

MINUTES

COMMISSION MEETING

September 29, 2020

****In consideration of Governor Northam's Executive Order 55 and public safety, the September 29, 2020 Commission meeting of the Marine Resources Commission was held electronically at 9:30 AM at the Marine Resources Commission main office at 380 Fenwick Road, Fort Monroe, Virginia. As required by law, all interested persons were provided an opportunity to be heard on this matter as part of the electronic meeting as follows:**

1. Any interested party was invited to visit the agency web calendar at <https://mrc.virginia.gov/calendar.shtm> and look for the 9/29/2020 meeting date to see web links to the draft proposed regulation, instructions for meeting participation, public call-in information, and the meeting Webex livestream web link. Participants was instructed to join the livestream and public conference call starting at approximately 9:00AM since the meeting will begin at 9:30AM.
2. All persons interested in commenting were highly encouraged to submit written comments prior to the meeting. Comments sent by mail were to be sent to 380 Fenwick Rd, Ft. Monroe, VA 23561 and should be received by 09/24/2020. Comments could have also have been emailed to fisheries@mrc.virginia.gov and were accepted until NOON on 9/28/2020.
3. Any individuals interested in providing spoken testimony via the public conference call-in line during the public hearing held on the day of the meeting were instructed to email their name, hometown, and for or against regulation to fisheries@mrc.virginia.gov by 5PM on 9/28/2020.

The online meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 380 Fenwick Road, Fort Monroe, Virginia with the following present:

Steven G. Bowman	Commissioner, present in room
John Tankard III	
Ken Neill, III	Associate Members
Heather Lusk	Present via conference call
Christina Everett	

Commission Meeting

**18618
September 29, 2020**

Chad Ballard	Associate Members
James E. Minor III	Present via conference call
Wayne France	
Kelci Block	Assistant Attorney General, Present via conference call
Jamie Hogge	Recording Secretary, Present via conference call
Ellen Bolen	Deputy Commissioner Present via conference call
Pat Geer	Chief, Fisheries Mgmt.; Present via conference call
Adam Kenyon	Deputy Chief, Fisheries Mgmt., Present via conference call
Shanna Madsen	Deputy Chief, Fisheries Mgmt., Present, in room
Andrew Button	Head, Conservation and Replenishment Present via conference call
Somers Smott	Fisheries Mgmt. Specialist, Present, in room
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Alicia Nelson	Coordinator, RFAB/CFAB Present via conference call
Lewis Gillingham	Director, SWFT Present via conference call
Alexa Kretsch	Fisheries Mgmt. Specialist Present via conference call
Jennifer Farmer	Regulatory Coordinator Present via conference call
Olivia Phillips	Fisheries Mgmt. Specialist Present via conference call

Commission Meeting

**18619
September 29, 2020**

Tony Watkinson	Chief, Habitat Management
	Present via conference call
Randy Owen	Deputy Chief , Habitat Management
	Present, in room
Justin Worrell	Environmental Engineer, Sr.
	Present via conference call
Mike Johnson	Environmental Engineer, Sr.
	Present via conference call
Jay Woodward	Environmental Engineer, Sr.
	Present via conference call
Mark Eversole	Environmental Engineer, Sr.
	Present via conference call
Allison Lay	Environmental Engineer, Sr.
	Present via conference call
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping
	Present via conference call

Virginia Institute of Marine Science (VIMS): Present via conference call

Lyle Varnell	Emily Hein	Mark Luckenbach
Dr. Bob Orth	Dr. Chris Patrick	

Others present via conference line

Chris Guvernator	Cecilia Lewis	Tracey McDonald
Cory Gray	Jeff Stonehill	Jim Wesson
Charles Crossman	John Donelson	Kim Huskey
T. Lee Byrd	Bill McDowell	David O'Brien
Earl Frederick	Bill Davis	Jennifer Johnson
Rich Calvert	Mark Hiltke	Monica Schenemann
Lauren Pudvah	Mark Remick	Sarah Vogelsong
Tracy Harris	William McCahill	Chris Moore
Chris Patrick	Bill Davis	Bettina Colonna Essert
Danny Vestal	Gibb Howell	Grace Flick
Hollie Faehner	Samantha Cosper	Mark Essert
Megan Moore	Megan Schiffres	Ron Larson
Bill Davis and others.		

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Commissioner Bowman called the meeting to order at approximately 9:32 a.m.

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Associate Member Tankard said the invocation by the request of Commissioner Bowman.

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APPROVAL OF AGENDA. – Commissioner Bowman asked if there were any changes from the Board members or staff.

Associate Member Tankard moved to approve the agenda as presented. Associate Member Everett seconded the motion. The motion carried, 6-0. Chair voted yes. Associate Members France and Minor were not present during vote.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the August 25, 2020 Commission meeting minutes.

Associate Member Tankard moved to approve the minutes as presented. Associate Member Ballard seconded the motion. The motion carried, 6-0. Chair voted yes. Associate Members France and Minor were not present during vote.

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Commissioner Bowman swore in the VMRC staff, VIMS staff and others that would be speaking or presenting testimony during the meeting prior to each item.

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- 2. **PERMITS** (Projects over \$500,000.00 with no objections and with staff recommendation for approval).

Tony Watkinson, Chief, Habitat Management, reviewed the page 2 Item A for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

- 2A. HUNTINGTON INGALLS INC-NEWPORT NEWS SHIPBUILDING, #20-1058,** requests authorization to construct approximately 297 linear feet of fender system and three hydraulic gangways along the south side of Pier 5 at Huntington Ingalls-Newport News Shipbuilding along the James River in the City of Newport News.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Tankard moved to approve the page 2 Item A as presented. Associate Member Ballard seconded the motion. The motion carried 6-0. Chair voted yes. Associate Members France and Minor were not present during vote.

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- 3. CONSENT AGENDA ITEMS. No consent agenda items.**

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- 4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL – No closed meeting needed.**

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- 5. PRESENTATION:** Dr. Bob Orth and Dr. Chris Patrick, Virginia Institute of Marine Science, Annual review of the status of Submerged Aquatic Vegetation.

Dr. Bob Orth & Dr. Chris Patrick, VIMS, presented a briefing on the annual review of the status of Submerged Aquatic Vegetation. Their comments are a part of the verbatim record.

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6. **DISCUSSION:** Presentation on Virginias' spend plan to distribute CARES Act Fisheries Disaster Relief funding. This spend plan was reviewed and officially approved by the National Oceanic and Atmospheric Administration.

Deputy Commissioner Ellen Bolen, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Bolen's comments are a part of the verbatim record.

Ms. Bolen explained the CARES Act Fisheries Disaster Relief funding in further detail. This spend plan was reviewed and officially approved by the National Oceanic and Atmospheric Administration.

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7. **GRAND BAY PROPERTIES, LLC, #20-0808.** Commission review of the Accomack County Wetlands Board's August 27, 2020, decision to approve the filling of 20 square feet of vegetated wetlands and 2,397 square feet of non-vegetated wetlands as part of a bulkhead replacement project along Chincoteague Bay on three (3) lots (756, 757 and 758) in the Captain's Cove subdivision.

Allison Lay, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Lay's comments are a part of the verbatim record.

Ms. Lay explained that the project is located on three vacant lots in the Captain's Cove subdivision along Chincoteague Bay in Accomack County. A bulkhead was constructed on each property between 2002 and 2004. This bulkhead has now failed and both mean low water (MLW) and mean high water (MHW) reach landward of the failed bulkhead.

At its July 30, 2020 public hearing, the Accomack Wetlands Board heard testimony from the agent, applicant, public, and County staff, including photographs of the site and copies of the application drawings. A motion was made to continue the project to the August meeting with a request that the applicant submit a survey showing MLW, MHW, and the elevation equal to 1.5 times the tide range as measured from mean low water. This elevation represents the upper limits of tidal wetlands as defined in § 28.2-1302 of the model wetlands ordinance. The motion was approved unanimously.

At its August 27, 2020 public hearing, the Board revisited the application and a survey submitted by the applicant that showed MLW and MHW, but did not include the previously requested elevation representing the upper limits of tidal wetlands. After discussing the project, the Board unanimously voted to approve the application contingent on the applicant's submittal of the cubic yards of fill proposed to be placed, mitigation for 20 square feet of vegetated tidal wetlands, a revised survey depicting the upper limits of tidal wetlands jurisdiction, and the option to bring the application back before the Board if it is determined that more than 20 square feet of vegetated wetlands would be impacted.

By correspondence on behalf of Commissioner Bowman, dated September 1, 2020, and in conformance with §28.2-1311 A 2 of the Code of Virginia, the Accomack Wetlands Board was advised that the full Commission would be reviewing the Board's decision to approve Grand Bay Properties' application.

Section §28.2-1313 of the Code of Virginia specifies when the Commission should modify, remand, or reverse a wetlands board's decision. Based upon our attendance at the hearing and our review of the record, staff believes that the Accomack Wetlands Board erred in its approval of the project as submitted, and did not give full consideration to the criteria for approval of an application as specified in the wetlands zoning ordinance.

Section §28.2-1302.10.B of the wetlands zoning ordinance states that the Board shall grant the permit if all of the following criteria are met: (1) the anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment; (2) the proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia; and (3) the proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-1300 et seq.) of Title §28.2 of the Code of Virginia. Section §28.2-1302.10.C further states that if the Board finds that any of the criteria listed in subsection B of this section are not met, the Board shall deny the permit application but allow the applicant to resubmit the application in modified form. Staff is of the opinion that the Board's decision on this matter fails to meet all three criteria in subsection B.

It is staff's opinion that the Board's rationale for the approval of the project has deviated from established guidance. The Board determined that the filling of wetlands was acceptable for the creation of upland to construct houses on, and did not fully consider

other alternatives that would not cause the filling of wetlands. Although mitigation was required for the fill of vegetated wetlands, avoidance and minimization should be considered before mitigation is required.

Although the Board stated that they believed a living shoreline is not feasible at this location due to fetch, staff believes that further consideration should have been given to VIMS recommendation for construction of a breakwater with spurs, which is a common shoreline erosion control structure used on high fetch shorelines. The Board could have also considered placement of the proposed bulkhead landward of the local wetlands board jurisdiction.

Importantly, the applicant intends to create a buildable lot by filling jurisdictional tidal wetlands. The Commission's wetland guidelines states that "Alteration of the shoreline is ordinarily not justified for purposes or activities which can be conducted on existing fastlands and which have no inherent requirement for access to water resources." A house could be constructed on an upland lot without requiring the filling of wetlands, therefore, the filling of wetlands to create a lot to have a house built on it does not meet the wetland guidelines.

Section §28.2-1313 of the Code instructs the Commission to modify, remand, or reverse the decision of the wetlands board if the Board, in reaching its decision, failed to fulfill its responsibilities under the wetlands zoning ordinance. As such, staff recommends that the

August 27, 2020, decision of the Accomack Wetlands Board be reversed and the application to fill 20 square feet of vegetated wetlands and 2,397 square feet of non-vegetated wetlands be denied. This is based upon the aforementioned staff findings and the faulty rationale for filling the marsh to create a lot to construct a house on when there were other methods to address shoreline erosion without converting tidal wetlands to uplands. This denial does not prevent the applicant from reapplying in modified form to address their erosion control needs.

Mr. Earl Frederick, Chairman of Accomack Wetlands Board, spoke regarding the project and the Board action. His comments are a part of the verbatim record.

Chris Guvernator, staff for the Wetlands Board, was present during the presentation but did not wish to address the Commission.

Mr. Pitt, agent for the applicant spoke. His comments are a part of the verbatim record.

Bill Davis, applicant for the project spoke on behalf of the project. His comments are a part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Everett made a motion to uphold staff recommendation to reverse wetlands board's decision and deny the permit. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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8. ROBERT HETZELL, #20-1160. Commission review of the Accomack County Wetlands Board's August 27, 2020, decision to approve the filling of 250 square feet of non-vegetated wetlands as part of a bulkhead replacement project along Chincoteague Bay on Lot 765 in the Captain's Cove subdivision.

Allison Lay, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Lay's comments are a part of the verbatim record.

Ms. Lay explained that the project is located on a vacant lot in Captain's Cove subdivision along Chincoteague Bay in Accomack County. A bulkhead was constructed on the property in 2002. This bulkhead has now failed and both mean low water (MLW) and mean high water (MHW) are located landward of the failed bulkhead.

At its August 27, 2020 public hearing, the Accomack Wetlands Board heard testimony from the agent and county staff including photographs of the site, and copies of the application drawings. The Board unanimously voted to approve the application with submittal of the cubic yards of fill to be placed, and notification to the new owners about the approval of the permit.

By correspondence on behalf of Commissioner Bowman, dated September 1, 2020, and in conformance with §28.2-1311 A 2 of the Code of Virginia, the Accomack Wetlands Board was advised that the full Commission would be reviewing the Board's decision to approve Robert Hetzell's application.

Section §28.2-1313 of the Code of Virginia specifies when the Commission should modify, remand, or reverse a wetlands board's decision. Based upon our attendance at the hearing and our review of the record, staff believes that the Accomack Wetlands Board erred in its approval of the project as submitted, and did not give full consideration to the criteria for approval of an application as specified in the wetlands zoning ordinance.

Section §28.2-1302.10.B of the wetlands zoning ordinance states that the Board shall grant the permit if all of the following criteria are met: (1) the anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment; (2) the proposed development conforms with the standards prescribed in §28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to §28.2-1301 of the Code of Virginia; and (3) the proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§28.2-1300 et seq.) of Title §28.2 of the Code of Virginia. Section §28.2-1302.10.C further states that if the Board finds that any of the criteria listed in subsection B of this section are not met, the Board shall deny the permit application but allow the applicant to resubmit the application in modified form. Staff is of the opinion that the Board's decision on this matter fails to meet all three criteria in subsection B.

It is staff's opinion that the Board's rationale for the approval of the project has deviated from established guidance. The Board determined that the filling of wetlands was acceptable for the creation of upland, and did not fully consider other alternatives that would not cause the filling of wetlands. The Commission's wetland guidelines states that "Alteration of the shoreline is ordinarily not justified for purposes or activities which can be conducted on existing fastlands and which have no inherent requirement for access to water resources. Although the Board stated that they believed a living shoreline is not feasible at this location during the hearing for a previous application, they did not specifically discuss the possibility of constructing a living shoreline at this site. The Board also did not consider the placement of the proposed bulkhead landward of the local wetlands board's jurisdiction.

Section §28.2-1313 of the Code instructs the Commission to modify, remand, or reverse the decision of the wetlands board if the Board, in reaching its decision, failed to fulfill its responsibilities under the wetlands zoning ordinance. As such, staff recommends that the August 27, 2020, decision of the Accomack Wetlands Board be reversed and the application to fill 250 square feet of non-vegetated wetlands be denied. This is based upon the aforementioned staff findings and the faulty rationale for filling of tidal

wetlands when there were other methods to address shoreline erosion without converting tidal wetlands to uplands. This denial does not prevent the applicant from reapplying in modified form to address their erosion control needs.

Raymond Britton, agent for the applicant, spoke in support of the project. His comments are a part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.

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- 9. GIBB HOWELL, #20-0864**, requests authorization to construct a second open-sided boathouse measuring 17-foot wide by 41-foot long at property situated along the Mattaponi River in King William County. The project is protested by both adjacent property owners.

Randy Owen, Deputy Chief, Habitat Management, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Owen's comments are a part of the verbatim record.

Mr. Owen explained that the project is located on the Mattaponi River, approximately, 15 miles northwest of the Town of West Point, in the Scotland Landing area of the river just below Walkerton. The depths at the applicant's shoreline very quickly drop off to that exceeding minus 10 (-10) feet at mean low water (MLW) and continue dropping to about -22 feet. The river is approximately 650 feet wide at the applicant's property.

The applicant's contractor, Mr. Joe Foulis with Waterfront Construction and Design, contacted staff prior to the submittal of the application. The Howell's were seeking authorization to construct, in addition to the second boathouse, an addition to the pier that would facilitate access to their existing and proposed second boathouse. The larger boathouse was requested to shelter a new 36-foot long *Pursuit* recently purchased by the

applicants. Mr. Foulis provided sketches of the project design to insure that the requested pier addition would qualify for the statutory authorization provided for private piers in §28.2-1203A5 of the Code of Virginia.

The application was received on May 20, 2020. Staff advised the contractor and applicant that the proposed pier addition qualified for the statutory authorization as proposed and that the second boathouse would require a VMRC permit. A request to advertise the project in the local newspaper was sent out on June 12, 2020, along with written notices of the request to the adjacent property owners.

Staff carefully evaluated the protestants concerns regarding the need for the second boathouse and their assertion that it would impede navigation. In response to the need, which VMRC staff raised as well, the Howell's now own both vessels stored on the property. The MLW soundings and a recent VMRC aerial overflight demonstrate that the proposed second boathouse is situated inshore of a line struck between longer piers located just up and downstream of the applicant's pier and, therefore, poses no threat to navigation. There is approximately 410 feet of deep water that serves as the navigable thoroughfare between the proposed second boathouse and the opposing shoreline. The U.S. Army Corps of Engineers have advised that the project was submitted under their non-reporting Regional Permit #17.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project and after considering all of the factors contained in § 28.2-1205 of the Code of Virginia, staff recommends approval of the second boathouse as proposed.

Gibb Howell, applicant, was present on the phone but declined addressing the Commission until the closing remarks. His comments are a part of the verbatim record.

Two people spoke in opposition of the project. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-1-0. Chair voted yes. Associate Member Everett voted no.

Fee:	\$ 100.00
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- 10. **WILLIAM McDOWELL, #20-0015**, requests authorization to construct a 560 square foot open-sided boathouse and a 140 square foot pier shelter at his property (355 Osprey Point Lane) situated along the Rappahannock River in Essex County. The project is protested by an adjacent property owner.

Randy Owen, Deputy Chief, Habitat Management, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Owen's comments are a part of the verbatim record.

Mr. Owen explained that the project is located on the Rappahannock River, approximately eight miles downstream of the Route 360 bridge in Tappahannock. The River at this location is over three miles wide. There are multiple piers and boathouses on the Rappahannock River in Essex County.

The Howell's initiated construction of the pier portion of their project, pursuant to the statutory authorization provided for private piers, in the latter part of June 2020. The Howell's are asking for a 700 square feet total roof footprint, of which 560 square feet will cover the boat slip and rear catwalk, and a 140 square foot shelter over the main axis of the pier. The Howell's own two boats at this time. Staff also administratively issued a permit for a proposed clothesline mooring that was requested with the project. This was done following the conclusion of the public interest review period on February 13, 2020, with no objections received by staff at that time.

In 1998, the General Assembly amended §28.2-1203(A)(5) of the Code of Virginia to provide statutory authorization for the construction of open-sided boathouses measuring 700 square feet or less and designed to cover a single boat at a private, noncommercial pier, provided the boathouse was not objected to by the adjoining property owner and was allowed by local ordinances. The Code was later amended to provide statutory authorization for open-sided shelter roofs up to 400 square feet, again provided the roof structure(s) are not objected to by the adjoining property owners. Since Essex County does not restrict the construction of boathouses and pier shelters, had the adjacent

property owner not objected to the project, the proposed project would have qualified for the statutory exemption.

Staff believes that the proposed boathouse and pier shelter are appropriately sized and, in fact, note that they are smaller than that allowed by statute. The pier’s location was moved 15 feet downstream to provide an adequate setback from the upstream neighbor and is located in front of the applicant’s property. Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the proposed roof and shelter.

Bill McDowell, applicant, spoke on behalf of the project. His comments are a part of the verbatim record.

Charles Crossman spoke in opposition of the project. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 7-1-0. Chair voted yes. Associate Member Everett voted no.

Fee:	\$ 100.00
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- BETTINA ESSERT, #20-0462**, requests authorization to construct approximately 614 linear feet of concrete mat and stone sill with 620 cubic yards of sand fill with native wetland plantings and a 14-foot by 80-foot concrete boat ramp adjacent to property (832 St. Lawrence Drive) along the Indian River in the City of Chesapeake. This project requires a tidal wetlands permit and a subaqueous permit.

Allison Lay, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Ms. Lay’s comments are a part of the verbatim record.

Ms. Lay explained that the project is located along Indian River, a tributary to the Eastern Branch of the Elizabeth River in the City of Chesapeake. The site is a point of land that is surrounded by tidal vegetated wetlands. The applicant has proposed to construct a concrete mat and stone sill with sand fill and native wetland planting to enhance the existing marsh. Two coir logs will also be placed on each end of the proposed sill. The applicant has also proposed to construct a boat ramp through wetlands parallel to a statutorily authorized pier.

The proposed sill will result in the conversion of 510 square feet of non-vegetated wetland to intertidal riprap, 190 square feet of submerged land to intertidal riprap, and 1200 square feet of non-vegetated wetland to vegetated wetland. The concrete boat ramp will impact 275 square feet of vegetated wetlands, 204 square feet of non-vegetated wetlands, and 395 square feet of submerged lands. The impacts to submerged lands for the boat ramp would require a royalty in the amount of \$197.50 at a rate of \$0.50 per square foot.

The proposed sill with sand fill and native plantings is considered a living shoreline and is the preferred shoreline erosion control method for the Commonwealth of Virginia. However, the proposed boat ramp will impact vegetated wetlands and staff believes that this impact could be avoided. Although the nearest public boat ramp is approximately a four mile drive from the property, staff believes that the impact to vegetated wetlands is not appropriate for the construction of a boat ramp. The proposed pier and boat lift can be used for boat mooring to reduce the number of times boats would be taken in and out of the water.

Accordingly, after evaluating the merits of the project and considering all of the factors contained in §28.2-1200 and §28.2-1302(10)(B) of the Code of Virginia, staff recommends approval of the sill with sand fill and native wetland plantings, but denial of the boat ramp.

Richard Calvert, agent for the applicant, spoke in support of the project. His comments are a part of the verbatim record.

Bettina Essert, applicant, spoke in support of the project. Her comments are a part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve application as submitted by the applicant. Associate Member Everett seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member France voted no.

Royalties: (Encroachment of 395 SF @ \$.50 /SF):	\$ 197.50
Fee:	\$ 100.00
Total Fees:	\$ 297.50

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- 12. VIRGINIA ELECTRIC AND POWER COMPANY, #20-1131**, requests authorization to replace five (5) transmission line support structures located in tidal wetlands, construct a temporary crossing over 400 linear feet of Hodges Creek, and replace a single 115 kV aerial transmission line over approximately 211 linear feet of Hodges Creek in the City of Chesapeake. This project requires a tidal wetlands permit and a subaqueous permit.

Allison Lay, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Ms. Lay’s comments are a part of the verbatim record.

Ms. Lay explained that the project is located in Hodges Creek, a tributary of the Southern Branch of the Elizabeth River near the High Rise Bridge in Chesapeake. The applicant is proposing to remove existing transmission line support structures and replace them with five (5) new structures. The new structures will impact 183 square feet of vegetated wetlands, 15 square feet of non-vegetated wetlands, and 48 square feet of submerged lands. During construction, a temporary crossing will be placed over 400 linear feet of Hodges Creek. A single 115 kV aerial transmission line will also be replaced to include a portion over 211 linear feet of Hodges Creek. A VMRC wetlands permit and a subaqueous permit will be required for this project.

The existing transmission line has reached the end of its life and needs to be rebuilt to maintain electrical service to the area. All temporarily impacted areas will be restored once construction is complete, and permanent impacts will be mitigated for through the

purchase of wetland credits. Accordingly, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) of the Code of Virginia and the Wetlands Mitigation-Compensation Policy and Supplemental Guidelines, staff recommends approval of the project as proposed with the following special conditions added to the permit:

1. Purchase of wetland credits at the New Mill Creek Tidal Mitigation Bank necessary to replace the loss of 183 square feet of tidal vegetated wetlands;
2. Assessment of an encroachment royalty in the amount of \$633.00 for the encroachment over 211 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot;
3. All areas of State-owned submerged land and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within 30 days from the date of completion of the authorized work. All excess materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters.

Jennifer Johnson, agent for the applicant was present on the call but did not add to the presentation. Her comments are a part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

Royalties: (Encroachment of 211 LF @ \$3.00 /LF):	\$ 633.00
Fee:	\$ 100.00
Total Fees:	\$ 733.00

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13. **OLD DOMINION ELECTRIC COOPERATIVE, #20-1246**, requests authorization to place temporary timber mats over 5,000 square feet of non-

vegetated wetlands and 30,400 square feet of vegetated wetlands to perform maintenance work and replace insulators on transmission lines along Chincoteague Road in Accomack County. A wetlands permit is required for use of a State-owned marsh.

Allison Lay, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Lay's comments are a part of the verbatim record.

Ms. Lay explained that the project is located along Chincoteague Road in Accomack County. The applicant is proposing to place temporary timber mats in wetlands for bucket trucks to be able to perform maintenance work and replace insulators on existing transmission lines. Cranes will also be used from the roadway to conduct work, but the bucket trucks would not be able to safely reach the transmission lines from the roadway. An Accomack County wetlands permit has already been issued for this project for impacts to wetlands not owned by the State. A VMRC wetlands permit will be required for impacts to State-owned marsh.

The timber mats placed in wetlands will be a temporary impact to safely conduct necessary maintenance of an existing transmission line. All impacted areas will be restored once construction is complete. Accordingly, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) of the Code of Virginia, staff recommends approval of the project as proposed with the following special conditions added to the permit:

1. This permit gives no ownership interest in the underlying State land;
2. All areas of State-owned marsh and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within thirty (30) days from the date of completion of the authorized work. All excess materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters;
3. The Permittee agrees not to conduct any of the authorized work between March 15 and August 31 of any year to minimize adverse impacts to shorebirds.

Cory Gray, agent for the applicant, was present on the phone and was available to answer any questions. His comments are a part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

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14. JEFFREY and MONICA SCHENEMANN, Oyster Planting Ground Application #2018-022, request authorization to lease approximately ten (10) acres of oyster planting ground in Wrights Cove, a tributary of the Coan River, in Northumberland County. The project is protested by numerous adjacent and nearby highland property owners.

Ben Stagg, Dir., Shellfish Aquaculture, Leasing and Mapping, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Stagg's comments are a part of the verbatim record.

Mr. Stagg explained that an application from Jeffrey and Monica Schenemann requesting to lease approximately ten (10) acres of oyster planting ground, within Wrights Cove, a tributary of the Coan River in Northumberland County, was received by the Engineering/Surveying Department on February 5, 2018. The application was subjected to the normal public interest review process.

After careful review and consideration of the objections raised by the nearby upland property owners, and the potential impacts of leasing this area for shellfish propagation, staff concludes that leasing this area appears appropriate. Accordingly, after considering all of the factors in §28.2.607 and §28.2-1205A of the Code of Virginia, staff recommends approval of the leasing of 8.93 acres of State-owned subaqueous bottomlands within Wrights Cove in Northumberland County to the applicant, Jeffrey and Monica Schenemann.

Monica Schenemann, applicant, spoke in support of the application. Her comments are a part of the verbatim record.

Jeff Stonehill spoke in support of the application. His comments are a part of the verbatim record.

Four people spoke in opposition of the application. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve staff recommendation. Associate Member France seconded the motion. The motion carried, 6-1-0. Chair voted yes. Associate Member Tankard voted no. Associate Member Minor was not present during final vote.

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15. PUBLIC COMMENTS: No one spoke during public comment.

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There being no further business, the meeting was adjourned at approximately 3:18 p.m.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary