

MINUTES

Commission Meeting

August 26, 2003
Newport News, VA

The August 26, 2003 meeting of the Marine Resources Commission was held with the following present

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
Ernest N. Bowden, Jr.)	Associate Members
Russell Garrison)	
J. T. Holland)	
F. Wayne McLeskey)	
Roger L. Chaffe	Senior Assistant Attorney General
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Michele Guilford	Acting Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin/Finance Div.
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Roy Insley	Head, Plan/Statistics Dept.
James Wesson	Head-Conservation/Replenishment
Chad Boyce	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Cory Routh	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Colonel Steve Bowman	Chief, Law Enforcement Div.
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
MPO James Davis	Marine Police Officer
MPO D. K. Crandall	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Kevin Curling	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.

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Jay Woodward
Benny Stagg
Tracy West

Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)
Lyle Varnell

Other present included:

Todd Herbert	Lee Rosenberg	Phillip Templeton
Jay Foster	Bill Mizelle	Glenn Brunner
Peter J. Smith	David Mullen	R. P. Ayers
Glenn Oder	Ann Pharr	Brenda Zarman
Richard Calvert	Kent Early	Ben Baiker
Rebecca Francese	Tom Langly	Susan Gaston
Dan Huddy	Ellen Huddy	Charles Dryden
Kelly Place	Douglas F. Jenkins Sr.	Russell Gaskin
James Hayden		
And others		

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Associate Member Chadwick Ballard, Jr. called the meeting to order at 9:35 a.m. with four other Associate Members present (Bowden, Garrison, Holland and McLeskey). Associate Member Birkett and Commissioner Pruitt arrived during the meeting. Associate Members Cowart and Jones were absent.

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Associate Member Garrison gave the invocation and led the pledge of allegiance to the flag.

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Associate Member Ballard introduced Mr. Ernest N. Bowden, Jr. as a newly appointed Associate Member. He explained that Mr. Bowden replaced Mr. Williams and noted that Mr. Bowden was the working waterman member of the Commission.

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Associate Member Ballard swore in all VMRC and VIMS staff that would be speaking or presenting testimony during the meeting.

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1. APPROVAL OF MINUTES: Associate Member Holland moved to approve the minutes for the July 22, 2003 Commission meeting. Associate Member Garrison seconded the motion. The motion carried, 4-0.

Approval of Agenda: Bob Grabb, Chief-Habitat Management, asked the Commission to move Item No. 5, Daniel Huddy in the printed agenda to follow Item No. 8 which would allow the applicant time to drive to the meeting from Charlottesville. He also asked to add Item No. 2-J, a Navy project, to the agenda. Mr. Grabb said the staff also would like to present an item in response to a question from Mr. Doug Jenkins, President, Twin Rivers Watermen's Association. Associate Member Birkett, who had arrived and assumed the chair, asked for a motion. **Associate Member Ballard moved and Associate Member Holland seconded the motion to approve the agenda. The motion carried, 5-0.**

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2. PERMITS:

Bob Grabb, Chief-Habitat Management, gave the presentation on Page Two items A through J and his comments are part of the verbatim record. Page Two items are projects that cost more than \$50,000, are unopposed, and have a staff recommendation for approval.

Mr. Grabb explained to Mr. Bowden that the Page Two items could also be called "Consent Agenda items," that have been subjected to a public interest review. The Code requires that the Commission approve projects with a cost of more than \$50,000.

He also explained to Mr. Holland and Mr. Bowden that "standard in-stream construction" conditions are those imposed on a permit—with various elements and requirements that have been standard for many years and are contained within the permit.

There being no questions from the board and no comments from the public, Associate Member Garrison moved approval of the items A through J. Associate Member Holland seconded the motion, which carried, 4-0.

2A. NEWPORT NEWS SHIPBUILDING AND DRY DOCK CO., INC., #03-0913, requests authorization to demolish an existing timber pier and construct a concrete replacement pier 1,040 feet in length by 100 feet in width; a utility section 27 feet wide for a distance of 875 linear feet from the bulkhead along the pier; installation of two (2) 40-foot by 50-foot dolphins with bollards at 75-foot and 140-foot centers from the end of the pier, connected by walkways; two (2) floating standoffs for docking along the proposed pier; and to dredge up to 482,000 cubic yards of State-owned subaqueous bottomland adjacent to their shipyard facility situated along the James River in the City of Newport News. All dredge material will be transported to Craney Island for disposal. Recommend a

royalty of \$68,750.00 for new dredging of 152,777 cubic yards of State-owned subaqueous bottomland at a rate of \$0.45 per cubic yard and a royalty of \$13,686.50 per year for the encroachment over 136,865 square feet of State-owned subaqueous bottomland at a rate of \$0.10 per square foot. Staff also recommends a permit condition requiring the planting of market size clams to mitigate for the dredging impact to approximately 61,966 clams, at a rate of 1.33/1, for a total of 82,415 clams, within one year of the initial dredging.

Dredging Royalty (for new dredging of 152,777 cubic yards @ \$0.45/cubic yard).....	\$68,750.00
Royalty fee (annual encroachment on 136,865 square feet @ \$0.10/sq. foot).....	\$13,686.50
Permit fee.....	\$ 5,000.00
Total fees.....	\$82,536.50

2B. CHESTERFIELD COUNTY DEPARTMENT OF UTILITIES, #03-1059, requests authorization to install a 36-inch forcemain sewer line, by trench and cofferdam method, a distance of 40 linear feet within Swift Creek, a tributary to the James River in Chesterfield County. Additionally, the applicant proposes to stabilize the streambed with VDOT Class I rip rap.

Permit fee.....	\$100.00
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2C. CITY OF SALEM, #98-1992, requests reactivation and extension of a previously issued permit to construct a new raw water intake structure which will extend approximately five (5) feet below ordinary high water and installation of 3mm or less mesh-size intake screens at the intake opening adjacent to their property situated near 4th Street water treatment plant situated along the Roanoke River. Recommend time-of-year restrictions from 15 March to 30 June to protect the Roanoke Logperch and standard instream construction conditions.

Permit fee.....	None
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2D. PERDUE FARMS, INC., #03-1600, requests authorization to dredge, by clamshell method, approximately 8,300 cubic yards of new material and 9,000 cubic yards of maintenance material from within mooring basins adjacent to their property situated along Jones Creek and the Southern Branch of the Elizabeth River in Chesapeake. All dredged materials will be transported to Craney Island for disposal. Recommend a royalty of \$0.45 per cubic yard for new material.

Royalty fee (for new dredging of 8,300 cubic yards @ \$0.45/cubic yard).....	\$3,735.00
Permit fee.....	\$ 100.00
Total fees.....	\$3,835.00

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2E. MOON ENGINEERING CO., INC., #03-1484, requests authorization to install two (2) new mooring dolphins consisting of up to 20 piles and a concrete cap, adjacent to their property situated at the confluence of Scotts Creek and the Elizabeth River in the City of Portsmouth. A sediment boom must be displayed on the side near the Virginia Port Authority's oyster reef. Recommend a royalty of \$250.00 for each mooring dolphin.

Royalty fee (for each mooring dolphin @ \$250.00).....\$500.00
Permit fee.....\$100.00
Total fees.....\$600.00

2F. CITY OF NORFOLK, #03-1133, requests authorization to place 25,000 cubic yards of sand overboard to nourish the beaches between 8th View and 9th View Streets adjacent to the Chesapeake Bay.

Permit fee..... \$100.00

2G. MOON ENGINEERING CO., #03-1485, requests authorization to maintenance dredge, by clamshell method, approximately 100,000 cubic yards of material from a 750-foot long by 90-foot wide basin to restore maximum depths of -36 feet below mean low water adjacent to their property situated at the confluence of Scotts Creek and the Elizabeth River in the City of Portsmouth. The dredge spoil will be taken to Craney Island.

Permit fee.....\$100.00

2H. CHESAPEAKE MARINA, LLC, #03-0416, requests authorization to install 10 linear feet of riprap, 160 linear feet of bulkhead with 615 square feet of subaqueous fill, ten (10) 40' x 10' floating piers with gangways, four (4) 50' x 10' floating piers, an 80' x 10' marginal wharf for fueling facilities and to dredge 2,190 cubic yards of State-owned subaqueous bottom from a 600-foot long by 20-foot wide area to obtain maximum depths of minus eight (-8) feet below mean low water and to use the materials as fill on the upland in order to construct and operate a new 720-slip dry storage facility at their property situated along the Southern Branch of the Elizabeth River in the City of Chesapeake. Since this will be for commercial use, it is recommended that \$0.60 per cubic yard for dredging and \$2 square feet for fill and \$0.50 for pier encroachment.

Royalty fee (for new dredging of 2,190 cubic yards @\$0.60/cubic yard)..\$1,314.00
Royalty fee (for 615 square feet of subaqueous fill @ \$2.00/sq. ft.....\$1,230.00
Royalty fee (for encroachment of 12,000 square feet @\$0.50/sq. ft.....\$6,000.00
Permit fee.....\$ 100.00
Total fees.....\$8,644.00

- 2I. **HALIFAX COUNTY SERVICE AUTHORITY, #03-0066**, requests authorization to install, by directional drill, 260 linear feet of an 8-inch forced sanitary sewer line beneath the existing streambed of the Dan River between U.S. Route 58 and the Virginia International Raceway in Halifax County.

Permit fee.....\$100.00

- 2J Navy Public Works Center, #03-1054, requests authorization to install a mooring buoy in the G-2 anchorage at 36°58'14" North Latitude, 76°21'01" West Longitude for the purpose of conducting training exercises in Hampton Roads Harbor near the Norfolk Harbor Entrance Reach. This buoy substitutes for the buoy in the G-4 anchorage previously approved by the Commission last month.

Permit fee.....\$100.00

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- 3. **EXECUTIVE SESSION.** No session was held.

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- 4. **MURRAY HOWELL, #99-0970**, requests authorization to construct a 16-foot by 34-foot open-sided boathouse near the channelward end of a 160-foot private, non-commercial pier adjacent to his property situated along the Piankatank River in Middlesex County. An adjoining property owner protests the project.

Chip Neikirk, Environmental Engineer Sr., gave the presentation with slides and his comments are a part of the verbatim record. Mr. Neikirk explained that the property is upstream of the Route 3 Bridge in Middlesex County, in the Mariner's Woods subdivision. The pier was originally to be located near the property line, but was moved more to the center. It was previously determined that the proposed pier met the statutory authorization for private piers contained in Section 28.2-1203 (A)(5) of the Code. There are two similar open-sided boathouses located immediately upriver of Mr. Howell's property.

Mr. and Ms. William E. Robins, the adjoining property owners to the south, protest the project. In their letter, Mr. and Ms. Robins state that they believe the boathouse will detract from their panoramic view of the Piankatank River.

The boathouse will encroach over a portion of private oyster ground leased to Mr. Donald Lee Fitchett. Mr. Fitchett was notified of the boathouse proposal by letter dated December 3, 2002. To date, he has not responded to our notification.

Mr. Neikirk said the boathouse appeared reasonably sized. In fact, had the adjacent property owner not objected to the project, it would have qualified for the exemption contained in §28.2-1203 (A)(5) of the Code. The proposed open-sided design should minimize the visual impacts associated with the structure and the navigational and environmental impacts should not exceed those associated with the existing pier and uncovered boatlift, which are statutorily authorized. The boathouse also is consistent with others in the immediate vicinity. Accordingly staff recommended approval of the project.

Associate Member Birkett had assumed the role of chairman from Associate Member Ballard. In that capacity he asked if there were any questions and if anyone in opposition was present and wished to speak. There being neither questions nor speakers, he put the matter before the Commission. **Associated Member Garrison moved to approve the permit and Associate Member Holland seconded the motion. The motion was approved, 5-0.**

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- 6. RIVER POINTE VILLAGE PIER, #03-1595**, requests authorization to install two (2) 144-foot long by 6-foot wide floating piers, ten (10) finger piers, 12 mooring piles and a 72-foot long by 4-foot wide floating walkway at a community pier to create 14 slips adjacent to their property situated along the Western Branch of the Elizabeth River in the City of Portsmouth.

Tracy West, Environmental Engineer Sr. gave the presentation with slides and her comments are part of the verbatim record. Ms. West explained that the project was located at the site of Home-A-Rama 2003. The applicant proposed to add floating piers to an open-pile community pier in order to provide 14 wet slips for use by potential residents of the community.

From an ecological perspective, Ms. West said that community-mooring facilities are generally preferred over individual private piers because they minimize impacts to the environment by limiting the number of pier crossings over wetlands and centralizing boating activities. In the past, however, the Commission has endorsed community piers and wet slip moorings on the condition that the developer agree to limit and restrict the number of private piers that can be constructed. This is normally accomplished with deed restrictions.

The Virginia Institute of Marine Science's (VIMS) Shoreline Situation Report stated that the impacts associated with the project could be reduced. It appeared that amenities to be offered at the slips--such as cable and telephone service--were designed to encourage transient docking, overnight stays on vessels, and vessel maintenance that could result in secondary impacts to the marine environment. VIMS recommended that sanitary facilities

be provided in accordance with Health Department regulations and that the number of slips be limited to the number of actual waterfront riparian property owners.

Since this community facility appears designed to provide slips for non-waterfront lots, staff felt it more closely resembled a marina or other place where boats are moored under Health Department regulations. The Health Department has granted a variance to the applicant since an alternate pump out agreement has been reached with the nearby Nautical Boatworks Marina.

During staff's evaluation of this project proposal, Ms. West said staff asked whether the riparian rights of the waterfront property owners would be severed in order to control the construction of individual private piers. The agent, Mr. Richard Calvert of Lynnhaven Boat and Dock, informed staff that the waterfront property owners would not be restricted from constructing their own private piers. He further stated that the developer felt it was too late to impose this restriction since most of the waterfront lots had already been sold.

Since the riparian rights of the waterfront property owners remained intact and individual private piers could be anticipated, the benefits of a community pier would be minimal. There would not be any minimizing of encroachments over state-owned submerged lands, crossings over wetlands, nor a concentration of boating activities as one would normally see in a community setting.

Since the waterfront property owners can construct their own piers, the slips appear to be clearly designed solely for the use by inland non-waterfront property owners. By their nature, these inland property owners are not entitled to the same rights to waterway access as waterfront property owners. Staff reiterated their belief that this application was really for a 14-slip marina rather than a community pier.

Ms. West said in summary that since the waterfront property owners would have a right to construct their own private piers, that the environmental advantages of having a single community pier in lieu of numerous individual structures would not be realized. A large commercial marina, Nautical Boatworks, is located approximately 2 miles by car from the subdivision. Any upland property owner who desires access to the water can utilize that marina. As a result, staff recommended denial of the installation of the slips at the community pier.

Should the Commission choose to approve the installation of the slips, however, staff recommended that the pier head be redesigned in a T-head or L-head configuration in order to minimize encroachment over State-owned submerged lands, and that overnight stays on vessels be prohibited and enforced by the Property Owners Association through their covenants.

Associate Member Ballard said he was confused. He then asked what the total number of lots in the subdivision was? Ms. West said she did not know the total, but knew there

were only 12 riparian lots. She also said she did not know how many of those already had been sold.

Richard Calvert, Vice President for Lynnhaven Dock Corp., the agent and contractor for the proposed project, said after reviewing the documentation that he had been trying to work out something with the owners and the Commission. He said the pumpout question had been handled by the State Health Department and the owner said he would eliminate the cable, Internet and telephone connections to the pier that might invite transients and encourage overnight stays. He reminded the Commission that the project had been approved by the City of Portsmouth.

Mr. Calvert said the developers also were willing to reduce the number of slips from 14 to 10 and implement best management practices. He said everyone was concerned about the environmental impacts and that this project was a very big one for the City of Portsmouth.

Commissioner Pruitt, who had assumed the chairmanship after his arrival, asked if there were any additional questions. The developers said the reduced number of piers could be worked. Mr. Calvert said there were actually 36 lots in the subdivision. Associate Member Ballard asked again how many riparian lots had been sold. It made a big difference, he said, if all 12 had been sold or just one or two.

Associate Member Garrison asked how far away the Nautical Boatworks marina was located from the site. He said Virginia had multiple problems with a lack of pumpout facilities. He added there were far too many boats that pump out the wrong way. Associate Member Birkett added that on numerous occasions in the past, the Commission had approved permits on the condition that a neighboring marina would pump out for the neighborhood. Based on the aerial photo, he added, the marina looked to be just a quarter of a mile away.

Associate Member McLeskey asked if the boat slips would be sold to residents of the neighborhood. Mr. Calvert said either sold or leased to equal out the cost. Whoever does end up with a slip would not abuse them, he added. The Health Department said the only individuals who can use the slips would have to reside less than 1,000 feet from the pier head.

Associate Member Garrison asked how no overnight moorings could be enforced? Mr. Calvert said it could only be by self-enforcement. Mr. Grabb said that it was the intent of staff to limit only overnight occupancy in the vessels not overnight moorings.

Commissioner Pruitt asked if there was anyone in opposition to the project. No one from the public asked to speak. He said that he did not believe Mr. Ballard's questions could be answered today and that several proposed changes in the application were now before the Commission. He asked counsel for advice. Mr. Chaffe, Assistant Attorney General, said it

looked like this was an “on-going process” and that one option would be to ask staff to get together and bring back suggestions. **Associate Member Holland said he felt that was exactly what should be done and offered a motion to bring back the project at the Commission’s September meeting. Associate Member Ballard seconded the motion. The motion carried, 6-0.**

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7. **KENT EARLY, #02-2344**, requests authorization to construct an 8-foot wide private pier extending 460 feet channelward of mean high water with a 54-foot by 24-foot open-sided boathouse, a 10-foot by 18-foot awning cover for a personal watercraft slip, 1,480 square feet of open-pile pierhead and finger piers at the channelward end of the pier, and to construct two timber groins extending 48 feet channelward of mean high water with 10 cubic yards of sand placed as beach nourishment in the groin cell adjacent to his property situated along the York River in Gloucester County.

Chip Neikirk, Environmental Engineer Sr., gave the presentation with slides and his comments are part of the verbatim record. Mr. Early’s property is located along the northern shore of the York River, approximately midway between Sarah Creek and the Perrin River in Gloucester County. Development along this shoreline is primarily residential. There is a wide shallow sand flat along the shoreline with the minus four foot (-4’) mean low water contour located approximately 450 offshore. There are several other long piers along this shoreline.

Depth soundings provided in the application indicate that the pier, as proposed, would extend to a depth of minus (-7) feet. The area under the boathouse and personal watercraft slip were depicted as being six (6) feet deep. Mr. Early stated in his letter, dated January 10, 2003, that the depth measurements were taken at mean high water. Adjusting for the 2.3-foot tidal range in this portion of the York River, staff estimated the mean low water depth under the boathouse and pierhead to range between -3.7 and -4.7 feet.

Mr. Neikirk said Mr. Early currently owns a 34-foot boat, but has plans to purchase a 42-foot boat. The boathouse is designed to accommodate the larger planned vessel. The eight foot wide pier width is proposed to accommodate a golf cart for elderly and handicapped relatives and the large T-head is to permit the cart to turn around. The boathouse and deck area total 2,470 square feet.

Neither neighbor protested the project, nor were any objections received in response to staff’s public notice. The pier and boathouse would not encroach over any public or privately leased oyster ground.

Mr. Neikirk said the Virginia Institute of Marine Science provided comments on the proposed groins and beach nourishment, stating that the proposed beach nourishment

should minimize the adverse impact on littoral drift. They did not provide any specific comments on the pier or boathouse. No other State agencies have commented on the project.

The pier and boathouse also will encroach over a dense bed of submerged aquatic vegetation (SAV), according to Dr. Robert Orth, a VIMS scientist. The SAV bed extends approximately 450 feet offshore in the vicinity of the project. Dr. Orth stated that historically the bed extended 550 feet offshore and that shading associated with the pier would likely adversely impact the SAV. The adverse impacts associated with the shading can be reduced, however, by limiting the size of the structure or by increasing the height over the water to allow more sunlight under the pier.

Staff did not believe that the 460 foot pier would adversely effect navigation, but was concerned about the eight-foot width and recommended that the width be reduced to six-feet. Staff also recommended no additional coverings over watercraft and thought that the pier-head was excessive. Staff had determined that similar length piers in the vicinity of the project met the statutory authorization for private piers contained in '28.2-1203 (A)(5) of the Virginia Code. The boathouse and PWC cover were not statutorily authorized, however, and required a permit from VMRC. Last month, the Commission approved guidance related to a recent Code change limiting the size of pier-heads on statutorily authorized private piers to 250 square feet or less. That guidance also reiterated that Commission approval was required for pier-heads exceeding 500 square feet in size. Staff had no objection to the construction of the two proposed, low-profile, timber groins and the placement of the ten (10) cubic yards of sand as beach nourishment in the created groin cell provided the material used for beach nourishment was at least 95 percent sand.

Associate Member Ballard asked about the widths of longer piers in the area. Mr. Neikirk said most were between 4-6 feet, but one was authorized at eight feet.

Commissioner Pruitt asked Mr. Early, owner of the property, if he wished to address the Commission and comment on staff recommendations. Mr. Early said the depth of the water dictated the length of pier. He is proposing to install a 40,000-pound lift to accommodate his proposed 42-foot SeaRay boat. He said that at mean high water he had seven feet, not at mean low water as stated in the original application. The eight-foot width was for a golf-cart. Associate Member Garrison asked if a guardrail could be installed to reduce the pier width. Mr. Early said safety was his major concern and that the wider width would assure safety. The T-head will provide space to safely turn around the golf cart, he said.

Mr. Early said a nearby pier was used as a model for his proposal. In response to staff's recommendation he agreed to raise the pier to five feet above mean high tide.

Commissioner Pruitt put the matter before the Commission. **Associate Member Holland said if the applicant was willing to raise the pier to five feet and due to the liability to**

use a golf cart for the handicapped he moved approval of the project. Associate Member Birkett seconded the motion.

Associate Member Ballard said he had no problems with an eight-foot width, but was concerned about the pier-head and the square footage of the encroachment proposed. He said he was not sure it was entirely necessary.

Associate Member Ballard asked if the motion was for 1,480 or 400 square feet. Associate Member Holland said 1,480. Commissioner Pruitt said he was waiting for someone to call for the question. Associate Member Holland called for the question. The motion was 3-3 and the Commissioner voted in favor of the motion. The motion passed, 4-3.

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8. **RANDALL SARFAN, #02-2234**, requests after-the-fact authorization to retain an 85-foot long by 4-foot wide open-pile walkway, a 16-foot by 12-foot floating dock and two boatlifts at a community pier adjacent to his property situated along Salt Ponds in Hampton.

Traycie West, Environmental Engineer Sr., gave the presentation with slides and her comments are part of the verbatim record. She said this was a six-slip community pier shared by the property owners.

In 1986, VMRC issued permit #86-0807 to Randall Sarfan for the construction of a community pier with six slips. The project drawings, which were attached to and made a part of the permit, depicted a six slip T-head pier with finger piers and an open-pile walkway extending from the north end of the T-head to a parcel of property labeled as Lot 6.

In 1996, Mr. Sarfan was issued another permit (VMRC #96-1037) authorizing the installation of a 12-foot by 12-foot floating platform and a boatlift at the community pier.

In 2002, Mr. Richard Mueller submitted an application (VMRC #02-1232) to install an additional boatlift at the Sarfan community pier. While conducting an application site inspection, staff noted that the community pier was not constructed in compliance with the original 1996 permit (VMRC #86-0807). The walkway from the end of the T-head that was to extend to the north and connect to Lot #6 had not been constructed. An unauthorized walkway, however, to Mr. Mueller's property was in place. Also, an additional float and two boatlifts had been installed. Staff discussed the inconsistencies with Mr. Mueller and he stated he had installed the float and was unaware that permits were required. He also stated that he did not have any information regarding the other lifts or the walkway to his property.

Staff subsequently met with Mr. Sarfan to discuss the inconsistencies. During that meeting, Mr. Sarfan stated that lifts were installed in the slips used by Mr. White of 36 Sarfan Drive and Mr. Ben Barker of 34 Sarfan Drive. Mr. Sarfan also explained that the six families that utilize the community pier do not have a formal association that is responsible for the facility. Rather, they hold one informal meeting every year to discuss pier maintenance and any other issues that may have arisen.

Upon further review of our files, staff was able to locate a letter written to Mr. Donnie White of 36 Sarfan Drive discussing the installation of a boatlift at a private pier. In that letter, staff stated that installation of a boatlift at a private pier would not require a permit from this agency. Staff was not able to locate any correspondence regarding Mr. Barker's lift.

The Virginia Institute of Marine Science (VIMS) has stated that the individual and cumulative adverse impacts resulting from this activity are minimal.

The Virginia Department of Health originally recommended that the project be denied because the facility was not in compliance with their Sanitary Regulations for Marinas and Boat Moorings. The applicant worked with the Department of Health to come into compliance and in a recent letter the Health Department stated they no longer had any objections to the proposal.

Since Mr. Sarfan obtained a permit for the installation of a boat lift and additional float at the community pier in 1986, staff is of the opinion that Mr. Mueller, Mr. White, and Mr. Barker should have been well aware that permits were required for the addition of any structures at the community facility.

It appears, however, that the installation of the two boatlifts without authorization was a result of confusion regarding the term "private pier." Community piers are defined as commercial under our Marina Siting Criteria. Mr. White described the facility as "private" to staff. Staff suspects that, since only he and the other families can use the facility, the families considered it to be a "private" pier. Likewise, it is reasonable to assume that Mr. White shared staff's letter with Mr. Barker who, in turn, had a lift installed in his slip.

The walkway and additional floating dock at the pier, however, do not appear to be a result of any similar confusion. The permit drawing attached to Mr. Sarfan's 1986 permit clearly indicates that a walkway extending from the northern end of the T-head was authorized by this agency. Also, it is staff's contention that since Mr. Sarfan had obtained a permit for a floating dock similar in structure in 1996, Mr. Mueller should have been aware that a permit would be required for the addition of another floating dock.

Since there is no formal association responsible for the community pier, it appears that responsibility for the violations falls squarely on Mr. Sarfan. Since there have been no

objections to any aspect of the project, had applications for permits been submitted prior to the installation of the boatlifts, float, and walkway, staff likely would have recommended approval. Therefore, staff recommended that the Commission approve the unauthorized structures at the community pier.

Given the after-the-fact nature, however, staff recommended the assessment of triple permit fees and royalties. Should the Commission wish to consider a civil charge, staff believes that the unauthorized float and walkway reflect minimal environmental impact and a minimal degree of non-compliance.

Associate Member Holland asked what would the sum of triple fees be? Ms. West said \$75.00. Associate Member Ballard asked if the pier was built across an inlet. Ms. West said the water in the inlet was six to eight inches deep and was a mud flat at low tide.

Commissioner Pruitt asked if the applicant was present? Ben C. Barker, Jr., agent for the applicant, said he would accept the staff recommendations.

Associate Member Ballard moved the staff recommendation including the triple permit fees and a civil charge of \$600.00 in lieu of further enforcement action. Associated Member Garrison seconded the motion.

Mr. Barker said he was not aware that a civil penalty was part of the recommendation. Commissioner Pruitt read from the staff recommendation that included triple fees and a civil charge. Associate Member Ballard asked what the civil charge reflected? Ms. West said it was for the float and walkway. Associate Member Ballard said he wanted the minutes to reflect that it was the walkway and float that caused the civil penalty.

Carl Josephson, the Commission's legal counsel who had taken over earlier from Mr. Chaffe, told Mr. Barker that if the civil charge was accepted, the permit would be provided. The civil charge was a condition for accepting the permit. If he chose not to accept it, the next action would be in Circuit Court. Associate Member Garrison said there was another alternative: the elimination and removal of the walkway and float. Mr. Barker then agreed to the civil charge.

Commissioner Pruitt called for a vote on the motion. **The motion passed, 6-0, including the \$600.00 civil charge.**

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5. **DANIEL HUDDY, #03-1046**, requests authorization to install a single mooring buoy located at 37° 44' 26" North Latitude and 76° 30' 59" West Longitude, approximately 300 feet offshore of his property on the Western Branch of the Corrotoman River in Lancaster County. A county resident protests the project.

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

The project location is on the upper section of the Western Branch of the Corrotoman River, across from Old Woman's Point, just north of the Corrotoman By-The-Bay subdivision. There are currently two permitted moorings (by Mr. Alexander and Mr. Pfeiffer) just south of the proposed mooring that lie in approximately seven feet of water. The river is about 1,000 feet wide at this location.

Mr. Huddy owns property on a cove of the river approximately 300 feet west of the proposed mooring location. He currently owns a 22-foot sailboat that he keeps at his 32-foot long private pier.

Mr. E. D. Bashore and Ms. Elizabeth Bunn, who live in Mollusk, protested the project. They were concerned that the boat would be an unlit navigation hazard when unoccupied. They also doubted that the anchor light would be displayed even when it was occupied or that fog signals would be maintained. They also believed that the untended boat would be at greater risk of catching fire and sinking, thus representing an increased risk of pollution to the river.

Mr. Milton Conrad has an oyster lease in the area, which runs parallel to the shoreline. The mooring would be placed offshore of his lease and Mr. Conrad does not object to it.

Mr. Huddy proposed to place a 50-pound mushroom anchor attached to a white ball with blue band. The U. S. Coast Guard found the project to be acceptable, provided the mooring and boat were maintained in accordance with federal navigation rules and requirements.

None of the listed adjacent property owners objected to the proposal. The project did not require a local wetlands permit, since all of the impacts were channelward of mean low water.

Given the nature of the project and the fact that the Coast Guard, adjacent property owners and nearby oyster ground leaseholder did not object, staff believed the request was a reasonable use of State-owned bottom. Accordingly, staff recommended approval of the project as proposed. Staff further recommend that the mooring ball be marked in accordance with Coast Guard requirements, that the VMRC permit number be affixed thereto, that VMRC be notified annually as long as the mooring was used, and that the anchor and tackle be removed in its entirety upon termination of use. Staff also recommended a one-time royalty in the amount of \$50 for the private use of public land.

Commissioner Pruitt asked if there were any questions from the Commission? There being none, he asked the applicant to address the Commission. Mr. Daniel J. Huddy said

there was not enough water at his dock to moor his sailboat. He felt it would be more practical to row out in a dingy to the mooring to get onboard the sailboat.

Commissioner Pruitt asked if there was anyone present in opposition? There were none. Commissioner Pruitt said he recalled the other moorings and could understand Mr. Huddy's need, but everyone in Roanoke could have a need for one. It was one thing to own waterfront property and have a pier and then want a mooring buoy. It was something different for non-riparian property owners, he added.

Mr. Grabb said that while Mr. Huddy had riparian property in close proximity, staff considered it a non-riparian situation.

Associate Member McLeskey asked if a boat could be anchored without a buoy. Mr. Grabb said yes, but anchor lights would be required. Associate Member Garrison said a 40-watt bulb was all that was required. Mr. Grabb said a buoy is not required to be lit.

Commissioner Pruitt asked for a motion. **Associate Member Garrison moved that the permit with staff recommendations. Associate Member McLeskey seconded the motion. The motion was approved, 6-0.**

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SPECIAL REPORT: Mr. Grabb said the staff had a presentation in response to questions raised by Mr. Douglas Jenkins in a letter to the Commissioner. Commissioner Pruitt said the presentation could be made later in the afternoon when Mr. Jenkins might be on hand.

Mr. Richard Calvert, representing River Pointe Village (Agenda item No. 6 on the agenda) asked to readdress the Commission. He said he had made some calls. The developer told him there was 12 slips that have riparian rights and seven of them have been sold. There was some urgency in this matter considering that the Home-A-Rama was in October. If the matter was delayed until the September meeting there might not be enough time available to consider the slips.

Commissioner Pruitt asked if he and staff had conferred in order to review the entire situation. Mr. Calvert said he had talked with Ms. West. Mr. Grabb said he, personally, had no idea where the 10 slips would be. If the agent could bring revised drawings back, Mr. Grabb said he would try to answer the questions raised.

Commissioner Pruitt directed Mr. Calvert to meet with Mr. Grabb and return to the Commission after lunch if everything was in order.

Mr. Barker, agent for Mr. Early (Agenda item No. 7) also asked to readdress the Commission. He said he felt the assessment of a \$600.00 civil charge was excessive. He said the relocation of the walkway should not carry any penalty because it was not damaging and the only thing needing to be permitted was the floating dock.

Commissioner Pruitt asked Associate Members Ballard and Garrison to respond since they made and seconded the motion. Associate Member Ballard said the civil charge matrix has two parts—the degree of non-compliance and the degree of environmental impact. They were both weighed as minimal. The fact there was no environmental impact did not mean there was no non-compliance. There was non-compliance because it was not constructed in accordance with the drawings submitted to the Commission. Associate Member Ballard reminded Mr. Barker that \$600.00 was by no means the maximum.

Associate Member Garrison said the Commission has had dozens of incidents like this. Unless we have some kind of penalty, we will have no control over the construction.

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Commissioner Pruitt recessed the meeting for lunch.

The meeting resumed at approximately 12:35 p.m.

Commissioner Pruitt asked if there was any other new business.

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SPECIAL ACTION: Lewis Gillingham, Fisheries Management Specialist, said that last year was the first year Virginia did not catch its summer flounder quota because there was a 40 percent increase and weather was a major factor. Virginia was shy of about 5 percent of the overall quota. The summer flounder industry asked that the opening be changed from the first Monday in November to the fourth Monday in October and that the poundage be changed from a 7,500-pound trip limit to a 10,000-pound limit during a 10-day period.

Industry representatives did not appear and Gillingham said that rather than delay until next month to call for a public hearing, the staff asks that the Commission advertise the two modifications for a public hearing in September. Associate Member Birkett moved to have a public hearing and Associate Member Garrison seconded the Motion. The motion passed, 6-0.

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9. Public Comments/Other Items

Commissioner Pruitt called for public comments on any issue. There were none.

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10. Request for Public Hearing: Proposed amendment to Regulation 4-VAC 20-1070-10 et seq. to address haul seine/submerged aquatic vegetation (SAV) interactions.

Rob O'Reilly, Deputy Chief, Fisheries Management, asked that Professor Bob Orth of VIMS be allowed to make an SAV presentation prior to any consideration.

Dr. Orth's comments, regarding propeller scarring on seagrass beds in the Chesapeake Bay, are part of the verbatim record. He said propeller scarring is indication of damage to habitat or creatures that have seagrass beds. Scars are formed, but do not show up for about one year. Seagrass beds are being used as a key indicator of water quality in the Chesapeake Bay. There is now a focus of large-scale restoration projects of SAV beds. He said propeller scarring is not unique to Virginia. Aerial photographs from 1989 to 2000 were used to identify scarred sites with at least three scares. He identified many locations. After examining all sites in the Chesapeake Bay, he also outlined the frequency of scarring with sites.

Heavily scarred sites, Dr. Orth said, have been degraded and scarring can alter the basic structure of the habitat. Jet skis do not cause problems because they do not have propellers. Does recreational boating or commercial fishing activities cause scarring? Scarring by recreational boaters would be found in areas near marinas, or highly fished areas. But no scarring was found near marinas or in "hot spots" for recreational fishermen. What about crab scraping? He pointed out photographs of flumes from crab scraping, but there are no scars. Generally, it is felt that crab scraping causes no problems.

What about gill netting? Dr. Orth said photographs do not show any propeller scares in areas of gill netting. What about crab potting? He said there is potting everywhere, but we do not see scarring in those areas. What about haul seining? We see scarring in traditional areas of hauling. He noted areas such as Guinea Marsh and Poquoson Flats show scarring for many of the 13 years of the photography research. The bottom line—the most heavily scarred areas—shows that they are caused by the haul seine area.

How do we deal with the scarring? We have identified hot spots of propeller scarring at Poquoson Flats and Brown's Bay. Options available including closing all seagrass beds, close "hot spot" areas or alter fishing techniques. If you close all of Poquoson Flats—that cover 1,277 acres—but that may put fishermen out of business. Could you close areas

until scarring recovers, Dr. Orth questioned. He added there is no analysis yet of the 2002 photography.

Commissioner Pruitt asked if there were any questions of Dr. Orth from the Commission. Associate Member Ballard said he was confused that closing areas to allow seagrass beds to recover is contrary to slides that suggest a natural recovery. Dr. Orth said structure of the grass beds can come back quickly, but does function return that quickly? Scarring in any one year at one point may not be much, but it tends to add up over the years.

Associate Member McLeskey asked the average depth of the water where scarring is observed. Dr. Orth said between a half-foot and three feet at mean low water.

Associate Members Garrison and Birkett gave a committee report. Associate Member Garrison said the committee is looking to the haul seiner cleaning up his own scars. He said he was hoping that there would not be problems by January. Associate Member Birkett said that since 2000 there are no photographs for data and there seems to be a diminishing amount of scarring. The only way to know for sure is to have data from the 2002 photography. Maybe we should play a "wait and see game" with a problem that may take care of itself. Hopefully, the haul seiners will be the prudent people they say they are and stay away from the grass beds.

Commissioner Pruitt said staff is recommending staying until 2002 and 2003 photographs can be analyzed by VIMS. Associate Member Garrison said further discussion of this issue should be delayed until analysis is available on the 2002 and 2003 photographs. He moved to go to public hearing in February if the VIMS analysis is available. Associate Member Ballard seconded the motion. The motion was carried, 6-0.

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SPECIAL REPORT: Chip Neikirk, Environmental Engineer Sr., reported that Mr. Doug Jenkins, President, Twin Rivers Watermen's Association, in a letter to the Commissioner, questioned a rip-rap project on Gardeners Creek in Westmoreland County. Mr. Jenkins provided several photographs about development on one side of the creek and then the other side of the creek. The project was approved by the local wetlands and did not require a permit from VMRC since it was above low water. Mr. Jenkins said he was concerned because it looked like a lot of wetland impact.

Mr. Neikirk gave a presentation of Mr. Jenkins' slides of the area with comments made on the back of the photographs by Mr. Jenkins. The comments are part of the verbatim record.

Associate Member Garrison asked about wetland grass. Mr. Neikirk said there were vegetated and non-vegetated wetlands. There was a variety of species of grass in the area. VIMS said there were no vegetated wetlands impacted in this area.

Commissioner Pruitt allowed Mr. Jenkins to address the Commission. He said the date on the VIMS photo was December 9 in the winter. Marsh grass dies in the winter with the only thing left being the roots, he explained. The photos show stones along the shore and his concern was that people are disregarding the Bay Act. Riprap should go behind the marsh. Violating marsh grass and destroying it hurts the beginning of the food chain for many fish. He said Westmoreland County could care less about marsh grass; it wants to develop every bit of shoreline it can. He said someone needed to protect the Bay Act. **The Commission took no action regarding Mr. Jenkins' concerns.**

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ANOTHER SPECIAL ITEM: Colonel Steve Bowman, Chief, Law Enforcement, presented Marine Police Officer Carl M. "Chip" Dize, Jr. (of Hayes, Virginia) for special recognition.

Col. Bowman pointed out a good, heroic deed performed by MPO Dize, which resulted in the preservation of a life. The commendation reads: "The Commonwealth of Virginia, Marine Resources Commission, hereby recognizes Marine Police Officer Carl M. "Chip" Dize, Jr. for meritorious service. On June 9, 2003, while shopping in the Wal-Mart store in Gloucester County, you recognized that an employee, J. D. Smith, was suffering breathing difficulty. Mr. Smith, manager of Wal-Mart's Tire and Lube Express, was choking on a piece of candy that was blocking his airway. With the instant response you immediately assessed the situation and performed the Heimlich maneuver several times, which ultimately forced the release of the obstruction, allowing Mr. Smith to regain normal respiratory function and in all likelihood saved his life. The Commission takes this opportunity to recognize you for this outstanding and meritorious action, which reflects to the great credit of you and this agency."

The Commission and audience applauded the presentation. Commissioner Pruitt thanked MPO Dize for his actions.

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Commissioner Pruitt called for another public comment period since a number of people had not appeared at the earlier time. No one from the public had additional comments.

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11. Request for Public Hearing: Proposed amendments to Regulation 4 VAC 20-950-et seq. "Pertaining to Black Sea Bass."

Chad Boyce, Fisheries Management Specialist, told the Commission that since its last meeting, the staff has met with industry on changes to the Black Sea Bass regulations. About 20-25 proposals for changes in the regulations were received. The Finfish Management Advisory Committee discussed the subject, but made no recommendations. The staff has contacted the National Marine Fisheries Service and made data requests to allow calculations on some of the industry proposals. There will be another industry meeting in September and recommendations will be taken to FMAC again. Hopefully, some recommendations will come to the Commission in September.

Mr. Boyce urged that the Commission advertise a wide array of options ranging from a quarterly quota system with trip limits to modifications of the current quota system.

Associate Member Ballard moved to go to public hearing in September and that the advertisement include a wide array of options. Associate Member Bowden seconded the motion. The motion passed, 6-0.

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12. Request for Public Hearing: Proposed amendments to Regulation 4-VAC 20-720 and 4 VAC 20-650 establishing the 2003/2004 oyster harvest rules.

James Wesson, Head, Conservation and Replenishment Department, told the Commission that the proposed oyster harvest season for 2003-2004 was basically the same as this year except for three minor changes that came from requests last year: 1) a by-catch to clam dredgers, 2) took the loss of license out of the penalty for failure to report daily for Tangier people selling out of state, and 3) hand tongs only in the Potomac River tributaries.

Associate Member Holland made a motion to go to public hearing in September on VAC 20-720. Associate Member Garrison seconded the motion. The motion passed, 6-0.

Mr. Wesson said the second regulation is an old one that has not been updated. All the constructed reefs have signs for the public to stay off, and the regulation will say that if a reef is marked no harvesting is allowed and persons must stay 300 feet away.

Associate Member Garrison made a motion to go to public hearing in September on 4 VAC 20-650. Associate Member Birkett seconded the motion. The motion passed, 6-0.

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Robert Grabb, Chief-Habitat Management, reported to the Commission that a meeting on the River Pointe, agenda item No. 6, had been held and asked the Commission to reconsider the project. **Associate Member McLeskey moved to reconsider and Associate Member Ballard seconded the motion. The motion passed, 6-0.**

Commissioner Pruitt asked staff to make the initial presentation. He said he understood the situation that Mr. Richard Calvert was in with the developer absent and no one from the City present. He said he did get a call, for the record, from the Portsmouth City Manager who said the project was very important to the City.

Tracy West, Environmental Engineer Sr., explained that Mr. Grabb and Mr. Calvert had been having discussions all afternoon. She presented a modified drawing of the pier, representing a reduction in the number of slips from 14 to 10. Another staff concern was who would be using these slips and how many lots have been actually sold. She said Mr. Calvert called the developer and determined what lots had been sold and she pointed those out to the Commission. In response to a question from Associate Member Ballard, Ms. West said The 1,000-foot arc includes most of the waterfront properties and several interior lots (18 lots including 6 interior).

Mr. Calvert said the owners were trying to negotiate a reasonable compromise. A gazebo was eliminated and the telephones, cable, etc. from the pier could also be eliminated. They just wanted to get this project approved by “you people.”

Commissioner Pruitt interrupted and told Mr. Calvert that this is not “you people,” but a Commission, firmly established by the Code of Virginia in 1875. He asked Mr. Calvert to refer to the group as the Commission.

Mr. Calvert apologized and said he was a bit nervous and said the owners/developers were willing to try to do anything they could that would enable the permit to go forward.

Associate Member Garrison said the Commission could apply a condition of removal of telephone service and cable television lines. Associate Member McLeskey asked what the homes were on the drawing to the south of the project. Mr. Calvert responded that it was an existing residential neighborhood.

Associate Member Holland said he had no problem with the conditions on the 10 slips including no one outside of 1,000-feet could own a slip. Associate Member Birkett asked if the pier would benefit the five inland owners. Mr. Calvert said he did not know the process that would be undertaken to distribute the slips.

Associate Member Garrison said he understood that this pier was being constructed to discourage others from building their own private piers. Mr. Calvert said private piers were an expensive proposition.

Associate Member Ballard said in the staff's original statement, the staff said the pier-head should be redesigned to minimize encroachment. Mr. Grabb said that had not been done. If someone were to make a motion, Associate Member Ballard said, is a redesign still appropriate? Mr. Grabb said the long pier could be constructed because it replaces an existing structure. It is the slips that were the problem. Staff said if you were going to do it, you could put a large T-head or an L-head with slips on the back to minimize the encroachment.

Associate Member Ballard said if you build it and it is not like your drawing then the developer is going to be back before this Commission. Mr. Grabb said the staff was told that all the waterfront properties were sold and that no deed restrictions could be placed on the property. If deed restrictions now could be placed on those lots that have not been sold, then you could justify four slips along with the others. He said he did not think the price of the homes would deter someone from building a private pier. The 10 slips would be for six interior lots and four waterfront lots, he offered with a T-head or L-head.

The existing pier can be built now because it is maintenance and repair of an existing structure, Mr. Grabb reiterated. Associate Member Ballard said after hearing that it would get the project over the Home-A-Rama obstacle. He said neither the Commission nor staff had settled on the number of slips or the configuration of the head.

Mr. Calvert said the pier was being built higher than normal and there was no intention to moor boats to the pier. The orientation of the slips was to utilize the floating docks along side the pier.

Commissioner Pruitt said he told the Portsmouth City Manager that a community pier normally handles piers for a development instead of a row of private piers. Mr. Calvert said the owners/developers had come back with 10 slips and that possibly the waterfront owners will not proceed with their own private piers.

Associate Member McLeskey asked the width of the pier. Mr. Calvert said it was about eight feet wide, just a little wider than the existing pier. He said there is a four-foot wide aluminum ramps on either side going down to the floating docks. He said they were willing to relocate or change the piers to get this project going.

Associate Member Birkett asked about the height of the pier. Mr. Calvert said it would be five feet above mean low water. It would be easier for the owners of the boats to get off on floating piers rather than a five-foot high structure. Associate Member Birkett said it would be wrong to take the power off the pier to ensure safety lighting.

Associate Member Holland moved to accept the project with 10 slips, excluding the telephone and cable connections and that property owners need to be within 1,000-feet to secure a slip. Associate Member Birkett seconded the motion.

Associate Member Ballard said he would accept the motion if drawings were submitted and staff found them acceptable regarding a 10-slip configuration. Commissioner Pruitt asked Associate Members Holland and Birkett if they would accept Associate Member Ballard's additional requirement. They agreed and Commissioner Pruitt called for a vote on the entire motion. The motion passed, 6-0.

Mr. Calvert thanked the Commission for its time and effort on the case.

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There being no further business, Commissioner Pruitt adjourned the meeting at 2:20 p.m. The next meeting date is Tuesday, September 23, 2003.

William A. Pruitt, Commissioner

Wilford Kale, Recording Secretary