

## MINUTES

## Commission Meeting

October 26, 2010

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, Jr. )	Associate Members
J. Bryan Plumlee )	
Richard B. Robins, Jr. )	
Kyle J. Schick )	
John E. Tankard, III )	
David Grandis	Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Management
John M. R. Bull	Director-Public Relations
Katherine V. Leonard	Recording Secretary
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Allyson Watts	Fisheries Mgmt. Specialist
Lewis Gillingham	Head, Saltwater Fishing Tournament
Laura M. Lee	Fisheries Mgmt. Specialist
Alicia Nelson	Fisheries Mgmt. Specialist
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Jennifer Baylis	Marine Police Officer
Richard Haynie	Marine Police Officer

**Commission Meeting**

**16102  
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Tony Watkinson	Chief, Habitat Mgmt. Div.
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Ben Stagg	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben McGinnis	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Jon Lucy	Susanna Musick
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Others present included:

Desmond Owens	Joseph McGee	Sandra McGee	Bob Winfree
Karen Kucera	Lee Larkin	Stormy Pearson	Gordon Slatfom
Jeff Watkins	Betty Pugh	Wallace Brittle	Mike Reeson
Melinda Adams	Ed Rhodes	Carol Rhodes	Jim Deibler
Russell Gaskins	Tim Wivell	Mark Sanford	Ellis W. James

and others.

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Commissioner Bowman called the meeting to order at approximately 9:39 a.m. All Associate Members were present.

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At the request of Commissioner Bowman, Associate Member Robins said the prayer and Tony Watkinson, Chief, Habitat Management led the pledge of allegiance.

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**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes from the Board members or staff. There were none. He asked for action by the Board.

**Associate Member Tankard moved to approve the agenda. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**MINUTES:** Commissioner Bowman requested a motion for approval of the September 28, 2010 Commission meeting minutes, if there were no corrections or changes. There were none.

**Associate Member Holland moved to approve the minutes, as distributed. Associate Member Tankard seconded the motion. The motion carried, 8-0-1. The Chair voted yes. Associate Member Robins abstained from voting, as he was not present at the September Commission meeting.**

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Commissioner Bowman at this time 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).

Tony Watkinson, Chief, Habitat Management Division, summarized these items for the Board. He stated that there were three items (A-C). His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff. There were none.

Commissioner Bowman opened the public hearing. Being there were no public comments, the public hearing was closed. He stated the matter was before the Commission for action.

**Associate Member Tankard moved to approve all of the page two items (A – C). Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**2A. VIRGINIA NATURAL GAS, INC., #10-1376**, requests authorization to install a 16-inch diameter gas pipeline, by directional-bore method, beneath 55 linear feet of Broad Creek, immediately upstream of North Military Highway in the City of Norfolk. Recommend the assessment of a royalty in the amount of \$165.00 for the encroachment beneath 55 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fees (crossing 55 lin. ft. @ \$3.00/lin. ft.)	\$165.00
Permit Fee	\$100.00
Total Fees	\$265.00

**2B. CITY OF SALEM, #10-1500,** requests authorization to install and backfill 200 linear feet of gabion baskets, encroaching a maximum of two feet channelward of ordinary high water along the bank of the Roanoke River, to be part of the Roanoke River Greenway in the City of Salem. The proposed installation will occur within temporary cofferdams placed five feet channelward of the gabion baskets. Staff recommends inclusion of the standard in-stream conditions.

Permit Fee_____	\$100.00
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**2C. WASHINGTON COUNTY SERVICE AUTHORITY, #10-0400,** requests a modification to their previously issued permit to construct a 12 MGD raw water intake in the original streambed of the South Fork Holston River Reservoir near its confluence with the Middle Fork Holston River in Washington County. The modification replaces the original single intake channel design with three smaller intake structures and an intake vault designed to improve pumping efficiencies and routine maintenance of the intake.

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). There were none.

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**4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.**

**Associate Member Robins moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purposes of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to items:**

A discussion regarding the Hollowell legal matter.

**Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Associate Member Robins moved for the following:**

**WHEREAS**, the Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

**WHEREAS**, § 2.2-3712.D of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

**NOW, THEREFORE**, the Commission hereby certifies that, to the best of each member’s knowledge,

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

**Associate Member Tankard seconded the motion. Commissioner Bowman held a Roll Call vote:**

**AYES: Bowden, Bowman, Fox, Holland, Laine, Plumlee, Robins, Schick, and Tankard.**

**NAYS: NONE**

**ABSENT DURING VOTE: NONE**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: NONE**

**Motion carried, 9-0. The Chair voted yes.**

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**Katherine Leonard, Recording Secretary**

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- 5. **DESMOND OWENS, #10-0550**, requests authorization to construct a 22-foot by 31-foot open-sided boathouse near the channelward end of his pier situated along the Ware River at 5711 Mobjack Road in Gloucester County. The project is protested by an adjoining property owner and a nearby property owner.

Chip Neikirk, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the Owens property was situated along the southwest shoreline of the Ware River near its confluence with the Mobjack Bay in Gloucester County. The existing pier extended approximately 660 feet channelward of mean high water and just channelward of a wide shallow sandy flat. Development along this shoreline was primarily residential.

Mr. Neikirk said that Mr. Owens proposed to install a boatlift and construct a 31-foot long by 22-foot wide open-sided boathouse to cover the lift along the northwest side of the pier. The proposed construction would not extend channelward of the existing pier. The boathouse was designed to provide shelter for Mr. Owens 26-foot long boat. An uncovered boatlift located approximately 400 feet channelward of mean high water along the pier supported a smaller boat and was not proposed to be covered. The uncovered boatlifts were statutorily authorized.

Mr. Neikirk noted that the project was protested by the adjoining property owner to the north, Ms. Larkin, as well as the owners of another property north of the project, Colonel and Mrs. Kucera. Their concerns included the location of the proposed boathouse near the extended northern property line, adverse impacts on aesthetics, and a concern that debris from the pier and boathouse might damage their property if building materials break loose during storm events. The Kuceras stated that the house on their lot was damaged by debris from Mr. Owens pier during Hurricane Isabel. Finally, they questioned the non-commercial status of Mr. Owens pier since he offloads crabs and oysters at the pier and had used timber racks constructed on the pier for shedding crabs and oyster aquaculture activities.

Mr. Neikirk also noted that there were fifteen letters in support of Mr. Owens application that had been received.

Mr. Neikirk said that the existing pier and proposed boathouse were located on public clamming ground set aside by the Commission. That classification does not preclude the construction of a private pier and boathouse.

Mr. Neikirk stated that the Commission's Subaqueous Guidelines described a structure as commercial if it is in support of operations that charge for the production, distribution or sale of goods or services, however, staff had typically considered a pier located adjacent to a private residence to still be non-commercial provided the only boats moored at the pier were owned by the property owner and the only seafood products offloaded at the pier were owned by the property owner and no sale or purchase of product occurred at the pier. Staff had required a change in status of a pier from non-commercial to commercial when a pier was used to support commercial shedding tanks and aquaculture structures and operations. Staff discussed these issues with Mr. Owens and he agreed to remove the racks from the pier.

Mr. Neikirk said that Mr. Owens had submitted two additional applications for boathouses as alternatives to this proposal. One was for a boathouse on the Old House Creek side of his property and another was for a boathouse on a shorter pier on an adjacent lot that also fronts on the Ware River. Both of those boathouses would be situated in relatively shallow water and would require the construction of another pier. He preferred the current proposal since it was significantly less expensive and because the boathouse would be situated in deeper water near the end of his existing pier.

Mr. Neikirk said that although the existing pier was quite long, it only extended slightly beyond the wide, shallow sand bar located along the shoreline. As such, staff did not believe the proposed boathouse would adversely affect navigation.

Mr. Neikirk noted that no State agencies had commented on the project.

Mr. Neikirk said that in 1998, the General Assembly amended §28.2-1203(A)(5) of the Code of Virginia to provide statutory authorization for the construction of open-sided boathouses measuring 700 square feet or less and designed to cover a single boat at a private, non-commercial pier, provided the boathouse was not objected to by the adjoining property owners and was allowed by local ordinances. Since Gloucester County did not restrict the construction of private boathouses, had the adjacent property owner not objected to the project, the boathouse would have qualified for the statutory exemption.

Mr. Neikirk stated that while staff was sympathetic to the neighbors' aesthetic concerns, staff believed the open-sided design of the boathouse only minimally added to the visual obstruction already presented by the pier and a boat located in the statutorily authorized boatlift. Staff believed the removal of the racks on the pier addressed the concerns regarding the commercial shedding and aquaculture activities on the pier. Finally, staff agreed that the pier and proposed boathouse were located along an exposed shoreline and there was a potential for the pier to be damaged during storm events, however, the majority of the structure was statutorily authorized and any resulting damage to neighboring properties would be a civil matter between the owners.

Mr. Neikirk said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed.

Mr. Neikirk entered a picture showing the racks had been removed. Commissioner Bowman asked if it was permanently removed. Mr. Neikirk said the applicant was told that he had to apply for any changes in the future for commercial.

Commissioner Bowman asked if there were any questions of staff.

Associate Member Plumlee asked about the size of the applicant's boat. Mr. Neikirk stated it was a 26-foot recreational boat. Associate Member Plumlee asked if the use of the racks was in the past. Mr. Neikirk said that there was no permit.

Commissioner Bowman asked for the applicant or a representative that wished to comment.

Desmonds Owens, applicant was sworn in and his comments are a part of the verbatim record. Mr. Owens said that he had worked as a waterman part-time for 27 years and he had complied with all requirements. He said he had a 26 foot recreational boat. He said he met the requirements of the Code with 700-foot, roofed, and opened-sided structure. He said there were no encroachment on SAV and no difference from other structures on the Mobjack. He said there were two protests, but numerous individuals that were in support of the project. He said the pier was used privately only. He stated he would follow the staff recommendation if it were to be approved.

Commissioner Bowman asked if there were any questions. Associate Member Tankard asked him why he removed the racks. Mr. Owens said he did not want any conflict. Associate Member Tankard asked if it would be for private use. Mr. Owens responded, yes.

Associate Member Holland asked him if the racks would be put back once he received approval. Mr. Owens responded, no.

Commissioner Bowman asked for any one in support that wished to comment.

Joseph H. McGee, III, was sworn in and his comments are a part of the verbatim record. Mr. McGee said he lived downriver of the applicant. He noted that he had an open sided pier and enjoyed looking out over the river while he sat inside it. He said there was wildlife in the area. He said in no way was the pier objectionable and it would be for protection of the recreational boat.

Commissioner Bowman asked if any one in opposition wished to comment.

John Daniel, Attorney for the protestants, was present and his comments are a part of the verbatim record. Mr. Daniel said he was representing Ms. Larkin and the neighbors who were opposed to the project. He said he had heard what Mr. Owens and Mr. McGee had said and the intention was probably right. He said the applicant's pier was 660 feet into Ware River where it met with the Mobjack Bay. He noted that the pier had been constructed in sections until it was its current length. He said that they agreed that he did need access to the water and he added that they just disputed the boathouse and its proposed used. He referenced Code Section 28.2-1205 regarding Public Trust and it being considered when a decision was being made. He said all resulting factors must be considered for the use of the subaqueous bottom, specifically, when it impacts an



adjoining or nearby property owner. He said the General Assembly said to consider the protestants as they knew that structures being constructed could impact neighbors' aesthetics. He said that there was a substantial fetch in the area (provided a photo) which was not mentioned. He said in 2003, during Hurricane Isabel the pier ended up in the neighbors yard (two pictures) and caused damage. He said he realized there were civil laws for this type of thing, but the Commission should consider the Public Trust, since there was a history of what damage the boathouse could cause. He noted that Ms. Larkin had just returned to town and seen the notice of the hearing just two days ago, so he did not have time for a site visit.

Francis L. Larkin, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Larkin said that she had lived there since 1994. She stated that when he extended the pier there was no problem. She said after that there was more activity, more people, and upland storage. She said that there was an extension made again, which she had protested because it was a more massive structure and impacted her view. She said the pier had been permitted conditioned on it not being commercial, but it was continually used for commercial uses and the unused crab pots were stored on the property. She said there were dead crabs, pumps, plumbing lines and other paraphernalia for a business. She said he still used the boat and pier for his business. She stated she was concerned this seafood business would be continued. She said now he wants a recreational boat house for his recreational pier, but she had observed it being used otherwise and expect the business activity to continue.

Commissioner Bowman asked for questions from the Board.

Associate Member Tankard stated that the pictures do not show it to be commercial. Ms. Larkin said he was licensed for all of it as a large amount of product was landed and put into boxes to be loaded on trucks. She said her neighbors had seen it was an active commercial enterprise. She said it was crabs and now it is oyster aquaculture.

Associate Member Fox said based on the pictures they only see activity on the ground which is not within the VMRC's jurisdiction. She said she understood it was all the same and connected to the permit of the pier.

Associate Member Plumlee asked if she had seen the boat on the lift. Ms. Larkin responded yes. He then asked if she had seen other boats to which she also responded yes. He asked if this was daily or weekly. Ms. Larkin said that it had not occurred recently, but it had in the past. He asked if she had seen deliveries made. Ms. Larkin said yes, but fisheries are seasonal so it was only seen at certain times of the year.

Commissioner Bowman asked how it was connected to the boathouse and how it contributed to the problems with the activities. Ms. Larkin said it enhanced the pier for the business and provided a larger boat. She said it was her past experience that she had seen it as a connection. She said it was troubling as it limited her view and as it was a

business establishment. She added that every addition impacts her view which she paid for.

Associate Member Fox asked if she was aware if he had another pier somewhere else. Ms. Larkin said no.

Karen Kucera, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Kucera said that the boats that are there have only been on the water two times and she had seen other boats offloading during the peeler crab season. She provided pictures. She said it was not only him at the pier. She stated that she was taking the Commission's time and if Mr. Owens would talk to them they might not even be here. She noted she had never met him and they tried to introduce themselves when they moved there 5 years ago, but he refused. She said she was concerned with the activity that she had seen on the pier. She said that VMRC said it was not commercial, but she works at home. She said they were happy he removed the racks night, but the piping was still there. She said they were concerned that they cannot have faith in Mr. Owens. She said all of the neighbors are concerned about non-recreational use of the pier as they only see him working and they need assurance that he will not resume these same activities. She said they were just skeptical because of their past experience.

Commissioner Bowman asked Mr. Daniels if he wished to comment further.

Mr. Daniels said he understood Mr. Fox when he said it was not VMRC jurisdiction based on what was on the land, but they had seen the pictures and it was not a minimal situation with all that equipment. He said this was a quiet, residential area and not zoned for commercial activities. He said he did not see this as a hobby. He said he agreed with the value of aquaculture. He said this appeared to be in fact a business enterprise and it was known for a fact that the pier was used commercially. He said Mr. Owens had ignored the no permit necessary letter issued by staff and he was told in 95 and 97 that it was a private pier and staff told him to remove the racks. He said they appreciated the Commission's consideration and Code Section 28.2-1205 must be considered. He said that if he was allowed the boathouse they asked that he be required to place it on the opposite side of the pier away from Ms. Larkin.

Associate Member Plumlee said they were only considering the approval of the boathouse and it was not a violation for the use of the pier. He asked how it benefits a business as it was only to protect the recreational boat. Mr. Daniels said he had already explained that in 28.2-1205 and the Public Trust Doctrine required the Commission to consider the impact to adjoining property owners. He said the Commission did have the authority to deny it if there is no County ordinance for it and if it was protested.

Associate Member Plumlee asked if he held any commercial permits. Mr. Neikirk said he was licensed for the shedding tanks. Associate Member Plumlee asked what other

permits he had for fishing. Mr. Owens said he had a Commercial Card, Rock fish permit and tags, aquaculture license, and gill net license.

Commissioner Bowman asked if he would be willing to relocate the boathouse. Mr. Owens said that had never been mentioned and he would be willing if they would help with the cost, but that it would still be impacted.

Associate Member Fox asked if it could be relocated off the L-head. Mr. Owens stated the water was too shallow to bring the boat in there.

Commissioner Bowman said the matter was ready for discussion or action.

Associate Member Robins said that when looking at the Public Trust he could not see a negative impact. He said that Hurricane Isabel had destroyed the pier which damaged the adjacent property, but if they used that as a measure for not allowing a pier, then there would be vast areas where piers would not be allowed. He said because of the size of the boat it was reasonable, the location was justified, and he felt that the staff was right.

**Associate Member Robins said that they can do commercial activities here, just not on the pier and the equipment on the upland was a local zoning matter. He moved to accept the staff recommendation. Associate Member Tankard seconded the motion.** He said that the protestants had mentioned that this was a commercial pier, but it appeared to be used only by the owner. He said he agreed with the staff recommendation.

Associate Member Schick said he agreed with what had been said, but Mr. Owens needed to take care and work with his neighbors in order to be a good neighbor.

Associate Member Fox explained that the issue here was whether to allow the addition of the boat house to a private pier and if it were to become commercial then an application would be necessary. He said he supported the motion.

Associate Member Plumlee said he agreed with all that had been said and that what was on land was for the local zoning to take care of. He said this was not a violation hearing, but an application for a boathouse. He said he supported the motion.

**The motion carried, 9-0. The Chair voted yes.**

Permit Fee_____	\$100.00
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- 6. FEDERAL HIGHWAY ADMINISTRATION, ET AL, #10-1448**, requests authorization to install riprap shoreline stabilization at multiple locations along the Potomac River at Jones Point Park and repair the failing wall in front of the Jones Point Park Lighthouse through the installation of sheetpile and riprap temporarily displacing wetland vegetation along Hunting Creek in the City of Alexandria. The project requires a Wetlands permit.

Associate Member Holland left the meeting.

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

Mr. Bacon explained that the proposed project was located on the Potomac River and Hunting Creek in the City of Alexandria. It was immediately adjacent to the Woodrow Wilson Bridge.

Mr. Bacon said that the original Commission permit for the Woodrow Wilson Bridge project (#99-2108) was issued in 2000 and authorized multiple impacts related to the replacement of the bridge and associated interstate exchanges, which included improvements to Jones Point Park. That permit expired on June 27, 2010. The applicant had reapplied for a new permit in order to complete portions of the project that were not finished under the original permit as well as make additional improvements to the Park property. The Park was owned by the National Park Service and the proposed improvements were mitigation commitments made by the Federal Highway Administration to the Park Service associated with the construction impacts from the bridge.

Mr. Bacon stated that the applicant proposed to install multiple areas of riprap revetment for shoreline stabilization and repair the failing wall in front of the Jones Point Park Lighthouse, as well as complete construction of a fishing pier, kayak launch, and bulkhead along the Potomac River portion of the property.

Mr. Bacon said that the areas of shoreline stabilization and lighthouse wall repair required a Tidal Wetlands permit from the Commission since the City of Alexandria had not adopted the Wetlands Zoning Ordinance. The remaining portions of the project were located over submerged lands owned by the federal government and were outside of the Commission's jurisdiction.

Mr. Bacon explained that following the issuance of the original permit in 2000, the retaining wall in front of the Jones Point Park Lighthouse was discovered to be collapsing into the Potomac River. In addition to supporting the historic lighthouse, the wall contained one of the original boundary markers of the District of Columbia set in place in 1791. The wall would be rebuilt in-place and the applicant proposed to install 100 linear feet of steel sheet-pile in front of the retaining wall which would result in the temporary

displacement of 800 square feet of wetlands vegetation. That area would be re-vegetated and 138 linear feet of riprap would be installed channelward of that vegetation. There were four additional areas of shoreline stabilization proposed along the Potomac River and Hunting Creek shorelines. A total of 336 linear feet of riprap would be installed at these areas which would impact non-vegetated wetlands.

Mr. Bacon noted that the total wetland impacts were to 0.9 acres of non-vegetated wetlands. There were no permanent impacts to vegetated tidal wetlands proposed by this project.

Mr. Bacon stated that the VIMS Shoreline Permit Application Report stated that the proposed project was consistent with an integrated approach to shoreline management and the impacts associated with the proposed project had been minimized to the extent possible.

Mr. Bacon said the Department of Environmental Quality issued a Minor Modification to their Virginia Water Protection Individual Permit, originally issued on June 29, 2000, on September 15, 2010.

Mr. Bacon also said that the Department of Conservation and Recreation indicated that the shoreline stabilization areas and lighthouse wall stabilization were permitted within lands analogous to locally designated Chesapeake Bay Preservation Areas.

Mr. Bacon explained that the Department of Game and Inland Fisheries commented that the Potomac River had been designated an Anadromous Fish Use Area, however they did not believe that the proposed project would impact this resource.

Mr. Bacon noted that no other agencies had commented on this project. No comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the project.

Mr. Bacon said that the project, as proposed, should not significantly impact tidal wetlands since the installation of riprap would stabilize erosion along the shoreline and continue to provide habitat. In addition, no vegetated tidal wetlands would be permanently impacted by the project.

Mr. Bacon stated that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1302 of the Code of Virginia, staff recommended approval of the project, as submitted.

Commissioner Bowman asked if the representative for the applicant wanted to comment.

Melinda Adam, Environmental Coordinator, was sworn in and her comments are a part of the verbatim record. Ms. Adam said they had taken steps to cut back the project to

minimize impacts, as it was a historical site. She asked the Commission to support the project.

Associate Member Plumlee asked about moving the structure. Ms. Adams said the structure was not stable. She said there had been talk about restoring it, but moving it was not a consideration.

Commissioner Bowman announced that the matter was before the board.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0. Commissioner Bowman noted that Associate Member Holland was not present. The Chair voted yes.**

Wetlands Permit Fee____	\$10.00
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**7. RUBY DEBOE, #10-1219**, requests authorization to install 25 linear feet of quarry stone riprap a maximum of 18 inches in front of an existing timber bulkhead which will impact 37.5 square feet of jurisdictional beach at property at the confluence of the Piankatank River and Chesapeake Bay at 450 Gillim Road in Middlesex County. A Coastal Primary Sand Dunes and Beaches permit is required.

Jay Woodward, Environmental Engineer, Sr., explained that the agent for the applicant called the previous day to ask that this item be continued.

Commissioner Bowman asked if they specified a date. Mr. Woodward stated no, and that he had explained to them that when they decided on a date it would need to be re-advertised.

Commissioner Bowman asked if anyone was present that wished to be heard regarding Item 7. There were none. He requested a motion for an indefinite continuance.

**Associate Member Robins moved to continue the matter. Associate Member Tankard seconded the motion. The motion carried, 8-0. Associate Member Holland had not yet returned to the meeting. The Chair voted yes.**

Continued indefinitely.

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8. **FERNAND BARUCH, JR., #10-1291**, requests authorization to extend an existing breakwater an additional 40 feet, install 75 linear feet of quarry stone riprap revetment, install 150 linear feet of quarry stone riprap sill that will be filled with 400 cubic yards of sand, excavated from an accumulation adjacent to his pier, to support the planting of wetland vegetation at his property situated on the Rappahannock River at the confluence of Meachim Creek at 938 Plainview Road in Middlesex County. Both Coastal Primary Sand Dunes and Beaches and Submerged Lands permits are required.

Jay Woodward, Environmental Engineer, Sr. gave the presentation. His comments are a part of the verbatim record.

Mr. Woodward explained that Mr. Baruch's property was located on a point of land at the mouth of Meachim Creek in Middlesex County. A long narrow spit of land and series of islands on the north side of Meachim Creek had recently eroded subjecting the property to a much longer northerly and northeasterly fetch across the Rappahannock River. In 2005, Mr. Baruch received a permit (VMRC #05-1046) to grade his bank, construct 500 linear feet of riprap revetment and install four (4) riprap breakwaters with 3,500 cubic yards of sand placed landward of the breakwaters, as beach nourishment, in an attempt to stem the erosion, which staff estimated at over 100 feet on the northern side of property since 1985. While that project appeared generally successful, Mr. Baruch would now like to address some additional areas of erosion, as well as maintain access to his recently constructed private pier and boathouse on the protected, Meachim Creek side of the parcel.

Mr. Woodward stated that the construction of the 75-foot long revetment would impact approximately 1,125 square feet of jurisdictional beach above mean high water at the base of the existing bank. The 150-foot long sill and beach nourishment landward of the sill would impact 1,800 and 1,400 square feet, respectively, of intertidal beach area. The sand for the nourishment would come from the material that had migrated into the creek from the river side of the property and was now closing in on the pier. The breakwater extension would impact 800 square feet of state-owned submerged land.

Mr. Woodward explained that Middlesex County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes that were effective on July 1, 2008. As a result, the Commission was charged with acting as the local Dunes and Beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code, for the beach impacts, as well as the permitting authority for the impact to state bottom.

Mr. Woodward said that the Virginia Institute of Marine Science (VIMS), in their report dated October 15, 2010, indicated that the proposed actions were consistent with integrated shoreline management guidelines.

Mr. Woodward stated that the Department of Game and Inland Fisheries indicated that state threatened peregrine falcons and two colonial waterbird colonies had been documented in the project area, but they did not anticipate the construction activities would have any adverse impact on these species, nor on state threatened bald eagles, as the project site fell outside the management zone for a documented nest. They recommended contacting the Center for Conservation Biology to ensure no new nests had been established and documented during the most recent survey. They further recommended a time-of-year restriction between February 15 and June 30 for instream work to minimize adverse impacts on anadromous fish.

Mr. Woodward said that the Department of Conservation and Recreation also documented natural heritage resources in the area, but stated the scope of the activity and distance to the resources should not adversely affect these resources.

Mr. Woodward explained that the Department of Environmental Quality was not requiring a Virginia Water Protection (VWP) permit due to the minimal and temporary nature of the proposed impacts and the Department of Health found the project acceptable.

Mr. Woodward stated that the breakwaters previously authorized and constructed appeared to be functioning as designed, and had resulted in the creation of valuable intertidal wetland and beach habitat, while also serving to protect the applicant's shoreline. It appeared that the minor adjustments currently proposed would not adversely effect the environment or navigation in the area, and, unlike the original proposal, were not opposed by any neighbors or others.

Mr. Woodward said that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1402(10) (B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed, with the inclusion of a more detailed planting plan, acceptable to staff and VIMS, and two (2) years of monitoring to ensure establishment of the newly established intertidal beach area behind the proposed sill, as well as the areas created behind the breakwaters previously constructed. Staff did not believe the scale of the breakwater extension work warranted a requirement for a time-of-year restriction, as recommended by the Department of Game and Inland Fisheries.

Associate Member Holland returned to the meeting.

Commissioner Bowman asked for any questions. Associate Member Robins asked if this project was considered adequate to stop the migration of sand into the creek. Mr. Woodward said he would not say, because it was part science and part art.

Commissioner Bowman asked if the applicant or a representative were present.



Mr. Jeff Watkins with Riverworks was representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Watkins said they accepted the staff recommendations and he would answer any questions. There were no questions.

Commissioner Bowman said the matter was before the Commission for discussion or action.

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

Permit Fee.....	\$25.00
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- 9. **ZOAR BAPTIST CHURCH, #10-1370**, requests authorization to install 65 linear feet of quarry stone riprap a maximum of 16 feet in front of an existing timber bulkhead which will impact 1,040 square feet of jurisdictional beach and state-owned subaqueous bottom at property near the confluence of the Rappahannock River and Chesapeake Bay on Riverside Drive in Middlesex County. Both Coastal Primary Sand Dunes and Beaches and Submerged Lands permits are required.

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

Mr. Woodward explained that the project site was located along the Rappahannock River, just west of Stingray Point, in Middlesex County. The shoreline faced towards the north. The property was an undeveloped lot which was used by the church for outdoor services, including baptisms in the river. The proposal included the permit-exempt replacement of 83 linear feet of vinyl sheet-pile bulkhead in the same footprint, as well as the revetment which would tie-in to an existing rock and rubble revetment on the adjoining property to the east. The adjoining property to the west had a bulkhead and a series of groins. The majority of the parcels along this reach had been hardened with stone or bulkhead, and some had groins. At low tide the sandy beach was approximately eight to ten feet in width.

Mr. Woodward said that the construction of the revetment will impact approximately 650 square feet of jurisdictional beach and 975 square feet of state-owned submerged land. Middlesex County has not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes that became effective on July 1, 2008. As a result, the Commission is charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code, as well as the permitting authority for activities over state bottom.

Mr. Woodward noted that in their report dated October 15, 2010, VIMS stated that the preferred approach in this case was to replace the bulkhead with riprap revetment.

Mr. Woodward stated that the Department of Environmental Quality had indicated that because the water quality impacts should be minimal and/or temporary, a Virginia Water Protection (VMP) would not be required.

Mr. Woodward stated that no other State agencies had commented on the project to date.

Mr. Woodward explained that while the VIMS report stated that bulkheads were not appropriate erosion control structures on high energy shorelines, and recommended that the existing bulkhead be replaced with a riprap revetment, staff had determined that portion of the application to be exempt since it would be in the exact same footprint as the existing section of bulkhead, with no additional impact to jurisdictional beach or State-owned bottom. Furthermore, the applicant's desire to maintain an access to the river seemed to justify the replacement of that section of bulkhead. The proposed riprap revetment along the remaining section of shoreline appeared reasonable, given the condition of the adjacent property to the east, provided the armor material to be used is at least Class 2 (average 300 pounds per stone) or smaller Class 3 (average 900 pounds per stone) material.

Mr. Woodward stated that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1402(10) (B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the proposed revetment with a condition that the armor material must be at least 300 pounds per stone and aligned no further channelward than the adjacent revetment, and tapering in at the western end near the existing timber groin, as depicted in the plan drawing. Staff also recommended encouraging the applicant to nourish the beach channelward of the replacement bulkhead with appropriately sized sand to provide additional protection to the property along this section, as well as providing a wider beach area for the church. The placement of beach nourishment material on an existing beach landward of mean low water was a statutorily authorized activity under the Coastal Primary Sand Dunes and Beaches ordinance. However, should any nourishment be proposed channelward of mean low water, further Commission authorization would be required.

Associate Member Plumlee asked if there was a plan to remove the old bulkhead. Mr. Woodward responded no, the bulkhead would remain in place and armor stone would be added to cover the top. Associate Member Plumlee asked if there was any type of barrier between them. Mr. Woodward stated that filter cloth would be used under the stone, but none would come up on the wall.

Associate Member Tankard asked about whether the applicant agreed to do the beach nourishment. Mr. Woodward said that the applicant was present and could comment on it.

Betty Pugh, contractor, was sworn in and her comments are a part of the verbatim record. Ms. Pugh explained that filter cloth was behind the wall and it would not be removed.

Associate Member Tankard asked if they agreed with the staff recommendation for beach nourishment to be used. Ms. Pugh said that they had contracted for that as a lot of fill had been loss behind the bulkhead. She responded that they had access to beach quality sand.

Commissioner Bowman asked for action by the Board.

**Associate Member Laine moved to accept the staff recommendation which included the conditions: 1) that the armor material must be at least 300 pounds per stone 2) aligned no further channelward than the adjacent revetment, and 3) tapering in at the western end near the existing timber groin. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Permit Fee____	\$25.00
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**10. ROBERT WINFREE, #10-1025.** Continuation of the August 24, 2010, Commission hearing concerning an after-the-fact authorization request to retain a previously unauthorized concrete block retaining wall/bulkhead structure at the applicant's property situated along the James River in the Town of Claremont, in Surry County. A Coastal Primary Sand Dunes and Beaches permit is required.

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

Commissioner Bowman left the meeting. Associate Member Holland was acting chair.

Associate Member Fox said because he was absent from the August meeting was staff going to review what occurred in the August meeting. Mr. Stagg said he would not read the August evaluation as he felt it all would be covered with his presentation.

Mr. Stagg explained that the project was located along the James River at the southern limits of the Town of Claremont. Surry County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes that were effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Stagg said the site was characterized as a sand beach and there was a sloped graded area landward of the retaining wall/bulkhead. The retaining wall/bulkhead was constructed of 2-foot by 6-foot concrete blocks that were stacked and interlocked with a

groove system. In 2004, Mr. Winfree applied to install a riprap structure along the eroding bluff at this location. That proposal was landward of mean high water and therefore did not require a VMRC or Wetlands Board permit at the time. The riprap was apparently never installed and the site continued to be subjected to additional erosion in the ensuing years.

Mr. Stagg stated that in early October 2009, staff received a phone complaint from a nearby property owner concerning construction activity and structures that had been placed both along the shoreline and upon State-owned subaqueous bottomlands at this location. During a follow-up site visit with Mr. Winfree, staff informed him that a considerable portion of the existing work required authorization from VMRC and possibly the Army Corps of Engineers and the Surry County Wetlands Board. Staff explained that in order to be considered in compliance, all the structures could be removed and the area restored to its former contours. As an alternative Mr. Winfree was informed of the option of submitting an after-the-fact application to retain the structures as installed. Mr. Winfree submitted a Joint Permit Application on October 22, 2009.

Mr. Stagg said that the after-the-fact request was heard at the March 23, 2010, Commission meeting. The Commission directed Mr. Winfree to remove the groin and breakwater structures within 90 days. Additionally, the Commission directed Mr. Winfree to submit a new application with a revised and properly engineered design to address the failing retaining wall/bulkhead structure.

Mr. Stagg stated that Mr. Winfree removed the portions of the project as directed by the Commission in a timely manner.

Mr. Stagg explained as a new Joint Permit Application was received from Mr. Winfree on June 25, 2010. Staff requested additional information concerning the design on July 6, 2010, and Mr. Winfree responded in a letter dated July 12, 2010, with additional information. Staff conducted a site visit with Mr. Winfree, on July 13, 2010. During the site visit Mr. Winfree indicated a desire to also place one groin structure along the shoreline. Staff received a revised drawing with a slight modification to the wall and the addition of the groin feature on July 14, 2010.

Mr. Stagg stated that at the August 24, 2010, hearing, after receiving a full briefing from staff, the Commission voted to require Mr. Winfree to provide revised drawings depicting a plan, certified by an Engineer, for an appropriate shoreline treatment, to include allowance for use of the existing materials if possible. Mr. Winfree did not attend the meeting but contacted staff after the meeting to explain that he had inadvertently noted the wrong date for the August hearing.

Mr. Stagg said that in their original Shoreline Advisory Report on the after-the-fact application, VIMS noted that the type of material used for all three structures was not normally recommended. Additionally, they stated that the bulkhead had already lost

considerable material on the landward side of the wall. They also observed some shoreline erosion along the channelward side of the bulkhead possibly from wave action and from flow associated with a drainage pipe that extends through the bulkhead. VIMS stated that if they had been consulted in advance, they would have recommended a properly designed stone breakwater system with beach nourishment and appropriate plantings and a properly sloped upland bank with heavy woody vegetation. They stated further that while a stone breakwater structure would be preferred, if a shoreline structure was considered necessary they recommended a stone rip rap revetment with a properly sloped upland bank. As a less preferred alternative, and to allow for the use of the existing concrete block structures, they indicated the blocks could be used in conjunction with a tiered bank system with appropriate vegetation. Finally, they noted that any of the above recommendations should include the proper installation and use of filter cloth in conjunction with all structures. In a revised Shoreline Permit Application Report, dated August 19, 2010, the above noted comments were repeated. Additionally, VIMS noted that a single groin on the beach was not expected to provide significant erosion protection benefits. They further noted that the groin structure, as proposed, may be flanked at the landward end because it would not tie into an upland bank. Finally, VIMS stated that if the concrete wall and groin were permitted, additional verification was needed that the structures were properly engineered for the expected wave height and existing upland drainage outfalls and that the groin should be nourished with clean beach sand and be low-profile in design.

Mr. Stagg explained that the applicant, through the firm Townes Site Engineering had submitted a revised plan that incorporated a geo-grid material along with other installation recommendations. These recommendations included removal of the existing wall, excavation and installation of filter fabric, placement of a buried stone footer with wire mesh reinforcement, placement of compacted granular base for the block wall sections, drain tile behind the realigned wall, and fill behind of the wall of appropriate stone drain aggregate material (# 57 stone recommended). Additionally, at every step up of block elevation a geo-grid reinforcement was to be placed between the block and into the embankment, a minimum of eight feet landward into the bank. Also, each section of stacked block was to have individual filter cloth placed landward of the aggregate stone material.

Mr. Stagg noted that staff had received revised VIMS comments on October 14, 2010, in which they noted that without additional information related to the local tide range or expected wave conditions, that while the structural integrity may be improved with the revised design, they lacked confidence that the dry-stack wall will be sustainable at this high energy location and therefore their previous recommendations remain unchanged. They also noted a lack of benchmark distances to any fixed upland locations related to the final wall location.

Mr. Stagg said that staff still had considerable concerns regarding the use of vertically stacked concrete blocks as bulkhead/retaining wall structures. The revised plan, however,

appeared to be a suitable retrofit utilizing the existing blocks, provided the installation method shown on the engineer's drawings was completely followed by the contractor. As previously noted the proposed groin would be placed in a similar location as one of the groin structures that were ordered removed. As noted previously in the earlier after-the-fact application, staff did not typically recommend these types of structures for groins as they did not appear to be properly tied together and they did not conform to the recommended low-profile groin design.

Mr. Stagg explained that after evaluating the merits of the project, and considering all of the factors contained in §28.2-1403(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended denial of the groin and approval of the remainder of the project with the following special conditions:

- The upstream portion of the wall must be realigned and angled landward and incorporate a return wall into the existing embankment. Such a return wall should preferably be protected with appropriately sized stone rip rap to better address the flanking of the structure.
- The structure shall be required to be removed within 90-days, should it fail in the future.
- The applicant provide a revised drawing with benchmark distances to fixed upland locations of the final wall location.

Mr. Stagg said that should the applicant desire to provide additional protection for the existing cypress trees, staff would encourage the applicant to consider the installation of a properly designed rock breakwater/sill channelward of the trees.

Commissioner Bowman returned to the meeting. Associate Member Holland continued as acting chair.

Associate Member Holland asked for questions.

Associate Member Plumlee asked if this was a show cause for after-the-fact removal. Mr. Stagg said at the original complaint, he went and spoke with Mr. Winfree, which at that time he indicated he wanted to retain it. He said he was told he would have to make an after-the-fact request to retain the wall. Associate Member Plumlee asked when was the failure of the structure first noticed. Mr. Stagg stated as a result of a several storms, it was damaged. He said the original staff recommendation was to obtain additional engineering input for the project. Associate Member Plumlee asked if VIMS had pulled back from their recommendation. Mr. Stagg said that VIMS recommended a stone breakwater. He said this was still their preferred approach for this area.

Associate Member Fox asked if he would just remove blocks and replace them. Mr. Stagg responded yes, it was the only way. Associate Member Fox said this would be expensive. Mr. Stagg said he explained to Mr. Winfree that any engineering design

would expensive, but he understood that he had messed up and was willing to do it right. Associate Member Fox asked if the VIMS recommendation was costly. Mr. Stagg said it would cost as much as before. Associate Member Fox asked if it would be more or less. Mr. Stagg said that was hard to say if bringing in the block was cheaper but it was easy to manipulate with access by beach.

Associate Member Holland asked if anyone else was there to comment. Mr. Stagg said there were no other protests other than the original complaint.

Associate Member Holland asked if he applicant wished to speak.

Robert Winfree, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Winfree stated that this had been a living experience as Hurricane Isabel had taken 145 yards of his beach and he had put the blocks in when he should have gotten some engineering input. He added he would do what was proposed and not cut any corners.

Associate Member Holland asked for questions and there were none. He also asked if there was anyone else, pro or con, who wished to speak. There were none.

Associate Member Holland stated the matter was before the Commission.

**Associate Member Tankard moved to approve the project with the applicant obtaining additional engineering certification. He referenced Code Section 28.2-1403. Associate Member Schick seconded the motion. He suggested adding that it be modified with a 45% angled wall. Associate Member Plumlee said he had some objections, but would vote for the motion and noted that if the structure did breakdown it would have to be removed at the cost of the applicant. He said the applicant must realize that there would be additional cost for removing and redoing the project.**

Mr. Stagg asked the Commission to clarify the motion.

**Associate Member Tankard said that the motion was for approval with the additional engineering certification and conditioned upon the upstream section of the wall being realigned for a return wall. He stated that no groin was included. Mr. Stagg reiterated that the staff recommendation included a 90-day removal time period if the structure failed. Associate Member Tankard agreed to the amendment. Associate Member Schick seconded the amended motion. The motion carried, 9-0. The Chair voted yes.**

No applicable fees.

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- 11. MIKE REESON**, owner of Driftwood Corporation request for reconsideration of the Commission action to assess a civil charge of \$1,800.00, related to his role as project contractor for the Guilford Heights Association (#10-0816), involving the unauthorized construction of a 186 linear foot concrete block retaining wall/bulkhead structure at the Association's property situated along the James River in Surry County that received after-the-fact approval at the August 24, 2010, meeting.

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

Commissioner Bowman said he would be recusing himself from this matter because of a conflict with the matter as before. Associate Member Holland was acting chair.

Mr. Stagg explained that the Guilford Heights Association project was approved at the August 24, 2010, meeting with a condition requiring the placement of rip rap at the downstream end of the block wall structure and with an assessment of a civil charge of \$1,800.00 each to both the Association and the contractor (Driftwood Corporation, Mr. Reeson). The Association paid the civil charge and the permit had been issued. Mr. Reeson had not agreed to accept the civil charge and had requested, through his legal counsel, for the opportunity to appear before the Commission to explain his involvement and to further discuss any civil charge amount. Staff requested Mr. Reeson provide any additional information related to this matter by October 15. To date, no additional information had been provided.

Mr. Stagg said that staff's recommended civil charge of \$1,800.00 for both the Association and Mr. Reeson was determined using the Commission's civil charge matrix based upon a minimal environmental impact and a major degree of non-compliance. To date, staff had not received any information to deviate from the original recommendation.

Associate Member Holland stated that matter today was the \$1,800.00 civil charge assessed for the contractor. He asked if the contractor wished to comment.

Wallace Brittle, Attorney for Mike Reeson, was present and his comments are a part of the verbatim record. Mr. Brittle said that, number one, they were contesting the charge as his client did not realize that he should have been present at the hearing. He said that staff had said he needed to be present, but when he was notified of the hearing he was not notified of the possible civil charge for minimal environmental impact and maximum degree of non-compliance. He referred to the statement by Mr. Reeson that if he did not do the project someone else would, he only meant that because of economics he needed to keep his crew busy. He said the focus of the Commission had been his responsibility which was considered the same as the applicant. The he obviously knew a permit was needed was not true. He stated that if not for the 2008 Statute change this might not need a permit. He said the applicant evaded the question of whether he told Mr. Reeson he



would go forward if there was no permit. He said if Mr. Reeson knew a permit was needed he would not have gone ahead. He said Mr. Reeson had asked the County if everything was good or if they needed anything. He was told it was good. He made a second call to confirm it. He said that VMRC staff had sent Mr. Baker a letter informing him not to proceed and Mr. Reeson did not know about the letter and Mr. Baker told him to go ahead. He said that Ms. Blount, the County Compliance person, told him to go ahead. He said it was a mistake that Mr. Reeson was not present the last time. He said Mr. Reeson was not told to stop and finished the project on December 23.

Mike Reeson, contractor, was sworn in and his comments are a part of the verbatim record. Mr. Reeson said the permit regarding water quality was surveyed and done by the County. He said Mr. Baker asked him and he told him that permits were needed from the Corps and VMRC before the project can start. He said that Mr. Baker was adamant that the project be started. He said he was told by Ronda Max that a joint permit was needed and he downloaded it and started it. He said he did not handle paperwork well and there were a lot of questions that he did not know the answer and he told Mr. Baker to get someone else to do it. He said that Mr. Baker stated he would not pay for someone else. He said that Mr. Baker had met with VMRC staff and was told that no permit was needed and only the County needed to approve it. He said this was what Mr. Baker understood also. He said there was a meeting with the County Director and Compliance Officer trying to establish an emergency with the DCR or DEQ and was told a study was needed. He said in the Fall of 2009 Mr. Baker told him that all was straight as well as Ms. Blount called and said everything was straight and work can start. He said pictures were taken of it all. He said when he finished he called the Compliance Officer and asked her to come look at it to okay it, but he never saw her. He said everything was fine until April. He said he should have been here at the Commission meeting, but he did not think it was an issue for him as he had done all he was supposed to do. He said it was not the money, but he wanted to know what he did wrong. He said there was a misunderstanding because he was not present and there was bad information given for which he apologized.

Associate Member Schick asked if the contract he had with the HOA said that they were responsible for getting the permits. Mr. Reeson stated the only permit needed was the Chesapeake Bay Act.

Associate Member Plumlee said he heard that there was improper notice at the last meeting. He asked if this could be heard without the other witnesses and the reason he was not here is that he was accusing others of non-compliance. He asked if there was a defect in the process of the original hearing. David Grandis, Assistant Attorney General and VMRC Counsel explained that there was no defect in the prior notice of hearing as Mr. Reeson did receive proper notice and just chose not to attend. He said the decision today did not impact the others as it was a separate civil charge. He said that their testimony was heard and now the Commission was hearing his testimony. Mr. Brittle said the letter for the notice of the hearing said it was for consideration of an after-the-fact permit application and not for fees to be assessed. Mr. Plumlee said that since Mr.

Reeson was not present and did not want to be, he lost the opportunity to hear the testimony. Mr. Brittle said that Mr. Baker's testimony was extensive and it was not considered unfair.

Mr. Reeson explained that the letter was not addressed to him so he did not think he was being directed to be here. He said Mr. Baker said he would take full responsibility for everything and Mr. Baker did not feel that he should be here. He said he had done all he could to be sure Mr. Baker did all that was supposed to be done and he did not know he would be assessed anything. Associate Member Schick asked about Mr. Baker's comments that if he did not do it someone else would. Mr. Reeson said that was not his intent when he said that as he intended to get permits and to do all he could. He stated he called the County before he did the work.

Mr. Grandis said that Code Section 28.2-1213 does not require a hearing, but it did require consent in the case of a civil penalty. He said hearing this on two separate occasions did not impact the results.

Associate Member Robins said it was the property owner's responsibility, but it did not let the contractor out of having some responsibility. Mr. Reeson said that the County said the property owner was responsible. Associate Member Robins asked about the letter to Mr. Baker in December 2009. Mr. Reeson stated he did not know about the letter. He said that he started moving everything in for staging on November 30<sup>th</sup> and nobody said anything to him, but just to go ahead.

Associate Member Tankard asked if he did this type of project on a regular basis. Mr. Reeson stated once or twice a year, if he was lucky. Associate Member Tankard asked about his comments that no permit was necessary. Mr. Reeson said that VMRC staff said that no permit was needed and he contacted Ronda Max and was told about the joint permit. He said there were other meetings with the County and he thought VMRC was out of the picture and there was only the process with the County and the need to do a water quality study.

Associate Member Holland stated the matter was before the Commission.

Associate Member Robins asked staff to clarify the original site visit and the written correspondence. Mr. Stagg said that they did meet, but after that there a Code change. He said the Code at the time said this was wetlands and there was no jurisdiction above the mean high water, which meant there was no permit for the wetlands and that was if there was no change in design. He said there was a design change to the structure and its alignment. He said he spoke with the County and was told there was a minimum water quality assessment and it was heard on November 17. He said that staff received the letter of approval in accordance with the Chesapeake Bay Act, but the bullets said that Surry County recommended it as long as VMRC or other permits were required. He said a letter from Mr. Baker was sent to staff and the staff responded, but apparently the

construction had already started. He said at the time, staff did not know the construction had been started and staff did not know that Mr. Reeson was the contractor. He said staff was informed by the County that the structure was built and they told Mr. Baker to submit a JPA. He said staff met with the County and Mr. Baker had a JPA with him at that time and Mr. Reeson was listed as the contractor. He said that he had only dealt with Mr. Baker and did not know about Mr. Reeson until after April.

Associate Member Tankard asked if at the time of the previous meeting could Mr. Reeson have concluded that only a County permit was needed. Mr. Stagg stated yes, based on what was proposed at that meeting, under the law that was in effect at that time, it was possible that Mr. Reeson could have concluded that a permit was not necessary from VMRC.

Associate Member Holland stated that the matter was before the Commission.

Associate Member Plumlee stated that for the last hearing others were given notice, but Mr. Reeson said he did not want to come and was now making statements opposing the others. He said at that time a civil charge was assessed and he was concerned with this hearing of reconsideration.

**Associate Member Schick stated he would make a motion to reduce the charge to a minimal environmental impact and minor degree of non-compliance with an assessment of \$600.00. He said the contractor did try to find out what needed to be done and he was not involved in the other permitting work. He stated the contractor should still have called VMRC and the Corps to check about permits. Associate Member Tankard seconded the motion. Associate Member Holland said he agreed with Associate Member Schick. The motion carried, 8-0. Commissioner Bowman did not participate in this hearing.**

Civil Charge.....	\$600.00
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**Special Retirement Presentation:**

Jack Travelstead presented Jon Lucy with a certificate of service from the VMRC in appreciation for all of his contributions in provided information to the Commission over his 38 years working at the Virginia Institute of Marine Science. He said that the Recreational Fishery Advisory Board had recommended this recognition be done. He noted that Ed Rhodes and Jim Deibler were present at the hearing. He read the certificate for the record.

Jon Lucy expressed his thanks for the recognition, but he said he was just doing his job when he did what he did for the Commission.

Commissioner Bowman stated that the Commission appreciated all of the support given to VMRC. He further thanked the members of the RFAB for their efforts.

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The Commission meeting was adjourned at approximately 1:00 p.m. for lunch and reconvened at approximately 1:55 p.m.

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**12. PUBLIC COMMENTS**

Ellis W. James, Norfolk Resident and Sierra Club Member, was present and his comments are a part of the verbatim record. Mr. James noted that there had been an oyster disaster declaration because of the Gulf incident. He noted also that the Governor was pushing for Virginia being allowed to do offshore drilling. He said that the BP CEO had tried to put the blame for the tragedy on everyone else and not BP. He said he asked that the Commission pay attention to what will happen off of Virginia's coast and also further up the coast. He stated that Virginia was in a position for the use of windmills and turbines.

Commissioner Bowman said that at the Governor's convention there was some alluding to offshore drilling, but also for other methods of power.

Gordon Slatfom, Tides Inn Application, was present and his comments are a part of the verbatim record. He said he wanted to discuss this matter.

Commissioner Bowman said that he must speak in generalities not specifics now that a letter was sent and the matter was now pending a decision for making an exemption from royalties. He said he had spoken with staff and the letter was being sent to all of the Board members.

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**13. REQUEST FOR PUBLIC HEARING:** Consideration of amendments to Regulation 4 VAC 20-995-10 et seq., "Pertaining to Commercial Hook-and-Line Fishing", to establish a limit to the number of crew that can participate in the commercial hook-and-line fishery and clarify participation requirements.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist said that during the October 24, 2000 Commission meeting, staff presented recommendations for the commercial hook-and-line task force.

He said one of the recommendations pertained to crew list:

‘Require commercial hook-and-line fishermen to register their crew members with the Commission annually, in advance of any fishing. Allow for changes to the registration list twice per year and provide that one crew person per vessel is not registered.’

Mr. Grist said that at the August 30, 2010 FMAC meeting staff presented information summarizing the use of crews in 2009 and 2010. He stated that FMAC recommended limiting the size of the crew list to 15 individuals and allowing the list to be updated only once per year.

Mr. Grist said that in Section 20 of the regulation, it provided for entry limitations, catch restrictions, transfers. He said that the maximum number of general hook and line licenses is established at 200 and includes those fishermen who either satisfy the provisions of subdivision A1 of Section 20 or are registered commercial fishermen who have reported sales of at least 1,000 pounds during the previous two years.

Mr. Grist said that staff proposed to simplify the two-year criteria for both the lottery and transfers and make it based on a calendar year.

Mr. Grist stated that staff recommended the advertisement of a public hearing for the following amendments:

- 1) limit commercial hook-and-line licensees to a crewlist of only 15 crew members;
- 2) update the crew list only once per year; and
- 3) specify the use of calendar years to determine eligibility for both the lottery and transfers.

Commissioner Bowman stated that an individual had the right to interpret it any way they want. He said the matter was before the Commission.

Associate Member Tankard asked if it was advertising for only one person not on the list. Mr. Grist stated that it would be the number on the crew list and the number of times to update the list in a year.

**Associate Member Tankard moved to advertise for a public hearing. Associate Member Holland seconded the motion. The motion carried, 9-0.**

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**14. REQUEST FOR PUBLIC HEARING:** Consideration of amendments to Regulation 4 VAC 20-620-10 et seq., ‘Pertaining to Summer Flounder’, and Regulation 4 VAC 20-920-10 et seq., ‘Pertaining to Landing Licenses’, to

provide an allocation of commercial offshore summer flounder quota to qualifying commercial hook and line licensees.

Lewis Gillingham, Head, Saltwater Fishing Tournament, gave the presentation. His comments are a part of the verbatim record.

Mr. Gillingham explained that access to the Summer Flounder Endorsement License (SFEL) had been limited to those fishermen who landed and sold at least 500 pounds of summer flounder in Virginia, in at least one year, during the period of 1993 through 1995.

Mr. Gillingham said the offshore summer flounder quota was divided into two periods that extend from the first Monday in January to the last Monday in November and the last Monday in November through December 31 or until the quota had been caught.

Mr. Gillingham stated that a request was made by a commercial hook and line fisherman, Jim Dawson, to allow Commercial Hook and Line (CHL) fishermen access to the offshore portion of Virginia's summer flounder quota. Because CHL fishermen were limited to the recreational possession and bag limit during the qualifying years they were unable to qualify for the SFEL. Therefore, even though he held a federal moratorium permit, and could legally harvest summer flounder from federal waters, the regulation did not allow him to land summer flounder caught outside of Virginia waters.

Mr. Gillingham said that staff recommended advertising for a November public hearing to discuss establishing a Restricted Summer Flounder Endorsement License (RSFEL) and its qualifying criteria and to establish a vessel possession limit and landing period for the RSFEL. He added that the vessel limit recommended was 150-200 pounds and that no agents or transfers be allowed. He noted that two regulations were involved, 4 VAC 20-620-10 and 4 VAC 20-920-10.

Commissioner Bowman said the matter was before the Commission for action.

Associate Member Robins said there were two policy issues that he was concerned about. He said that there was already a directed offshore fishery which was in excess capacity. He said the trawl fishery already had more State permits than federal ones. He said that the other was a quota imbalance with an expansion of effort overall and the Commission must think about this carefully.

Mr. Gillingham said there would be no agents or transfers and the vessel limit proposed of 200 pounds was a small amount and the fishermen must own a vessel with a Federal Summer Flounder Moratorium Permit. It was likely that very few CHL fishermen would be interested even if they could qualify. He explained that black sea bass and tautog was a directed fishery with summer flounder being a bycatch.

Associate Member Robins suggested that staff follow it as it goes and if the bycatch equity is an issue then the minimum size for commercial hook and line and recreational could be taken to a public hearing. He said the Commission should do something for parity. He said the difference now can be justified as being caught by the directed trawl fishery. He said it was a policy issue and an equity issue that should be taken to FMAC.

Associate Member Plumlee asked if no agents pertained to individuals or corporations. Mr. Gillingham said right now the Commission was looking at language for one person from a company to use the Federal Summer Flounder Moratorium Permit to get this license for hook and line. Associate Member Plumlee asked if it could be transferred by succession. Mr. Gillingham said that was a mute point as a Federal Moratorium Permit would be required to qualify. Associate Member Plumlee said that there was no language for a Federal Moratorium Permit. Commissioner Bowman said for the final hearing the Commission should be given the draft regulation with crossed out language.

Commissioner Bowman asked how would law enforcement weight and measure the catch. Mr. Gillingham stated just like the trawl fishery. Commissioner Bowman suggested that language was needed in the regulation. Mr. Gillingham stated that they could cite the existing regulation.

Commissioner Bowman asked for action by the Board.

**Associate Member Robins moved to accept the staff recommendation to advertise for a public hearing and to add a measure for parity and a minimum size length for Commercial and Recreational. Associate Member Tankard seconded the motion. Mr. Gillingham asked if this was for both State waters and federal waters. Associate Member Robins responded both State and federal. He added that with the potential for expansion it was appropriate for this to be reviewed by FMAC. The motion carried, 9-0. The Chair voted yes.**

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- 15. REQUEST FOR PUBLIC HEARING:** Consideration of amendments to Regulation 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting", to eliminate the use of agents from the commercial gill net fishery.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record.

Mr. Grist explained that in the regulation it requires that a gill net permit shall be in the possession of any gill net permittee or his agent. He said it was unlawful to have more than one gill net limited-entry permittee on board any vessel at any time, except those legally licensed to only one gill net permittee.

Mr. Grist said that during the April 2010 Commission meeting a public hearing was held to address the Gill Net Subcommittee recommendation for a maximum vessel gillnet limit, whereby the combination of all gill net licenses on board the vessel cannot exceed 12,000 feet, regardless of the number of Class A or Class B gill net permittees on board the vessel. A 600-foot or less gill net license would be equal to 600 feet regardless if the net in use is less than 600 feet length.

Mr. Grist said that Lt. Colonel Rhodes had indicated that all four Law Enforcement Captains had indicated that the regulation was not enforceable

Mr. Grist said that the Commission did not approve the subcommittee recommendation.

Mr. Grist explained that staff recommended the following amendments:

1. No limits on the number of individuals lawfully licensed to commercially gillnet from any vessel.
2. Agents are limited to working for one gillnet permittee only:
  - a. For non-CRFL holders, one agent permit may be applied for with the information on which harvester they will be an agent for that year.
  - b. For current-CRFL holders (Options to be chosen from, not to include both):
    - i. Same criteria as 2(a) except they will surrender any gill net permits and licenses for the year if they are to be an agent for another CRFL holder, or
    - ii. Same criteria as 2(a) and they may work their own gill net gear.

Mr. Grist said that FMAC added an additional option to end the use of any agents in the gill net fishery, except in cases of medical hardship. He said in cases of medical hardship, staff could approve a temporary agent for removal of gear. He said the FMAC stated the reason was that under the current gillnet regulations, all CRFL holders are able to possess a gill net permit and licenses, and there was no need to use an agent. He said in other fisheries, such as striped bass and the crab pot fishery, in striped bass there was prohibition of agents and with the crab fishery there was a required registration of all agents.

Commissioner Bowman asked for questions, there were none. He asked for action by the Board.

**Associate Member Laine moved to accept the staff recommendation to advertise for a public hearing. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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- 16. RUSSELL GASKINS:** Request to license and locate a pound net in a new location on the north shore of the Rappahannock River, upriver of the Robert O. Norris, Jr. Bridge. The proposed location is protested.

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

Mr. Travelstead explained that Mr. Gaskins had applied to the Commission to license and locate a pound net on the northern shore of the Rappahannock River, about 3,600 feet upstream of the Norris Bridge. The net will begin at the shoreline and would be 1,200 feet in length.

Mr. Travelstead said that during the 30-day public comment period, the agency received a single comment protesting the placement of the net. He noted that staff had notified adjacent shoreline property owners within 500 feet of the proposed site, as well as an oyster ground leaseholder, whose lease would be crossed by the net. He noted also that no comments had been received.

Mr. Travelstead stated that the letter of protest gives the following reasons for denying the net in this location.

- 1) This area is high in boat traffic and the net would present a navigation hazard.
- 2) The net will target fish on their spawning run.

Mr. Travelstead noted that the regulation requires the Commission to consider any protest in response to the public trust doctrine.

Mr. Travelstead said that based on the maps of SAV developed by VIMS, the net would cross an existing SAV bed. He said that the placement of the poles and netting would impact the SAV but should be minimal and short in duration.

Mr. Travelstead said that based on the fact that no objections were raised by the adjacent property owners, staff assumed that its impact on adjacent properties would be negligible.

Mr. Travelstead explained that staff recommended approval of Mr. Gaskin's pound net request

Mr. Travelstead explained that Mr. Gaskins had been in this location for 40 years until 2004 when because of health problems he did not use it. He said that pound nets were not new to the area and in the past there had not been any issues, as there had not been any complaints during the time he did use this site.

Associate Member Fox asked if the protestant lived along the shore in the area. Mr. Travelstead responded, no.

Commissioner Bowman asked the applicant if he wished to make some comments.

Mr. Gaskins said that he had open-heart surgery about ten years prior and at that time he removed all his nets, but this one. He said he cannot make money as a crabber and he needs to return to using this pound net. He said he wants this one back.

Commissioner Bowman opened the public hearing and asked if there was anyone in opposition present who wished to comment. There were none. He closed the public hearing and asked for action by the Board.

**Associate Member Bowden moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 9-0.**

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There was no further business and the meeting was adjourned at approximately 2:32 p. m. The next regular meeting will be held Tuesday, November 23, 2010.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary