use pier. As such, and with no slip space provided, no such language was requested. Once it was discovered that the lots were being marketed as waterfront, and subsequently as water view with the right to construct individual private piers through easements, staff recognized the pier density that could eventually result from numerous piers being constructed along this reach of Lawnes Creek. Staff requested information from the applicant so that any Commission decision on both this and future applications would be consistent.

Mr. Stagg said that because of the way the easement lines had been oriented, staff anticipated conflicts with future requests related to the granting of adequate riparian area to accommodate structures that might be proposed. Additionally, since the width of Lawnes Creek was relatively narrow, since the channel area was variable in its relationship to the shoreline, and since the mouth of the creek tended to have significant shoaling issues, staff believed any approval of piers along this reach of shoreline should be carefully considered. Full consideration of the potential impacts pursuant to §28.2-1205 of the Code of Virginia were warranted. Staff believed potential impacts included additional congestion in the waterway and possible conflicts for those using the Wildlife Management ramp, wetland impacts and sedimentation due to construction and increased boating activity, navigation restrictions resulting from up to 57 piers being built along approximately 13,000 linear feet of the creek, and other impacts from boat use including contaminants from oil and fuel discharge, as well as a change in character of the undeveloped nature of the waterway. In addition there was an oyster ground lease in the Creek that could be affected by the use of 57 individual piers. In fact, the degree to which these types of impacts were acknowledged had been highlighted in a NOAA publication titled "Environmental and Aesthetic Impacts of Small Docks and Piers (Workshop Report: Developing a Science-Based Decision Support Tool for Small Dock Management, Phase1; Status of the Science)."

Mr. Stagg stated that in light of the foregoing, and since staff did not believe an easement granted any inherent right of access for a pier, as would actual riparian ownership, staff recommended denial of the pier and boathouse. While there might be some areas along the Lawnes Creek shoreline where private piers may be considered reasonable, staff believed it was incumbent on the developer, in this instance, to identify reasonable

locations and numbers of piers for these lots. Staff felt that this number was substantially less than the 57 proposed.

Mr. Stagg said that should the Commission believe that there was adequate information provided for action on Mr. Vaughn's application and that approval was deemed warranted, staff would further recommend that a private pierhead line be established for Lawnes Creek, and that Mr. Vaughn's pier, and any future piers or boathouses be prohibited from extending beyond that line. Staff recommended that such a pierhead line be established at the -5.0 mean low water contour and/or no more than 1/3 of the width of the waterway, whichever was less. In light of this alternate recommendation, staff recommended that if approved, Mr. Vaughn's pier not extend beyond the aforementioned pierhead line of -5.0 feet at mean low water and that the applicant provide revised drawings confirming no extension beyond the established pierhead depth.

Commissioner Bowman asked if there were any questions for staff?

Associate Member Robins asked if there were similar cases with a small area where cumulative impacts were observed. Mr. Stagg stated that he did not know of any project and no data was available. He said this project has raised the issue. He stated at Gatling Pointe, the piers were further apart and had been built across the marsh so they were long piers. He said these possible piers would take years to build and if they are built there would be the impact of the possible density. He said there needed to be a mechanism to deal with these future piers. Associate Member Robins asked how far was the proposed pier from the community pier that now exists. Mr. Stagg stated it was 1,300 feet from the mouth and 800 to 1,000 feet from the community pier.

Associate Member Tankard asked in reference to Code Section 28.2-1205 impacts, would all 57 piers cross over tidal wetlands. Mr. Stagg responded yes, but some would be bridges, which would have impacts when the pilings were installed. Associate Member Tankard asked if there was any public benefit to the use of the wetlands. Mr. Stagg responded no.

Associate Member Schick asked if other piers were in this area. Mr. Stagg stated that there were a few piers on the opposite side just built to get to the water.

Associated Member Fox asked if the community pier was approved. Mr. Stagg explained that at an on-site visit staff had asked if there would be any private pier construction allowed. He said they indicated to him that there would be no private piers as none of the lots went to the creek. He said when the covenants were approved by the County they thought there were granting the right to construct piers. He stated he could not say what the intent of the developer was, but it was the intent of the easements, which were made a part of the approval. He said new plats were done to show the easements. Associate Member Fox asked if staff thought that piers would be here. Mr. Stagg stated there were no riparian lots so staff believed that no piers could be built.

Associate Member Laine asked about the water depth being three feet at the mouth. He said looking at the documentation it appeared to be two feet, how was it determined that it was three feet. Mr. Stagg said that soundings were done with a GPS and depthfinder and staff established the three feet. He stated the real mean low water was determined. He said that only trailerable boats utilize the area, no large boats can unless it is at high tide.

Associate Member Robins stated that it appeared to be a high quality, unimpacted and undeveloped area. Mr. Stagg stated yes, the piers in the area were on the Surry side and further upstream and it was a very rural area.

Commissioner Bowman asked if the applicant or his representative wished to comment.

Wade Vaughn, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Vaughn stated he was the owner of lot number 137 and what was being considered here was the entire area. He said he hoped the pier would be approved as proposed, as the history did not relate to him. He said he only wanted a pier at lot number 137. He said the pier length proposed was 301' and less, 62 feet for access to land it was more like 258 feet. He explained that the pier aligns with the easement and there were no conflicts. He said there was 400 feet from mean high water across to the other side and he was within ¼ crossing of the channel, not exceeding 300 feet. He said the oyster lease was at the mouth of the creek. He said the Wildlife Management boat ramp encouraged traffic. He said in the VIMS report it said that this would not cause permanent impact to the area, only temporary. He said there was an error in the impact area; instead of 1,255 square feet it should say 1,079 square feet. He said the walkway would be raised 3 to 4 feet so as to not to keep out light. He said currently there was no pierhead criteria and the Code said that it can be ¼ across the waterway or 300 feet from mean high water, as he had proposed. He explained that changing the proposal would impact his design and it was not determined to impact navigation. He said he was just 1 of 2 applicants to date and the Commission needed to consider the actual project instead of the possible ones. He said staff's recommendation for denial was based on the potential impacts of other piers. He said he was requesting that his be approved, as proposed, because any change would put him in a shallow area.

Commissioner Bowman said in Isle of Wight there were similar situations in his area, which included him and he knew of others.

Associate Member McConaugha stated that the easement was already established. Mr. Vaughn stated that he was told he would have an easement set to avoid property owner conflicts. He said the easement was aligned with the pierhead and pier.

William Riddick, Attorney representing the Homeowner's Association and the developer, was present and his comments are a part of the verbatim record. Mr. Riddick explained that he had been involved in this development from the beginning. He said the developer did not want to impact the area. He said the County ordinance was to preserve the land and the design was done to maximum open space. He said the staff recommendation

blamed Mr. Vaughn for the mowing violation and it was not him. He said he supported the applicant. He said the easements were done to give VMRC more control; otherwise it would be piers by right, as it was included in the deed. He said they can make application to comply with regulations, but they must be considered on a case-by-case basis.

Mr. Riddick explained that the easement had been done after talking to VMRC staff and was done to prohibit conflicts as piers were always a part of the original plan. He said they met with staff and made it clear that piers were anticipated to be built on Lawnes Creek. He said the community pier had been requested by the County to lessen the number of requests for piers and each applicant would be considered on their own merit. He said Mr. Vaughn's area was the shortest so one easement was granted by the Association to Mr. Vaughn. He said they anticipate that most would not be getting a pier. He said Mr. Livengood told him the longest pier was 900 feet in Isle of Wight County. He said he was further told that it was a common thing for piers to be built over an easement and VMRC had approved them in the past. He said the Commission should act on Mr. Vaughn's application the same as any other, as it was not unusual or unreasonable. He said the Commission was not considering 56 other applications for piers, just Mr. Vaughn's. He said if there was a problem with the plat, then it could be changed and done the way staff wanted. He said they had been proactive with VMRC and there was a need to look at the applications on a case-by-case basis.

Commissioner Bowman asked if anyone else, pro or con, wished to comment. He asked Mr. Vaughn if he wished to rebut or add any comments.

Mr. Vaughn stated he had submitted his plan and requested approval.

Commissioner Bowman asked for discussion or action by the Board.

Associate Member Robins asked in order to clarify the record, if the site meeting with everyone was for the community pier and no private docks. Mr. Stagg stated only the community pier and no other piers and the covenant document was not seen by staff.

Commissioner Bowman stated that usually the VMRC puts restriction on other private piers when a community pier was granted. He said that it was assumed that this would remain an open space with no piers, so no restriction was added when it was permitted, which caused him concern.

Associate Member Schick stated that if the covenants were provided at that time, it would be different and the misconception would have been realized and staff would have known that the piers were possible. He said this was a pristine area and in the past this had been allowed in other areas, but during his time on the Board, he did not recall any.

Associate Member Tankard stated that he was concerned with the possible cumulative impact and that this was not a public benefit. He said with the community pier there would be maximum benefit for the community and if private piers were to be approved it

would not be favorable for the environment. He said in Section 28.2-1205 it required that the tidal wetlands be considered, as well as and other uses. He said he did not see merit in supporting the project.

Associate Member Holland said he disagreed and there was a need to look at this applicant only and not assume that the other 56 piers would be built. He said he supported approval of the project.

Associate Member Fox said that like the others he was concerned with cumulative impacts. He said in this case the applicant had an easement and had done all that was required. He said he was not sure what to do.

Commissioner Bowman stated he was concerned, but he did the same with his pier and he was not convinced of cumulative impacts, as it was a fine line. He said to make a good decision cumulative impacts should be considered but on an individual basis. He said the applicant had done all that was required and was responsive to staff's concerns. He said he agreed it was a pristine area, but piers were already there plus the pier at the wildlife area. He said he supported approval.

Associate Member Fox noted staff's suggestion to establish a pierhead line. He suggested that it could be established now, but for future applications.

Bob Grabb, Chief Habitat Management, stated the Commission could approve the Vaughn application, and establish a pierhead line at next month's meeting, if that is what they wanted to do. He said that staff was looking at the possibility of 57 piers coming in the area and without a regulation they could all be exempt by Code. He said the mean low water line would make it so the pier had to be within the easement. He explained that the developer had replatted the lots and added 20 feet on each of the easements and that way all 40 feet for each pier could be accommodated, if VMRC were to establish a pierhead line. He said staff proposed 5 feet since that would be the maximum vessel draft that would allow egress and ingress to the creek. He said the Commission must realize that if they set a precedent and allow one, it would be difficult to deny others. He said that unfortunately, determining when a cumulative impact occurs usually cannot be determined until it happens. He said that staff was asking for guidance.

Associate Member Fox stated that the Commission could establish a pierhead line next month. Mr. Grabb stated, yes, the Commission could do whatever it wants.

Commissioner Bowman asked for action by the Board.

Associate Member Holland stated that based on earlier comments regarding easements and riparian rights, he moved to grant the application for permit, as proposed by the applicant. Associate Member Bowden seconded the motion. The motion failed, 3-6. Associate Members Bowden and Holland voted yes. The Chair voted yes.

Roll Call Vote:

Bowden	yes	Fox	no	Holland	yes	Laine	no
McConaugha	no	Robins	no	Schick	no	Tankard	no
Chair	yes						

No applicable fees – Since the motion to approve failed, the permit was denied.

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The Commission meeting was adjourned for lunch at approximately 12:26 p.m. The meeting was reconvened at approximately 1:04 p.m.

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- 9. **U.S. ARMY CORPS OF ENGINEERS, #09-0483**, requests authorization to place up to 100,000 cubic yards of dredged material, per dredge cycle, from the maintenance of Quinby Creek Channel in Accomack County, upon a previously used spoil site adjacent to State-owned marsh northwest of Peeler Point in Public Ground 61 in Upshur Bay and to place up to 200,000 cubic yards of dredged material from the maintenance of Sloop Channel and North Channel in Accomack County, upon two previously used spoil sites adjacent to State-owned marsh northwest of Cunjer Channel in Public Ground 66, and north of the intersection of Great Machipongo and North Channels in Hog Island Bay. Wetlands and Subaqueous permits are required.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Badger explained that the Quinby Creek Federal Project Channel in Upshur Bay provided navigable access to Quinby Harbor and required maintenance dredging every three to four years. The channel was last dredged in the fall of 2003. This overboard placement site had been used since 1973. As a result of the overboard disposal, vegetated wetlands had been created and the placement site had become partially intertidal.

Mr. Badger stated that during 2010, the Corps intended to place approximately 100,000 cubic yards of maintenance dredged material within the site. The elevation of the spoil area would not be raised any higher than the adjacent marsh.

Mr. Badger said that although the disposal site was located in Public Ground 61, there did not appear to be any viable public shellfish in the immediate vicinity. There were, however, several private oyster ground leases or clam ground leases adjacent to the channel.

Mr. Badger noted that both the Sloop Channel and North Channel were a part of the Waterway on the Coast of Virginia (WCV) and required maintenance dredging every two to three years. These particular overboard spoil sites had been used since 1957 and 1967, respectively. As a result of the overboard disposal, the site north of the intersection of Great Machipongo and North Channels had become partially intertidal. The spoil site adjacent to State-owned marsh northwest of Cunjer Channel in Public Ground 66 had become partially vegetated.

Mr. Badger said that in 2010, the Corps intended to place approximately 200,000 cubic yards of maintenance dredged material within the two sites. The elevation of the spoil areas would not be raised any higher than two feet above mean low water or the adjacent marsh.

Mr. Badger stated that while the actual dredging of the federal project channels was authorized by statute, the placement of the dredged material in the proposed overboard sites was not exempt and therefore required a permit. A permit for the Quinby Creek Federal Project Channel placement site was last issued by the Commission in 2003. That permit expired in 2008. The permit for the Sloop Channel and North Channel placement sites had been issued by the Commission in 2002 and it had expired in 2007.

Mr. Badger said that since a portion of the non-vegetated wetlands involved in the project were State-owned, the Commission, rather than the Accomack County Wetlands Board, must issue a permit for their use pursuant to Section 28.2-1306 of the Code of Virginia.

Mr. Badger explained that the VMRC staff had held a public hearing in the Accomack County Administration Building on Tuesday, June 2, 2009 to receive public comments on the project. In attendance was one ACOE representative, two representatives for the Quinby Harbor Committee and one local citizen. The oyster and clam ground leaseholders were all notified of the public hearing by mail. To date, staff had not received any public opposition to this project.

Mr. Badger explained further that the Virginia Institute of Marine Science had indicated that overboard disposal of dredged material increases the time and distance that suspended sediments are at elevated levels. Placement of dredged material in properly contained upland disposal sites gets the material out of the system, making it less likely to fill in the dredged areas and thereby causing frequent maintenance dredging. In the case of North Channel, the adjacent overboard disposal most likely shortens the project longevity as material is washed back into the dredge cut. VIMS also states that high levels of suspended sediment cause stress to shellfish, particularly during the summer months' high water temperatures and high levels of biological activity. In oyster and clam growing areas, they recommend that dredging be avoided during the months of July, August and September.

Mr. Badger stated that no other State agency had expressed any opposition to the project.

Mr. Badger stated that even though the preferred approach would be to place the dredged material in upland disposal sites, most of the dredging occurred further than two miles from the mainland, making the transport of material more difficult and expensive. Since the initial construction and subsequent maintenance of the Quinby Creek Channel, Sloop Channel and North Channel, the dredged material placement sites had all been overboard. As a result of the overboard disposal from both Quinby and Sloop Channels, vegetated wetlands had been created.

Mr. Badger said that the North Channel disposal site had been used since 1967 and was now partially intertidal. At this time, however, the Corps' long-term dredged material management plan was to continue placing the dredged material overboard in this general location. The proposed site was over 1,000 feet northwest of North Channel and the nearest oyster ground lease was approximately 1,000 feet east of the placement site. For the most part, the channel ran through a large shoal area in Hog Island Bay that was exposed to wind wave action, as well as, tidal currents that also contribute to sedimentation in the channel. The channel was over 7,000 feet in length and the entire channel needed dredging every three years. Staff believed a small amount of dredged material likely re-entered the channel from the placement site, but that amount was not enough to change the dredging frequency. Therefore, since the proposed sites had been used in the past, and since it did not appear that the continued use of the sites would result in any significant long-term adverse impacts, staff recommended approval of the project, with the stipulation that no material be placed on vegetated wetlands and with the further imposition of a time-of-year restriction from July 1 through September 30 to protect spawning shellfish.

Mr. Badger stated further that staff recommended that the elevation of the dredged material not exceed two feet above mean low water or the adjacent marsh, whichever was less, and that the applicant be required to submit post-dredging bathymetric and cross-sectional surveys of both the federal project channel and the disposal sites. Staff also recommended that the Corps be required to evaluate other alternatives to the overboard disposal site adjacent to North Channel prior to the next projected maintenance dredging.

Commissioner Bowman asked if a representative for the Corps was present and wanted to comment.

Robert Pruhs, representing the U. S. Army Corps of Engineers, was present and his comments are a part of the verbatim record. Mr. Pruhs stated that requiring a study would impact this project. He said it was difficult to acquire funding and he was asking that they be allowed to wait until the 2012 budget to get the funding for a study. He said getting the funding for the study and getting the project done was a concern.

Commissioner Bowman asked for action by the Board.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. Associate Member Fox asked if this

included the modification discussed by staff, regarding the study of the disposal site in the area. Commissioner Bowman responded yes. The motion carried, 9-0. The Chair voted yes.

Permit Fee.....	\$100.00
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10. JOHN AELLEN, #09-0421, requests authorization to install 65 linear feet of stone riprap on his property along Onancock Creek in the Bailey Neck area of Accomack County. A Coastal Primary Sand Dune/Beach permit is required from the Marine Resources Commission.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Badger explained that the project is located in the Bailey Beach Subdivision (lot #7), a community lying on the south side of Onancock Creek, three miles northwest of the Town of Onancock and one-half mile east of East Point. The subdivision was created around 1990. Most of the parcel was low in elevation.

Mr. Badger further explained that the property is located along a shoreline reach that transitions from a beach area to vegetated wetlands. There were stone riprap revetments on adjacent lots to the south and on part of the applicant’s lot to the north. On the point where there was vegetated wetlands, the applicant had installed stone riprap marsh toe protection.

Mr. Badger stated that the Commission, at its May 27, 2008, meeting approved a request by the applicant to install 36 linear feet of stone riprap along an eroding bank and repair an existing wooden groin on the north side of the proposed project. That project had been completed.

Mr. Badger said that since last May the remaining 65-foot long, 2-foot high dune between the existing stone riprap structures had eroded so that the dune no longer existed. There was now a vertical scarp from the upland down to the beach area.

Mr. Badger stated that the County of Accomack had not yet adopted the model Coastal Primary Sand Dune and Beach ordinance. As a result, the Commission was responsible for administering the provisions of that ordinance within the locality.

Mr. Badger said that staff had held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers, on Tuesday, June 2, 2009, to accept public comments on the project. Mr. Aellen was the only person to attend the hearing. No public opposition had been received to date.

Mr. Badger explained that the Virginia Institute of Marine Science (VIMS) had indicated that the preferred approach to address erosion on sandy beach shorelines such as this site included beach nourishment with appropriate plantings and construction of an offshore rock sill structure. This approach was preferred for stabilization since it provided better habitat and did not sever the connection between the upland and the tidal zone. VIMS also stated that the proposed riprap revetment was a less preferred alternative, but acceptable if an offshore rock structure and sand nourishment were not feasible on this shoreline.

Mr. Badger stated that no other State agency had expressed any opposition to the project.

Mr. Badger explained that in response to the VIMS report, Mr. Aellen stated that the placement of a stone riprap revetment would be consistent with the existing riprap structures on both sides of his proposed project. He also stated that it was essential to preserve the existing shoreline in order to maintain the 100-foot buffer required by the Chesapeake Bay Preservation Act in Accomack County. Mr. Aellen's property, Lot 7, was on a point with water on three sides. To address some of their concerns, Mr. Aellen was willing to add 100 cubic yards of beach nourishment adjacent to the proposed riprap structure to allow grasses previously present to re-establish.

Mr. Badger noted that in Section 28.2-1401 (B) of the Code of Virginia "Powers and duties of the Commission" stated that "The Commission shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. Whenever practical, the Commission shall accommodate necessary economic development in a manner consistent with the protection of these features." In addition, the Coastal Primary Sand Dunes/Beaches Guidelines, Section IV, stated that "No permanent alteration or construction upon any coastal primary sand dune shall take place which would, impair the natural functions of the dune, physically alter the contour of the dune or destroy vegetation growing on the dune. Activities contrary to these standards will be permitted only if the Commission finds that there will be no significant adverse ecological impact from the proposal, or that granting a permit for the proposal is clearly necessary and consistent with the public interest."

Mr. Badger said that after evaluating the merits of the project and in keeping with the VMRC Guidelines and Section 28.2-1401 (B) of the Code, and given the fact that the proposed 65-foot long stone riprap revetment project along an eroding bank would not armor any dunes and the fact that the project was surrounded by stone riprap revetments and that the applicant had already stabilized the vegetated wetlands in the transition area with marsh toe stone riprap, staff recommended approval of the project, as proposed, with the addition of 100 cubic yards of beach nourishment adjacent to the proposed riprap structure to further enhance shoreline protection.

There were no questions of staff.

Commissioner Bowman asked if anyone was present pro or con to comment. There were none. He asked for action by the Board.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Permit Fee.....	\$100.00
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- 11. **DEPARTMENT OF CONSERVATION AND RECREATION, #09-0431,** requests authorization to install 60 Prothonotary Warbler bird nest boxes on ¾“ conduit pipe in the Northwest River, and an unnamed tributary thereof, located a maximum of six (6) feet channelward of the shoreline of the Northwest River State Natural Area Preserve in Chesapeake. The project is protested by an adjoining property owner.

Continuance approved until July Commission meeting.

12. PUBLIC COMMENTS:

Baylor Oyster Grounds on Seaside of the Eastern Shore

Hank Jones, clam producer, was present and his comments are a part of the verbatim record. Mr. Jones explained that they were running out of grounds to be leased on the Bayside of the Eastern Shore and were now seeking what could be done to reevaluate the original survey of the Baylor Grounds established in 1894 on the Seaside of the Eastern Shore in order to remove some of those grounds for leasing by the public.

Commissioner Bowman, on advice of Counsel, explained that these grounds were protected by the State Constitution and the Commission did not have the authority to make any changes. He further explained that any changes in these areas would have to be made by the General Assembly. He suggested that Mr. Jones contact his legislative representatives in the General Assembly.

No action was taken.

Commissioner Bowman asked for any further public comments for issues not on the agenda. There were none.

- 13. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-260 to exempt oysters grown by caged aquaculture methods from the 3-inch size limit.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. Travelstead stated that this was a request from industry. He said that oysters grown in aquaculture cages were assumed to be exempt from the three inch minimum size limit, but upon review of the current regulation it was found not to be stated in the regulation. He said this would clarify the intent of the Commission.

Commissioner Bowman opened the public hearing. There were no public comments. The public hearing was closed. He asked for action by the Board.

Associate Member Tankard moved to adopt the amendment to Regulation 4VAC 20-260-10. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.

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- 14. GROUPE-TILEFISH:** Results of SAFMC meeting.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. Travelstead explained that at the last meeting the Commission adopted new regulations in response to the South Atlantic Fisheries Management Council (SAFMC) proposed expansion of their management authority northward to include Virginia and those States to the north. He said that they were proposing to prohibit the harvest of fish in waters greater than 40 fathoms, thus eliminating the Virginia fishery. He said Virginia's fishery was healthier as compared to the southern states.

Mr. Travelstead stated that staff attended this meeting for the MAFMC in order to convince them that the mid Atlantic states should have a say in the regulating of these fish. He said that it was in Amendment 17 that the expansion of authority was proposed.

Mr. Travelstead explained that staff had talked with other Mid Atlantic States, such as Delaware, Maryland, etc. who have not adopted any regulatory limits. He said that Maryland DNR had started to work on adopting the same regulation as Virginia. The process would take about four months. He said information provided by VMRC to Maryland DNR had proven the necessity for these regulations.

Mr. Travelstead stated that there was a study proposal by ODU for the collection of biological information and that the Recreational Fishery Advisory Board (RFAB) would be considering this proposal for funding in the Fall.

Mr. Travelstead said that an Ad hoc group needed to be established in order to begin talks and meet with industry.

Commissioner Bowman asked for questions of staff.

Associate Member Robins thanked the staff for their efforts. He said there was a need to set up an Ad hoc group in order to get other input and ideas.

Associate Member Tankard asked if enough had been done by the Charter Boat group, but there was a need to revisit limits. Mr. Travelstead responded yes, but some limits for the snowy grouper were needed, as the total catch limit for the Atlantic Coast was 532. He said the SAFMC did not want to give up any of those fish. He said an Ad hoc group would talk about the snowy grouper and how to protect that small number of fish. He said there might be consideration given to a tag fishery, with perhaps a lottery to limit the tags and limit the number of fishermen. He said this needed to be discussed with an Ad hoc group.

Associate Member Fox said that these were deep water fish and you would use an electric reel so that you do not know what you have until you see it and it might be dead by that time. Mr. Travelstead stated that not all species are mixed and can be avoided.

Associate Member Robins stated that with deep water fishery you can target others, but it was not perfect. He said the separation geographically is significant in regards to measures for deep water fishing.

There was no action taken.

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15. APPEALS: Individuals Whose Crab Licenses were on the Waiting List.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. Travelstead explained and reviewed some the past actions by the Commission on these appeals for the last five months. Previously, the Commission had heard 141 appeals and had approved 97. To date, 362 crab pot licenses and 230 peeler pot licenses remain on the waiting list. At this time, we have 22 individuals who are appealing their placement on the waiting list.

Mr. Travelstead explained further that Regulation 4VAC 20-1040 provides that licensed crab pot and peeler pot fishermen, who reported no harvested under that license from 2004 through 2007 shall not be eligible to purchase that license in 2009 and thereafter, but shall be placed on a waiting list.

Mr. Travelstead said that Table 1 lists six individuals who filed appeals based on medical conditions. Five of the six appellants have provided medical records or statements from a physician verifying their claim. Since medical conditions are legitimate reasons for granting appeals, staff recommends approval of these appeals. Since Mr. Belvin had not provided information to substantiate his claim at this time, staff recommended denial of his appeal. If he were to provide medical information supporting his appeal, staff would recommend approval.

Staff recommended approval:

Bruce J. Caskey **Richard N. Nash** **Ford D. Haynie** **Kenneth F. Pearson**
Linda G. Geddis

Commissioner Bowman asked for a motion

Associate Member Schick moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.

Rickie R. Belvin – staff recommended denial.

Commissioner Bowman asked for a motion.

Associate Member Holland moved to approve the appeal if the documentation were to be provided and approved by the staff. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.

Mr. Travelstead explained that the next group did not use their license and staff was recommending they be denied. He said Mr. Shackelford had to go out of State and could not be present. He said he had requested a continuance.

Commissioner Bowman said he agreed and stated that those that were present should be allowed to speak. He asked for a motion for Mr. Shackelford's request for a continuance.

Associate Member Fox moved to continue it until the next meeting. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Seth W. Rux

Associate Member Bowden said this case was the same as other cases, such as the Davenport's. He explained that Mr. Rux had been using his peeler pots, but only using the hard crab pots to catch jimmies to use for bait in his peeler pots. He said he deserved the same as those before. Associate Member Holland stated that he agreed. Mr. Travelstead stated that he had not provided any evidence in his comments to staff. Associate Member Bowden stated that he had had substantial peeler landings. He explained that the hard

crabs were not sold, but used for the peeler pots. Mr. Travelstead stated that the Commission had granted appeals in previous cases.

Associate Member Bowden moved to grant the appeal of Mr. Rux. Commissioner Bowman suggested amending the motion to state that staff would call to request a letter from the son. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.

John F. Balderson

Ted Butler, attorney representing Mr. Balderson, was present and his comments are a part of the verbatim record. Mr. Butler provided a handout to the Board and said this should all be on file, which Mr. Travelstead confirmed it was.

Mr. Butler stated that Mr. Balderson did work in the Mobjack Bay with another fisherman, Tommy Hall. He stated that Mr. Hall had since been deceased. He explained that Mr. Balderson thought that Mr. Hall had reported for him and Mr. Hall would support him in this if he were able to do so. He said Mr. Hall did report and that should be in the records and Mr. Balderson had a record of checks. He stated that there was an error in the harvest records.

John Balderson, crabber, was sworn in and his comments are a part of the verbatim record. Commissioner Bowman asked him if this information was correct. Mr. Balderson stated yes, he thought Mr. Hall had put his number on the reports.

Associate Member Schick asked how long had Mr. Balderson worked with Mr. Hall. Mr. Balderson stated in 2004, 2005, and 2006. Associate Member Schick asked when Mr. Hall had been deceased. Mr. Butler stated that Mr. Hall died in 2007.

Associate Member Robins asked about the two checks and how the proceeds were split. Mr. Balderson said they alternated how the money was split as both of their pots were being used.

Commissioner Bowman stated that this was the best evidence to be looked at and put the matter before the Commission for a motion.

Associate Member Robins stated that the checks indicated they were fishing jointly and it was a reporting error by Mr. Hall who was not here anymore. He moved to grant the appeal. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.

Gregory Moon - not present

Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Horace J. Tiggle

Mr. Travelstead explained that Mr. Tiggle had not turned in any reports.

Horace J. Tiggle, crabber, was sworn in and his comments are a part of the verbatim record. Mr. Tiggle stated that he was requesting his appeal based on hardship. He said he had crab potted with his son in the past, but that he had passed away in 2001. He said he had been involved with the seed program. He said that his deadrise had not been working and when he was able to get back in the fishery he had his pots, but no license.

Commissioner Bowman said that there were control dates. He stated that the Commission had denied others and they needed to be consistent. He asked for action by the Board.

Associate Member Tankard said that he felt sympathetic, but the Commission needed to be consistent. He said that he could not support a renewal. He moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. The motion carried, 9-0. The Chair voted yes.

William H. Kirby

William H. Kirby, crabber, was sworn in and his comments are a part of the verbatim record. Mr. Kirby said that he did not know he had to submit the hard crab catch and only sent in peeler information. He said he was a veteran from 2002 to 2003 and also that he had had back problems. He stated he lost his boat in 2003. He said he had his veteran records if they were needed.

Commissioner Bowman stated that there were pre-existing medical conditions during 2002 to 2004. He asked for action by the Commission.

Associate Member Robins moved to approve the appeal on the condition that the staff received the documentation and approve it. Associate Member Tankard seconded the motion. The motion carried, 9-0.

Commissioner Bowman explained that he needed to clarify the record with documents to staff and if they were acceptable then he would be approved, if not, then he would need to come back next month for the hearing.

Christopher P. Gaskins – not present

Associate Member Tankard moved to deny the appeal. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.

Keith B. Waterfield – not present

Mr. Travelstead explained that Mr. Waterfield had crabbed with his brother in 2008, but nothing was in the record for the qualifying period.

Commissioner Bowman asked for action by the Board.

Associate Member Laine moved to deny the appeal. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Mr. Travelstead stated that in Table 3 that there had been errors in the reporting. He said staff went back and found that they did meet the standard. He said that staff recommended approval.

Preston P. Dize **Beverly W. Pruitt**

Associate Member Schick moved to approve the appeals. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.

Mr. Travelstead explained that in Table 4 the appeals were based on hardships and various other reasons. He said that staff did not find any proof of harvest or reports filed or that they met any other condition for appeal. The staff recommended denial.

Robert M. Jenkins **Paul H. Herrick** **Elwood Waterfield** **Michael P. Curley**
Jeffery S. Bonney **Nina J. McClung**

Robert Jenkins – not present

Associate Member Schick moved to deny the appeal. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.

Associate Member Robins recused himself from the following hearing.

Paul H. Herrick, crabber was sworn in and his comments are a part of the verbatim record. Mr. Herrick stated that in 2004 he was divorced and lost everything including his boat. He said he then made his living welding. He said in 2007 his nephew had used the license and he had submitted his catch. He said things were getting better, but he had further health problems which put him in a financial crisis. He stated his ex-wife had filed his reports. Mr. Travelstead said that the staff was checking the record to see if there was anything under the nephew's name, Jeff Parker.

Commissioner Bowman suggested that Mr. Herrick get his information to the staff and the matter would be heard next month.

Elwood Waterfield – not present

Associate Member McConaugha moved to deny. Associate Member Robins seconded the motion. The motion carried, 9-0. The chair voted yes.

Michael Curley, crabber, was sworn in and his comments are a part of the verbatim record. Mr. Curley stated that he had nothing to add, but would answer any questions.

Commissioner Bowman asked if he had any records. Mr. Curley stated that he had filed his “no activity” reports.

Rob O’Reilly, Deputy Chief, Fisheries Management, explained that during the 2004 – 2007 qualifying period, a licensee must have caught at the least one pound of crabs to stay in the fishery.

Mr. Curley stated that he had been taking care of his mother who was in poor health. He said that there was a medical hardship, as he was caring for his mother.

Commissioner Bowman asked for action by the Commission.

Associate Member Robins stated that he could sympathized with his situation, but the development of the regulation was because there needed to be a reduction in the number of licenses and a reduction in the harvest. He said in order to maintain consistency by the Commission, he moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The chair voted yes.

Nina J. McClung was sworn in and her comments are a part of the verbatim record. Ms. McClung explained that her husband had crabbed for ten or 12 years and had passed away in 2004. She said the plan was that her son would use the license someday. She said it had been transferred to her name, but when her son was 16 he would be able to use it. She said it would be a financial hardship as they are trying to keep the boat and equipment. She stated that she was requested an exception.

Commissioner Bowman explained that the regulation did not allow for such an exception as requested. He said the Commission must consistently apply the regulation so as to be fair to others. He asked for action by the Commission.

Associate Member Bowden asked if her husband had crabbed in 2004. Commissioner Bowman asked if there were any reports. Ms. McClung explained that he worked with Tim Johnson. Commissioner Bowman asked if there was any paperwork. Ms. McClung

responded no, but he did work. She added that he might have worked with Dwayne Clark. Commissioner Bowman requested that staff check for any record.

Jeffrey Bonney, crabber, was sworn in and his comments are a part of the verbatim record. Mr. Bonney stated that there was an error in the harvest reports and he had copies of crab tickets for 2004, 2006, and 2007. He stated also that his wife did his reports, because he would work for 2 or 3 months each year.

Commissioner Bowman asked if he had the reports. Mr. Bonney responded that he had records of sales in 2006, 2007, and 2008 and his wife had put no work. Commissioner Bowman reminded him that it was his responsibility. Mr. Bonney stated he had crabbed since 1971, every year.

Commissioner Bowman reviewed some receipts handed to him. He asked Mr. Bonney who he had sold to. Mr. Bonney responded he sold them to his father's business, and his mother and father wrote the receipts. He stated he had his father's records.

Commissioner Bowman stated that staff needed to review this information before the Commission made a decision. He suggested that Mr. Bonney give this information to Lt. Col. Rhodes and he would get them to staff to be reviewed. He stated that Mr. Bonney should bring the information to Lt. Col. Rhodes before the next meeting for staff to check and it will be heard again at that meeting.

No further action was taken at this time.

Paul J. Herrick - Commissioner Bowman stated that Mr. Herrick should get the information to staff for their review and then it can be heard next month.

No further action was taken at this time.

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16. DISCUSSION: Recommendations of the Commercial Fishing Advisory Board.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that the Commercial Fishing Advisory Board had reviewed and approved five projects. Due to a funding shortfall, at this time the request was only for the funding of one of the projects:

D) Jun - Dec 2009, Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 8 ½). M. Fabrizio, T. Tuckey, VIMS. \$24,544.

Associate Member Fox moved to approve the request. Associate Member McConaugha seconded the motion. The motion carried, 9-0. The Chair voted yes.

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17. REPEAT OFFENDER: There were no repeat offender cases to be heard.

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Nina J. McClung

Joe Grist, Head, Plans and Statistics, informed the Commission that there was no evidence in the VMRC records of any harvest by Ms. McClung.

Associate Member Holland moved to continue the matter until next month. Associate Member Bowden seconded the motion. The motion carried, 9-0.

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There was no further business and the meeting was adjourned at approximately 2:21 p.m. The next regular meeting will be Tuesday, July 28, 2009.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary