

## MINUTES

## Commission Meeting

August 25, 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. T. Holland )	
William E. Laine )	
John R. McConaugha )	Associate Members
Richard B. Robins, Jr. )	
J. Kyle Schick )	
John E. Tankard, III )	
Carl Josephson	Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Mgmt. Div.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin and Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Alicia Nelson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Lewis Gillingham	Head, Saltwater Fishing Tournament
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Thomas Wilkins	Marine Police Officer
Lisa Gruber	Marine Police Officer

**Commission Meeting**

**15503  
August 25, 2009**

Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell  
Bob Orth

State, Legislative, and City Officials:

Secretary Pierce R. Homer

Senator Yvonne B. Miller	Delegate Lionell Spruill, Sr.
Senator Harry B. Blevins	Delegate John A. Cosgrove

Mayor Alan P. Krasnoff  
Councilwoman Elizabeth Psimas

Other present included:

Linda Figg	Philip Shulet	Tony Tyson	Robert Viten
Andrea Grady	Linda Grubbs	Ed Beales	Jessica Bateman
G. L. Nelson	G. Glassman	Mary Ann Saunders	Jim Cahoon
Earl Sovey	Tammy Barry	Ted Garty	Jay Tate
Dave Slump	Steven Wright	John Keifer	Chuck Joyner
James D. White	Mike Crist	Josh Hill	Francis Roberts
Ken Kiefer	David O'Brien	Mike Winn	Carmercita Lush
Patrick Hall	Stephen Furlough	William Counselman	Julia B. Hillegrass
Bruce Knowles	Gail Burger	David Host	Owen Walsh
Jam Proctor	Ira Agricoln	Jesse Williams	Kevin Eley
Alan P. Krasnoff	Amar Dwarkanath	Ron Hallman	Betty Rychen
Chas Rychen	Nini Baker	Edward Borham	Dwight Droon
Ed Elliot	Chris Wagner	Bob Wolfe	S. Brant Jackson
David Perry	Andrew Grady	Paul Harrison	Sam Gulisam
Andy Pickel	Jeff Rowland	Marina L. Phillips	J. Elliott Westall
Tony Goodwin	Corey Punch	David Olson	Frances W. Porter

**Commission Meeting**

**15504  
August 25, 2009**

Chris Frye	Art Kohn	Phillip Buns	Scott Harper
Ernest E. Ball	Peter Frost	Ray Lee	Ellis W. James
Riddick Baker	Linda Baker	Anthony S. Thomas	Robert Hollowell
Cary Nelson	Keith Miller	Bryan Greene	Billy Haynie
Erin Haynie	Charles R. Amory	Jack McCambridge	

and others.

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Commissioner Bowman called the meeting to order at approximately 9:36 a.m.. Associate Member Fox was absent.

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At the request of Commissioner Bowman, Associate Member Robins gave the invocation and Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel led the pledge of allegiance.

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

Jack Travelstead, Chief, Fisheries Management, said staff requests two items be added to the agenda; first, an emergency regulation for the VIMS summer flounder tagging program and the regulation for summer flounder and second, a request for a public hearing regarding actions by the ASMFC for the recreational fishery for Black Sea Bass.

Commissioner Bowman explained that Item 4, the closed meeting would be switched on the agenda to follow Item 5.

Bob Grabb, Chief, Habitat Management, stated that Item 2 B, Beach Cove Villa Condo Owners Association, #09-0507 had been pulled since it was now protested.

Commissioner Bowman asked for a motion to approve the amended agenda. **Associate Member Robins moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**MINUTES:** Commissioner Bowman announced that there were no minutes ready at this time and they would be at the next month's meeting.

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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, summarized the ten page two items, 2A through 2K, for the Board. His comments are a part of the verbatim record.

(Note: Item 2B, Beach Cove Villas Condo Owners Association, #09-0507, was pulled because a protest had been received.)

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 Schick moved to accept the staff recommendations for items 2A and 2C through 2K. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes.**

- 2A. **PULASKI COUNTY SERVICE AUTHORITY, #09-0961**, requests authorization to install a submerged 24” diameter water main, by directional bore or open-trench method, beneath 731 linear feet of the New River, approximately 900’ downstream of the Radford Water Treatment Plant in the City of Radford and Pulaski County. Recommend approval with our standard instream permit conditions and a permit condition wherein the Permittee agrees to conduct any necessary mussel, fish and/or crayfish surveys/relocations and adhere to any instream work time-of year restrictions as recommended by the Department of Game and Inland Fisheries.

Permit Fee.....	\$100.00
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- 2B. **BEACH COVE VILLAS CONDO OWNERS ASSOCIATION, #09-0507**, request authorization to construct two (2) 180-foot long, and one (1) 80-foot long quarry stone breakwaters, one (1) 50-foot long stone spur, extend and armor two (2) existing stone and concrete block groins, and place 2,800 cubic yards of beach-quality sand for nourishment along the shoreline of Rappahannock River at

Windmill Point in Lancaster County. Recommend approval with a royalty in the amount of \$1,325.00 for the beach nourishment over 26,500 square feet channelward of mean low water on State-owned subaqueous bottom at a rate of \$0.05 per square foot.

Pulled from the Agenda, Protested

- 2C. TOWN OF MOUNT JACKSON, #09-0971**, requests authorization to replace existing 6-inch water main with 60 linear feet of 12-inch water main encased in concrete a minimum of two feet beneath the North Fork of the Shenandoah River in Shenandoah County.

Permit Fee.....	\$100.00
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- 2D. PRINCE WILLIAM COUNTY SERVICE AUTHORITY, #09-0469**, requests authorization to install approximately 121 linear feet of new 36-inch or 54-inch sewer line a minimum of 8-feet beneath the channel bottom of Neabsco Creek and Cow Branch in Prince William County. The lines will be installed by directional bore method.

Permit Fee.....	\$100.00
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- 2E. VULCAN CONSTRUCTION MATERIALS, #09-0803**, requests authorization to dredge by mechanical or hydraulic method an additional two (2) feet to maintain a depth of minus twelve (-12) feet, and to conduct maintenance dredging on an as-needed basis, a 450-foot long by 60-foot wide mooring basin to maintain depths of minus twelve (-12) feet below mean low water adjacent to property situated along the Occoquan River in Prince William County. Staff recommends a royalty in the amount of \$900.00 for the additional dredging of 2000 cubic yards of State-owned subaqueous bottom at a rate of \$0.45 per cubic yard.

Royalty Fees (2,000 cu. yds. @ \$0.45/cu. yd.....	\$ 900.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,000.00

- 2F. J. R. THARPE TRUCKING CO., INC., #09-0393**, requests authorization to remove, for commercial sale, up to 3,000 cubic yards of sand annually, in 150 cubic yard increments, using a barge mounted hydraulic pump, from the Staunton River, at the applicant's property located at 12101 Scuffletown Road in Charlotte

County. Recommend an annual royalty of up to \$1,800.00, at a rate of \$0.60 per cubic yard.

Annual Royalty Fees (2,000 cu. yds. @ \$0.60/cu.yd.....	\$1,800.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,900.00

**2G. BOYD HOMES, #09-0904**, requests authorization to install, by directional drill method, a 14-inch sanitary sewer force main pipeline beneath Burnetts Mill Creek in the City of Suffolk. Recommend a royalty of \$96.00 for the encroachment under 32 linear feet of State-owned subaqueous bottomlands at a rate of \$3.00 per linear foot.

Royalty Fees (32 lin. ft. @ \$3.00 per sq. ft.....	\$ 96.00
Permit Fee.....	\$100.00
Total Fees.....	\$196.00

**2H. CITY OF ROANOKE, #08-1389**, requests a modification to their previously authorized permit to now replace the existing Wiley Drive bridge with an approximately 22-foot, 6-inch wide by 130-foot, 5-inch long bridge consisting of three concrete arch span segments, crossing over the Roanoke River in the City of Roanoke.

No applicable fees – Permit Modification

**2I. BCVPI WATER AUTHORITY, #09-0574**, requests authorization to install a 20-inch diameter water line, by directional-bore method, crossing beneath 20 linear feet of Crab Creek in the Town of Christiansburg, Montgomery County.

Permit Fee.....	\$100.00
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**2J. DEPARTMENT OF THE NAVY, #09-0837**, requests authorization to install a 12-foot wide by 112-foot long floating dock with a 4-foot by 20-foot gangway, four (4) 5-foot wide by 45-foot long floating finger piers, and associated anchoring piles to create five (5) wet slips along Pier 60 in Little Creek Cove at Naval Amphibious Base, Little Creek in Virginia Beach.

Permit Fee.....	\$100.00
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**2K. SUNSET BAY, LLC #09-0711**, requests authorization to install uncovered boat lifts in their existing 24 boat slips along Chincoteague Channel adjacent to Sunset Bay Town Homes in the Town of Chincoteague, Accomack County. The 24-slip marina is permitted for public use and not solely for Association members. A royalty was assessed based on the bold outline of the 24 slips in a previous permit; therefore, no additional royalty is required.

Permit Fee.....	\$100.00
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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).

**3A. TOWN OF CAPE CHARLES, #09-0785**, requests after-the-fact authorization to retain a 75-foot long, inter-bay stone breakwater situated adjacent to the Town's Public Beach along the Chesapeake Bay in the Town of Cape Charles, Northampton County. The breakwater is part of the overall shoreline stabilization plan for the public beach. The agent has agreed to the payment of a \$600.00 civil charge and triple permit fees of \$300.00 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 that on April 24, 2001, the Town obtained a permit from VMRC (#01-0050) to install four (4) offshore stone breakwaters totaling 785 linear feet, 290 linear feet of stone armor protection adjacent to an existing 290-foot long stormwater outfall, and to place 45,000 cubic yards of beach quality sand nourishment along the Public Beach in the Town of Cape Charles. The Town completed the southern 300-foot long breakwater prior to the 2004 permit expiration date. The Town’s budget was not able to support the entire plan at that time.

Mr. Grabb stated that at the request of the Town the original permit was reactivated, modified and extended by the Commission at their May 24, 2005, meeting. The modification was to allow the potential use of concrete block within the toe of the breakwater structures. No other changes were requested.

Mr. Grabb explained as a result of a routine compliance check on May 15, 2008, it was revealed that a 75-foot long, inter-bay stone breakwater structure had been constructed between the two larger permitted breakwaters. The applicant and their agent, Vanasse Hangen Brustlin, Inc. (VHB), were informed of the discrepancy. Staff had been working with VHB since then to address the issue.

Mr. Grabb stated that what happened was that the original concept for the overall master plan included the inter-bay breakwater, however, the Town's budget was not able to support the entire plan. As a result, this 75-foot breakwater was removed from the drawings prior to submitting the original Joint Permit Application (JPA).

Mr. Grabb said that in 2005 or 2006, the Town secured funding to complete the project. The Town requested a construction estimate to complete the full plan, including the 75-foot breakwater. The contractor's estimate for the full plan was within the Town's budget, therefore, the Town authorized the contractor to execute the work, including the inter-bay breakwater.

Mr. Grabb noted that VHB stated that at the time they did not recognize that the southern inter-bay breakwater had not been permitted. This oversight occurred due to multiple iterations of the project that were considered to meet budget constraints, coupled with the time lapses between their involvement in planning, design, and permitting. VHB has taken responsibility for the oversight.

Mr. Grabb said that subsequent to the receipt of the after-the-fact JPA, staff conducted a public interest review. No objections have been received. Had the applicant included the 75-foot long breakwater in their original application, staff was confident the Commission would have approved the entire plan. In light of the above, staff recommended approval of the after-the fact request with a \$600.00 civil charge and triple permit fees of \$300.00 as staff felt that this was a minor deviation and minimal environmental impact, in lieu of further enforcement action. The agent has agreed to the civil charge and fees.

Commissioner Bowman opened the public hearing for those wished to comment, either pro or con on this matter.

Chris Frye, representing VHB, was present and stated that the staff's comments were correct and complete. He offered to answer any questions. There were no questions.

**Commission Meeting**

(Note: Mr. Frye did not come forward to the microphone so his response may not be audible in the verbatim record.)

There being no further comments, Commissioner Bowman closed the public hearing.

Commissioner Bowman asked for action by the Board.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Civil Charge.....	\$600.00
Permit Fee (triple).....	\$300.00
Total Fees.....	\$900.00

**3B. DOUGLAS KAHLE, #09-0831,** requests after-the-fact authorization for a 22-foot by 41-foot open-sided boathouse constructed as part of the private pier serving 1736 North Alanton Drive in the Alanton subdivision, situated along a cove tributary to Broad Bay in Virginia Beach. The roof structure was built larger than the boathouse proposal (16-foot by 34-foot) which was previously deemed authorized by statute and granted a "No Permit Necessary" exemption (VMRC #00-0459). The applicant has agreed to a triple permit fee of \$75.00 and a \$600.00 civil charge based on a minimal degree of environmental impact and a minor degree of non-compliance.

Bob Grabb, Chief, Habitat Management gave the presentation. His comments are a part of the verbatim record.

Mr. Grabb explained that the roof structure was built larger than the boathouse proposal (16-foot by 34-foot) which was previously deemed authorized by statute and granted a "No Permit Necessary" exemption in 2000 (VMRC #00-0459). Staff recently discovered the oversized roof structure while investigating the unauthorized placement of a second private pier adjacent to this property. That second pier has since been removed as directed by staff.

Mr. Grabb further explained than rather than attempt to reduce the size of the approximate nine-year old boathouse structure, Mr. Kahle chose to submit an after-the-fact joint permit application in a timely manner, as instructed by staff. Although Mr. Kahle advised staff during a site visit that he could not recall why the structure was built larger than that proposed back in 2000, it appeared that the pier and boathouse plans were modified during construction. The changes included the roof structure's overhang extending over the pier's walkway and finger pier, which resulted in the overall coverage

exceeding 700 square feet (the size at which a boathouse would be deemed statutorily exempt).

Mr. Grabb stated that a full public interest review was completed, including adjoining property owner notifications and a newspaper advertisement, and no opposition was received. The City of Virginia Beach did not require any additional approvals or permits for the after-the-fact request. Given that the applicant had agreed to a triple permit fee of \$75.00 and a \$600.00 civil charge based on a minimal degree of environmental impact and a minor degree of non-compliance, staff recommended that the Commission endorse the consent agreement and grant after-the-fact approval for the boathouse structure, as built.

Commissioner Bowman opened the public hearing. He asked if anyone wished to speak either pro or con. There were none. The public hearing was closed.

Commissioner Bowman asked for action by the Board.

**Associate Member Robins moved to approve the fees as agreed to by staff and the applicant. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Civil Charge.....	\$600.00
Permit Fee.....	\$ 75.00
Total Fees.....	\$675.00

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Commissioner Bowman welcomed and introduced the following State, Legislative, and City Officials, who were present:

Transportation Secretary Pierce R. Homer

Senator Yvonne B. Miller  
Senator Harry B. Blevins

Delegate Lionell Spruill, Sr.  
Delegate John A. Cosgrove

Mayor Alan P. Krasnoff, City of Chesapeake  
Councilwoman Elizabeth Psimas, City of Portsmouth

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**4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** It was determined that a closed meeting was not necessary after all.

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5. **FIGG BRIDGE DEVELOPERS LLC, #09-0797**, requests authorization to cross the Southern Branch of the Elizabeth River with a high level, fixed-span, two-lane, private toll bridge immediately south (upriver) of the existing closed Jordan Bridge linking the City of Chesapeake with the City of Portsmouth. The new bridge will provide 145 feet of vertical clearance above mean high water and 225 feet of horizontal clearance within the Federal navigation channel.

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

Mr. McGinnis explained that Figg Bridge Developers, LLC proposed to construct a two-lane fixed span high rise bridge over the Southern Branch of the Elizabeth River, in the same corridor and just south of the former Jordan Bridge. The new bridge would reconnect Poindexter Street in Chesapeake with Elm Avenue in Portsmouth. The project site extended from the Interstate 464 interchange on Poindexter Street to the intersection of Victory Boulevard and Elm Avenue. The new bridge would be a private toll bridge. It would be constructed, maintained, and operated by a private owner.

Mr. McGinnis further explained that the existing Jordan Bridge was constructed in 1928. It was closed on November 8, 2008, due to structural instability and significant safety concerns. Prior to the bridge's closing, it was the oldest operating lift bridge in the Commonwealth of Virginia and was used by an estimated 7,000 vehicles per day. More than 10,000 lifts per year were conducted for over 21,500 marine vessels. Once the bridge was closed to vehicular traffic, and because of the degraded state of the bridge, the U.S. Coast Guard determined the structure was a navigational hazard. As a first step towards removal, the lift span over the navigational channel was removed on May 4, 2009. Demolition of the remainder of the approach spans is to proceed over the remainder of 2009.

Mr. McGinnis stated that the 2009 General Assembly enacted legislation (Chapter 581, Acts 2009) in February which enabled the City of Chesapeake to initiate actions to replace the Jordan Bridge. The City of Chesapeake sold the upland property underlying the proposed bridge and the former bridge to a private group of investors. In return for the property, they agreed to demolish the former Jordan Bridge and rebuild a new structure. The new bridge length would be approximately 5,530 feet from abutment to abutment on either side of the Southern Branch of the Elizabeth River. Where it crossed the river, the width of the waterway was 1,885 feet from mean low water on the Chesapeake side to mean low water on the Portsmouth side. The proposed vertical clearance would be 145 feet above mean high water, with a horizontal clearance of 225 feet within the federally maintained navigation channel. The bridge deck would be 51 feet, 8 inches wide and would consist of two lanes of vehicular traffic, with eight-foot

wide shoulders on each side and an 8-foot wide pedestrian sidewalk, separated by a concrete barrier.

Mr. McGinnis stated that replacing the Jordan Bridge enjoyed wide public and political support, including the Cities of Chesapeake and Portsmouth along with several area Delegates and Senators and the Governor. The maritime industry, however, had concerns related to the design of the structure, as proposed.

Mr. McGinnis noted that the Virginia Maritime Association (VMA), in a position paper submitted in a letter of protest to VMRC from Edward A. Barham (T. Parker Host, Inc.), and the U. S. Army Corps of Engineers, in its letter to the Coast Guard, had both expressed concerns regarding the navigable opening of the fixed span as it related to future shipping needs in the waterway. VMA indicated a preference for a minimum vertical clearance of 165 feet above mean high water and a minimum horizontal clearance of 300 feet, so that larger ships, i.e. those expected to be in operation after the current widening of the Panama Canal was completed, would have unrestricted upstream access. The Corps had concerns about the potential for the fixed structure to interfere with any future expansion (deepening and widening) of the Federal Project Channel in the river. Both entities felt the proposed design was short-sighted and would interfere with future shipping needs. The only other protest letter submitted to VMRC was from Mr. Dwight A. Dixon expressing concern regarding impacts to his upland property.

Mr. McGinnis explained that the applicant had indicated that the bridge height could not be adjusted. They maintained that the bridge must comply with the Americans with Disabilities Act (ADA). Apparently, if pedestrian access is incorporated in the design, the structure is limited to a slope of no more than 5 % grade. They also stated that any additional increase in the structures height would require approval by the Federal Aviation Administration (FAA). Furthermore, the applicant maintained the new bridge would provide the same clearance as the old structure, and that the vertical and horizontal clearances were no less than other nearby bridge structures crossing the Southern Branch of the Elizabeth River. In addition, the applicant had forwarded to VMRC a copy of an independent navigation analysis prepared by the engineering firm, Moffatt & Nichol, that was also sent to the Coast Guard, which concluded “the South Norfolk Jordan Bridge as proposed met both the current and future reasonable needs of navigation.”

Mr. McGinnis said that while the former Jordan Bridge had a sidewalk and permitted both pedestrian and bicycle traffic, it was not clear to staff why there was an overarching need to accommodate that use on the new replacement bridge. None of the other, bridges (HRBT, MMBT, CBBT or I-64) or tunnel structures (Downtown or Midtown Tunnels) in the area currently permitted such use. In fact, the overriding justification for the bridge was restoring vehicular access between the cities, not as a pedestrian walkway or bike path. According to the applicant’s agent, the reason this use was incorporated into the project design was because the January 27, 2009 agreement that Figg signed with the Chesapeake City Council required it. Furthermore, the City specified, in that agreement,

that the pedestrian walkway be ADA compliant. Even allowing that this was merely the restoration of a prior use or access that was accommodated by the former bridge, it seemed to staff that the use of a shuttle system could be incorporated into the bridge operation, if necessary. Were that to occur, it would negate the ADA applicability and a steeper grade could be used without a major redesign of the entire roadway or interchanges. The secondary benefit from this might be an ability to increase the height clearance by 20 feet which would partially address the concerns of the maritime users. Addressing or increasing the clearance width would be much more difficult. Aside from the ADA issue, staff was still uncertain of the exact nature of the FAA's involvement with the bridge. Certainly, with many other, taller structures (transmission towers, etc.) in the area, it was unclear why the FAA would object to a taller bridge, provided it was lighted in accordance with all applicable regulations.

Mr. McGinnis stated that the Virginia Institute of Marine Science indicated that the proposed project would result in the permanent loss of 1,000 square feet of subaqueous bottom, as a result of pile placement, and temporary impacts associated with construction. Expected impacts included bottom disturbance with the potential of releasing toxics from the sediment into the waterway. VIMS documented various anadromous fish species (Alewife, American Shad, Hickory Shad, and Blueback Herring) in the surrounding area and recommended avoiding construction activities between February and June to reduce impacts to these species. VIMS further stated via e-mail that a time-of-year restriction would help minimize impacts related to acoustical damage to fish in the area, resulting from excessive and prolonged non-natural noise, such as pile driving in the waterway during spawning runs.

Mr. McGinnis said that in light of the review and comments on the Essential Fish Habitat (EFH) study requested by the National Marine Fisheries Service (NMFS), the applicant had proposed installing turbidity curtains around the pile cluster areas when they were being installed, to isolate and contain any contaminants released during construction. However, since VIMS stated that not only sedimentation but also noise related to the driving of piles had a potential impact on anadromous fish species in that area, VIMS believed the imposition of a time-of-year restriction was warranted to provide the greatest amount of protection to aquatic resources under the VMRC's jurisdiction. VIMS also noted that the recently completed new Woodrow Wilson Bridge over the Potomac River near Washington, D.C. resulted in some incidents of fish kills that were ultimately attributed to acoustical impacts resulting from driving hollow pilings for the structure.

Mr. McGinnis stated that the Chesapeake Wetlands Board approved the portion of the project within their jurisdiction at their July 15, 2009 meeting. They required 104 square feet of compensation through the purchase of credits from the Libertyville Tidal Wetland Bank for the shading of vegetated tidal wetlands in a ditch adjacent to the Beltline Railroad. The Portsmouth Wetlands Board approved the portion of the project within their jurisdiction at their August 5, 2009 meeting, and they required restoration of the impacted tidal wetlands associated with the temporary construction access pad. They also

required compensation through the purchase of credits from the same mitigation bank for the permanent impacts to an additional 1,290 square feet of vegetated tidal wetlands.

Mr. McGinnis noted that the Virginia Department of Environmental Quality had indicated that they would not require a Virginia Water Protection Permit (VWP) for the project since it qualified for one of the Corps' Nationwide Permits. This was confirmed by letter dated June 30, 2009.

Mr. McGinnis explained that The U. S. Army Corps of Engineers had determined that the project should qualify for their Nationwide Permit 33, for the impacts to wetlands associated with the proposal, provided the requirements of Section 106 of the National Historic Preservation Act were met. In fact, staff understood the applicant was working with the Corps and the Department of Historic Resources to determine how to address two anomalies in the River that could require further analysis with regard to their potential, as significant historic resources.

Mr. McGinnis stated that since this was a bridge project, the Coast Guard was the lead permitting agency for the portion of the structure extending over navigable waters. They were currently reviewing the project, but had indicated that they planned to withhold their permit decision until all of the other local and State permitting and reviewing agencies have taken final action on this request. The Coast Guard would ultimately make the final decision on what was the appropriate vertical and horizontal clearance. The Coast Guard had reported to staff that they had received 908 comments in support of the project and 75 in opposition to the project, as proposed, that were submitted in response to the public notice for their permit.

Mr. McGinnis said that there was general agreement that there was an obvious need to replace this vital vehicular transportation link between Chesapeake and Portsmouth. A new Jordan Bridge would ease congestion on the other area bridges and tunnels over the Southern Branch of the Elizabeth River. Since there was no public money currently available to replace the structure, this private project offered a cost effective and reasonable solution. Clearly, the potential public benefits of the project outweighed any potential adverse environmental impacts to State bottom and the fisheries resources under VMRC jurisdiction. Since the proposed South Norfolk Jordan Bridge would cross a Federal Navigation Channel and in this case, since the U. S. Coast Guard was the lead Federal Agency for this bridge project, staff believed it was appropriate to defer the navigational issues to them.

Mr. McGinnis stated that with the understanding that the Coast Guard had ultimate jurisdiction over the navigational opening created by the proposed bridge, staff recommended approval of the project , with the following special conditions: (1) a time-or-year restriction should be imposed from February 15 to June 30 for any in water construction activities, which may disturb bottom sediments (pile driving or removal, etc.); (2) all new piling installation, and any old piling removal should be within turbidity

curtains surrounded by oil containment booms to isolate and localize any potential contaminated materials which might become re-suspended into the water column, and (3) complete removal of the existing Jordan Bridge structure from State-owned subaqueous bottom should occur within one (1) year of permit issuance. Additionally, staff recommended a one-time royalty in the amount of \$194,796.00 for the encroachment over 97,398 square feet of State-owned subaqueous bottom at a rate of \$2.00 per square foot for this private, commercial structure.

Mr. McGinnis also stated that if the Coast Guard made a final determination that the bridge structure needed to be redesigned to increase the height or width of the navigational opening over the federal channel, staff would request that the Commission authorize staff to amend the permit provided the bridge remained in the same location and there was no additional encroachment over State-owned submerged land. Should a redesign result in a change in either the location of the bridge or an increase in the footprint of the structure over State-owned subaqueous bottom in the river, staff would bring the modification back to the Commission for reconsideration following the requisite public interest review for the new structure.

Mr. McGinnis said that he had brought to the meeting a box of letters of support and opposition for this project. He said the total of the letters was 1,014 of which 908 were in support and 75 were in opposition. He noted that there was also a Navigation Study provided by Moffatt and Nichol a Norfolk Engineering Firms. He said that item 3A was the VIMS report.

Mr. McGinnis stated that he was standing in for Jay Woodward the staff engineer for this project who was on leave. With that understanding, he said he would try to answer any questions as best he could.

Associate Member Robins asked about impacts to the fisheries in the area.

David O'Brien, NOAA representative, was present and his comments are a part of the verbatim record. Mr. O'Brien explained that was being coordinated with the U. S. Coast Guard to make the determination if the time-of-year restriction was substantial and the Game and Inland Fisheries understood this as they did not have the data to make a recommendation for the Elizabeth River. He said it was left to the State to make the determination, but it was not known what the numbers are for various species. He said NMFS felt the time-of-year requirement was not warranted.

Commissioner Bowman asked if there were other questions.

Commissioner Bowman said that in an e-mail from VIMS an overview had been provided and their staff had compared this project to the Woodrow Wilson Bridge which was constructed on the Potomac River. He asked if those pilings were concrete or steel? Mr. McGinnis stated they were steel. Commissioner Bowman stated that there were similar

species in both areas. He said when monitoring the affect on fish the bubble curtain kept there from being any more kills, as the curtains reduced the impacts. Mr. McGinnis stated that the e-mail continued to say that it appeared to stop fish kills, but it did not tell what else was impacted. He stated the time-of-year restriction was done to protect the area. He said the data was not available to know what the actual impact was, and the information they had dealt with steel piles. He said large waves would come off of them and staff was being cautious. He said the curtains work fine, but the Commission needed to decide.

Commissioner Bowman stated that others were using them to lessen impacts and VIMS had opened the door for the Commission to decide.

Commissioner Bowman then asked for the applicant's representative to speak.

Linda Figg, President and CEO, representing the applicant, was sworn in. Her comments are a part of the verbatim record. Ms. Figg stated that this was a private bridge benefiting the public at no cost to the government. She also stated that with their projects they did all they could to protect the environment while providing for vessel traffic, vehicle traffic and pedestrian traffic. She said the company specialized in bridges in the United States and internationally as well. She said all of their companies focused on bridges, in Boston, New York and Maine. She said they had been awarded three presidential awards and a National Endowment. She said some of their projects involved the Smart Road Bridge in Virginia; I-295 over the James River; the Minneapolis Bridge all of which showed the importance and need for concern of the environmental.

Ms. Figg explained that the Jordan Bridge was closed in 2008 because it was too dangerous for the traversing traffic, which created a void in transportation in the area. She said they had an agreement with the City of Chesapeake for this privately-owned concrete bridge. She said with this bridge that emergency access will be provided, which was not there before.

Ms. Figg said that vessel traffic will be accommodated with an opening of 145 feet by 225 feet for accessing by boats and a fender system for vessel impacts. She stated that there would be no lift span so there would be no delays for bridge openings for vehicular traffic. She said the 5% grade was also best for vehicular traffic. She said they would actually leave the area better than it was found. She added there would be safety shoulders with a protected sidewalk.

Ms. Figg said they would respect the time-of-year restriction and more, but plan to build it quickly and accomplish the pile driving in four months. She said they would protect the environment by using the curtains. She said the bridge was precast and the latest technology was being used. She said it was prefabricated and assembled at the site so there was less activity over the water. She said this was done the same for the New Jersey Bridge, which was built in 15 months.

Jim Cahoon, representing Bay Environmental, was sworn in and his comments are a part of the verbatim record. Mr. Cahoon stated that he appreciated VIMS and staff's time, but as the environmental consultant he had prepared documents as directed by NEPA for the Coast Guard. He said in preparation of these documents they had coordinated with a number of State and local governments to evaluate the impacts to the environment and the natural resources. He said there would be no impact to threatened and endangered species in this area, nor to the fish habitat. He further said that there would be minimal impacts to wetlands which totaled 1,224 square feet in both the City of Chesapeake and in the City of Portsmouth. He said they had coordinated this project with the U. S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Game and Inland Fisheries and the Virginia Institute of Marine Science. He said all of these agencies were concerned with anadromous fish in the Southern Branch of the Elizabeth River which were very important species both commercially and recreationally, such as red drum, black sea bass, bluefish, and two species of flounder. He said they were concerned with the impact of the noise and pressure waves from the power driving which affected the swimming patterns of the fish and removed them from their natural habitat and caused redistribution of contaminated sediment. He explained that VIMS did admit that they were being conservative when they recommended a time-of-year restriction.

Mr. Cahoon explained that the use of a curtain with air bubbles would minimize the noise and pressure from the piles being power driven into the bottom. He also said that the use of concrete piles versus steel was better, too. He said that the air bubble curtains had not been used in Virginia. He stated that the air bubble curtains were used at the Woodrow Wilson Bridge and they proposed to use it during the time period from February 15 through June 30. He said the air bubble curtain would be put around each piling. He said they would also use the silt curtains so there would be two levels of protection. He said the silt curtains float on the surface and are of adequate length to reach the bottom and are anchored in place.

Mr. Cahoon said that there was also concern over or the contaminated sediment, which contained cresote and heavy metals. He said the EPA is interested in this bridge project because of their project in the area. He said they felt the silt curtain with the oil boom would address the EPA concerns.

Commissioner Bowman asked for any questions from the members.

Associate Member Tankard asked how much experience was there in the use of air bubble curtains. Mr. Cahoon stated none in Virginia, but there was lots of research and in the Northwest they had been used for salmon as well as in Florida and Canada. He said the time-of-year restriction was not impressive because of the lack of data.

Associate Member Robins asked about the e-mail from VIMS (item 3A7) which discussed three types of bubble curtains, single rig, double rig and confined air bubbles which were the most effective. Mr. Cahoon explained them.

Alan P. Krasnoff, Mayor for the City of Chesapeake, was sworn in and his comments are a part of the verbatim record. Mr. Krasnoff explained that a letter had been submitted by the City of Chesapeake. He said that the City staff had deferred to the Figg team. He said that there were many public benefits and both the City of Chesapeake and the City of Portsmouth supported the project. He said it would benefit the citizens in the area and the entire Hampton Roads region without any impact. He said that in 1977 this bridge was deeded over to the City of Chesapeake. He explained there were 10,000 openings over the years that impeded traffic. He said the average number of vehicles that cross the bridge was 7,000 per day along with bike and pedestrian traffic. He said following the closure the Hampton Roads Planning and Transit Bus Service provided service, but it was not used in other areas which were congested. He said to replace the bridge was a dream and the Figg proposal to own and operate the bridge with no government funding allowed it to be done. He said the bridge was a vital crossing of the Elizabeth River. He stated the bridge would provide emergency access, relief from congestion, and an enhancement to the economy in the areas.

Mr. Krasnoff said that in 2009 the City Council approved it and a Senate Bill Number 1550 was approved and signed by the Governor in March 2009. He stated there was a unanimous vote in both houses of the General Assembly. He said a representative of the Governor's office was present in support of the project. He said there was also much support from the Navy, EPA, and 900 plus letters were received in support with only less than a 100 opposed. He said the Coast Guard governed the impacts to navigable waters. He said he was requesting approval of the JPA, as requested by the applicant.

Senator Yvonne Miller, a member of the Senate Transportation Committee, was present and her comments are a part of the verbatim record. Senator Miller said that she was present in support of the project. She said the Cities represented had been inconvenienced and she was requesting approval. She said the proposal was profitable for the region. She stated that the General Assembly was not able to fund the project. She said there could be a profit for the private entity as this was the best natural port to receive the large ships.

Delegate Lionell Spruill, Sr., a member of the General Assembly, was present and his comments are a part of the verbatim record. Delegate Spruill explained that the bill was patroned by Senator Levitt and the Senate Committee voted in favor of the bill, 40-0, both Republican and Democrat. He said in the House, no one spoke in opposition at all. He said the railway bridge was not to be removed and the Gilmerton Bridge would be closing for repairs by the City. He said the new bridge would be better. He stated that the opposition was good if they had told them about it. He said the proposal was to be done

without tax dollars and no one was opposed to it until now. He requested that this be approved.

Senator Harry Blevins, a member of the General Assembly, was present and his comments are a part of the verbatim record. He requested that the Commission support the project.

Delegate John Cosgrove, a member of the General Assembly, was present and his comments are a part of the verbatim record. Delegate Cosgrove stated that this was not in his area. He said that Delegate Spruill agreed with him in this one case and he never had before done that. He stated the funds had been taken to do other projects and all support this endeavor. He said there were objections to the width and height, but this was wider than the others and higher than the others. He said this bridge was an artery to transportation in this area. He said he questioned the validity of the objection as this was an opportunity to get the bridge built and not take any government money. He said it would be paid for by the private sector. He said the bridge was critical to the transportation system and it would be a disaster if it were not approved.

Elizabeth Psimas, a member of the City Council for Portsmouth, was present and her comments are a part of the verbatim record. Ms. Psimas said she was representing the City Council for Portsmouth. She said the bridge was needed and the Council had unanimously endorsed the project. She stated it was imperative for the citizens, the naval shipyard, and others.

Mike Crist, Engineer with Moffatt and Nichol, was present and his comments are a part of the verbatim record. Mr. Crist provided a presentation with slides. He said they provided the report study for the navigation project. He said he had worked with the CBBT, VDOT, and HRBT on projects as well as the Virginia Port Authority regarding ship navigation. He said he was familiar with the waterway and the current channel dimensions and discussed a design for the maximum vessel. He said when the Panama Canal was finished there would be larger vessels seen, but not the panamax size in this area. He said the vessels that were able to access the area were discussed. He said the bridge did not restrict vessels and there were geometric constraints which was why it was not any larger.

Jeff Roland, South Norfolk Resident, was sworn in and his comments are a part of the verbatim record. Mr. Roland said there was a balance of the marine environment and the public use of the business owners in the turning basin area. He said he had been a Chesapeake Planning Commission member and he felt that this was a healthy project for the Area. He said the Civic League which he was a member of had voted to unanimously support the project. He said in the Mill Dam Creek area he had enjoyed it over the years, but had watched it become degraded. He said he had enjoyed the waterway as a young man. He said this would help the environment and the utilities would be allowed to pass through the bridge and if a portion of the EPA brown field were to be capped it

would limit the pollution. He said the removal of the old bridge for the new bridge would be in less area than that of the footprint and the fisheries would have more space. He stated he supported the project, as designed.

Julia Hillgrass, representing the Hampton Roads Planning District, was sworn in and her comments are a part of the verbatim record. Ms. Hillgrass stated that they supported the bridge project as it was a critical link between the cities. She stated there would be minimal impacts even with the size of the project. She said that the mitigation plans were in place and the applicant was providing the funds.

Frances Roberts, Executive Director of the Military Alliance for the Hampton Roads and Peninsula area, was sworn in and his comments are a part of the verbatim record. Mr. Roberts said that the community supported the project and it would optimize transportation with all the military activities in the area. He said the project initiative was supported.

Jesse Williams, Hampton Roads Chambers of Commerce, was sworn in and his comments are a part of the verbatim record. Mr. Williams said that they had reviewed the project and supported the development. He said they were asking that it be approved.

Andy Pickel, Hampton Roads Transportation Organization, was sworn in and his comments are a part of the verbatim record. Mr. Pickel said that it was predicted that in 23 years the traffic would be 100,000 vehicles and this new bridge would help with the tunnel congestion. He said by 2030 there would be an increase of 130,000 in the population in the area. He said the Board reviewed this at their June 2009 meeting and unanimously approved supporting the project. He provided a copy of their Resolution of Support.

Commissioner Bowman asked for those in opposition who wished to speak.

David Host, representing T. Parker Host, Inc., was sworn in and his comments are a part of the verbatim record. Mr. Host stated that this was the first public hearing at which they had been allowed to speak. He said they had submitted a letter and they represented 300 to 375 ships that transit the river annually. He said these boats shipped cargos of liquid and bulk. He said they were opposed to the vertical and horizontal restrictions as they were the same as the old bridge and would hinder navigation. He said it needed to be built right as there were newer ships with newer dimensions. He stated that in 2012 to 2014 the big ships are coming when the Panama project is completed. He said the dimensions needed were 185 feet high to 5-600 feet wide, like other bridges, to allow them to remain competitive with other ports. He said there also will be impacts from larger ships that hail from foreign ports whose ballast waters would need to be flushed out bringing non-native species to Virginia's waters. He said for larger ships that have oil spills it will impact the environment. He said third is the political issue. He said that they should not be short-sighted and the study by the Moffatt-Nichol Engineering Company

was unsolicited and flawed. He stated that the Coast Guard letter was for support. He said the Maritime sector which represented over 500 members were opposed to the project, as proposed. He said it was approved to be turned over to the City, but there were no restrictions and this was a quick fix. He said what was really needed was to build it right and to represent the watermen.

Associate Member McConaugha asked what the depth was of the channel. Mr. Host answered that the Panamax ships were 40 to 45 feet and at the Gilmerton the water depth is 35 to 40 feet. He said with the approval of Congress the Navy had boats approved for 48 feet. He said there was a need to support the deepening.

Commissioner Bowman asked if other bridges would be replaced in the future. Mr. Host said that the waterways cannot be restricted as required by the Federal law called the Truman-Hobbs Act. He said it was required that the bridges be replaced.

Commissioner Bowman asked when would this be needed. Mr. Host stated that with the improvements to the Panama Canal this area will be impacted for the next ten years.

Dave Sump, Attorney with Trout and Sanders, was present and his comments are a part of the verbatim record. Mr. Sump stated that he represented Perdue Inc. which was downstream. He explained that the Perdue heir had owned this business for over 50 years and they were the largest producer and exporter of grain. He said 70 M tons of grain were shipped a year. He said they were the leading users of the panamax ships on the east coast. He said the water is 26 feet and they now need 40 feet. He said the Jordan Bridge was built by a private enterprise for smaller vessels common in 1928. He said when Mr. Jordan envisioned the bridge it was limited by the Panama Canal. He said this proposal was not for 2015 and the last 80 to 100 years the river has limited trade. He said that Mr. Perdue did not object to the bridge only the dimensions proposed. He said they needed to be able to compete with others for the size of vessels being used. He said they needed the opportunity to compete with the ports in the Gulf and others.

Patrick Hall of Kender-Morgan, was sworn in and his comments are a part of the verbatim record. Mr. Hall explained that the Southern Branch of the Elizabeth River was a port of high volume bulk products that are loaded and discharged. He said there was need to support growth and the increasing activity at the Elizabeth River Terminal. He said the increased size of the bridge was needed. He said other areas offer larger bridges to support the water borne commerce. He said the size proposed will hamper the Terminal's growth.

Bob Wolfe, with Hess Corporation Petroleum Co., was sworn in and his comments are a part of the verbatim record. Mr. Wolfe explained that there was 30 million gallons per month shipped on the Elizabeth River. He said these ships must pass under the bridge. He said they oppose the dimensions of the bridge and they suggested the dimensions be 150 feet by 400 feet. He stated Hess supported the bridge but not the size proposed.

Captain Kevin Healy, with the Independent Docking Pilots, was sworn in and his comments are a part of the verbatim record. Captain Healy explained that vessels were docked with the assistance of tugs. He said they opposed the size. He said the transients had the tugs along to allow for control and there was a need to add 30 to 45 feet for the tug width. He said the bridge was not aligned with the channel and this limits useable width. He said further that the alignment and bend in the channel limited maneuverability especially with lightly loaded ships. He said the new bridge should be lengthened, because the fender system would impact the distance of travel of the boat. He said the Panama Canal would be ready to open in 2014 and the new Panamax ship dimensions will be 1,200 feet in length, 106 feet beam, 50-foot draft, and 190 feet air draft. He said the proposed size would limit the terminal's competitiveness by limiting access to the Elizabeth River. He said it would also be detrimental to the safety of navigation in the area. He said the turning basin allowed a maximum size boat of 600 feet now. He said the width of the river was enough to accommodate a 1,000-foot ship. He stated the Moffatt-Nichol study said that a 179-foot beam boat with a tug would have 5 ½-foot clearance.

Associate Member McConaugha asked about the deepest draft vessel that used in the river. Captain Healy said it would equal the depth depending on the tide. He said a 40-foot channel would allow a 40-foot ship with high water.

Brant Jackson, Association of Docking Pilots, was sworn in and his comments are a part of the verbatim record. Mr. Jackson stated they were not opposed to the bridge only the dimensions. He said there was an increased hazard in navigating with the length of the span with the fender system. He said until this had not been a hazard to vehicular traffic. He said they service all terminals in the Elizabeth River and this would impact commerce which in turn hurts them. He said the lower reaches of the channel was 40 feet and accommodated ships that were 40 feet. He said the upper reaches of the channel was 35 feet and accommodated 35-foot ships. He added that at the Gilmerton Bridge it was 35 feet.

Stephen Farlow, Farlow Marina, was sworn in and his comments are a part of the verbatim record. Mr. Farlow said that he was also representing the Maritime Association for Tugs and Barges, and others. He said they bring boats to the terminals in this area for such items as fertilizers. He said if they cannot access the terminals then it hurts the commercial industry. He said the ships are bigger and there is more risk. He said they need the bridge and support it, just not the size.

Ernest Ball, was sworn in and his comments are a part of the verbatim record. Mr. Ball explained that he was the original operator of the Elizabeth River Terminals and Terminal Association. He said for 30 years he was on the Port Planning and Transportation Project. He said the Southern Branch of the Elizabeth River was the only deep water area to have port development. He said the proposal would hinder and make this a long term handicap. He suggested the following: 1) approve the old bridge, 2) hold up Gilmerton;

3) 3 months adjust Gilmerton, 4) review the beltline connection; 5) Railway traffic adjust to Gilmerton and NS Bridge or built with a 45 foot depth; 6) introduce toll fee against all vessels bigger than 30 feet; 7) Corps and Coast Guard make the depth 45 feet to the Gilmerton Bridge. He said to postpone the dredging at Gilmerton.

Honorable Pierce R. Homer, Secretary of Transportation, was introduced by Ms. Figg and was sworn in. He said he was responsible for the oversight of bridges and highways in the Commonwealth. He said his attendance was only to learn from VMRC's permit process. He said he was sure that the Board had taken the long-term issue into account. He stated that if this were a VDOT Bridge it would be built the same. He said he supported the project.

Philip Shucet, The Philip Shucet Company, was sworn in and his comments are a part of the verbatim record. Mr. Shulet stated that this was the 7<sup>th</sup> public hearing for the project since January 2008. He said that the project balances the traffic and maritime needs. He said this was a forward looking project and had been done before. He said the Southern Branch of the Elizabeth River was limited in access by Panamax vessels.

Commissioner Bowman asked for discussion by the Commission.

Associate Member Robins had a question of VIMS. Mr. Robins stated that VIMS had recommended a time-of-year restriction, but there were other approaches that had been discussed, such as the bubble curtain. He asked if the only restriction that was needed was time-of-year. Carl Hershner, VIMS, stated that the time-of-year restriction only focused on those species in the area. Mr. Robins asked about the other measures. Mr. Hershner explained that they had been used for fish that are in transit, such as salmon, but there was not a lot of scientific evidence of its effectiveness. Mr. Robins asked about the time-of-year being used with transit fish. Mr. Hershner explained that time-of-year was a precautionary VIMS recommendation. He said other options were available, but there was no evidence of what was most effective.

Commissioner Bowman asked for other discussion or action by the Board.

**Associate Member Holland moved to accept the staff recommendation to include the time-of-year restriction as well as the use of turbidity curtains. Associate Member Laine said that the opposition had presented a strong case for a larger bridge, but also there were persuasive arguments from the Cabinet Transportation Secretary, members of the General Assembly, and others who supported the project, as presented. Associate Member Robins stated that the public interest and public need was compelling and the navigation issue was best considered by the Coast Guard. He said the staff was recommending deferral to the Coast Guard and the Planning Commission supported it. He said that impacts to the fisheries must be considered and doing it with a time-of-year restriction was not warranted. He said there was a select range of choices but because of the risk the preference should be to require the**

use of the bubble curtain in lieu of the time-of-year restriction. He said he supported the motion. Associate Member Holland agreed with the suggestion to require the use of the bubble curtain in lieu of the time-of-year restriction. Associate Member Robins seconded the motion. Commissioner Bowman stated the public benefits were greater than the future private detriments. He stated also that funds were hard to come by and these were private funds being used. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (97,398 sq. ft. @ \$2.00/sq. ft.).....	\$194,796.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$194,896.00

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The Commission meeting broke for lunch at approximately 12:07 p.m. and the meeting was reconvened at approximately 12:50 p.m.

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- 6. **WILLIAM M. WINN, #04-0979**, requests after-the-fact authorization for additional pier, additional wave-screen structure, and additional encroachment of a bulkhead over State-owned bottomlands in excess of those previously authorized, at the applicant’s commercial marina facility situated along the James River at Jordan Point in Prince George County. This was continued from the July 28, 2009, meeting.

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 site (Jordan Point Marina) was located along the James River adjacent to and immediately downstream of the Benjamin Harrison Bridge, south of Hopewell in Prince George County. The Jordan on the James subdivision lies immediately downstream of the project site.

Mr. Stagg said that the marina was severely damaged by Hurricane Isabel. Nearly all of the pier and boathouse structures were impacted. The applicant received authorization to install three floating piers with finger piers and gangway access in the general footprint of the previously existing and severely damaged fixed piers and to install a new vinyl bulkhead aligned up to 18 inches channelward of an existing deteriorated wooden bulkhead that was also damaged by the hurricane. In addition, the applicant received authorization to construct a two-part soldier-pile wave screen of 100 foot and 150 foot

lengths respectively, positioned approximately 200 feet channelward of the proposed downstream floating pier. The wave screen was to be constructed from wooden piles that were recovered and recycled from the old damaged piers.

Mr. Stagg stated that when a routine compliance check was done, it was revealed that there was considerable discrepancy between the permitted structures and the currently existing structures at the site. The applicant was informed of this and staff had worked with the permittee to address those issues.

Mr. Stagg said that in written correspondence, the permittee indicated that the bulkhead realignment that was out-of-compliance was done to address a complete blow-out of a portion of the structure and projected costs of up to 30% over budget to remove and construct it as originally requested and authorized. He also stated that pre-constructed floating slips were used and he failed to adequately depict the gangway offset. He also noted, and staff had confirmed, that the number of slips at the facility had not changed and still met the current Health Department approval. Finally, the permittee noted that the wave screen was a complete miscalculation of the length needed. Mr. Winn had indicated that while he hired some help during the construction and installation, he regarded himself to be the contractor for the project.

Mr. Stagg explained that staff believed the piers, while extending farther channelward than the permit drawings indicated, were actually still within the footprint of the previous fixed piers and therefore the environmental impact was the same, as that of the previously destroyed fixed piers. Additionally, the bulkhead and wave screen represented a minimal degree of environmental impact. Mr. Winn was well aware, however, of the need for a permit, as one was issued for all three of the items noted above.

Mr. Stagg stated that the pier reconfiguration appeared to be a legitimate oversight by the permittee, however the bulkhead realignment was clearly done as a cost saving measure, and the wave screen was simply constructed considerably longer than that permitted. Therefore, staff considered these two items to constitute a major degree of non-compliance. Based on that, staff recommended and the permittee previously agreed to pay, am \$1,800.00 civil charge in-lieu of any additional enforcement action. Staff continued to recommend that the Commission agree to accept that civil charge and approve the structures, as they currently exist. Should the Commission wish to treat the bulkhead realignment and the wave screen as separate violations, however, staff recommended, again based on minimal environmental impact and major non-compliance, a civil charge of \$1,800.00 for each violation for a total of \$3,600.00. The applicant had not indicated if he was willing to agree to that amount.

Commissioner Bowman asked who actually owned the marina. Mr. Stagg stated that Mr. Winn and his wife. He said that Mr. Winn told staff that he was basically the contractor and only subcontracted out some of the work.

**Commission Meeting**

Commissioner Bowman asked for the applicant to come forward if he wished to comment.

William Winn, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Winn stated that he had owned the facility since 1986 and Hurricane Isabel had severely damaged his whole property. He said he was undercapitalized and so he had been the contractor with workers assisting him. He said the hurricane had blown out the bulkhead so he made the decision to put it back as it was done. He said as for the piers he did not realize they were longer than permitted. He said he admitted that he had drawn the wave screen structures as 250 feet and when he had additional materials he just continued until they ran out. He said the piers needed more protection. He said he had replaced the dock with a used one.

Commissioner Bowman said he had seen it right after the hurricane and it looked like a mixing bowl and there was a lot of cost to the repairs.

Commissioner Bowman asked if anyone else wished to make comments. There were none.

Commissioner Bowman said he knew the area and there was nothing around it. He said he did not endorse not having a permit though.

He asked for discussion or action by the Board.

**Associate Member Robins stated that last month this was a page 3 item and there was discussion as to whether this was a single or multiple violation. He said that staff recommended it be treated as a single violation. He moved to accept the staff recommendation. Associate Member Tankard seconded the motion. Associate Member Schick stated that as a marina owner himself, he understood that the owner did not want to see his business in shambles and not have enough insurance. He said his back was against the wall, but he did need to call VMRC and let staff work with him. Commissioner Bowman stated this was good work by staff. The motion carried, 8-0. The Chair voted yes.**

Civil Charge.....	\$1,800.00
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- 7. **CITY OF NORFOLK, #09-0674**, requests authorization to replace portions of an existing 5-foot by 10-foot double barrel box culvert with a 6-foot high by 95-foot long precast, concrete, arch-span bridge unit, spanning 28 feet over the bottom of the existing culvert, beneath the Granby Street crossing of Mason Creek in the City of Norfolk. The proposed project also includes the dredging of 100 cubic

yards of State-owned subaqueous material within and adjacent to the culvert. The project is protested by several nearby residents.

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

Mr. McGinnis explained that the subject culvert was located beneath the existing Granby Street crossing of Mason Creek in the City of Norfolk. Granby Street was a major north-south corridor within the city, and was immediately east and parallel to Interstate 64 in this vicinity. The project consisted of the removal of the upper portions of the existing concrete box culvert, excavation/dredging of approximately 100 cubic yards of subaqueous material from within and immediately adjacent to the culvert, and the installation of pre-cast, concrete arch-span structures to form a new top to the existing culvert. The project was intended to correct several structural deficiencies that have formed in the existing culvert, which have lead to the placement of weight restrictions on vehicles crossing over this portion of Granby Street.

Mr. McGinnis said that the project was protested by Mr. Robert T. Vitek, President of the Mason Creek Committee, Inc., and Ms. Andrea Grady. Mr. Vitek's letter, dated July 9, 2009, stated that the proposed project "does not address the more extensive and overlapping issues" concerning the use of Mason Creek. Mr. Vitek believed that this project should be incorporated into a larger, integrated plan to address pollutant discharges, restore recreational boating access in the creek, and provide a useable hurricane evacuation route. His letter also questioned the tide range of Mason Creek indicated in the City's application drawings. Subsequent to Mr. Vitek's letter, staff received a letter from Ms. Grady, dated July 21, 2009, in which she stated her objection to the proposed project over concerns related to hurricane evacuation, flooding, stormwater runoff pollution, and recreational use of the creek. In addition to these letters of protest, staff had also received 15 requests for a public hearing on the matter from nearby residents.

Mr. McGinnis stated that the City of Norfolk, in a letter dated August 7, 2009, addressed the concerns/objections expressed by Mr. Vitek and the Mason Creek Committee. In that letter, the City stated that the immediate necessity for the replacement of the culvert was a result of the identification of severe structural deficiencies to the original slab in both barrels of the culvert, including sagging, delaminations, spalling, and steel section loss. As a result, the culvert's load rating placed it within a range for recommended replacement. The City had also posted a 25-ton weight limit. The City's letter went on to address the Mason Creek Committee's concerns. With regard to localized flooding, the City pointed to a 2007 study completed by Moffatt and Nichol (M&N), which determined that flooding within Mason Creek was controlled by the downstream Naval Air Station Culvert and not the Granby Street culvert. Further, the City stated that an EPA Stormwater Management Model indicated that additions or improvements made to the culvert were not effective in reducing water levels within the creek and might actually

worsen flooding east of Granby Street. The City went on to explain that increases to the height of the culvert or the construction of an open-pile bridge would increase costs significantly and would be in excess of funds available for the project. They clarified that the project's objective was to restore vehicular load capacity and the hydraulic capacity of the culvert. The navigational improvements to and environmental clean up of Mason Creek were beyond the scope of work for the current project. The City closed the letter by agreeing that the tide range shown in the original application drawings was incorrect, and submitted revised drawings reflecting accurate representations of mean low water (MLW) and mean high water (MHW).

Mr. McGinnis explained that staff received a letter from Mr. Tony Tyson, an adjacent property owner to the project, dated July 7, 2009, in which he stated that he did not object to the project, as proposed. He stated that he would have concerns if the project were to involve replacement of the culvert with a bridge. Mr. Walter Lush, another adjacent property owner to the project, indicated the same to staff by telephone.

Mr. McGinnis stated that the Virginia Institute of Marine Science (VIMS) Shoreline Permit Application Report, dated August 14, 2009, stated that the project was consistent with an integrated approach to shoreline management and that the impacts associated with the proposed project had been minimized to the extent possible given the site conditions. The Virginia Department of Game and Inland Fisheries, in an e-mail to staff dated July 24, 2009, stated that their records indicated a number of Colonial Waterbird colonies within the project area, but that based upon the scope and location of the project they did not anticipate any adverse impacts. They further recommended standard in-stream construction practices be observed. The Virginia Department of Conservation and Recreation, in a memorandum dated July 20, 2009, stated that they did not anticipate that the proposed project would adversely impact natural heritage resources or state-listed plants or insects within their jurisdiction. Their comments also stated that the project must comply with the Chesapeake Bay Preservation Area Designation and Management Regulations, the Virginia Stormwater Management Act, and the Virginia Stormwater Management Program (VSMP) Permit Regulations. No other agencies have raised concerns or objections to the project.

Mr. McGinnis said that while staff was sympathetic to the concerns expressed by the protestants, the City of Norfolk had made it clear that the proposed project was intended to replace an existing transportation infrastructure in-kind. Staff has long understood the influence the Navy's tide gate (culvert) has on Mason Creek. Staff did not believe, however, that the City's proposal would have any further effect on localized flooding within the Creek. Staff agreed with the City that the protestants' concerns relative to the environmental clean up of the creek were outside the scope of the current project. While staff would be supportive of improvements to navigation to further accommodate recreational use of the creek, staff recognized that the City's current proposal would not prevent that type of improvement in the future, should funds become available.

Mr. McGinnis stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since impacts resulting from the use of State-owned submerged land should be minimal, and after considering all of the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended the project be approved, as proposed.

Mr. McGinnis read Senator Northam's e-mail into the record supporting those in opposition to the project.

Commissioner Bowman asked if there was a representative for the City who wished to comment.

John Cafer, City of Norfolk, was sworn in and his comments are a part of the verbatim record. He said he had no further comments and they would answer any questions.

Commissioner Bowman asked if it were not to be replaced would the road be closed. Mr. Cafer responded yes. Commissioner Bowman asked about the cost of a bridge versus the culvert. Mr. Cafer responded that it had not been determined, but he would guess a bridge would be in excess of \$10 million and the culvert costs were \$1 million.

Commissioner Bowman asked if anyone in opposition wished to comment.

Robert T. Vitek, Mason Creek Association, was sworn in and his comments are a part of the verbatim record. Mr. Vitek stated that he had spoken with other groups and his presentation was well received and there were offers of help. He said he had also worked with Senator Northam. He stated that everyone was focused on the bridge and understood that they had not looked at the overall impact. He said with the bridge you should take advantage of this opportunity to raise it up as the water now goes over the road. He stated that this was a hurricane evacuation route. He had a slide presentation showing the flooding from storm events. He said this was evidence that a new bridge was needed. He also said that it would open up the creek to navigation as well as the water would go under the bridge otherwise it would go over the top. He said nothing had been received from the Department of Conservation and Recreation and they had been provided a packet. He said he was requesting denial of the permit which would prevent the road flooding as well as provide for navigation underneath. He said this proposal did not satisfy the Clean Water Act and the City needed to use the EPA Study regarding storm water management.

Commissioner Bowman stated that they did not evaluate what other State agencies do.

Mr. McGinnis stated that they had not received any concerns from them, as it was not the topic nor was it a part of the application.

Commissioner Bowman explained that the Commission granted permits for encroachments on subaqueous beds and under Section 28.2-1203, permits are granted for reasonable uses of State-owned bottom.

Mr. Vitek said it was complicated and he was trying to explain. Commissioner Bowman stated that his concerns should have been taken up with the City. Mr. Vitek said that reporting was required by DEQ and he provided a handout, which he read a portion into the record. He said this required a NPDES and reporting which was not being done and other aspects had not been considered.

Commissioner Bowman asked him why he was opposed to the project. Mr. Vitek stated he had the e-mail from Senator Northam which discussed pollution issues and how the stormwater retention basin was being closed off. He said it was about VMRC having to deal with fish and they were no longer there because of the water quality. He stated there were excessive amounts of fecal coliforms.

Commissioner Bowman stated that the concerns he expressed were basically concerns with the City and if these were taken to the City, what was their response? Mr. Vitek explained that the City said they did not have the money to look at the expense or benefit of a bigger bridge. He stated that the amount they said was not realistic. Commissioner Bowman said that the Commission was trying to remain on track with what VMRC's responsibility was and the point does not follow the Code for us. Mr. Vitek stated that they had provided the information and asked that the Commission consider the community fairly.

Gerrard Nelson, U. S. Navy retired, was sworn in and his comments are a part of the verbatim record. Mr. Nelson asked what the VMRC did do. Carl Josephson Senior, Assistant Attorney General responded that they considered reasonable uses of State-owned bottom. He stated the culvert was only being considered and not the entire creek. Mr. Nelson said the City had not done its job and requested to just replace the culvert of the same bridge and there was a problem with the bridge still there. He reiterated that this was an emergency exit for extreme weather. Commissioner Bowman stated that this was the City's problem as the Commission was only being asked to permit their placement of the culvert. He said this was the situation of a complaint with the City versus being our responsibility.

Mr. Josephson stated that this Commission was not the appellate body for objections with local jurisdictions.

Mr. Nelson provided a picture of his back-yard. He said there used to be water there and now it was just mud. He said the water cannot get through the culvert because of the junk that keeps filling up the creek and making the bridge bigger might get a better flow. He said that he had tried to get something done, but he could not get anything done. He

provided other pictures. He said they cannot give up and Senator Northam had finally come through.

Andrea Grady, Mason Creek Committee, was sworn in and her comments are a part of the verbatim record. Ms. Grady stated she appreciated the Commission's efforts for the state-owned bottoms. She said the state of the road did not support the traffic as the road was degraded. She stated that the Mason Creek Bridge was one of the worst. She said the City did not consult with them and she would like to see the research and the reason for the cost. She said the creek was in her backyard and her children could not play in the creek because it was so dirty. She said making the bridge bigger would allow more flow and navigation of small boats. She said now you cannot get under the bridge. She read a letter from VDOT which they give their requirements for the replacement of a bridge, which she entered into the record. She said letters from fellow protestors had been entered into the record. She said they needed some direction as to where they could go.

Commissioner Bowman explained that her direction was the City Council and the Mayor if they did not like what was being done. He stated that the Commission could not interfere with the City's decisions.

Tony Tyson, adjacent property owner, was sworn in and his comments are a part of the verbatim record. Mr. Tyson said he supported the project and provided a slide to depict his property. He said they had received the Commission's letter about any objections to the placement of the culvert and he did not object unless the culvert were to be raised which would impact exiting his property. He said at rush hour it was already a problem. He said if replacing the culvert corrects the flow, then okay. He said making it a stronger culvert will increase the flow and for that it was not necessary to raise it.

Carmen Lush, adjacent property owner, was sworn in and her comments are a part of the verbatim record. Ms. Lush stated she was in the white house on the water next to Mr. Tyson and there was trespassing on her property. She said the culvert was okay if it would stop flooding during storms.

Commissioner Bowman asked if the City wished to rebut the testimony.

Mr. Cafer stated that as far as the hurricane route was concerned that was the interstate. He said a meeting had been held and here they were meeting again.

Commissioner Bowman said he hoped they would get with the protestants to work out the problems. He asked for discussion and action by the Board.

**Associate Member Robins stated he appreciated the concerns with the water quality and the City might be able to address it. He stated it was not under the purview of the VMRC and they could not change what the City Engineer had done. He moved to approve the project. Associate Member Tankard seconded the motion.**

**Commissioner Bowman noted the receipt of the Senator Northam’s letter, but a lot of what it addressed was not under the VMRC purview. The motion carried, 8-0. The Chair voted yes.**

Permit Fee.....	\$100.00
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- 8. **RAY LEE, #09-0625**, requests authorization to install a 17- foot six-inch by 31-foot open-sided boathouse at 103 Acacia Court situated along College Creek in James City County. The project is protested by an adjacent property owner and several nearby property owners.

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

Ms. Murphy explained that the proposed project was located on College Creek, in the Kingspoint subdivision of James City County. Development along this section of the shoreline was largely residential.

Ms. Murphy said that the applicant was requesting authorization to construct a 17’ 6” by 31-foot open-sided boathouse to cover a single lift. The applicant also sought authorization to construct a 6-foot wide by 700-foot long private, non-commercial pier (the majority of which would be over wetlands) with an 11-foot by 36-foot L-head platform and 5-foot wide finger piers. With the exception of the boathouse structure, all other portions of the applicant’s pier request did not require authorization from the Marine Resources Commission, since the proposed pier qualified for the statutory authorization, provided in §28.2-1203 (A)(5) of the Code of Virginia.

Ms. Murphy stated that there was a small pier at Dr. Lee’s property now, but it was in a shallow tributary to College Creek and would be removed. Staff received several letters of protest from Dr. Lee’s neighbor and nearby property owners. The protestors were concerned about the size of Dr. Lee’s proposed boathouse, its proposed location adjacent to his property, and the impact on their view. There did not appear to be an alternative location for the boathouse along Dr. Lee’s property that would provide adequate water depth for boat mooring.

Ms. Murphy noted that without the APO objections, Dr. Lee’s proposed boathouse would have qualified for the statutory authorization provided in Section 28.2-1203 of the Code of Virginia because the proposed boathouse roof was less than 700 square feet, which was the threshold allowed for private, non-commercial boathouses. While staff was sensitive to the concerns of the protestors, the proposed boathouse appeared to be appropriately

sized. It would be in the view of the protestors; however, there were existing piers and boathouses along this section of College Creek. 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 Dr. Lee's proposed boathouse with the condition that he remove his existing pier, as stated in his application.

Ray Lee, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Lee said he was a landowner asking to be allowed to use his riparian rights to have a pier with boathouse to access the water. He said he was proposing these structures in accordance with all standards. He said the existing pier was not built by him and did not extend out into navigable waters.

Commissioner Bowman asked if anyone in opposition was present and wished to comment.

Bruce Noles, property owner, was sworn in and his comments are a part of the verbatim record. Mr. Noles said that he objected because it would interfere with the view from his window. He stated the existing pier was 270 feet with a 11 X 18 X 2 foot walkway. He said this was also proposed to be built on College Creek which was a historical creek. He said that the next door neighbor was not objecting, but 7 other property owners were objecting. He stated that they were not pleased with the 700 foot pier and were also concerned with the platform and boathouse. He said they were told it would add to the aesthetics of the area. He said some had requested a meeting with Mr. Lee, which he refused. He said the boathouse was 14 by 31, but had been changed to 17 ½ by 31.

Commissioner Bowman asked staff to clarify. Ms. Murphy explained that the slip was 14 feet and the 17-foot width of the boathouse had not changed.

Mr. Noles stated that the size was unrealistic and degrading to the view. He said for 35 years it had been equally enjoyed by all. He said the Commission should not allow it and ignore the other neighbors. He said that you can only egress on high tide and there was no need for the 35 feet for a 20-foot boat. He said the neighbors would be closer to it than Mr. Lee.

Gail Burger, resident, was sworn in and her comments are a part of the verbatim record. Ms. Burger on a slide depicted her property. She said the pier at 700 feet was within their view and others. She said she was concerned that it was crossing wetlands. She stated that the pier was 700 feet, but the house was at the beginning of the pier. She said they would be looking at a boathouse over naturally, beautiful land. She said there was a new law that said you cannot build over wetlands and cannot remove a tree off of your property, but this pier would be allowed because it was under VMRC jurisdiction.

**Associate Member Robins stated that he appreciated the comments as this was a pristine area, but the law allowed open-sided boathouses. He moved to approve the**

**project. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Permit Fee.....	\$100.00
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**9. STEWARD KISER, #09-0620**, requests authorization to install up to 80 linear feet of rip rap revetment along a sand beach at the applicant's property located adjacent to the James River at 74 Riverview Drive in Surry County. The application requires a beaches and dunes permit.

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 was located along the James River, just upstream of the Scotland Wharf ferry dock, in Surry County.

Mr. Stagg stated that the applicant was requesting authorization to rework and enhance an existing riprap revetment and to place additional riprap along a beach area of the shoreline. The riprap would be placed at the base of an eroding bluff that was approximately 20 feet high at or above the high tide line. Mr. Kiser's house was located approximately 18-20 feet from the top of the bluff.

Mr. Stagg said that the project would impact approximately 450 square feet of previously undisturbed jurisdictional beach. Surry County had not yet adopted the beaches and dunes 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 was charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code. Surry County had determined that the project did not involve any tidal wetland impacts.

Mr. Stagg noted that the Virginia Institute of Marine Science (VIMS), in their Shoreline Permit Application Report, dated August 13, 2009, provided a recommendation that the preferred approach for this high-energy sandy shoreline was to provide protection through sand nourishment and construction of an offshore rock breakwater. They further noted that if a breakwater system was not feasible, the next approach would be to construct a riprap revetment at the base of the bank, as far landward as possible to avoid and minimize beach impacts. No other agencies had commented on the proposal and the project had received no protests.

Mr. Stagg explained that nearby properties had been similarly stabilized and a portion of the applicant's property already had rip rap stabilization that would benefit from the

reconfiguration and placement of properly sized granite stone. Since the subject property was limited in width and the site was in very close proximity to the ferry dock loading structures, the installation of a breakwater at this location did not seem feasible or practical.

Mr. Stagg said that after evaluating the merits of the project, and after considering the standards and guidelines, as well as the purpose and intent of Chapter 14 (§et seq.) of Title 28.2 of the Code of Virginia, staff recommended approval of the project, as proposed.

Commissioner Bowman asked if there were any questions. There were none. He then asked for discussion or action by the Commission.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.**

No applicable fees – Beaches and Dunes Permit

\* \* \* \* \*

**10. ENFORCEMENT ACTION:** Commission review of information indicating possible violation of Chapter 12 of Title 28.2 of the Code of Virginia, specifically the unauthorized pier construction by Mr. John Alvey at or near his property situated along Neabsco Creek at 16127 Neabsco Road, in Prince William County.

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

Mr. Bacon explained that Mr. Alvey's property was less than a half mile from the confluence of Neabsco Creek and the Potomac River. While the site was best described as being commercial/industrial in nature, it was just downriver of several marinas and residential neighborhoods. The property was zoned B1 (business) and had been used as a marina in the past.

Mr. Bacon explained further that during a routine compliance check at the adjoining marina on May 21, 2009, staff noticed the installation of a floating dock system at Mr. Alvey's property. A notification letter of the alleged violation was mailed as well as being served by Marine Police. That letter, dated July 22, 2009, explained what staff believed to be an unauthorized structure installed over State-owned submerged land.

Mr. Bacon reminded the Commission that Mr. Alvey appeared before the Commission on September 23, 2008, regarding unauthorized dredging activities that occurred at his property. In addition, in April 22, 2005, the Commission had previously sent Mr. Alvey a

formal letter directing him to cease all further dredging activities at his property, whether intentional or incidental. At the meeting held on September 23, 2008, the Commission unanimously found Mr. Alvey in violation of §28.2-1203 of the Code of Virginia and referred the matter to both the Commonwealth's Attorney and Attorney General, for initiation of the appropriate criminal and civil enforcement actions respectively, including possible restoration and/or civil penalties. At that time Mr. Alvey was specifically cautioned against undertaking any further dredging or construction activities at his property without the proper VMRC permit.

Mr. Bacon said that staff was not aware of any existing or prior permit that would allow Mr. Alvey to install new floating piers and slips at his property. Although staff had not received any response in writing or any prior permit documents from Mr. Alvey, he had repeatedly stated in phone conversations with staff that he believed his marina was authorized in a 1970's permit.

Mr. Bacon stated that a further review of Commission records indicated that in 1976, Mr. Alvey applied for a marina/pier facility at his property. The Commission denied that permit request at their meeting held on October 26, 1976. The Commission also denied a marina application at their meeting held on February 22, 1977. The Division's 1972 Master Log indicated that Mr. Alvey's application to dredge, fill, construct a bulkhead and marina was denied. The 1987 Commission minutes reflect the Commission's decision to request that the Attorney General seek a court order directing Mr. Alvey to remove portions of his marina facility. On February 19, 1997, however, that case was dropped due to inaction and the lapse of three years with no enforcement action being taken.

Mr. Bacon said that in this most recent instance, a formal request from the Commissioner for further enforcement action was forwarded to Attorney General, Mr. Robert McDonnell on December 12, 2008. To date, staff had not received a response from the Attorney General's Office on the disposition or status of Mr. Alvey's case.

Mr. Bacon stated that staff believed that the floating dock system that Mr. Alvey installed at his property was a clear violation of Chapter 12 of Title 28.2 of the Code of Virginia. Even if a prior VMRC permit existed from the 1970's for some sort of marina facility staff did not believe it would authorize new construction some 30 years later.

Mr. Bacon explained that since the Commission had previously warned Mr. Alvey that any future incidents would result in enforcement action, staff recommended that the Commission again find Mr. Alvey in violation of §28.2-1203 of the Code of Virginia and that this matter be referred to both the Commonwealth's Attorney and Attorney General for the appropriate criminal and civil enforcement action respectively, including possible restoration and/or civil penalties. To the extent that Mr. Alvey was a licensed contractor or business enterprise in the Commonwealth, staff would also recommend that the Commission lodge a formal complaint with the Department of Professional and Occupational Regulations (DPOR) and/or the Better Business Bureau (BBB).

Commissioner Bowman stated that this individual had no regard for the laws of Virginia and there are others who just make an honest mistake. He stated the matter was before the board.

**Associate Member Laine moved to refer this case to the Commonwealth’s Attorney and the Attorney General’s office, as well as a formal complaint being sent to the Department of Professional and Occupational Regulations and the Betty Business Bureau. Associate Member Tankard seconded the motion. Associate Member Schick said as a marina owner he had floating docks, but he had called the VMRC. He said he was told that there was a fine of \$10,000 per day until the case was reviewed by the Commission. He said there were two cases and it was time to take the bull by the horns and show them that he cannot get by with this anymore. The motion carried, 8-0. The Chair voted yes.**

Referred for Further Enforcement Actions

\* \* \* \* \*

- 11. **ENFORCEMENT ACTION:** Commission review of information indicating a possible violation of Chapter 12 of Title 28.2 of the Code of Virginia, specifically unauthorized construction of rip-rap groins and the removal of aquatic vegetation by Mr. Brad Martin at or near properties situated along Potomac Creek at 37 and 51 Louie Lane in Stafford County.

Associate Member Schick stated that Mr. Martin had called him and advised him that he would not be able to be at the meeting. He said he told him to send in a letter requesting the continuance. Commissioner Bowman stated that he did send in a letter.

Commissioner Bowman asked for a motion.

**Associate Member Schick moved to continue this item until the September meeting. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Continued until the September meeting.

\* \* \* \* \*

- 12. **DECEMBER PARTNERS, LLC.** Commission adoption of Resolution and approval of Deed conveying 32,631 square feet (0.749 acres +/-) of previously filled State-owned subaqueous lands in the City of Norfolk to December Partners, LLC, and its successors and assigns, in accordance with Chapter 884 Acts of Assembly 2007.

**Commission Meeting**

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, gave the presentation. Mr. Josephson stated there were four conveyances and that that the Attorney for 12, 13, and 14 was Chris Nolan.

Mr. Josephson said the value of this conveyance which was determined by the Commission was \$34,000.00. He said the Resolution had been prepared and was consistent with the Deed. He stated in this case the Commissioner was authorized to execute these documents once the Governor and Attorney General had approved them.

Commissioner Bowman asked for a motion.

**Associate Member Robins moved to approve the resolution. Associate Member McConaugh seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Mr. Josephson said that these conveyances were all the results of Acts by the General Assembly.

Conveyance Fees.....	\$31,924.72
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**RESOLUTION OF THE VIRGINIA MARINE RESOURCES COMMISSION  
PERTAINING TO THE SALE AND CONVEYANCE  
OF A PIECE OR PARCEL OF SUBAQUEOUS LAND IN THE ELIZABETH  
RIVER IN THECITY OF NORFOLK AS AUTHORIZED BY 2007 ACTS OF  
ASSEMBLY, CHAPTER 884**

WHEREAS, by Chapter 884 of the 2007 Acts of Assembly, the Marine Resources Commission is authorized to sell and convey on behalf of the Commonwealth to December Partners, LLC and its successors and assigns, upon such terms and conditions and the payment of an amount commensurate with the property interest being conveyed as provided in §§ 2 and 3 of Chapter 884 of the 2007 Acts of Assembly, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the Elizabeth River in the City of Norfolk as more particularly described below; and

WHEREAS, the Marine Resources Commission, on the 18th day of December, 2007, considered the amount of the payment commensurate with the property interest being conveyed as provided in §§ 2 and 3 of Chapter 884 of the 2007 Acts of Assembly, and determined the payment amount to be Thirty-One Thousand Nine Hundred Twenty-Four and 72/100 Dollars (\$31,924.72); and

WHEREAS, the subaqueous land authorized to be conveyed is more particularly described as follows:

All that certain lot, piece or parcel of land, belonging, lying, situate and being in the City of Norfolk, Virginia, as shown on the plan entitled "EXHIBIT PLAN SHOWING SUBAQUEOUS LAND SITUATE BELOW PROPERTY OF DECEMBER PARTNERS, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, NORFOLK, VIRGINIA SCALE: 1"=50' JANUARY 5, 2007", attached hereto and made a part hereof as Exhibit A, and being more particularly described as follows:

Commencing at the intersection of the Southern Line of Front Street and a line 30 feet from and parallel to the West Line of 2nd Street; thence from the point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 630.62 feet to a point; thence South 22 degrees 22 minutes 30 seconds West a distance of 121.72 feet to the "point of beginning." Thence from the "point of beginning" the following courses and distances: South 22 degrees 22 minutes 30 seconds West a distance of 310.62 feet to a point; thence North 67 degrees 41 minutes 08 seconds West a distance of 105.87 feet to a point; thence North 22 degrees 33 minutes 49 seconds East a distance of 179.21 feet to a point; thence South 80 degrees 55 minutes 55 seconds East a distance of 8.86 feet to a point; thence North 22 degrees 48 minutes 57 seconds East a distance of 34.54 feet to a point; thence North 65 degrees 04 minutes 36 seconds West a distance of 6.58 feet to a point; thence North 16 degrees 54 minutes 38 seconds East a distance of 38.20 feet to a point; thence North 20 degrees 18 minutes 27 seconds East a distance of 48.28 feet to a point, thence North 27 degrees 27 minutes 27 seconds East a distance of 9.80 feet to a point, thence South 66 degrees 53 minutes 27 seconds East a distance of 107.48 feet to the said "point of beginning." The described subaqueous property contains an approximate total area of 32,631 square feet or 0.749 acres more or less.

WHEREAS, the attached Deed has been prepared to convey to December Partners, LLC, and its successors and assigns, all rights, title and interest as the Commonwealth may have in the foregoing described subaqueous land; and

WHEREAS, the Virginia Marine Resources Commission deems the terms and conditions therein set forth to be proper;

\* \* \* \* \*

NOW, THEREFORE, BE IT RESOLVED: That the Marine Resources Commission hereby authorizes its Chairman, the Commissioner of the Virginia Marine Resources Commission, to execute the attached Deed, following and subject to the approval of the form of the Deed by the Attorney General and the approval of the Deed by the Governor.

**DEED OF CONVEYANCE**

**THIS DEED** made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **COMMONWEALTH OF VIRGINIA**, Grantor, and **DECEMBER PARTNERS, LLC**, a Virginia limited liability company, Grantee, whose address is: 3081 Stratford Court, Chesapeake, Virginia 23321.

**WITNESSETH:**

**WHEREAS**, by Chapter 884 of the Virginia Acts of Assembly of 2007, approved on April 4, 2007, the Marine Resources Commission is authorized to sell and convey on behalf of the Commonwealth of Virginia, upon such terms and conditions as are deemed proper by the Commission and with approval of the Governor and in a form approved by the Attorney General, to December Partners, LLC, its successors and assigns, such rights, title, and interest the Commonwealth may have in a piece or parcel of subaqueous land in the Elizabeth River in the City of Norfolk, Virginia, as hereinafter described; and

**WHEREAS**, the consideration determined by the Marine Resources Commission on December 18, 2007, for the 0.749 acres +/-, (32,631 square feet), equates to the sum of Thirty-One Thousand Nine Hundred Twenty-Four and 72/100 Dollars (\$31,924.72); and

**WHEREAS**, the Marine Resources Commission, on the 25th day of August, 2009, approved the terms and conditions of the sale and conveyance contained in this Deed and authorized its Chairman, the Commissioner of the Marine Resources Commission, to execute this Deed on its behalf, subject to approval of its form by the Attorney General and the approval of the Governor; and

**NOW, THEREFORE**, for and in consideration of the sum of Thirty-One Thousand Nine Hundred Twenty-Four and 72/100 Dollars (\$31,924.72), Grantor, hereby grants and quitclaims unto the Grantee, its successors and assigns, all its rights, title and interest, in and to the following described real property:

All that certain lot, piece or parcel of land, belonging, lying, situate and being in the City of Norfolk, Virginia, as shown on the plan entitled "EXHIBIT PLAN SHOWING SUBAQUEOUS LAND SITUATE BELOW PROPERTY OF DECEMBER PARTNERS, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, NORFOLK, VIRGINIA SCALE: 1"=50' JANUARY 5, 2007", attached hereto and made a part hereof as Exhibit A, and being more particularly described as follows:

Commencing at the intersection of the Southern Line of Front Street and a line 30 feet from and parallel to the West Line of 2nd Street; thence from the point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 630.62 feet to a point; thence South 22 degrees 22 minutes 30 seconds West a distance of 121.72 feet to the "point of beginning." Thence from the "point of beginning" the following courses and distances: South 22 degrees 22 minutes 30 seconds West a distance of 310.62 feet to

a point; thence North 67 degrees 41 minutes 08 seconds West a distance of 105.87 feet to a point; thence North 22 degrees 33 minutes 49 seconds East a distance of 179.21 feet to a point; thence South 80 degrees 55 minutes 55 seconds East a distance of 8.86 feet to a point; thence North 22 degrees 48 minutes 57 seconds East a distance of 34.54 feet to a point; thence North 65 degrees 04 minutes 36 seconds West a distance of 6.58 feet to a point; thence North 16 degrees 54 minutes 38 seconds East a distance of 38.20 feet to a point; thence North 20 degrees 18 minutes 27 seconds East a distance of 48.28 feet to a point, thence North 27 degrees 27 minutes 27 seconds East a distance of 9.80 feet to a point, thence South 66 degrees 53 minutes 27 seconds East a distance of 107.48 feet to the said "point of beginning." The described subaqueous property contains an approximate total area of 32,631 square feet or 0.749 acres more or less.

**IN WITNESS WHEREOF**, and pursuant to the authority of Chapter 884, Virginia Acts of Assembly 2007, the Commonwealth has caused this Deed to be executed on behalf of the Marine Resources Commission by the Commissioner of the Marine Resources Commission, Steven G. Bowman.

\* \* \*

- 13. MOON OF NORFOLK, LLC.** Commission adoption of Resolution and approval of Deed conveying 108,466 square feet (2.49 acres +/-) of previously filled State-owned subaqueous lands in the City of Norfolk to Moon of Norfolk, LLC, and its successors and assigns, in accordance with Chapter 884 Acts of Assembly 2006 and limited by Chapter 879 Acts of Assembly 2007.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that Moon of Norfolk, LLC would be executed by the Governor not the Commissioner. He said what was being considered today was the Deed, how much was being conveyed, and the staff with Nolan had determined the amount of compensation, which had been corrected and determined to be \$79,509.37. He said the Resolution and fees were to be approved by the Commission.

Bob Grabb, Chief, Habitat Management, said that Mr. Nolan had checked with the City regarding the overage of the real estate tax assessment which had resulted in a change being made to the compensation amount. Commissioner Bowman asked if it was now calculated correctly. Mr. Grabb responded yes.

Commissioner Bowman asked for a motion.

**Associate Member Robins moved to approve the resolution. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Conveyance Fees.....	\$79,509.37
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**RESOLUTION OF THE VIRGINIA MARINE RESOURCES COMMISSION  
PERTAINING TO THE SALE AND CONVEYANCE  
OF A PIECE OR PARCEL OF SUBAQUEOUS LAND BELONGING, LYING,  
SITUATE AND BEING IN THE CITY OF NORFOLK AS AUTHORIZED BY  
2006 ACTS OF ASSEMBLY, CHAPTER 884, AS AMENDED BY 2007 ACTS OF  
ASSEMBLY, CHAPTER 862 AND AS LIMITED BY § 4-5.10d OF 2008 ACTS OF  
ASSEMBLY, CHAPTER 879**

WHEREAS, by Chapter 886 of the 2006 Acts of Assembly, as amended by Chapter 862 of the 2007 Acts of Assembly, and as limited by § 4-5.10d of Chapter 879 of the 2008 Acts of Assembly, the Governor is authorized to sell and convey to Moon of Norfolk, L.L.C., and its successors and assigns, in an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5 of Chapter 862 of the 2007 Acts of Assembly, and in a form approved by the Attorney General such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land belonging, lying, situate and being in the City of Norfolk, as more particularly described in Chapter 886 of the 2006 Acts of Assembly, as amended by Chapter 862 of the 2007 Acts of Assembly; and

WHEREAS, § 4-5-10d of Chapter 879 of the 2008 Acts of Assembly limited the sale or conveyance of those subaqueous lands identified by metes and bounds in Chapter 886 of the 2006 Acts of Assembly, as amended by Chapter 862 of the 2007 Acts of Assembly to subaqueous lands that have been filled prior to January 1, 2006; and

WHEREAS, the metes and bounds description of the subaqueous lands that have been filled prior to January 1, 2006 within the piece or parcel described in Chapter 886 of the 2006 Acts of Assembly, as amended by Chapter 862 of the 2007 Acts of Assembly, are more particularly described below; and

WHEREAS, the Marine Resources Commission, on the 25th day of August, 2009, considered the amount of the payment commensurate with the property interest being conveyed as provided in §§ 4 and 5 of Chapter 862 of the 2007 Acts of Assembly, and determined the payment amount to be Seventy-Nine Thousand Five Hundred Nine and 37/100 (\$79, 509.37); and

WHEREAS, the subaqueous land authorized to be conveyed is more particularly described as follows:

All that certain lot, piece or parcel of land, belonging, lying, situate and being in the City of Norfolk, State of Virginia, as shown on the plan

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entitled "EXHIBIT PLAN PROPERTY OF MOON OF NORFOLK, L.L.C., A VIRGINIA LIMITED LIABILITY COMPANY INSTRUMENT #980033576 NORFOLK, VIRGINIA SCALE: 1"=60' MARCH 16, 2009", attached hereto and made a part hereof as Exhibit A, and being more particularly described as follows:

Commencing at the intersection of the Southern Line of Front Street and a line 30 feet from and parallel to the West Line of 2<sup>nd</sup> Street, thence from said point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 145.00 feet to a point; thence South 22 degrees 29 minutes 28 seconds West a distance of 118.55 feet to the "Point of Beginning". Thence from said "Point of Beginning" the following courses and distances:

South 76 degrees 36 minute 34 seconds East a distance of 9.07 feet to a point; thence South 70 degrees 28 minutes 48 seconds East a distance of 160.19 feet to a point; thence South 70 degrees 22 minutes 56 seconds East a distance of 67.23 feet to a point; thence South 86 degrees 13 minutes 40 seconds East a distance of 56.91 feet to a point; thence South 22 degrees 29 minutes 28 seconds West a distance of 43.78 feet to a point; thence South 53 degrees 40 minutes 12 seconds West a distance of 25.26 feet to a point; thence South 55 degrees 00 minutes 51 seconds West a distance of 50.39 feet to a point; thence South 21 degrees 02 minutes 59 seconds West a distance of 260.22 feet to a point; thence South 08 degrees 26 minutes 17 seconds West a distance of 18.69 feet to a point; thence South 25 degrees 52 minutes 28 seconds West a distance of 61.87 feet to a point; thence South 15 degrees 34 minutes 14 seconds West a distance of 32.29 feet to a point; thence South 27 degrees 00 minutes 57 seconds West a distance of 45.69 feet to a point; thence South 82 degrees 21 minutes 06 seconds West a distance of 35.38 feet to a point; thence North 67 degrees 23 minutes 25 seconds West a distance of 11.43 feet to a point; thence North 51 degrees 31 minutes 47 seconds West a distance of 34.46 feet to a point; thence North 62 degrees 20 minutes 54 seconds West a distance of 47.62 feet to a point; thence North 59 degrees 57 minutes 44 seconds West a distance of 46.49 feet to a point; thence North 28 degrees 23 minutes 03 seconds West a distance of 47.10 feet to a point; thence North 25 degrees 48 minutes 45 seconds East a distance of 47.01 feet to a point; thence North 23 degrees 35 minutes 33 seconds East a distance of 89.75 feet to a point; thence North 29 degrees 55 minutes 36 seconds East a distance of 23.30 feet to a point; thence North 14 degrees 31 minutes 52 seconds East a distance of 28.10 feet to a point; thence North 20 degrees 14 minutes 04 seconds East a distance of 21.25 feet to a point; thence North 32 degrees 35 minutes 55 seconds East a distance of 41.23 feet to a point; thence North 23 degrees 59 minutes 16 seconds East a distance of 95.98 feet to a point; thence North 65 degrees 18 minutes 12 seconds West a distance of 19.01 feet to a point; thence North 58 degrees 22 minutes 28 seconds West a distance of 14.07 feet to a point; thence North 10 degrees 03 minutes 35 seconds East a distance of 5.75 feet to a point; thence North 30 degrees 01 minutes 34 seconds East a distance of 7.64 feet to a point; thence North 41 degrees 23 minutes 18 seconds West a distance of 17.47 feet to a point; thence

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North 51 degrees 34 minutes 36 seconds West a distance of 16.64 feet to a point; thence North 22 degrees 29 minutes 28 seconds East a distance of 88.52 feet to the said "Point of Beginning". Said described property contains an approximate total area of 2.49 +/- acres; and

WHEREAS, the attached Deed has been prepared to convey to Moon of Norfolk, L.L.C., and its successors and assigns, all rights, title and interest as the Commonwealth may have in the foregoing described subaqueous land; and

WHEREAS, the Virginia Marine Resources Commission deems the terms and conditions therein set forth to be proper;

\* \* \* \* \*

NOW, THEREFORE, BE IT RESOLVED: That the Marine Resources Commission hereby directs that the attached Deed and this Resolution be forwarded to the Attorney General to consider approval of the form of the Deed and, if approved, the Commission respectfully requests the Attorney General forward the Deed to the Governor for approval and signature if the Governor approves the sale and conveyance of the foregoing described subaqueous land in accordance with the provisions of the attached Deed.

**DEED OF CONVEYANCE**

**THIS DEED** made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **COMMONWEALTH OF VIRGINIA**, Grantor, and **MOON OF NORFOLK, L.L.C.**, a Virginia limited liability company, Grantee, whose address is: 9512 North River Road, Suffolk, Virginia 23435.

**WITNESSETH:**

**WHEREAS**, by Chapter 884 of the Virginia Acts of Assembly of 2006, approved on April 19, 2006, as amended by Chapter 862 of the 2007 Virginia Acts of Assembly, approved on April 4, 2007, and as limited by § 4-5.10d of Chapter 879 of the Virginia Acts of Assembly of 2008, approved May 9, 2008, the Governor is hereby authorized to sell and convey to Moon of Norfolk, L.L.C., and its successors and assigns, subject to such terms and conditions of the sale and conveyance as are deemed proper, and the payment of an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5 of Chapter 862 of the 2007 Virginia Acts of Assembly and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the Elizabeth River, belonging, lying, situate and being in the City of Norfolk, as hereinafter described; and

**WHEREAS**, the Marine Resources Commission determined, on the 25<sup>th</sup> Day of August, 2009, that the appropriate consideration for the 2.49 acres +/-, (108,452 square feet), equates to Seventy-Nine Thousand Five Hundred Nine and 37/100 Dollars (\$79,509.37); and

**WHEREAS**, the Marine Resources Commission, on the 25<sup>th</sup> day of August, 2009, approved the terms and conditions of the sale and conveyance contained in this Deed, subject to approval of the form by the Attorney General and the approval of the Governor;

**NOW, THEREFORE**, for and in consideration of the sum of Seventy-Nine Thousand Five Hundred Nine and 37/100 Dollars (\$79,509.37), Grantor, hereby grants and quitclaims unto the Grantee, its successors and assigns, all its rights, title and interest, in and to the following described real property:

All that certain lot, piece or parcel of land, belonging, lying, situate and being in the City of Norfolk, State of Virginia, as shown on the plan entitled "EXHIBIT PLAN PROPERTY OF MOON OF NORFOLK, L.L.C., A VIRGINIA LIMITED LIABILITY COMPANY INSTRUMENT #980033576 NORFOLK, VIRGINIA SCALE: 1"=60' MARCH 16, 2009", attached hereto and made a part hereof as Exhibit A, and being more particularly described as follows:

Commencing at the intersection of the Southern Line of Front Street and a line 30 feet from and parallel to the West Line of 2<sup>nd</sup> Street, thence from said point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 145.00 feet to a point; thence South 22 degrees 29 minutes 28 seconds West a distance of 118.55 feet to the "Point of Beginning". Thence from said "Point of Beginning" the following courses and distances:

South 76 degrees 36 minute 34 seconds East a distance of 9.07 feet to a point; thence South 70 degrees 28 minutes 48 seconds East a distance of 160.19 feet to a point; thence South 70 degrees 22 minutes 56 seconds East a distance of 67.23 feet to a point; thence South 86 degrees 13 minutes 40 seconds East a distance of 56.91 feet to a point; thence South 22 degrees 29 minutes 28 seconds West a distance of 43.78 feet to a point; thence South 53 degrees 40 minutes 12 seconds West a distance of 25.26 feet to a point; thence South 55 degrees 00 minutes 51 seconds West a distance of 50.39 feet to a point; thence South 21 degrees 02 minutes 59 seconds West a distance of 260.22 feet to a point; thence South 08 degrees 26 minutes 17 seconds West a distance of 18.69 feet to a point; thence South 25 degrees 52 minutes 28 seconds West a distance of 61.87 feet to a point; thence South 15 degrees 34 minutes 14 seconds West a distance of 32.29 feet to a point; thence South 27 degrees 00 minutes 57 seconds West a distance of 45.69 feet to a point; thence South 82 degrees 21 minutes 06 seconds West a distance of 35.38 feet to a point; thence North 67 degrees 23 minutes 25 seconds West a distance of 11.43 feet to a point; thence North 51 degrees 31 minutes 47 seconds West a distance of 34.46 feet to a point; thence North 62 degrees 20 minutes 54 seconds West a distance of 47.62 feet to a point; thence North 59 degrees 57 minutes 44 seconds West

a distance of 46.49 feet to a point; thence North 28 degrees 23 minutes 03 seconds West a distance of 47.10 feet to a point; thence North 25 degrees 48 minutes 45 seconds East a distance of 47.01 feet to a point; thence North 23 degrees 35 minutes 33 seconds East a distance of 89.75 feet to a point; thence North 29 degrees 55 minutes 36 seconds East a distance of 23.30 feet to a point; thence North 14 degrees 31 minutes 52 seconds East a distance of 28.10 feet to a point; thence North 20 degrees 14 minutes 04 seconds East a distance of 21.25 feet to a point; thence North 32 degrees 35 minutes 55 seconds East a distance of 41.23 feet to a point; thence North 23 degrees 59 minutes 16 seconds East a distance of 95.98 feet to a point; thence North 65 degrees 18 minutes 12 seconds West a distance of 19.01 feet to a point; thence North 58 degrees 22 minutes 28 seconds West a distance of 14.07 feet to a point; thence North 10 degrees 03 minutes 35 seconds East a distance of 5.75 feet to a point; thence North 30 degrees 01 minutes 34 seconds East a distance of 7.64 feet to a point; thence North 41 degrees 23 minutes 18 seconds West a distance of 17.47 feet to a point; thence North 51 degrees 34 minutes 36 seconds West a distance of 16.64 feet to a point; thence North 22 degrees 29 minutes 28 seconds East a distance of 88.52 feet to the said "Point of Beginning". Said described property contains an approximate total area of 2.49 +/- acres.

**IN WITNESS WHEREOF**, and pursuant to the authority of Chapter 884 of the Virginia Acts of Assembly of 2006, as amended by Chapter 862 of the 2007 Virginia Acts of Assembly and as limited by § 4-5.10d of Chapter 879 of the Virginia Acts of Assembly of 2008, the Commonwealth has caused this Deed to be executed by the Governor, Timothy M. Kaine, all as of the day and year first above written.

\* \* \*

- 14. FORT NORFOLK, LLC.** Commission adoption of Resolution and approval of Deed conveying 4,489 square feet (0.103 acres +/-) of previously filled State-owned subaqueous lands in the City of Norfolk to Fort Norfolk, LLC, and its successors and assigns, in accordance with Chapter 673 Acts of Assembly 2008.

Mr. Josephson explained that the Commissioner would execute the easement and the approved amount for compensation was \$5,307.07. He stated that the Resolution and Deed were to be executed by the Commissioner subject to the Governor and Attorney General's approval.

Commissioner Bowman asked for a motion.

**Associate Member Robins moved to approve the resolution. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Conveyance Fees.....	\$5,307.70
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**RESOLUTION OF THE VIRGINIA MARINE RESOURCES COMMISSION  
PERTAINING TO THE SALE AND CONVEYANCE  
OF A PIECE OR PARCEL OF PREVIOUSLY FILLED SUBAQUEOUS LAND IN  
THE CITY OF NORFOLK, VIRGINIA AS AUTHORIZED BY 2008 ACTS OF  
ASSEMBLY, CHAPTER 673**

WHEREAS, by Chapter 673 of the 2008 Acts of Assembly, the Marine Resources Commission is authorized to sell and convey on behalf of the Commonwealth to Fort Norfolk LLC and its successors and assigns, upon such terms and conditions and as are deemed proper by the Commission pursuant to § 28.2-1200.1 of the Code of Virginia, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of previously filled subaqueous land in the City of Norfolk, Virginia, as more particularly described below; and

WHEREAS, the Marine Resources Commission, on the 24<sup>th</sup> day of March, 2009, considered the amount of the payment commensurate with the property interest being conveyed as provided in § 28.2-1200.1, and determined the payment amount to be Five Thousand Three Hundred Seven and 70/100 Dollars (\$5,307.70); and

WHEREAS, the subaqueous land authorized to be conveyed is more particularly described as follows:

All that certain lot, piece or parcel of land, belonging, lying, situate and being in the City of Norfolk, Virginia, as shown on the plan entitled "EXHIBIT PLAN SHOWING SUBAQUEOUS LAND SITUATE BELOW PROPERTY OF FORT NORFOLK, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, NORFOLK, VIRGINIA SCALE: 1" = 50' NOVEMBER 30, 2007", as shown on Exhibit A attached hereto and made a part hereof, and as more particularly described as:

Such lot commencing at the intersection of the southern line of Front Street and a line 30 feet from and parallel to the west line of 2nd Street, thence from said point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 630.62 feet to a point at the southwestern corner of the intersection of Front Street and Rader Street, thence South 22 degrees 22 minutes 30 seconds West a distance of 121.72 feet to the "Point of Beginning". Thence North 66 degrees 53 minutes 27 seconds West a distance of 107.48 feet to a point, thence North 27 degrees 27 minutes 27 seconds East a distance of 42.60 feet to a point, thence North

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66 degrees 57 minutes 22 seconds West a distance of 79.75 feet to a point, thence South 86 degrees 13 minutes 40 seconds East a distance of 36.16 feet to a point, thence South 74 degrees 10 minutes 14 seconds East a distance of 9.37 feet to a point, thence South 56 degrees 40 minutes 45 seconds East a distance of 10.37 feet to a point, thence South 48 degrees 42 minutes 02 seconds East a distance of 9.30 feet to a point, thence South 56 degrees 12 minutes 50 seconds East a distance of 14.88 feet to a point, thence South 50 degrees 43 minutes 27 seconds East a distance of 14.27 feet to a point, thence South 60 degrees 55 minutes 26 seconds East a distance of 8.88 feet to a point, thence South 63 degrees 32 minutes 20 seconds East a distance of 13.27 feet to a point, thence South 51 degrees 50 minutes 30 seconds East a distance of 52.98 feet to a point, thence South 41 degrees 22 minutes 47 seconds East a distance of 7.09 feet to a point, thence South 57 degrees 38 minutes 35 seconds East a distance of 13.45 feet to a point, thence South 22 degrees 22 minutes 30 seconds West a distance of 23.41 feet to the said "Point of Beginning". Said described previously filled subaqueous property contains an approximate total area of 4,489 square feet or 0.103 acres.

WHEREAS, the attached Deed has been prepared to convey to Fort Norfolk, LLC, and its successors and assigns, all rights, title and interest as the Commonwealth may have in the foregoing described subaqueous land; and

WHEREAS, the Virginia Marine Resources Commission deems the terms and conditions therein set forth to be proper;

\* \* \* \* \*

NOW, THEREFORE, BE IT RESOLVED: That the Marine Resources Commission hereby authorizes its Chairman, the Commissioner of the Virginia Marine Resources Commission, to execute the attached Deed, following and subject to the approval of the form of the Deed by the Attorney General and the approval of the Deed by the Governor.

**DEED OF CONVEYANCE**

**THIS DEED** made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **COMMONWEALTH OF VIRGINIA**, Grantor, and **FORT NORFOLK, LLC**, a Virginia limited liability company, Grantee, whose address is: 273 Granby Street, Suite 300, Norfolk, Virginia 23510.

**WITNESSETH:**

**WHEREAS**, by Chapter 673 of the Virginia Acts of Assembly of 2008, approved on March 27, 2008, the Marine Resources Commission is authorized to sell and convey on behalf of the Commonwealth of Virginia, upon such terms and conditions as are

deemed proper by the Commission pursuant to § 28.2-1200.1 of the Code of Virginia and with approval of the Governor and in a form approved by the Attorney General, to Fort Norfolk, LLC, its successors and assigns, such rights, title, and interest the Commonwealth may have in a piece or parcel of previously filled subaqueous land in the City of Norfolk, Virginia, as hereinafter described; and

**WHEREAS**, the consideration determined by the Marine Resources Commission on March 24, 2009, for the 0.103 acres +/-, (4,489 square feet), equates to the sum of Five Thousand Three Hundred Seven and 70/100 Dollars (\$5,307.70); and

**WHEREAS**, the Marine Resources Commission, on the 25<sup>th</sup> day of August, 2009, approved the terms and conditions of the sale and conveyance contained in this Deed and authorized its Chairman, the Commissioner of the Marine Resources Commission, to execute this Deed on its behalf, subject to approval of its form by the Attorney General and the approval of the Governor.

**NOW, THEREFORE**, for and in consideration of the sum of Five Thousand Three Hundred Seven and 70/100 Dollars (\$5,307.70), Grantor hereby grants and quitclaims unto the Grantee, its successors and assigns, all its rights, title and interest, in and to the following described real property:

All that certain lot, piece or parcel of land, belonging, lying, situate and being in the City of Norfolk, Virginia, as shown on the plan entitled "EXHIBIT PLAN SHOWING SUBAQUEOUS LAND SITUATE BELOW PROPERTY OF FORT NORFOLK, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, NORFOLK, VIRGINIA SCALE: 1" = 50' NOVEMBER 30, 2007", as shown on Exhibit A attached hereto and made a part hereof, and as more particularly described as:

Such lot commencing at the intersection of the southern line of Front Street and a line 30 feet from and parallel to the west line of 2nd Street, thence from said point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 630.62 feet to a point at the southwestern corner of the intersection of Front Street and Rader Street, thence South 22 degrees 22 minutes 30 seconds West a distance of 121.72 feet to the "Point of Beginning". Thence North 66 degrees 53 minutes 27 seconds West a distance of 107.48 feet to a point, thence North 27 degrees 27 minutes 27 seconds East a distance of 42.60 feet to a point, thence North 66 degrees 57 minutes 22 seconds West a distance of 79.75 feet to a point, thence South 86 degrees 13 minutes 40 seconds East a distance of 36.16 feet to a point, thence South 74 degrees 10 minutes 14 seconds East a distance of 9.37 feet to a point, thence South 56 degrees 40 minutes 45 seconds East a distance of 10.37 feet to a point, thence South 48 degrees 42 minutes 02 seconds East a distance of 9.30 feet to a point, thence South

56 degrees 12 minutes 50 seconds East a distance of 14.88 feet to a point, thence South 50 degrees 43 minutes 27 seconds East a distance of 14.27 feet to a point, thence South 60 degrees 55 minutes 26 seconds East a distance of 8.88 feet to a point, thence South 63 degrees 32 minutes 20 seconds East a distance of 13.27 feet to a point, thence South 51 degrees 50 minutes 30 seconds East a distance of 52.98 feet to a point, thence South 41 degrees 22 minutes 47 seconds East a distance of 7.09 feet to a point, thence South 57 degrees 38 minutes 35 seconds East a distance of 13.45 feet to a point, thence South 22 degrees 22 minutes 30 seconds West a distance of 23.41 feet to the said "Point of Beginning". Said described previously filled subaqueous property contains an approximate total area of 4,489 square feet or 0.103 acres.

**IN WITNESS WHEREOF**, and pursuant to the authority of Chapter 673, Virginia Acts of Assembly 2008, the Commonwealth has caused this Deed to be executed on behalf of the Marine Resources Commission by the Commissioner of the Marine Resources Commission, Steven G. Bowman.

\* \* \*

- 15. DEPARTMENT OF TRANSPORTATION.** Commission adoption of Resolution and approval of Deed of Easement conveying right to use 10.440 acres land (6.66 acres subaqueous State-owned lands and 3.78 acres previously filled State-owned subaqueous land) in the City of Norfolk to the Department of Transportation, its successors and assigns, for the construction of a second tunnel for the Route 58 Midtown Tunnel, in accordance with Chapter 298, Acts of Assembly 2009.

Carl Josephson, Senior Assistant Attorney General explained that this was a new one that had not been seen before. He said the General Assembly had approved the easement over Baylor ground for the Elizabeth River mid-town tunnel. He noted that on page two of four in the next to the last paragraph some technical changes had been made.

Mr. Josephson explained the technical changes. He said that this was for the Midtown Tunnel project which would impact public oyster ground and delineate an easement from the Virginia Marine Resources Commission to the Virginia Department of Transportation. He said it originally said VMRC which was corrected and spelled out. He explained also that in the document the plat had been given a title, which was "Showing Impacts to Public Oyster Bed No. 9" and the number for record was still blank for where it could be found. He said it would not be approved by the Governor and Attorney General until the number had been determined and added. He said the Commissioner would execute this easement document after the Governor and Attorney General had approved it.

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Associate Member Laine left the meeting.

Commissioner Bowman asked if there were no royalties. Mr. Josephson responded that was correct.

Commissioner Bowman asked for a motion.

**Associate Member Robin moved to approve the easement as amended and as described by Counsel. Associate Member Tankard seconded the motion. The motion carried, 7-0-1. The Chair voted yes. Associate Member Laine was not present.**

No applicable fees – Easement Conveyance

**RESOLUTION OF THE VIRGINIA MARINE RESOURCES COMMISSION****Baylor Survey Easement, Elizabeth River.**

WHEREAS, Chapter 298 of the 2009 Virginia Acts of Assembly authorizes the Virginia Marine Resources Commission (“VMRC”) to grant and convey to the Commonwealth of Virginia, Department of Transportation (“Department of Transportation”), its successors and assigns, upon such terms and conditions as VMRC, with the approval of the Governor and the Attorney General, shall deem proper, permanent easements and rights-of-way and a temporary right-of-way of a reasonable width as needed for the purpose of the construction of a second tunnel for the Route 58 Midtown Tunnel, the location of said easement area being situated along the Elizabeth River and being a part of the Baylor Ground designated “Public Ground No. 9, Norfolk County (City of Norfolk)” as shown on a map compiled by the VMRC and being a tract of property described below; and

WHEREAS, an attached Deed of Easement has been prepared to grant to the Department of Transportation a permanent easement pursuant to Chapter 298 of the 2009 Acts of Assembly; and

WHEREAS, the metes and bounds of the permanent easement to be granted, which conform to the metes and bounds as described in Chapter 298 of the 2009 Acts of Assembly, are described in the attached Deed of Easement and as follows:

Beginning at the southeastern-most point of said "Public Ground No. 9" said point having a coordinate value of North 3,478,519.497, East 12,122,019.715. Coordinate values are based on Virginia State Plane Coordinate System, South Zone, NAD 1983/1994 HARN, and expressed in U.S. Survey feet. Thence, with the south line of "Public Ground No. 9,"

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North 82° 21' 33" West, 275.71 feet to the TRUE POINT OF BEGINNING; Thence, continuing with the south line of "Public Ground No. 9," North 82° 21' 33" West, 636.94 feet; Thence leaving the south line of "Public Ground No. 9," North 45° 25' 50" East, 1,387.72 feet to the eastern line of said "Public Ground No. 9"; Thence, following the eastern line of said "Public Ground No. 9," South 4° 23' 22" West, 766.60 feet; Thence, leaving the eastern line of said "Public Ground No. 9," South 45° 25' 50" West, 419.22 feet, to the TRUE POINT OF BEGINNING; and containing 10.440 acres, more or less.

WHEREAS, the Commission deems the terms and conditions set forth in the attached Deed of Easement to be proper;

\* \* \* \* \*

NOW, THEREFORE, BE IT RESOLVED: That the Marine Resources Commission hereby authorizes its Chairman, the Commissioner of the Virginia Marine Resources Commission, to execute the attached Deed of Easement, following and subject to the approval and approval of the form of the Deed of Easement by the Attorney General and approval of the Deed of Easement by the Governor.

**DEED OF EASEMENT**

THIS DEED OF EASEMENT, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2009, is by and between the COMMONWEALTH OF VIRGINIA, acting by and through the Virginia Marine Resources Commission ("VMRC"), Grantor, and the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION, an agency of the Commonwealth of Virginia, ("Department of Transportation"), Grantee.

**WITNESSETH:**

WHEREAS, Chapter 298 of the Virginia Acts of Assembly of 2009 authorizes the Virginia Marine Resources Commission to grant and convey to the Department of Transportation, its successors and assigns, upon such terms and conditions as VMRC, with the approval of the Governor and the Attorney General, shall deem proper, permanent easements and rights-of-way and a temporary right-of-way of a reasonable width as needed for the purpose of the construction of a second tunnel for the Route 58 Midtown Tunnel, the location of said easement area being situated along the Elizabeth River and being part of the Baylor Ground designated "Public Ground No. 9, Norfolk County (City of Norfolk)" as shown on a map compiled by the VMRC, and being a tract of property described below; and

WHEREAS, the Department of Transportation has requested the VMRC to grant and convey unto the Department of Transportation a permanent easement pursuant to the foregoing authority; and

WHEREAS, by Section 3 of Chapter 298, Virginia Acts of Assembly of 2009, none of the property described in Section 1 of said legislation that lies within the Baylor Survey shall be considered part of the natural oyster beds, rocks, and shoals in the waters of the Commonwealth,

NOW, THEREFORE, FURTHER WITNESSETH:

That pursuant to Chapter 298 of the Virginia Acts of Assembly of 2009, the VMRC hereby grants to the Department of Transportation, its successors and assigns, a permanent easement for the above-mentioned purpose in and to the following real property:

Beginning at the southeastern-most point of said "Public Ground No. 9" said point having a coordinate value of North 3,478,519.497, East 12,122,019.715. Coordinate values are based on Virginia State Plane Coordinate System, South Zone, NAD 1983/1994 HARN, and expressed in U.S. Survey feet. Thence, with the south line of "Public Ground No. 9," North 82° 21' 33" West, 275.71 feet to the TRUE POINT OF BEGINNING; Thence, continuing with the south line of "Public Ground No. 9," North 82° 21' 33" West, 636.94 feet; Thence leaving the south line of "Public Ground No. 9," North 45° 25' 50" East, 1,387.72 feet to the eastern line of said "Public Ground No. 9"; Thence, following the eastern line of said "Public Ground No. 9," South 4° 23' 22" West, 766.60 feet; Thence, leaving the eastern line of said "Public Ground No. 9," South 45° 25' 50" West, 419.22 feet, to the TRUE POINT OF BEGINNING; and containing 10.440 acres, more or less.

The boundary of the easement granted herein is shown as "Boundary Delineating Midtown Tunnel Project's Impact to Virginia Marine Resources Commission's Public Oyster Bed No. 9 and Delineating Easement from Virginia Marine Resources Commission to Virginia Department of Transportation Pursuant to 2009 Virginia Acts of Assembly, Chapter 298. Area = 10.440 Acres" on a plat entitled, "Map Showing Impacts to Public Ground Oyster Bed No. 9 and Boundary of Easement from Virginia Marine Resources Commission to Virginia Department of Transportation, City of Portsmouth, VA," dated August 18, 2009, and prepared by P.B. Americas, Inc., which plat is recorded in the Circuit Court for the City of Portsmouth in Map Book \_\_\_\_\_, Page \_\_\_\_\_.

Pursuant to Section 5 of Chapter 298, Virginia Acts of Assembly of 2009, the Department of Transportation is authorized to permit uses of the easement and right-of-way granted herein to a private entity developing and/or operating the Midtown Tunnel pursuant to the Public-Private Transportation Act (§ 56-556 et seq.) of the Code of Virginia.

IN WITNESS WHEREOF, and pursuant to the authority of Chapter 298, Virginia Acts of Assembly of 2009, the Commonwealth of Virginia has caused this Deed of Easement to be executed on behalf of the Marine Resources Commission by the Commissioner of the Marine Resources Commission, Steven G. Bowman.

\* \* \* \* \*

- 16. PUBLIC COMMENTS:** (There were two individual requests heard at the end of the meeting.)

\* \* \* \* \*

- 17. ANNUAL UPDATE** on the status of submerged aquatic vegetation (SAV):  
Dr. Bob Orth, VIMS

Dr. Bob Orth, representing VIMS, gave the presentation. His comments are a part of the verbatim record. He provided a PowerPoint presentation to assist in his presentation.

Associate Member Laine returned to the meeting.

Commissioner Bowman asked if there were any questions.

After some discussion about funding, Jack Travelstead, Chief, Fisheries Management stated that this was also a request for funding to continue the monitoring. Commissioner Bowman asked if the cost of the next year of Dr. Orth's study on the effects of Boat Scarring on Submerged Aquatic Vegetation project would be \$20,000.00? Mr. Travelstead stated that was the correct cost for the project, and that this cost would be split equally between the Saltwater Recreational Fishing License Fund and the Commercial Fishing License Funds.

**Associate Member Robins moved to accept the staff recommendation for the funding. Associate Member Bowden seconded the motion. The motion carried, 8-0. The Chair voted yes.**

\* \* \* \* \*

- 18. PUBLIC HEARING:** Consideration of Emergency Regulation 4VAC20-1220, et seq., "Pertaining to Separation between Nets," establishing a 300 yard distance between nets and establishing a process to grant variances to that distance requirement.

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

Mr. Travelstead explained that at last month's meeting the Commission adopted an Emergency Regulation 4 VAC 20-1220 in response to a 2009 directive from the General Assembly that is found in HB 2256. That legislation repealed the prohibition on setting a net within 300 yards of the side or end of any fixed fishing device and required the Commission to set this minimum distance by regulation.

Mr. Travelstead explained that at that the Commission meeting it was suggested that the Commissioner be authorized to establish a variance to the 300 yard distance when he finds that a net set that close to a fixed device would significantly affect the catch of the fixed net. Further, if the owner of the fixed device was not satisfied with the Commissioner's decision he would be able to appeal that decision to the entire Commission. Staff concurred with these suggestions, since they allowed for situations of this type to be considered more rapidly and reduced the staff's workload. The appeals process provided the additional safeguard and guaranteed a case decision process when needed.

Mr. Travelstead said this appeals process would allow for the granting of a variance in special cases wherein the licensee can demonstrate significant impacts from the setting of an adjacent net 300 yards away. Such a process would, staff believed, be responsive to the directive of the General Assembly.

Mr. Travelstead explained that the 300 yard separation between any net and a fixed fishing device has existed for almost 60 years with few complaints from the fishing industry.

Mr. Travelstead explained that the FMAC felt that the 300 yards was adequate and it would be no problem with the watermen since they were use to it. They also felt that the variance and appeal processes were not needed, as a change in the State standard should not be changed because of one complaint.

Mr. Travelstead stated that there had been no public comments other than the ones from the Finfish Advisory Committee.

Mr. Travelstead said that staff felt that the regulation proposed was responsive to the General Assembly bill.

Commissioner Bowman opened the public hearing.

Robert Hollowell, waterman, was present and his comments are a part of the verbatim record. Mr. Hollowell asked if they were allowed to move the fixed fishing device east or west. Commissioner Bowman responded that the license was for that spot.

Billy Haynie, watermen, was present and his comments are a part of the verbatim record. Mr. Haynie stated that he had brought up this matter. He explained that for six years he had a pound net and a gill netter came in at 1,100 feet and kept it there when it was not being used. He said that he caught flounder during September and October and had a good catch last year. He said the gill netter at 1,800 feet did catch the same. He noted that the gill netter had other locations to work and he only had the one pound net and he wanted him to be moved. He said he supported the regulation and agreed with the variance process proposed.

Commissioner Bowman stated Law Enforcement needed to talk with the individual to try to work something out. Mr. Haynie said the gill netter knows he's in the wrong and 900 feet is not much separation on the water and his fall season was shot when he usually makes most of his money. He said he was looking for relief.

Associate Member Laine asked if he had any other fishing gear. Mr. Haynie stated he had some for 2 or 3 years to keep others away from the pound net, but it backfired when the others moved in. Associate Member Robins asked what kind of gear. Mr. Haynie stated it was a fyke net. Commissioner Bowman asked if it was a good spot why not fish that gear. Mr. Haynie reiterated that he had just put it there to protect the pound net.

Commissioner Bowman asked for any other comments. There were none. He said the matter is before the Commission.

Associate Member Bowden explained that FMAC had talked about it. He said that staff had said the catch was variable from year to year, but really it was from day to day. He said taking this action would impact all for one problem. He suggested addressing this with the individual as this was a personal conflict and puts the Commission in a bad position. He said he felt that it had worked for 50 or 60 years and one issue was not a reason to make a change.

**Associate Member Bowden moved to adopt the original 300 yards between the nets. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Commissioner Bowman stated that this should be considered further. Associate Member Bowden suggested that the Commission intervene in the situation or the problem will just evolve. He suggested getting the staff to call and arrange something.

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- 19. PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4VAC 20-252, 10 et seq., "Pertaining to Striped Bass," to reinstate the two fish limit for the December recreational striped bass fishery.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that the 2-fish for the month of December had been endorsed by the Finfish Advisory Committee. The 2008 harvest was 36% under the quota and this could be because of economics, fish abundance, or the survey. There had been bad times from 2001 to 2006, when there were overages of the quota for all years and some substantial. He said that staff was asking for the same regulation as in 2006 when the economy was better. He said that year the fishery had been powerful with a 56% overage and now with a 570,000 pounds underage staff was bringing this matter to the Commission.

Mr. O'Reilly stated that 1997 was the first year there was a baywide quota for Maryland, Virginia, and the Potomac, with the Bay jurisdictions being the only area with a recreational quota. It was hard to manage and use projections, since the major part of the fishery occurred in WAVE 6.

Mr. O'Reilly said that in 2004 there was a modified slot limit, and 2005 there has been, a no-take (between 28 and 34 inches) slot limit. In 2007 there was a 1-fish limit during the last 22 days of fishing in December, and in 2008 there was a 1-fish limit during the last 11 days of fishing in December. The 2007 harvest was under quota according to what was posted by NMFS, but Virginia's data was not considered final for quite some time because of recording problems by the NMFS contractor. Commissioner Bowman asked if he knew where the federal interviews took place. Mr. O'Reilly responded no. He added that the Adhoc Committee had been concerned about the locations of the interviews in 2007. He stated that the survey was not meant to manage a quota.

Mr. O'Reilly stated that no one wants to repeat a 1/2 million pound underage of the quota. He said in the survey done on the website everyone had complained.

Mr. O'Reilly said that the staff recommended adoption of the amended Regulation 4VAC 20-252 (E). The amendments were on pages 8 and 9 of the draft regulation at the back of the packet.

Commissioner Bowman opened the public hearing.

Keith Miller, Virginia Charter Boat Association, was present and his comments are a part of the verbatim record. Mr. Miller said he strongly supported the recommendation for a 2-fish limit for December.

As there were no other public comments, the public hearing was closed. Commissioner Bowman said the matter was before the Commission.

**Associate Member Tankard moved to adopt the amendment to Regulation 4VAC 20-252-10. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**20. PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4VAC20-610, et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting," to clarify harvest reporting requirements.

Stephanie Iverson, Fisheries Management, Sr., gave the presentation. Her comments are a part of the verbatim record.

Ms. Iverson said that prior to amending the regulation in 2001 information from non-federally permitted species harvested from federal waters that were not sold to federally permitted Virginia seafood dealers was not collected by the Commission or by NMFS. The intention of this amendment was to allow for the collection of the harvest data, not merely the documentation of it. She said in subsection D of the regulation only CRL holders were required to submit their monthly catch reports to the Commission. The omission of the requirement for SLL holders to submit their monthly reports in Subsection D meant that they did not have to submit the harvest data that they are required to document in Subsections C and E.

Ms. Iverson explained that the proposed amendments recommended by staff were meant to close these loopholes in the Regulation under Section 60, Subsections D, E, F, and H.

There were no questions. Commissioner Bowman opened the public hearing. There were no public comments, so the public hearing was closed.

Commissioner Bowman asked for action by the Commission.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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21. **PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4VAC20-1040, et seq., "Pertaining to Crabbing Licenses," to clarify that crab licenses purchased under the Crab Disaster Relief Program were permanently retired.

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

Mr. Travelstead said that staff had received a good number of reasonable bids and they would have a report on them after November 1<sup>st</sup>. After these are formalized and purchased they will be permanently retired and not available to anyone. He said they can only purchase and transfer a license to get back into the fishery.

Commissioner Bowman stated that it was the license that was retired not the waterman.

Commissioner Bowman opened the public hearing. There were no public comments on this matter. He closed the public hearing.

Commissioner Bowman asked for action by the Board.

**Associate Member Robins stated that he felt it was important that this be clarified. He moved to adopt the amended Regulation 4VAC 20-1040-10. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.**

\* \* \* \* \*

22. **PUBLIC HEARING:** Consideration of proposed amendments to Regulations 4VAC20-1090-10, et seq. and 4VAC20-1180-10, et seq., to increase saltwater recreational fishing license fees for non-residents and to prohibit the issuance of a recreational boat license to a non-resident for a privately-owned boat not registered in Virginia.

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

Mr. Travelstead said that there was a list of fees for residents and non-residents now will pay twice the fee.

Mr. Travelstead said that years ago the fees were challenged in Court and Virginia lost. He said the Court told Virginia how to determine an appropriate fee by adding the general funds spent to manage and enforce the recreational fishing rules and divide the licenses sold to resident. Using this method a non-resident could be charged a fee as high as \$50.00.

Mr. Travelstead said that staff was recommending \$25.00, double the resident fee. He said other States charged double fees. He said there was a chart in the packet showing what other states charge. He said the necessary changes were in Regulation 4VAC 20-1090 and Regulation 4VAC 20-1180.

	<b>Resident</b>	<b>Nonresident</b>	<b>Factor</b>
<b>New Hampshire</b>	\$15.00	\$15.00	1
<b>New York</b>	\$10.00	\$15.00	1.5
<b>New Jersey (shellfish only)</b>	\$10.00	\$20.00	2.0
<b>Delaware</b>	\$8.50	\$20.00	2.35
<b>Maryland</b>	\$15.00	\$15.00	1
<b>Virginia</b>	\$12.50	\$12.50	1
<b>D.C.</b>	\$10.00	\$13.00	1.3
<b>North Carolina</b>	\$15.00	\$30.00	2.0
<b>South Carolina</b>	\$10.00	\$35.00	3.5
<b>Georgia</b>	\$9.00	\$24.00	2.67
<b>Florida</b>	\$17.00	\$47.00	2.76

Mr. Travelstead stated that another provision concerned the eligibility of non-residents for a recreational boat license. He explained that HB 2223 allowed for a prohibition unless the boat is registered in Virginia, which would be added to the VMRC regulation. He said that the question had been raised about how this affected Maryland and the Potomac. He stated that this would not affect individuals from Maryland and the Potomac area because of the reciprocity agreements.

Commissioner Bowman opened the public hearing.

Keith Miller, Virginia Charter Boat Association, was present and his comments are a part of the verbatim record. Mr. Miller stated that they supported these actions to increase the fees and were in favor of the proposal to double non-resident fees.

There being no further public comments, the public hearing was closed and Commissioner Bowman asked for action by the Board.

**Associate Member Laine moved to adopt the amended Regulations 4VAC 20-1090-10 and 4VAC 20-1180-10. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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23. **PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4VAC20-1070, et seq., "Pertaining to Haul Seines," to exempt certain shoreline haul seine operations from prohibition on fishing the net in less than three feet of water.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that Mr. Hollowell was not haul seining from a boat to form the pocket, but from the beach. A change was made in 2003 to the regulation to get the boats that fish in deeper water to avoid using their boats in shallow water, while forming the pocket or bailing fish from the pocket. Mr. Hollowell was told recently by Law Enforcement that he could not haul seine in the shallow waters. Staff has proposed an exemption for the 3 feet depth as a minimum for fishing the pocket, and others besides Mr. Hollowell may be exempt from the 3-foot prohibition in the Regulation.

Mr. O'Reilly explained that in the back of the packet was the draft regulation and the amendments were on page two under allowances for exceptions. The fisherman must notify the Commissioner in writing of his intent to do this and to describe the location. He said this way staff would be able to identify others when they notify the Commissioner. He said in 2008 there were 35 haul seiners that reported.

Mr. O'Reilly said that staff recommended adoption of the amendment by the Commission.

Commissioner Bowman asked if there were any questions and there were none. Commissioner Bowman requested that the language concerning notifying the Commissioner for approval of an exemption be changed to Commissioner or his designee.

The public hearing was opened, but no one commented. The public hearing was closed.

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

**Associate Member Holland moved to adopt the amendment to Regulation 4VAC 20-1070-10. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**24. REQUEST FOR PUBLIC HEARING:** For the proposed 2009-2010 Public Oyster Harvest Restrictions. (Regulation 4VAC 20-720-10, et seq.)

James Wesson, Head, Conservation and Replenishment, gave the presentation. His comments are a part of the verbatim record.

Dr. Wesson explained that this was a request for a public hearing. He said staff was proposing to do the same as last year, just rotating areas in some rivers.

**Associate Member Robin moved to advertise for the public hearing. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**25. REQUEST FOR PUBLIC HEARING:** Black Sea Bass ITQ hardship quotas. (Regulation 4VAC 20-950-10, et seq.)

Alicia Nelson, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record.

Ms. Nelson explained that a portion of the quota was set aside for those who could not qualify for a directed black sea bass permit based on hardship. Those receiving the hardship quota cannot transfer the quota for five years. Because the hardship quota is a static quota and has not been reduced over time like the percentage quotas in the rest of the directed fishery, the hardship quota holders hold more poundage than 40% of the directed fishery in 2009. In 2010, the first transfers of the hardship quota will be allowed, and the Commission now had to determine how to fairly incorporate the hardship quota into the rest of the directed fishery. She said the conversion of the quota was made to a percentage based on the 2009 quota, as shown in Table 1.

Table 1: Converting the hardship quota poundage to percentages of the directed fishery based on the 2009 quota.

09 Directed Quota	Hardship quota (lbs)	% of 09 quota	lbs in 2009
168,638	2,110	1.251%	2,110
	1,444	0.856%	1,444

Ms. Nelson said that staff was recommending the conversion of these hardship cases be based on the year the quota was given. She explained that this way they would be subject to the same changes in quota shares as those in the directed fishery. She said this was shown in Table 2.

Table 2: Converting the hardship quota to percentages based poundage in the year awarded (Preferred Option)

Year Awarded	Hardship Directed Quota (in that year)	Hardship quota (lbs)	% of yearly quota	lbs in 2009
2005	642,323	2,110	0.3285%	555
2007	425,300	1,444	0.3395%	573

Ms. Nelson said that staff recommended advertising the two options for an October public hearing.

Commissioner Bowman stated that the matter was before the Commission for action.

**Associate Member Robins moved to advertise for a public hearing in October. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**26. DISCUSSION:** Consider amending the Regulation for Summer Flounder to provide an exemption for watermen who participate in the VIMS tagging program; requests for emergency regulation and to advertise for a public hearing.

Rob O’Reilly, Deputy Chief, gave the presentation. His comments are a part of the verbatim record. Mr. O’Reilly explained there was no evaluation, but there was a draft regulation for this item. He said it was not set up as an emergency regulation, but would be by the effective date of the 28<sup>th</sup> of August.

Mr. O’Reilly said that on page 7 of the draft regulation was where this amendment had been added. This was being done for Dr. Mary Fabrizio of VIMS for her research project to tag summer flounder with a new type of sonic tag.

Mr. O’Reilly stated that this was a project being funded by the RFAB funds. He said when an e-mail was received requesting that staff issued a scientific collection permit, it was not realized that a change in the regulation was necessary. He said this project has two parts, which included the fishermen tagging the fish and then collecting the fish with the tags. He said a second permit was issued allowing for as many participants as VIMS wanted.

Mr. O’ Reilly said that Dr. Fabrizio was asking for an exemption for these watermen who catch the fish with tags so they would not be in violation of the regulation if there were undersize fish and the exemption would mean anglers did not have to include these fish in

their personal possession limit. He said the tags were to be recovered and returned to VIMS.

Commissioner Bowman asked what the value of the returned fish was.

Lewis Gillingham, Head, Saltwater Fishing Tournament, said that VIMS would receive the tag recapture calls and record the information. He suggested adding wording that the tag shall remain in fish at all times.

Jack Travelstead, Chief, Fisheries Management, explained that there was usually a reward of \$100.00 and it might be double for the special tag.

Commissioner Bowman asked staff if advertising for a public hearing would be needed to continue this amendment. Mr. O'Reilly explained that the project probably would not be finished by then, so they did need to advertise for a public hearing.

Commissioner Bowman asked for a motion for the Emergency Regulation.

**Associate Member Holland moved to adopt the emergency regulation. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Commissioner Bowman asked for a motion to advertise for a public hearing.

**Associate Member Robins moved to advertise the research exemption for a September public hearing. Associate Member Bowden seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**27. DISCUSSION:** Consideration of the closure for the Black Sea Bass Fishery in cooperation with the ASMFC; request for public hearing in September.

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

Mr. Travelstead explained that the ASMFC had met and informed the management boards that the recreational harvest for the black sea bass was estimated to be triple the quota. He said there was a single coast-wide quota.

Mr. Travelstead stated the Commission should consider action to close the season at the end of September. He said staff was asking for a public hearing to be held in September to close the black sea bass fishery.

**Commission Meeting**

There were no questions.

Commissioner Bowman asked for a motion.

**Associate Member Robins moved to advertise for a public hearing in September. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**BRYAN GREEN** – Appeal to have crab licenses removed from the waiting list.

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

Mr. Travelstead said that Mr. Green had filed an appeal August 10<sup>th</sup> and the cut off date for requesting an appeal was June 9<sup>th</sup>. He said a letter was sent, but he missed the deadline and the appeal cannot be accepted.

Bryan Green was sworn in and his comments are a part of the verbatim record. Mr. Green explained that it took him months to get the doctor's letter and he was told to wait until he got the letter when he spoke to a lady at VMRC some time ago. He said he was not aware of the deadline. He said he documented that he had health issues in 2004 and his injuries had not allowed him to work during the 2004 to 2008 time period.

Commissioner Bowman explained that a control date had been established and to accept the appeal would be going against the regulation; and, others would want to have the same done for them. He stated it would not be proper to allow the appeal.

Commissioner Bowman stated that the matter was before the Commission.

Associate Member Schick asked about notification of the deadline. Mr. Travelstead explained that a copy of the notice was mailed to all of those individuals on the waiting list.

**No action was taken.**

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**MICHAEL SHACKLEFORD** – request for appeal to have crab licenses removed from the waiting list.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead stated that this appeal had been submitted

timely. He said he had missed the meeting because he was in the hospital but he was at the hearing today. He said there was nothing in the records of reporting harvest for the period 2004 to 2007.

Mike Shackelford was sworn in and his comments are a part of the verbatim record. Mr. Shackelford said he had not filed, but had always purchased his license. He said he was 43 years old and had worked on the water for 30 years. He said he had no other occupation. He said he had been haul seining and he did not want to sell his license and was requesting it be returned. He reiterated that he had not filed reports.

Commissioner Bowman said it was the same as the others and he would like to give everybody everything, but they must stand by the law.

Commissioner Bowman asked for a motion.

**Associate Member Robins moved to deny the appeal because the criteria for appeal was not met. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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There was no further business and the meeting was adjourned at approximately 4:35 p.m. The next regular meeting will be Tuesday, September 22, 2009.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary