

MINUTES

Commission Meeting

October 28, 2014

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

John M. R. Bull	Commissioner
Chad Ballard, III	
Robert G. Beck	
James D. Close	
A. J. Erskine	
S. Lynn Haynie	Associate Members
Ken Neill, III	
Whitt G. Sessoms, III	
John E. Zydron	
Matthew R. Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Todd Sterling	Bs. System Specialist, Sr.
Dave Lego	Bs. System Specialist
Joe Grist	Deputy Chief, Fisheries Mgmt.
Joe Cimino	Fisheries Mgmt. Manager, Sr.
Stephanie Iverson	Fisheries Mgmt. Manager
Lewis Gillingham	Director, SWFT
Samantha Hoover	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Adam Kenyon	Biological Sampling Supervisor
Laurie Williams	Fisheries Mgmt. Specialist
Rachael Maulorico	Fisheries Mgmt. Planner
Ande Ehlen	Fisheries Mgmt. Specialist
Alicia Nelson	RFAB Coordinator
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Mike Morris	Marine Police Officer, Sr.
William Franklin	Marine Police Officer
Marshall Reedy	Marine Police Officer
Gerald Pitt	Marine Police Officer

Commission Meeting

**17236
October 28, 2014**

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Brad Reamy	Program Support Technician
Rob Butler	Surveyor, Engineering-Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Mark Luckenbach
Robert Orth		

Virginia Department of Health – Division of Shellfish Sanitation

Keith Skiles	Danielle Schools
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Others present:

Wayne McCoy	Matt Rembold	Jay Crofton
Robert Kerr	Pria Clarke	Don Clarke
Bill Parr	Robert Pruhs	Dennis Kiett
Chris Williamson	Wesley Gross	Chris Turner
Ann Wallace	Ben Saunders	Ben McGinnis
Greg Brezinski	Jennifer Beckensteiner	
Nadya Mamoozaden	David Kledek	Paul Richardson
Corey Holbert	Matt Oreska	Charles H. William IV
Emily Williams	Charles Williams III	Kim Huskey
Jennifer Hume	Robert Hewlett	Phillip B. Brown
J. Breeden	Chris Moore	

and others.

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

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

Tony Watkinson, Chief, Habitat Management stated that there were no changes for Habitat Items.

Joe Grist, Deputy Chief, Fisheries Management, stated that there was an additional Fisheries Management item. He said that staff was requesting adding Item 24, to discuss a minor change in Chapter 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest", to amend the description of Rappahannock River Rotation Area 1.

Commissioner Bull stated the matter was before the Commission.

Associate Member Sessoms moved to approve the agenda, as amended. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the September 23, 2014 Commission meeting minutes.

As there were no changes or corrections, Commissioner Bull stated that the matter was before the Commission.

Associate Member Erskine moved to approve the minutes, as written. Associate Member Beck seconded the motion. The motion carried, 9-0. Chair voted yes.

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2. PERMITS (Projects over \$500,000 with no objections and with staff recommendation for approval).

Tony Watkinson, Chief, Habitat Management, informed the Commission that there were six page two items to be heard. He reviewed the items A through F for the Board. His comments are a part of the verbatim record.

Commissioner Bull asked for public comments.

Matt Rembold, Engineer for the project and representing the applicant for Item 2 D was sworn in and his comments are a part of the verbatim record. He wanted to thank the Commission for hearing this matter and to answer any questions. There were no questions.

Commissioner Bull stated the matter was before the Commission.

Associate Member Beck moved to approve the page two items, 2A through 2F, as submitted. Associate Member Sessoms seconded the motion. The motion carried, 9-0. Chair voted yes.

- 2A. DEPARTMENT OF THE NAVY, #14-1075,** requests authorization to hydraulically nourish sections of the Fort Story shoreline (4,170 total linear feet of shoreline) situated along the Chesapeake Bay within the Joint Expeditionary Base Little Creek-Fort Story in Virginia Beach. Approximately 850,000 cubic yards of sand dredged from federal navigation channels will be placed along the shoreline, and an existing 48-inch cast iron storm water outfall pipe will be extended by 160 feet out into the Bay.

Permit Fee	\$100.00
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- 2B. U. S. ARMY CORPS OF ENGINEERS, #14-0171,** requests authorization to place per dredge cycle up to 100,000 cubic yards of sandy dredge material along the shoreline at the Cape Charles Town Beach. The dredge material is from the maintenance dredging of the Cape Charles Federal Navigation Channel.

Permit Fee	\$100.00
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- 2C. SHIRLEY CONTRACTING COMPANY, INC., #14-1197,** requests authorization to construct twin clear-span bridges, each measuring 42 feet in width, across approximately 158 linear feet of Broad Run to facilitate construction of the Gloucester Parkway Extension (SR 2150) in Loudoun County. Permittee shall execute a transfer of this permit to the Virginia Department of Transportation upon their acceptance of the structure(s) authorized herein.

Permit Fee	\$100.00
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- 2D. HANOVER COUNTY DEPARTMENT OF PUBLIC WORKS, #14-1353,** requests authorization to cross Stony Run in four locations with a 24-inch diameter gravity sewer line encased in concrete and trenched in approximately two feet below the natural stream bed in association with Phase 6 of the Stony Run Sewer Interceptor project from Cobbs Road to the Town of Ashland. Recommend approval with standard in-stream work conditions, including all work to be conducted in the dry within cofferdams constructed of non-erodible material and complete removal of all construction related material and restoration of the streambed and banks to their natural, pre-constriction condition upon completion of the project.

Permit Fee	\$100.00
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Commission Meeting

2E. COLONNA'S SHIPYARD, #09-0073, requests authorization to maintenance dredge 13,200 cubic yards of State-owned subaqueous material using either mechanical or hydraulic methods to establish and maintain, on an as-needed basis, maximum depths of -27 feet at mean low water, adjacent to Pier 8 at the West Yard facility situated along the Eastern Branch of the Elizabeth River in the City of Norfolk. Dredged material will be disposed of in the Craney Island Rehandling Basin if dredged mechanically, or hydraulically pumped directly into the Craney Island Dredged Material Management Area.

Permit Fee	\$100.00
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2F. VIRGINIA ELECTRIC AND POWER COMPANY, #14-1023, requests authorization to remove the existing transmission line structures within the Lynnhaven Inlet and install two new towers, spanning an approximate 900-foot section of the Lynnhaven Inlet on the south side of the Lesner Bridge in Virginia Beach. The new towers will be installed utilizing eight-foot diameter concrete pipe pile bases which will extend eight feet vertically above mean high water. Six new conductor lines will be attached to the new towers, maintaining a minimum of 66 feet of vertical clearance above mean high water. Staff recommends approval with a total royalty assessment of \$5,710.40 which includes two complete electrical circuits crossing 900 linear feet of State-owned submerged bottom at a rate of \$3.00 per linear foot, the dredging of 184 cubic yards of State-owned submerged bottom (associated with the removal of the existing and installation of the new towers) at a rate of \$0.60 per cubic yard, and the filling of 100 square feet of State-owned submerged bottom at a rate of \$2.00 per square foot.

Royalty Fees (Two 900 ft. crossings @\$3.00/ft.)	\$5,400.00
Royalty Fees (dredging 184 cu. yds. @ \$0.60/cu. yd.)	\$ 110.40
Royalty Fees (filling 100 sq. ft. @\$2.00/sq. ft.)	\$ 200.00
Permit Fee	\$ 100.00
Total Fees	\$5,810.40

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3. CONSENT AGENDA ITEMS. None

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- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** When asked, Matthew Hull, Assistant Attorney General and VMRC Counsel indicated that no closed meeting was necessary.

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- 5. **ARMY CORPS OF ENGINEERS, #13-1563**, requests authorization to place approximately 27,000 cubic yards of sandy dredge material from the maintenance dredging of the Starling Creek Federal Navigation Channel along approximately 2,100 feet of shoreline, install an 879-foot long stone revetment centering on the existing dredge placement site and replace the four storm water outfall pipes adjacent to the placement site on Saxis Island in Accomack County. Subaqueous and Coastal Primary Sand Dunes/Beach permits are required.

Hank Badger, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record.

The County of Accomack has not yet adopted the model Coastal Primary Sand Dune and Beach Ordinance. As a result, the Commission is responsible for administering the provisions of the ordinance within that locality. Commission staff held a public hearing in the Saxis Town Hall on Tuesday, September 30, 2014, to accept public comments on the project. Mayor Drewer, two Corps representatives and five members of the public attend the hearing. All were in favor of the project.

Staff considered the merits of the project and all of the factors contained in Code Sections 28.2-1205 (A) and 28.2-1403 (10) (B) of the Code of Virginia and recommended approval of the project, as submitted, with the following condition:

The applicant shall be required to submit post bathymetric and cross-sectional surveys of the placement site within 90 days of completion of the placement of the dredged material.

After some discussion, Commissioner Bull opened the public hearing and asked for public comments, pro or con. There were none. He stated the matter was before the Commission.

Associate Member Ballard moved to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

Permit Fee	\$100.00
Coastal Primary Sand Dunes/Beach Permit Fee*	\$300.00
Total Fees	\$400.00

*Prepaid

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6. **DENNIS KOCH, #14-0834, BARBARA MERCER, #14-0833, JACK LUNDY, #14-1064, JAMES SPEEGLE, #14-1231, ANN WALLACE, #14-1061, DAVID ROGERS, #14-1065, DOROTHY WHITE, #14-1062, SANDRA VON SHILLING, #14-1063, HORACE PRATT, #14-1232.** Each applicant requests authorization to install a manmade dune system consisting of geo-textile bags filled with sand, overtopped with sand and natural vegetation, upon their property located along the Chesapeake Bay at North 1st Street in the City of Hampton. Each project requires a Coastal Primary Sand Dune/Beach permit.

Mike Johnson, Environmental Engineer, Sr. gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record. He noted that the City of Hampton had not adopted the Coastal Primary Sand Dune/Beach ordinance, which meant the Virginia Marine Resources Commission was authorized to hear this matter.

Staff held a public hearing for the proposed project on October 9, 2014, which was attended by some of the applicants and adjacent property owners. No one spoke against the project and the proposal was supported by the adjacent property owners that were present.

Staff felt that while beach nourishment with breakwaters or groins may be the preferred alternative to control shoreline erosion in this area these methods are cost prohibitive. What the applicants were proposing should have minimal adverse environmental impacts and offer some level of protection. As such Staff recommended approval of their projects, as proposed, with the following special permit conditions:

1. A minimum of one foot of sand cover shall be maintained over the geo-textile bags.
2. A planting plan shall be submitted for approval by Commission Staff that includes natural vegetation and the use of Bermuda grass, as a walkway. The plan shall include provisions for replanting to maintain 80% coverage of vegetation and shall include monitoring for three years and the submittal of an annual report at the end of each year for three years following project construction.
3. Should the constructed dune features fail and they cannot be maintained the geo-textile bags shall be removed and sand spread on the beach.
4. Should the artificial dunes result in unanticipated impacts the Commission may hold an additional hearing to consider requiring their removal and order such removal if necessary.

After some questions and discussion, Commissioner Bull opened the public hearing. He asked if there was anyone present to comment supporting the project.

Robert Kerr, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Kerr said that he had designed the dune system consisting of geotextile bags filled with sand, overtopped with sand and natural vegetation, upon the applicants' properties located along the Chesapeake Bay at North 1st Street in the City of Hampton. He said that this was different from anything used before and he had talked with the Virginia Institute of Marine Science. He added that staff had been a great help.

After some questions and discussion for clarification, Commissioner Bull opened the public hearing to public comments, either pro or con. There were none. He stated that the matter was before the Commission.

Associate Member Sessoms stated that he thought this would be an effective system and he moved to accept the staff recommendation for approval with the four conditions. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

Coastal	Primary	Sand	
Dunes/Beach Permit Fee*			\$300.00

*Prepaid by each applicant (9).

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7. GREGORY BREZINSKI, #14-1077, requests authorization to construct a single family dwelling along the Chesapeake Bay at 826 North 1st Street in the City of Hampton. The project requires a Coastal Primary Sand Dune/Beach permit.

Mike Johnson, Environmental Engineer, Sr. gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record. He noted that the City of Hampton had not adopted the Coastal Primary Sand Dune/Beach ordinance and the Virginia Marine Resources Commission was authorized to hear the matter.

Staff held a public hearing for the project on October 8, 2014. The meeting was attended by the applicant and both adjacent property owners. The adjacent property owners felt the applicant should be allowed to build on his property, but that channelward encroachment should be limited to the existing line of dwellings to limit aesthetic impacts.

Staff recommended approval of the project pending receipt of revised drawings depicting the dwelling in line with the adjacent house to the south and depicting the channelward encroachment of the bulkhead to be as close as possible to the existing one to the south. Should the applicant not be able to secure a waiver from the City of Hampton for a variance to allow construction of the home and garage closer to North 1st Street (within the 30 foot setback area) the applicant would have to request that the Commission

reconsider his request for a change in the house and garage location or for a modified house and garage plan. Any such review would require a new public hearing.

After some questions and discussion, Commissioner Bull opened the public hearing to public comments, pro or con.

Gregory Breziwski, applicant was sworn in and his comments are a part of the verbatim record. Mr. Breziwski said that the City required that the entity approval was obtained prior to their decision. He noted that this was difficult site to develop and the DZA applied. He said he agreed with the staff recommendation to move the structure the ten feet required to align it with the existing bulkhead to the south and to align the dwelling with the adjacent house. He stated he needed the Commission approval.

Ann Wallace, adjoining property owner was sworn in and her comments are a part of the verbatim record. She stated she agreed with staff recommendation and had no problem with the project.

Commissioner Bull asked if there was anyone in opposition who wished to comment and there were none. He stated that the matter was before the Commission for discussion or action.

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

Coastal	Primary	Sand	
Dunes/Beach	Permit Fee*		\$300.00

*Prepaid

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- 8. **VERIZON, #13-1275**, requests after-the-fact authorization to retain a fiber optic cable installed across the Southern Branch of the Elizabeth River adjacent to the Gilmerton Bridge in Chesapeake. The project requires a wetlands and a subaqueous permit.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the information in the staff's evaluation with slides. Her comments are a part of the verbatim record. Ms. Woodward noted that these are after-the-fact wetlands and subaqueous permits. She also noted that the City of Chesapeake had not adopted the Wetlands ordinance and the Virginia Marine Resources Commission is authorized to hear this matter.

Staff held the public hearing at the VMRC main office on October 21, 2014. The hearing was attended by Mr. Crofton and Mr. Tom Wheeler, Operations Manager with Southern States Cooperative, Inc., an adjacent property owner. Mr. Wheeler did not express

concern with the project, and indicated he was primarily there for informational purposes and to ensure there would be no conflict with future dredging projects. The current location of the cable is outside of the construction area of the Gilmerton Bridge. Since construction of the bridge is now complete, and to avoid any potential issues in the future, Mr. Crofton agreed that the portion of the line along the Eastern segment, adjacent to Southern States Coop, Inc. property, would be relocated further south and closer to the alignment of the original cable which is abandoned in place.

Staff recommended after-the-fact approval of the project, as proposed. In lieu of further enforcement action by the Commission, staff recommended after-the fact approval of the cable crossing contingent upon Verizon's agreement to pay a triple permit fee of \$300.00 and triple royalties in the amount of \$10,800.00 for the crossing of 1,200 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot pursuant to Section 28.2-1206 of the Code of Virginia, and a \$1,000.00 civil charge based on a minor degree of deviation and a minimal degree of impact as identified in the Commission's Guidance for Civil Charge Assessments. Given the temporary wetland impacts associated with the proposal, staff further recommended the following permit conditions:

1. Erosion and sediment control measures shall be in conformance with the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook and shall be employed throughout construction.
2. Permittee agrees to restore, a minimum of 22.5 linear feet of vegetated wetlands onsite following the installation of the fiber optic cable. Existing biological benchmarks will be used to re-establish the appropriate grade to support the planting of both *Spartina alterniflora* and *Spartina patens* on 12-inch centers. Any additional vegetated wetland areas directly impacted within the limits of disturbance will also be restored.
3. Permittee agrees to coordinate all restoration activities with VMRC staff, and a final site inspection will be conducted subsequent to the restoration of the site.
4. Permittee agrees to adhere to a time of year restriction from February 15 to June 30 to protect anadromous fish resources.

Associate Member Zydron asked why was there a fine when this was an emergency repair which was not their fault. Ms. Woodward explained that most cases like this that are heard involve the assessment of a civil charge which in this case was \$1,000 for minor deviation and minimal impact.

Commissioner Bull asked for comments from the applicant's representative.

Commission Meeting

Jay Crofton, representing the Virginia Electric and Power Company, was sworn in and his comments are a part of the verbatim record. Mr. Crofton explained that this has happen in the past and it was not Dominion Virginia Power Company’s fault. He stated the permit was in place and it was marked and still someone damaged it. He explained that Mr. Watkinson explained what was in store if go ahead and they checked and did all the rights thing. They did what the Commission told them to do. He said they requested reconsideration of the penalties.

Commissioner Bull asked for comments, pro or con. There were none. He stated the matter was before the Commission for discussion or action.

After much discussion about the Board’s concerns regarding the penalties, Commissioner Bull stated the matter was before the Commission.

Associate Member Zydron moved to approve the request but to assess the standard royalties. Associate Member Erskine seconded the motion. Associate Member Neil asked if it was for the standard permit fee not triple permit fees, to include staff conditions, and with no civil charge. Commissioner Bull stated yes. Associate Members Zydron and Erskine stated they accepted the changes. The motion carried, 9-0. Chair voted yes.

Wetlands Permit Fee*	\$ 300.00
Royalty Fees (encroachment 1,200 lin. ft. @ \$3.00/lin. ft.	\$3,600.00
Permit Fee	\$ 100.00
Total Fees	\$4,000.00

*Prepaid

- 9. SAVAGE NECK VA LLC, et al, #13-1843**, requests authorization to install five (5) 180-foot long offshore breakwaters with beach nourishment situated adjacent to their properties along the Chesapeake Bay (south of Smith Beach and north of Sand Hills) in the Savage Neck area of Northampton County. The project is protested by a nearby property owner.

Hank Badger, Environmental Engineer, Sr., gave the briefing of the information included in the staff’s evaluation with slides. His comments are a part of the verbatim record.

Mr. Badger noted that Edmund Tankard called him the day before to say he did not protest the project, but that he did have a right of way on the beach that he wanted noted in the record.

Staff explained that they considered all of the merits of the entire project and all of the factors contained in §28.2-1205(A) of the Code of Virginia and recommended approval

of the project, as submitted, with a one-time royalty assessment in the amount of \$3,149.00 for the beach nourishment fill over 62,980 square feet of State-owned subaqueous land at a rate of \$0.05 per square foot.

Wayne McCoy, representing the applicant was sworn and his comments are a part of the verbatim record. Mr. McCoy stated he was not aware of Mr. Tankard's easement until now as he had not contacted them. He said that they were building higher in order to counter the rising seas. He stated that there was tremendous erosion because it was a high energy area on the Chesapeake Bay.

Commissioner Bull opened the public hearing for public comments, pro or con.

Don Clarke, Virginia Beach Attorney and representing the protestant, was present and his comments are a part of the verbatim record. He noted that one of the property owners in the area will be selling their lot so they are not concerned, but if the project is done as proposed Mr. Tankard would not have his right of way and would have to build a bridge to access his property if the project is done as proposed. He said it was speculation on the sand movement and it was a dynamic beach. He said they questioned the need for five jetties and 1,100 feet was not minimal and a permanent change. He said the sand bars were working even with the changes. He stated they were opposed to the project because it would only help the applicant and they were not so sure it would help the other properties.

Commissioner Bull asked for comments from the Virginia Institute of Marine Science (VIMS) staff.

Lyle Varnell, representing VIMS, explained that this was a dynamic, high energy area and the sands move back to the beach as there is a lot of sand here. He said VIMS recommended the offshore breakwaters be used in areas like here because it allows for sand movement back to other areas on the beach. He said that a survey of all existing breakwater systems had proven that they work. He said the preferred method was recommended by VIMS.

Mr. McCoy explained that this project has been engineered based on the guidelines of VIMS.

William Parr, representative for Savage Neck, was sworn in and his comments are a part of the verbatim record. Mr. Parr said they searched for documents of Mr. Tankard's easement and cannot find anything. He said that the protests were not based on science and professionals had met with the governing agencies over the past year. He said that they were reducing the structures but did not agree with eliminating any of them or with what is down the beach. He noted that Ms. Savage's brother said that 40 miles of land was lost.

The public hearing was closed. Commissioner Bull stated the matter was before the Commission for discussion or action.

Associate Member Ballard stated he felt the proposal was well done by the applicant and he moved to accept the staff recommendation. Associate Member Beck seconded the motion. The motion carried, 9-0. Chair voted yes.

Royalty Fees (beach nourishment 62,980 sq. ft. @ \$0.05/sq. ft.)	\$3,149.00
Permit Fee	\$ 100.00
Total Fees	\$ 3,249.00

- 10. **REQUEST FOR PUBLIC HEARING** to set aside unassigned State bottom not to be leased in Cobb Bay adjacent to and south of Public Ground #13, and in South Bay adjacent to and east of Public Ground #30, in Northampton County. The areas are identified as suitable for Submerged Aquatic Vegetation (SAV) growth and restoration.

Hank Badger, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record.

Staff recommended the Commission hold a public hearing at their December 9, 2014 meeting to consider the proposed SAV set-aside areas in Cobb Bay for approximately 805 acres and in South Bay for approximately 963 acres.

Dr. Robert Orth, representing VIMS, explained that he reported annually on the status of seagrass and would be able to give they presentation at the January meeting to request the expansion of the SAV Areas.

Dr. Mark Luckenbach, representing VIMS, spoke in support of the request.

After much discussion, Commissioner Bull asked when the public hearing should be held.

Associate Member Neill suggested January to hear the experts and moved to hold a public hearing at the January 2015 meeting. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.

- 11. **PUBLIC COMMENT:** There were no public comments.

Commission Meeting**12. REPEAT OFFENDERS:**

Charles Williams, IV – was present and sworn in.

William Franklin, Marine Police Officer, gave the briefing of the case from the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Possession of 34 untagged striped bass – Section 28.2-201, 4VAC 20-252 (Class 3 Misdemeanor, summons issued January 4, 2014; Amended by the Court Plea Agreement to possession of one untagged striped bass, March 24, 2014; convicted in Northumberland County General District Court, Fine \$75.00, Court Cost \$81.00, March 24, 2014.

Joe Grist, Deputy Chief Fisheries Management, read the staff recommendation.

Charles Williams IV, a commercial fisherman registration licensee, was convicted of an amended charge of possession of one untagged striped bass on March 24, 2014 (Section 120 of Chapter 4VAC20-252-10 et seq.). According to the Commission's guidelines for sanctions, one conviction of exceeding the possession limit within a 12-month period would result in one year probation.

Mr. Williams was cited on January 4, 2014, when the Virginia Commercial Striped Bass season was closed, and no possession was allowed.

In accordance with Code Section 28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Williams on probation for a period of one year, from October 28, 2014, through October 27, 2015. Any failure on Mr. Williams part of obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Williams appearing before the Commission for a hearing on license revocation.

James C. Breeden, Attorney for Mr. Williams was present and his comments are a part of the verbatim record. Mr. Breeden stated that there was evidence of nets in the Potomac River and therefore was in season. He said the Potomac River tags were good for 2013-2014, whereas, Virginia's tags were good for 2013. He stated that Mr. Williams forgot his Potomac River tags. He reiterated that there was no evidence of the fish being caught in Virginia waters and no evidence that the fish were caught out of season. He stated the nets licensed with the Potomac River Fisheries Commission. He stated he was wrong not to have them tagged. He noted that there was one crabbing violation but it was dismissed by the court. He stated that Mr. Williams had been cooperative with the officer and he realized the importance of the regulation.

Mr. Williams stated that the striped bass were taken from his licensed nets in the Potomac River and there was a line on the north side of the Great Wicomico to the Potomac River

where you can possess both area tags and he was within that line to his house. He stated he had been working with someone else the day before and had forgotten to bring his Potomac River tags with him.

After further discussion about the seriousness of the violation, the staff recommendation, and making the probation time period longer, Commissioner Bull asked for a motion.

Associate Member Close moved to place Mr. Williams on a two year probation period, effective 10/28/14 and ending 10/27/16. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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13. UNLAWFUL TAKING OF OYSTERS OFFENDERS:

Mike Morris, Marine Police Officer Sr., was sworn in and his comments are a part of the verbatim record.

David A. Turner – was not present.

Took, caught and removed oysters from condemned waters (Code Section 28.2-810); summons issued 7/14/2014; convicted 9/25/2014 in the Newport News General District Court (Criminal); fine \$300.00, Court Cost \$101.00.

Joe Grist, Deputy Chief Fisheries Management, read the staff recommendation:

Mr. David A. Turner's commercial licenses were revoked under Code Section 28.2-232 of the Code of Virginia for 12 months, 12/10/2013 through 12/09/2014, followed by one year probation, owing to repeat offender violations of two warm water violations and for harvesting oysters without shellfish tags and an oyster aquaculture harvester permit to do so. During his revocation, he had one conviction entered on September 25, 2014, for harvesting oysters from a condemned area, as defined in Code Section 28.2-810, valued at \$300.00. This is a riparian oyster planting ground assigned pursuant to Article 1 (Code Section 28.2-600 et seq.) of Chapter 6 of Title 28.2 of the Code of Virginia.

As authorized under Code Section 28.2-528, staff recommends the Commission revoke all of Mr. Turner's licenses to take or catch fish, shellfish, or marine organisms. Staff recommends that the revocation extend for two years from Mr. Turner's conviction date of September 25, 2014 and ending on September 24, 2016, as provided by Code Section 28.2-528.

After much discussion on whether this was considered theft of oysters in accordance with Code Section 28.2-528, Associate Member Zydron moved to continue the hearing of all the cases until the December 9, 2014 Commission meeting and that all

cases scheduled for today's hearing would be brought back under the appropriate Code Section 28.2-232. Associate Member Beck seconded the motion. The motion carried, 9-0. Chair voted yes.

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14. **FAILURE TO REPORT:** Cases involving failure to report commercial harvests, in accordance with Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Stephanie Iverson, Fisheries Management Manager, gave the briefing for the failure to report cases. Her comments are a part of the verbatim record.

Jennifer Hume – present and sworn in

Ms. Iverson explained that Ms. Hume was current of all her reporting as of this meeting date.

Ms. Hume explained that she just did not do the reporting and with all that was going on in her life she was very busy. She stated she had not acted responsibly and taken care of her reporting.

Ms. Iverson stated that staff recommended two year probation to end October 27, 2016.

After some discussion, Associate Member Erskine stated that the reporting was very important and moved to accept the staff recommendation for Ms. Hume to be placed on two year probation, starting 10/28/2014 and ending 10/27/2016. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

Kevin R. Wyatt – not present.

Ms. Iverson explained that since Mr. Wyatt was not here, the Commission could continue the hearing, suspending all of his licenses until he appeared before the board or decide to hear the matter today. Associate Member Neill asked if he was up to date to which Ms. Iverson responded no.

Associate Member Neill moved to suspend all licenses until Mr. Wyatt appeared before the Commission for his hearing. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

Phillip Brown – present and sworn in

Ms. Iverson explained that Mr. Brown was missing March and August 2014 and also February, September, June, and December 2013.

Mr. Brown explained that he had copies all of his paperwork with him and he had made a mistake. He added that staff had helped him to get caught up. He said he was just not organized or good with paperwork.

Ms. Iverson stated that staff recommended two year probation, ending October 27, 2016.

Associate Member Zydron moved to accept the staff recommendation to place Mr. Brown on two year probation, starting October 28, 2014 and ending October 27, 2016. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

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- 15. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-910-10 et seq. "Pertaining to Scup (Porgy)," to increase the possession limit for scup, during the Winter II Period (November 1 through December 31), from 8,000 pounds to 18,000 pounds.

Sally Roman, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation with slides.

The commercial fishery is managed by an annual coastwide quota divided into three periods: Winter I period (January 1 through April 30), Summer period (May 1 through October 31), and Winter II period (November 1 through December 31), under Addendum I to the FMP. For the Winter I and Winter II periods, quotas are managed through vessel possession limits, and landings are monitored by the National Marine Fisheries Service (NMFS). Addendum X to the FMP provided for the rollover of unused quota from the Winter I period into the Winter II period. Vessel possession limits for the Winter II period are increased by 500 pounds per each 500,000 pounds of scup that are rolled over. Virginia's commercial vessel possession limit will need to be modified to reflect the rollover between the two periods. The current possession limit is 8,000 pounds. The possession limit will need to be increased to 18,000 pounds.

Staff recommended the Commission adopt Chapter 4 VAC 20-910-10 et seq. "Pertaining to Scup (Porgy)" establishing the Winter II (November 1 through December 31) vessel possession limit for scup as 18,000 pounds.

Commissioner Bull opened the public hearing. There were no public comments. He stated the matter was before the Commission.

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

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Commission Meeting

- 16. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees," to increase saltwater recreational license fees to ensure continuation of core recreational programs.

Joe Grist, Deputy Chief Fisheries Management, gave the briefing of the information provided in the staff's evaluation with slides. Mr. Grist noted that there were 19 additional comments received.

Staff recommends the Commission adopt amendments to Chapter 4 VAC 20-1090-10 et seq. "Pertaining to Licensing Requirements and License Fees" to raise recreational license fees, effective January 1, 2015.

Type of License	Last Fee Adjustment by VMRC	Current 2014 License Cost	Proposed 2015 License Cost
Individual SW, Resident	2011	\$ 17.50	\$ 22.50
Individual SW, Non Resident	2009	\$ 25.00	\$ 30.00
SW 10-Day Temp, Resident	2011	\$ 10.00	\$ 15.00
SW 10-Day Temp, Non Resident	2009	\$ 10.00	\$ 15.00
SW Recreational Boat, Resident	2011	\$ 48.00	\$ 53.00
SW Recreational Boat, Non Resident	2009	\$ 76.00	\$ 84.00
Combo Res Fresh/SW	2011	\$ 39.50	\$ 44.50
Combo Non Res Fresh/SW	2009	\$ 71.00	\$ 76.00
Combo Temp 5-Day Res Fresh/SW	2011	\$ 24.00	\$ 29.00
Combo Temp 5-Day Non Res Fresh/SW	2009	\$ 31.00	\$ 36.00
Resident Tidal Boat Sport Fishing	2011	\$ 126.00	\$ 131.00
Non Resident Tidal Boat Sport Fishing	2011	\$ 201.00	\$ 206.00
Charter/Head Boat - 6 and Under	2006	\$ 190.00	\$ 224.00
Non-Res Charter Boat 6 and Under	2009	\$ 380.00	\$ 421.00
Charter/Head Boat- more than 6	2006	\$ 190.00	\$ 224.00
Non-res charter boat more than 6	2009	\$ 380.00	\$ 421.00
Commercial Pier-optional license	2011	\$ 632.00	\$ 669.00
Boat Rental - resident (max 703)	2011	\$ 14.00	\$ 19.00
Boat Rental - non resident (max 1270)	2011	\$ 18.00	\$ 23.00

Commissioner Bull opened the public hearing.

Robert Hewlett, representative for Charter Boat Association, was present and his comments are a part of the verbatim record. Mr. Hewlett stated that the industry cannot stand any increases in the license fees and were opposed to any increases, unless the same were done for the commercial industry.

Commissioner Bull stated the matter was before the Commission.

Associate Member Zydron stated that he would abstain from participating in this hearing, because of a business conflict and also he does himself have a charter boat license.

Associate Member Neill said the recreational fishermen are opposed to any increases, but that he agreed with the report that was written. He stated that the Peninsula Salt Water Sport Fisherman's Association (PSWSFA) had grudgingly given their approval and also wanted the Commercial industry to have their license fees increased. He said they do not agree with using the money for other things or to replace general funds or Wallop Breaux federal funds. They wanted to use funds overall to keep the Saltwater Fishing Tournament operating and to enhance the artificial reef program.

After further discussion, Commissioner Bull again stated the matter was before the Commission.

Associate Member Haynie moved to accept the staff recommendation. Associate Member Sessoms seconded the motion. The motion carried, 8-0-1. Chair voted yes and Associate Member Zydron abstained.

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17. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass" to comply with Addendum IV to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan.

Joe Grist, Deputy Chief Fisheries Management, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

The primary issue before the Commission is that upon adoption of Addendum IV to Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass, the management measures will be required to be effective January 1, 2015. The Virginia commercial striped bass Individual Transferable Weight Quota fisheries, Chesapeake Bay and Coastal, begin on January 16, 2015 and must have a defined quota for management. The Virginia recreational fisheries, coastal and Chesapeake Bay, have differing seasons, however, they must also have defined size and possession limits, and these should be advertised as soon as possible so that the general public is aware of any ASMFC required management changes. There will not be a November Commission meeting for staff to provide an update on the specific details and requirements of the ASMFC decision on October 29, prior to the December 9, 2014 Commission meeting. In order to meet the expected implementation date of January 1, 2015, staff is requesting that the Commission approves advertisement, for a December 9, 2014 public hearing, any measures adopted and approved by the ASMFC Striped Bass Management Board on October 29, 2014.

Staff recommended advertising, for a December 9, 2014 public hearing, amendment to Chapter 4 VAC 20-252-10 et seq. "Pertaining to the Taking of Striped Bass" to include:

- Any measures adopted and approved, relative to Virginia striped bass fishery management, by the ASMFC Striped Bass Management Board on October 29, 2014;
- Provisions to establish a Spring Recreational Striped Bass Trophy Permit, and sanctions pertaining to the failure to submit mandatory harvest reports for spring trophy striped bass.

Associate Member Neill moved to accept the staff recommendation for a public hearing to be held at the December 9, 2014 Commission meeting. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.

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18. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-500-10 et seq., “Pertaining to the Catching of Eels” to comply with the Interstate Fishery Management Plan requirements for American eel.

Ande Ehlen, Fisheries Management Specialist gave the briefing for the information provided in the staff’s evaluation. Her comments are a part of the verbatim record.

Addendum III established new management measures for both the commercial and recreational eel fisheries, as well as implements fishery independent and fishery dependent monitoring requirements. To increase the accuracy of reporting, states and jurisdictions with a commercial yellow eel fishery are required to implement a trip-level reporting system for both buyer and harvester reporting. Although Addendum III implemented management measures to be effective by January 1, 2014, the American Eel Management Board (Board) voted in October 2013 to delay the requirement for states to implement buyer reporting until January 1, 2015. This motion allowed states more time to implement buyer-reporting requirements.

Virginia already has trip-level reporting in place for harvesters, through the Mandatory Reporting Program, but will need to implement buyer reporting for yellow eels, to be effective by January 1, 2015.

Staff recommended advertising for a December 9, 2014 public hearing for proposed amendments to Chapter 4 VAC 20-500-10 et seq., “Pertaining to eels”, to comply with the Interstate Fishery Management Plan for American eel, that could include buyer reporting, establishing a commercial quota, and adopting a trigger mechanism.

After some discussion, Associate Member Erskine moved to accept the staff recommendation and advertise for a public hearing December 9, 2014. Associate Member Haynie seconded the motion. The motion carried, 9-0. Chair voted yes.

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- 19. **REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-900-10 et seq., “Pertaining to Horseshoe Crabs” to establish the 2015 Virginia commercial landings quota.

Rachael Maulorico, Fisheries Management Specialist, gave the briefing of the information provided in the staff’s evaluation. Her comments are a part of the verbatim record.

The Virginia TECH trawl survey has provided essential horseshoe crab abundance estimates for the ARM model, since 2007; however because of a loss of funds, the survey was not conducted in 2013. For this reason, the ASMFC Horseshoe Crab Technical Committee has recommended remaining status quo to the 2014 quota, until other estimates of abundance can be introduced to the ARM model. The ASMFC’s Horseshoe Crab Management Board is scheduled to vote on establishing the 2015 horseshoe crab quota at its October 30, 2014 fall meeting.

Staff recommended advertising for a December 9, 2014 public hearing to propose amendments to Chapter 4VAC20-900-10 et seq., “Pertaining to Horseshoe Crabs,” to establish the 2015 Virginia horseshoe crab commercial quota.

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

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- 20. **REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-280-10 et seq., “Pertaining to Speckled Trout and Red Drum” to amend the daily by-catch landing limit for speckled trout.

Joe Cimino, Fisheries Management Manager Sr. gave the briefing for the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Sub-section 4 VAC 20-280-50 B currently states, “...it shall be unlawful, for any commercial fisherman registration licensee, to take, harvest, land, or possess a daily by-catch limit of up to 100 pounds of speckled trout”. This phrasing is not consistent with the intent of the regulation, which was to ensure that it shall be unlawful for any commercial fisherman registration licensee, to take, harvest, land, or possess no more than 100 pounds of speckled trout as bycatch after the 80% trigger has been reached.

Staff recommended advertising for a December public hearing to consider proposed amendments to Chapter 4 VAC 20-280-10 et seq., “Pertaining to Speckled Trout and Red

Drum” to amend the phrasing of the daily bycatch landing limit for commercial speckled trout.

Commissioner Bull stated the matter was before the Commission.

Associate Member Haynie moved to accept the staff recommendation. Associate Member Sessoms seconded the motion. The motion carried, 9-0.

Associate Member Neill noted that it was unlawful to possess more than 100 pounds and suggested that needed to be corrected in the regulation. Mr. Grist said the Regulation Committee reviews all regulations.

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21. RECOMMENDATIONS: From the Recreational Fishing Advisory Board, on funding an artificial reef project from the Virginia Saltwater Recreational Fishing Development Fund.

Alicia Nelson, RFAB Coordinator, gave the briefing for the information provided in the staff’s evaluation. Her comments are a part of the verbatim record.

At the September 8, 2014 RFAB meeting, the board members requested that \$350,000 be dedicated to maintenance and development of additional artificial reefs. This request is consistent with public comment received by the RFAB in recent years requesting that more funding be used toward artificial reef development projects.

The September 8th RFAB meeting also included a public hearing for the projects in the current RFAB cycle (2nd cycle 2014). RFAB recommendations for the remaining projects currently under review will be decided at the RFAB’s November 17, 2014 meeting and will be brought to the Commission at the December 9, 2014 Commission meeting. However, the RFAB voted unanimously to recommend an expenditure of \$350,000 from the VSRFDF to development and maintenance of Virginia’s artificial reefs at the September meeting, and recommended this single item be taken before the Commission during the October 28, 2014 meeting. The RFAB members explained that their intention was to allow staff the ability to move expeditiously, and not wait until after December, to begin acquiring further maintenance materials for deployment by the artificial reef program.

Staff recommended the project funding recommendation by the RFAB to the Commission, for an expenditure totaling \$350,000 from the VSRFDF for artificial reef development and maintenance be approved.

After some discussion, Associate member Neill moved to accept the staff recommendation for approval of the RFAB recommendation. Associate member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

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22. REQUEST: For emergency amendments to modify Summer Flounder management measures, as described, in 4VAC20-620-10 et seq.

Joe Grist, Deputy Chief Fisheries Management gave the briefing for the information provided in the staff evaluation. His comments are a part of the verbatim record.

The request by industry is to change the start date of the offshore summer flounder fishery 2nd period from the second Monday in November (November 10, 2014) to December 1, 2014, and lengthen the within season landing period to 20-days. These measures should maximize the opportunity for vessels to participate and land flounder from offshore. This would also improve value of the fish, as the season would occur just before the Christmas holidays, when flounder often have a higher dockside value. There is no requested change of the 10,000-pound Virginia landing amount, as industry members have noted that there may be 70 or more licensed vessels willing to participate in Virginia’s offshore summer flounder fishery. With approximately 839,000 pounds of commercial quota left, industry members did not want to risk exceeding the remaining allotted quota amount.

Staff recommended adoption of emergency amendments to Chapter 4 VAC 20-620-10 et seq. “Pertaining to Summer Flounder” to establish a consecutive 20-day landing period, beginning December 1, 2014, for any legally licensed Summer Flounder Endorsement Licensee landing summer flounder, harvested outside of Virginia waters, effective November 10, 2014.

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

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23. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4VAC 20-1270-10 et seq. “Pertaining to Atlantic Menhaden” to modify the reference years for the total allowable landings.

Lewis Gillingham, Director, SWFT, gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

In March of this year the legislature extended the provisions of Section 28.2-402 of the Code of Virginia until July 1, 2016. It is necessary for the Commission to modify and extend the provisions of Chapter 4 VAC 20-1270-10 et seq. “Pertaining to Atlantic

Menhaden” to align with Code and modify the reference years to allow the Commission to fulfill its limited role in the management of Atlantic menhaden.

Staff recommended the Commission authorize advertisement, for a December public hearing, to modify the reference years for the total allowable landings of commercially caught menhaden and extend the provisions of Chapter 4 VAC 20-1270-10 et seq. “Pertaining to Atlantic Menhaden” until July 1, 2016.

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

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- 24. REQUEST:** Emergency amendments to Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest” to amend the definition of Rappahannock River Rotation Area 1.

Joe Grist, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Grist explained that this was an amendment to the regulation to correct the latitude-longitude for Rappahannock River Rotation Area 1. Staff recommended approval of the amendment with an effective date of October 30, 2014.

After some discussion, Associate Member Beck moved to approve the amendment. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 3:44 p.m. The next regular Commission meeting will be Tuesday, December 9, 2014.

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John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary