

MINUTES

Commission Meeting

August 29, 2006

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. T. Holland)	
John McConaugha)	Associate Members
Wayne McLeskey)	
Richard B. Robins, Jr.)	
Kyle Schick)	
J. Edmund Tankard)	
Carl Josephson	Sr. Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin./Finance Div.
Andy McNeil	Programmer Analyst, Sr.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Joe Cimino	Fisheries Mgmt. Specialist
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Kelly Lancaster	Fisheries Mgmt. Specialist
Lewis Gillingham	Fisheries Mgmt. Specialist
Mike Johnson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Richard Lauderman	Chief, Law Enforcement Div.
Warner Rhodes	Deputy Chief, Law Enforcement Div.
James Simms	Marine Police Officer

Commission Meeting

**13895
August 29, 2006**

Jeff Vanlandingham

Marine Police Officer

Bob Grabb

Chief, Habitat Management Div.

Tony Watkinson

Deputy Chief, Habitat Mgt. Div.

Chip Neikirk

Environmental Engineer, Sr.

Jeff Madden

Environmental Engineer, Sr.

Tracy West

Environmental Engineer, Sr.

Justin Worrell

Environmental Engineer, Sr.

Randy Owen

Environmental Engineer, Sr.

Benjamin McGinnis

Environmental Engineer, Sr.

Elizabeth Gallup

Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell

Bob Orth

Other present included:

Bruce Aitkenhead

Dean Parker

Jonathan Gerst

Michael Kay

Shana Conley

John Brecknor

Carlotta Dozier

Cliff Wood

Stacie Masten

Marianne Wood

Jim Newell

Page Ayres

Tom Dalton

Charles Forrest

Richard Johnson

Ellis W. James

Lynn Perkinson

Susan Gaston

Douglas F. Jenkins, Sr.

Russell Gaskins

Roger Parks

Tom Powers

Charles Dryden

Chris Moore

Brian Pruitt

Clyde Pruitt

Kelly Place

Frances Porter

Louis Kahl

and others

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Commissioner Bowman called the meeting to order at approximately 9:33 a.m. Associate Member Fox was not present.

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Associate Member Robins gave the invocation and Bob Grabb, Chief, Habitat Management Division led the pledge of allegiance to the flag.

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Commissioner Bowman introduced the new Associate Members appointed by Governor Kaine.

Dr. John McConaugha:

“The first that I would like to introduce on your far left is Dr. John McConaugha of Old Dominion University. He was appointed by Governor Kaine to succeed Dr. Cynthia Jones who is also from Old Dominion University. Dr. McConaugha is an Associate Professor of the Department of Ocean, Earth and Atmospheric Sciences. He joined the ODU faculty in 1980 and served for eight years as Assistant Chairman of the Oceanography Department. His prior university work included three years at the Duke University marine laboratory and three years as project manager at Los Angeles Harbors Environmental Project at the University of Southern California. Dr. McConaugha is a graduate of the University of Miami and received his Ph.D. in Biology from the University of... Southern California.”

John Edmund “Ed” Tankard:

“On your far right is John Edmund “Ed” Tankard III of Exmore, Virginia from the Eastern Shore. He succeeds Mr. Russell Garrison. He is President of Tankard Nursery in Exmore. He’s been active in many community organizations and most recently served as President and Board Member of the Barrier Islands Center. He currently serves as Treasurer and Board Member of Virginia Eastern Shore Land Trust, Citizens Advisory Committee to the Chesapeake Executive Council and as a member of the Mid-Atlantic Board of Directors of Sun Trust Bank. He’s a graduate of Hampton-Sidney College and received his masters in Business Administration from the College of William and Mary.”

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Commissioner Bowman introduced the new Chief of Law Enforcement, Richard Lauderman, who had come to the Commission after many years on the Newport News Police force. He announced two individuals who had been promoted up in the ranks in

the Law Enforcement Division. Lt. Col. Warner Rhodes was promoted to Deputy Chief, Law Enforcement Division and Captain Steve Pope was promoted to the Middle Area Supervisor position.

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Commissioner Bowman swore in all VMRC and VIMS staff that would be speaking or presenting testimony during the meeting.

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda. Bob Grabb, Chief, Habitat Management, explained that a page two item had been added, 2K, City of Virginia Beach, #06-1128.

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

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MINUTES: Commissioner Bowman asked for a motion to approve the July 25, 2006 meeting minutes.

Associate Member Holland moved to approve the minutes as presented. Associate Member Robins seconded the motion. The motion carried, 6-0-2. Associate Members Tankard and McConaugha both abstained, as they were not on the board at the last meeting. The Chair voted yes.

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2. PERMITS (Projects over \$50,000 with no objections and with staff recommendation for approval).

Bob Grabb, Chief, Habitat Management Division, gave the presentation for the page two items, A through K. Mr. Grabb reviewed all the items for the board. His comments are a part of the verbatim record.

After some discussion, Commissioner Bowman asked if anyone was present pro or con on these items to address the Commission.

Page Ayers, representing the applicant for Item 2H, Northrop Grumman Newport News Shipbuilding, 00-0583, was sworn in and his comments are a part of the verbatim record.

Mr. Ayers stated that they were requesting flexibility in the permit requirement to dispose of the material at the Craney Island Disposal site. He explained that at present the disposal site was full although efforts were being made to clean out an area for disposal purposes.

Mr. Grabb explained that whether it was for a modification or another permit request it would have to be advertised and a hearing held on the request, since it was advertised only for the existing permitted proposal. He stated that staff did not see any problem with the modification request, but it should be advertised first.

Mr. Ayers stated that they would withdraw the modification request as they had other deadlines that could not be delayed, specifically the launching of the GW Bush carrier.

Associate Member Holland moved to approve Page Two items, A through K, as presented by staff. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.

2A. LOUDOUN COUNTY SANITATION AUTHORITY, #06-1201, requests authorization to install 410 linear feet of 8-inch dimensional ratio 11 HDPE Force Main and associated 16-inch dimensional ratio HDPE casing and 50 linear feet of 8-inch PVC Force Main by the directional drill method at a minimum of twenty (20) feet beneath Goose Creek in Loudoun County.

Permit Fee.....\$100.00

2B. MR. AND MRS. ROBERT WELLS, #05-1036, request authorization to install a series of four (4) offshore stone breakwaters totaling 680 linear feet with suitable sandy beach quality nourishment adjacent to their property along the Chesapeake Bay and mouth of Hungars Creek in the Vacluse Shores subdivision of Northampton County. Recommend a royalty of \$68.75 for beach nourishment of 1,375 square feet of state owned subaqueous bottom at \$0.05 per square foot.

Royalty Fees (Beach nourishment, 1,375 sq. ft. @ \$0.05/sq. ft.)...\$ 68.75
Permit Fee.....\$100.00
Total Fees.....\$168.75

2C. CITY OF DANVILLE, #06-1708, requests authorization to construct a 208' long by 40' wide two-lane, two-span bridge, with utilities, across Sandy Creek to provide vehicular access from Collins Drive to commercial property on the north side of Piedmont Drive in the City of Danville. Recommend our standard instream permit conditions.

Permit Fee.....\$100.00

2D. NAVAL FACILITIES ENGINEERING COMMAND, #06-0122, requests authorization to modify a Commission-authorized project to install one additional 50-foot by 5-foot finger pier to provide mooring for U.S. Navy security forces adjacent to federal property along the Southern Branch of the Elizabeth River in Portsmouth.

No applicable fees - permit modification

2E. COLLINS ENTERPRISES, LLC, #06-0677, requests authorization to construct two (2) C-shaped open-pile public pedestrian walkways, one 80-foot long by 5-foot wide and one 180-foot long by 5-foot wide, adjacent to their property situated along the Lafayette River in Norfolk. Staff recommends a royalty of \$1,430.00 for encroachment over 1,430 square feet of State-owned submerged lands at \$1.00 per square foot.

Royalty Fees (encroachment, 1,430 sq. ft. @ \$1.00/sq. ft.).....	\$1,430.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,530.00

2F. WESTERN VIRGINIA REGIONAL JAIL AUTHORITY, #06-1412, requests authorization to install, using directional drilling, 80 linear feet of 6-inch natural gas line, 12-inch potable water line, and 8-inch forced sewer main under the Roanoke River in Salem.

Permit Fee.....\$100.00

2G. YORK COUNTY DEPARTMENT OF GENERAL SERVICES, #04-1406, requests a modification to a Commission-approved project for after-the-fact authorization to install three (3) 33-foot long board-type fender systems adjacent to the boat ramps at Roger Smith Landing located on the Poquoson River in York County.

No applicable fees – permit modification

2H. NORTHROP GRUMMAN NEWPORT NEWS SHIPBUILDING, #00-0583, requests a modification to their previously authorized VMRC permit #00-0583 to hydraulically dredge an additional 11,750 cubic yards of State-owned bottom material from the James River in Newport News from the area to the north of the entrance way to Dry Dock 12 to a new maximum depth of -35 feet MLW. Dredged material will be directly discharged via pipeline to Craney Island. Staff recommends a royalty of \$5,287.50 for the new dredging of 11,750 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Royalty Fees (dredging 11,750 cu. yds. @ \$0.45/cu. ft.).....\$5,287.50
No permit fee – permit modification

2I. KINDER MORGAN BULK TERMINALS, INC. #06-1602, requests authorization to construct a 63-foot by 90-foot extension to the previously authorized Pier IX deck apron which will frame into the existing turning dolphin at Pier IX at Kinder Morgan Bulk Terminals’ property situated along the James River in Newport News.

Permit Fee.....\$100.00

2J. DICKENSON COUNTY BOARD OF SUPERVISORS, #05-0179, requests a permit modification to allow for the construction of two pedestrian clearspan bridges, measuring 5’ by 66’ and 5’ by 30’, across the Pound River and a third bridge across Cane Branch measuring 5’ by 55’ to facilitate construction of the Haysi-Breaks Trail in Dickenson County.

No application fees – permit modification

2K. CITY OF VIRGINIA BEACH, #06-1128, requests authorization to maintenance dredge the existing Crab Creek navigational channel, which provides access from the Lynnhaven Boat Ramp and Beach Facility to Lynnhaven Inlet. Dredging will serve to maintain a 50-foot wide and maximum –6 foot deep mean low water channel from the ramp to the turning basin at the southernmost point, and a maximum –8 foot deep channel from the turning basin to the mouth of the channel where it ties into the existing Federal Project Channel at the Lesner Bridge. An estimated maximum of 27,000 cubic yards of sandy material may be maintenance dredged annually, by either the hydraulic or clamshell methods, and all dredged material will be placed at the Lynnhaven Disposal Site and/or along the Ocean Park shoreline as beach nourishment. A time-of-year restriction to minimize impacts on larval and juvenile summer flounder will preclude any dredging between the period March 1 through September 30.

Permit Fee.....\$100.00

3. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL.

Associate Member Robins moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purposes of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation,

or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to:

1. Williamson versus VMRC.
2. VMRC versus Jewett.
3. Harrison versus VMRC.

The motion was seconded by Associate Member Holland. The motion carried, 7-0.

Associate Member Robins moved for the following:

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

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

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

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

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

AYES: Bowden, Holland, McConaugha, McLeskey, Robins, Schick, Tankard, and Bowman.

NAYS: None

ABSENT DURING VOTE: Fox

ABSENT DURING ALL OR PART OF CLOSED MEETING: Fox

The motion carried, 8-0.

**Katherine Leonard, Recording Secretary
Virginia Marine Resources Commission**

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4. **HERON COVE VILLAS HOMEOWNERS ASSOCIATION, #05-2955**, requests authorization to remove a 474-foot long by 8-foot wide pier with 31 wetslips and to construct a 700-foot long by 8-foot wide pier with 42 wetslips adjacent to their property situated along Wilton Creek in Middlesex County. The project is protested by nearby property owners.

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

Mr. Neikirk explained that the Heron Cove Villas was a 42-unit condominium development located within the Coves at Wilton Creek Subdivision situated along Wilton Creek in Middlesex County. In 1988, the Coves at Wilton Creek Limited Partnership received authorization to construct the current 31-slip pier, an 18-slip community pier serving a separate group of condominiums, and a community boat ramp. The Commission originally denied the permit request based in part on anticipated adverse water quality impacts. That denial, however, was subsequently overturned by the Middlesex County Circuit Court on appeal. The two condominium developments were now independently owned and managed. The Heron Cove Homeowners Association (the Association) was seeking authorization to remove the existing 31-slip community pier and construct a new pier containing 42 larger wetslips with the goal of providing each condominium owner with their own wetslip.

Mr. Neikirk said that the Heron Cove Condominiums were located on a parcel with approximately 1,400 linear feet of water frontage along the western shoreline of Wilton Creek. The condominiums were concentrated atop a steep 20 to 30-foot high bank. Wilton Creek ranges between approximately 325 feet and 450 feet wide along the length of the shoreline at the project site and the creek is relatively deep with mean low water depths of 6 to 8 feet in the vicinity of the pier. The deep protected waters within the creek make it a popular "hurricane hole" for local boaters. The existing and proposed piers generally follow the contour of the shoreline. The proposed replacement pier would extend approximately 100 feet channelward of mean high water along most of the shoreline. The shoreline along both sides of the creek is steep and there is evidence of significant erosion along sections of the shoreline. In fact, the Association received a permit from the Middlesex County Wetlands Board to install a riprap revetment along 1,385 linear feet of the shoreline. Development along the creek is primarily residential.

Mr. Neikirk stated that the project was protested by one of the condominium owners and by the owners of a parcel across the creek on Wilton Creek Road. Two homeowners within the Coves at Wilton Creek subdivision, near the northern end of the community pier, originally opposed the project based on a concern that the expansion of the pier would interfere with the access to their pier. The Association had apparently addressed their concerns. The remaining objections to the project included, aesthetic concerns

related to the scale of the project and possible adverse impacts on water quality and the ecology of the creek associated with the additional boat slips.

Mr. Neikirk said that the Virginia Institute of Marine Science stated that there would be some temporary disturbance to the benthic resources and water quality associated with the demolition and reconstruction of the pier. They also identified additional wake generated erosion as a possible concern and noted that the existing bank was already undercut and that the recently authorized riprap revetment had not yet been installed. They stated that the eleven additional slips would increase pollution loading resulting in water quality impacts including reduced dissolved oxygen, elevated bacterial contamination and additional toxins in the water column and sediments. They added, however, that the amount of new pollution resulting from an expanded facility was generally not quantifiable, but was directly related to the care and concern exercised by the boat owners and operators. To minimize the further degradation of water quality, VIMS recommended that adequate sanitary and pump-out facilities be provided, as required by the Health Department and that the Association develop a marina management plan.

Mr. Neikirk stated that the Health Department informed staff that the applicant had submitted an approved plan for sanitary facilities and that they had no objection to the project. The Department of Conservation and Recreation documented the existence of natural heritage resources in the project area, but did not anticipate that the project would adversely affect those resources.

Mr. Neikirk explained that there were privately leased shellfish grounds within Wilton Creek and, with the exception of a riparian lease in the name of the Coves at Wilton Creek, the project would not encroach directly on any of those leases. It should be noted that between 1972 and 1993 the lower portion of Wilton Creek was open for the direct marketing of shellfish. Since 1993 the entire Creek had been condemned and just this year two small coves near the mouth of the Creek were included in the condemned area. While it is difficult to attribute the increased condemnation to a specific event or activity, the increased condemnation is certainly indicative of declining water quality throughout the creek.

Mr. Neikirk said that the siting criteria checklist in the Commission's "Criteria for the Siting of Marinas or Community Facilities for Boat Mooring" (VR 450-01-0047) identified four criteria associated with this facility as undesirable. Specifically, the salinity was suitable for shellfish growth, there were private shellfish leases in the vicinity, the creek was presently used for other potentially conflicting uses such as, swimming, crabbing, and fishing, and the adjacent shoreline required stabilization. Finally, the regulation states for community piers that, "the number of slips will not necessarily be predicated by the number of units on the property" and that, "projects that by their cumulative impact will result in dense concentrations of boats in one area will be critically evaluated as to their impacts on natural resources."

Mr. Neikirk stated that when this pier was applied for in 1987, the applicant originally requested 42 wetslips. During review of the application, the applicant reduced the number of requested slips to 31 in an attempt to limit the size of the seasonal closure that was going to be imposed by the Health Department, and as a proffer to reduce the anticipated adverse impacts on navigation and the creek environment. This proposal sought authorization to increase the number of slips at the pier to that which was originally proposed in 1987. It is interesting to note that during the review of the original application there was considerable discussion regarding the "arbitrary nature" of the Health Department's seasonal condemnation based solely on the number of wetslips. Although the number of slips was reduced to minimize the size of the seasonal condemnation, increased pollution within the creek has since resulted in a year-round condemnation of the entire creek.

Mr. Neikirk explained that high-density waterfront developments raise difficult resource allocation questions. Those questions become increasingly complex when a limited length of shoreline is shared in common by various owners. While staff agrees that these owners have some rights associated with the commonly owned shoreline, those rights probably only include some limited common right to access the water. Staff does not believe that this common interest in a development automatically includes a right to construct a pier or moor a vessel thereto. This opinion is clearly expressed in the Commission's Marina Siting Criteria. As a result, staff is often left with trying to determine what constitutes "reasonable" access for the owners of such developments.

Mr. Neikirk stated that further complicating the issue is our inability to predict with any certainty, the adverse impacts that could result from the increased boating activity. At this time, the multitude of physical and use factors involved make predicting the carrying capacity of a creek virtually impossible. In cases where there is a potential for significant environmental impacts, and where the public and private benefits are ill-defined, staff believes it is prudent to proceed with caution. In this particular case, the increasing size of the shellfish condemnation area seems to support the declining water quality within Wilton Creek that staff anticipated in 1987.

Mr. Neikirk said that for high-density developments, staff typically recommends that the number of slips be related to the number of lots that could be constructed had the property been developed as single-family lots. Under current zoning practices in Middlesex County approximately nine single-family lots could have been located along the 1,440 linear feet of shoreline associated with the Heron Cove Condominiums. For comparison, the east side of Wilton Creek was developed as large single-family lots and there are 21 lots along approximately 10,300 linear feet of shoreline. This equates to approximately one lot per 490 linear feet of shoreline. Based on the 2002 aerial photography, there are 18 piers along the east side of the creek. Even if the Commission were to allow two slips per potential single-family lot on the Heron Cove pier, the pier would only have 18 slips. Accordingly, the existing pier already has more slips than staff typically recommended for this type of community amenity.

Mr. Neikirk also said that since there is a clear potential for adverse environmental impacts associated with the proposal, staff recommends the Commission proceed cautiously when authorizing additional slips along the creek, especially since the water quality within the creek has declined in recent years. 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(A) of the Code of Virginia, staff recommended the Commission authorize the removal of the old 31-slip pier and reconstruction of the proposed "replacement" pier with 31 slightly larger wetslips, since this was what the Court authorized, with the stipulation that the applicant was required to develop an acceptable marina management plan. Staff was unable to recommend approval for the proposed 176 linear feet of "new" pier with 11 new wetslips, nor the triangular deck area at the northern end of the of "new" pier. Staff also recommended the assessment of a royalty at a rate of \$1.50 per square foot for the encroachment of the pier and slips over State-owned submerged land. If approved as recommended by staff, that assessment would be \$37,548 based on the encroachment over 25,032 square feet of State-owned submerged land. Should the Commission approve the project as applied for, the recommended assessment would be \$50,850 based on the encroachment over 33,900 square feet of State-owned submerged land.

After much discussion, Commissioner Bowman asked if the applicant or a representative wished to address the Commission.

Carlotta Thompson, attorney for the applicant, was present and her comments are a part of the verbatim record. Ms. Thompson explained that they had two issues as a result of staff's presentation. She stated that number one was the riprap and in order to put in the riprap the existing pier had to be removed to provide easier access for installation. She said once the riprap portion was complete then the pier would be rebuilt. She said the second issue was the statement that the existing structure had added to the pollution in the area. She went on to say that this had not been proven. She said the Health Department had approved it and they had met all their requirements. She explained that the protestant himself had a slip at this facility and only objected to the additional boat slips. She further explained that the reason people move there was to get access to the water, and they had only reduced the number of slips proposed originally in order to obtain approval. She said this area was a safe haven and dock from bad weather year round and it was consistent land use and use of waterfront. She stated that the additional slip would not impact the view or access for others in the complex. She said other projects in the area had been approved. She also stated that if this area had been subdivided into individual lots it would have been approved. She said the additional eleven slips would help finance the installation of the riprap, which would protect the waterfront from erosion. She said there was an agreement with Mariners Point to provide access to a pump out station.

Cliff Wood, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Wood explained that half the money for the riprap was available because they had raised the monthly dues. He stated that the additional slips would provide the remaining

finances needed to install the riprap. He said they have a clean marina program and would put out signs, which would have information for all, as far as good stewardship for use of the area.

Carl Josephson asked the applicant what the rate was for renting a slip. Mr. Wood explained that a slip would get \$25,000 - \$26,000 and be limited to who to sell to, unit owners and solely for Villas residents.

After further discussion, Commissioner Bowman asked if anyone in opposition wished to address this issue.

Louis Kahl, protestant and condominium resident, was sworn in and his comments are a part of the verbatim record. Mr. Kahl explained that he was opposed to the size of the project and the additional slips. He made some comments about the impact on the parking situation in the complex also. He stated that when the condo owners bought into the Villas they knew that there would not be enough slips for all the units. He said the additional slips would be right out in front of his property affecting his view and the aesthetics.

Ms. Thompson in her rebuttal stated that the protestant's boat would obstruct his view and in 1987 the group compromised on the number of slips in order to get approval. She further said that the parking problems happen anywhere.

Commissioner Bowman explained that the parking situation was not under the Commission's jurisdiction.

Associate Member Robins stated that in the policy guidelines and in the code the Commission must try to minimize the impact of a project on others use, the natural resources and water quality. He said he felt the water quality degradation in the area had happened since the project was built. He said the Commission's policy was to allow for a number of slips that would be allowed if the property was subdivided into lots and 31 slips was more than would be considered appropriate under our criteria.

Associate Member Robins moved to accept the staff recommendation.

Associate Member Schick stated that the guidelines could be applied in a wide variety of situations. He said the criteria addresses the interior lots and more interior owners want a slip, but that was not right. He said but these are waterfront lots and they should get a little more. He stated that the additional slips would pay to help prevent erosion and the Commission could allow all of the eleven slips to help pay for the riprap, which will improve the water quality since erosion was the number one cause.

Associate Member Holland stated that the riprap would help the water quality and upgrade the community.

Associate Member Tankard stated that staff considers the bad water quality to be related to the marina and it was important that the Commission not be held hostage by the applicant.

Associate Member McLeskey said that the erosion problem could be connected to the upland development. He said it could not be said that the boat slips contributed totally to the problem, as there were other communities without any boat slips having the same erosion problems. He said the project, as presented, made sense.

Associate Member Schick said that there was no more erosion here than in other areas. He said that the no wake signs and low traffic showed that best management practices helped.

Associate Member Robins stated that he agreed with the practices, but questioned the scale given. He said they had already been given the right to wharf out.

Associate Member Bowden seconded the motion. The motion carried, 5-3. Associate Members Holland, McLeskey and Schick all voted no. The Chair voted yes.

Royalty Fees (encroachment, 25,032 sq. ft. @ \$1.50/sq. ft.)....	\$37,548.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$37,648.00

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- 5. **VIRGINIA INSTITUTE OF MARINE SCIENCE**, requests authorization to renew for another five (5) years 507.90 acres in South Bay that was set-aside for seagrass restoration by the Commission at their August 28, 2001, meeting.
- 6. **VIRGINIA INSTITUTE OF MARINE SCIENCE**, requests authorization to set-aside 366.36 more acres of unassigned state bottom adjacent to the existing set-aside area in South Bay, west of Wreck Island in Northampton County for five years. The area will be used for seagrass restoration.

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

Mr. Watkinson explained that historically, prior to 1933 the coastal bays of the Eastern Shore supported large amounts of submerged aquatic vegetation (SAV), primarily eelgrass. SAV was found in Magothy, South, Cobb, Hog Island and Chincoteague bays. The significance of these beds was noted in the populations of wintering waterfowl that fed on the eelgrass and in the bay scallop population, which was harvested commercially. Public Scallop Grounds were set-aside in the 1920s in these bays by the Commission. In

the early 1930s, a combination of disease and the 1933 hurricane wiped out the entire population of eelgrass in the coastal bays. Bay scallops, which use eelgrass as a settlement substrate, were eliminated and had rarely been seen since.

Mr. Watkinson said that since 1998, VIMS has had an active program to restore seagrass to the bays on the Eastern Shore seaside. The Commission in August 2001 set-aside approximately 400 acres (361.49 acres by survey) for seagrass restoration in South Bay. VIMS had excellent success in the large-scale restoration effort in South Bay and had asked to renew the area for another five years.

Mr. Watkinson stated that the proposed additional SAV set-aside area was located adjacent to the existing SAV area and west of Wreck Island property of the Virginia Department of Game and Inland Fisheries. Water depths in the area vary from mean low water near Wreck Island to minus five (-5) feet at mean low water in the middle of the set-aside area.

Mr. Watkinson said that most of the proposed set-aside area had been vacant or unassigned for more than ten years. Only a 57.31- acre portion of the proposed set-aside area had been leased during that time. That lease was terminated in April of this year due to the fact that the Application for Reassignment form was not returned. South Bay had a large amount of clam aquaculture activity in the southern half of the bay and there were a dwindling number of clam dredgers that worked north and southeast of the proposed set-aside area.

Mr. Watkinson explained that since the adjacent and nearby shellfish leases had either clam aquaculture beds on them or the leases were dredged for clams, and since the SAV restoration project continued to be successful and the eelgrass might migrate onto their leased bottom, staff notified the adjacent leaseholders of the proposed project and informed them of the Commission hearing. Staff also advertised the public hearing in the local paper on August 5, 2006 and again on August 12, 2006. No public opposition or comments had been received to date.

Mr. Watkinson said that given the fact that the existing SAV set-aside area had been successful and had expanded beyond its borders, staff recommended that the existing set-aside area be renewed for another five (5) years. Staff further recommended that the proposed 366.36 acre addition, be set-aside for seagrass restoration for a period of five (5) years as shown on the attached oyster ground map, with the option to renew it for an additional five (5) years if the restoration efforts continue to prove successful. If approved the SAV set-aside area in South Bay would contain a total of 727.85 acres.

Mr. Watkinson also stated that since, Regulation, 4 VAC 20-70-120, allowed for the taking or catching of hard shell clams by the use of a conventional dredge from unassigned ground on the seaside of Accomack and Northampton counties between December 1 and April 1, where the water was more than four feet in depth at mean low

water, staff recommended that no dredging be allowed in the set-aside area, since a portion of the set-aside area might have water depths greater than four feet at mean low water.

Associate Member Robins said that he was concerned for the leaseholders, if the eelgrass did migrate naturally onto their adjoining leases. He asked Counsel if the leaseholder had prior claim or do they need some protection to allow for future aquaculture. Carl Josephson stated that they and the Commission must follow the regulation. He said they could only be exempted if there was something in the regulation allowing an exemption. Mr. Watkinson stated that there were other types of aquaculture that the Commission could consider, such as off bottom structures. He said that floats and racks could possibly be allowed, as that was not excluded by regulation.

Associate Member Holland said that he agreed with Associate Member Robins. He said to restrict use of a lease was not right, if SAV should naturally spread on the lease.

Dr. Bob Orth, representing the Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. Dr. Orth reviewed his PowerPoint presentation. He explained that the projects on Seaside had been quite successful. He stated that clam dredging was decreasing and the Aquaculturists were told that they would work with them. He stated that the VMRC staff was looking at the situation.

Commissioner Bowman asked staff if this public hearing was advertised to which Mr. Watkinson responded, yes, it was advertised again, once the meeting date had been changed.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that if it was necessary to avoid a conflict, the Commission could take emergency action to amend the regulation at this hearing, stipulating that approval was pending the permanence of the amended regulation being accepted. Commissioner Bowman stated that the board needed to look at it before taking any action.

Commissioner Bowman opened the public hearing and asked if there was anyone who wished to address this matter at this hearing. There were none.

Associate Member Robins stated that he was not against eelgrass restoration, but there was a need to take into consideration others' rights to use their leases and look at amending the regulation in the future. He said he moved to approve the renewal and expansion requests. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman asked the Commission to continue the discussion on the possibility of amending the regulation. He even suggested that Counsel be given a copy of the regulation to review and to revisit the matter at the end of this hearing.

Bob Grabb, Chief, Habitat Management Division, explained that there was no need to amend the regulation as long as the structures remained within 12 inches of the bottom and were not on SAV. He said the Commission could consider any project where the aquaculture structure was more than 12 inches and proposed to be placed on SAV. He said he would provide Counsel with a copy of the regulation.

Commissioner Bowman asked Counsel if there was a need to take action today. Mr. Josephson responded that he was satisfied with the explanation made by staff, that there was no need to amend the regulation.

Dr. Orth reminded the Commission that the restoration of eelgrass was a part of the overall 2010 goal to restore the Chesapeake Bay.

Commissioner Bowman also stated that Governor Kaine had made the restoration of the Bay one of his priorities during his term in office.

No further action was taken.

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7. PUBLIC COMMENTS: There were no public comments at this point in the meeting.

Commissioner Bowman asked Associate Member Holland to allow for another Public Comment Period after the Commission returns from lunch because the meeting was progressing so quickly.

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8. SAV UPDATE: Update on scarring of SAV areas and status of eelgrass beds

Dr. Bob Orth, Virginia Institute of Marine Science gave this presentation with a powerpoint presentation. His comments are a part of the verbatim record. Dr. Orth reviewed his PowerPoint presentation for the board explaining their findings, as to the status of the scarring on the eelgrass beds in the Chesapeake Bay and its tributaries, specifically Mobjack Bay and the Poquoson River. He explained that what scarring they did find, it was determined to have been done by an individual who was new to haul seining, and someone would be talking to him regarding this matter. He said he recommended they be allowed to continue observing the scarring of the eelgrass beds and making presentations of the results in 2007.

Jack Travelstead, Chief Deputy Commissioner, reminded the Commission that they needed to approve the continued funding of this project for \$20,000, split between the Recreational and Commercial License funds.

Commissioner Bowman commented that the study was important.

Associate Member Holland moved to continue the funding as recommended by staff. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

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Mr. Travelstead introduced two new Fisheries personnel.

Joe Grist, the new Head of the Plans and Statistics Department comes from ASMFC and was a stock assessment specialist. Mr. Grist is a Newport News native. Mr. Grist has a Bachelor of Science degree from CNU and a Masters degree in Fisheries Science from Virginia Tech.

Mike Johnson was hired to replace Ellen Cosby as a planner and comes from Woods Hole. He has a Bachelor of Science degree and a Masters degree, both from the University of North Carolina.

Commissioner Bowman welcomed the two new employees.

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- 9. REQUEST FOR PUBLIC HEARING:** Request to exempt licensed pound net fishermen, located in the National Marine Fisheries Service Modified Pound Net Leader Area, from requirements to fish their pound nets or establish a complete system of nets and poles, in order to renew their licenses or maintain their priority rights to such locations in 2007.

Jack Travelstead, Chief Deputy Commissioner, gave this presentation and his comments are a part of the verbatim record.

Mr. Travelstead explained that National Marine Fisheries Service's regulation to protect sea turtles put severe restrictions on the Pound Net Fishery in the Chesapeake Bay and he reviewed the map in the packet showing the management areas in the pound net fishery of Virginia. He referred the Commission to a picture of a modified leader in the packet and explained the modified pound net leader had been approved for use in their prohibited areas by NMFS.

Mr. Travelstead explained that last year the Commission had approved a request for an exemption that allowed pound net fishermen to forgo the setting and fishing of a pound net in the NMFS prohibited leader zone during 2005. This meant that the fishermen did not lose their priority status or their ability to obtain a 2006 license for those nets at the same location.

Commission Meeting

Mr. Travelstead stated that the federal law which allowed the use of this modified leader in the NMFS' prohibited area was supposed to become effective January 1, 2006 but did not become effective until June 2006. He further stated that because the new law was not effective until June of this year, several pound net fishermen could not afford to set and fish their nets for the remainder of 2006. He said approving the exemption would allow them to maintain their priority rights and license eligibility in 2007.

Mr. Travelstead said that staff recommended approval of the amendment to allow a one-year waiver of the requirement to set and fish a pound net to maintain priority rights and license eligibility, as shown in the draft amended Regulation 4VAC 20-20-10 in the Commission's packet.

Commissioner Bowman explained that this was a request for public hearing at next month's meeting.

Associate Member Holland moved to approve the request for a public hearing. Associate Member Bowden seconded the motion. The motion carried, 8-0. The Chair voted yes.

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10. REQUEST FOR PUBLIC HEARING: Request for amendments to Regulation 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees."

Jack Travelstead, Chief Deputy Commissioner, gave this presentation and his comments are a part of the verbatim record.

Mr. Travelstead explained that this was an administrative, editorial change. He said in 4VAC 20-1090-10 when changes in the license fees occurred in 2005, the regulation was drafted to clarify that there were the old fees in 2005 which were still effective and new fees in 2006. He stated the 2005 fees reference needed to be eliminated and the 2006 fees need to be made permanent to go beyond 2006. He said that changing fees was not what would be discussed.

Commissioner Bowman explained that this was what the General Assembly called "housekeeping".

Associate Member Holland moved to approve the request for a public hearing at the next month's meeting. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

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11. REQUEST FOR PUBLIC HEARING: Request for amendments to Regulation 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

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

Ms. Iverson explained that the request for amendment was to tighten up the compliance requirements so that renewal of the license would be dependent upon being up-to-date and in compliance with reporting on a monthly basis.

Commissioner Bowman explained that this would aid the staff in working with ASMFC and others to obtain quotas and other considerations in regards to the fisheries.

Ms. Iverson stated that there was also a need to require a "911" address. She explained that this would enable Law Enforcement to locate individual fishermen when necessary. She said these two changes required a public hearing and staff was requesting approval to hold a public hearing at next month's meeting.

Associate Member Schick moved to approve the request for public hearing at the next month's meeting. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

12. REQUEST FOR PUBLIC HEARING: Request for public hearing to amend 4 VAC 20-720-10, et. seq., "Pertaining to Restrictions on Oyster Harvest," for the 2006-2007 Public Oyster Harvest Season.

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

Dr Wesson explained that staff was requesting approval to hold a public hearing at next month's meeting to discuss the upcoming Public Oyster Harvest Season, various issues with summer harvest and concerns about *Vibrio*. He said the private harvest had been small until recently and now it had increased. He said also there was more interest in aquaculture. He stated that the Shellfish Management Advisory Committee meeting might bring up more issues to be discussed, as well.

Commissioner Bowman stated that the Virginia Department of Health, Division of Shellfish Sanitation personnel would be present at the next hearing to discuss the issues with summer harvest and concerns about *Vibrio*. He said Virginia had the best track record for its shellfish resource and the state wanted it to continue that way.

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

13. FAILURE TO REPORT HARVEST in accordance with 4 VAC 20-610-10 et. seq.

Kelly Lancaster, Fisheries Management Specialist, explained that the two watermen had stepped out for lunch and not returned, as yet.

Associate Member Tankard moved to continue this matter until after the lunch break. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

14. REPEAT OFFENDER: Charles L. Forrest

Lt. Colonel Warner Rhodes, Deputy Chief, Law Enforcement, gave this presentation. His comments are a part of the verbatim record.

Lt. Colonel Rhodes explained that Mr. Charles L. Forrest had five convictions for violations of Regulation 4VAC 20-252-10, Et. seq., Pertaining to the Taking of Striped Bass”, Section 30 (C) and was found by the court to be guilty on all counts. He said Mr. Forrest was convicted as a result of an undercover operation. He said that staff recommended Mr. Forrest be put on 12 months probation, as there were no past convictions on record.

Commissioner Bowman asked Mr. Forrest to come forward and be sworn in. Mr. Forrest explained that he admitted that he was wrong, but it was not intentional. He said he was sorry, but he was convinced by another individual to do wrong. His comments are a part of the verbatim record.

Commissioner Bowman asked Mr. Forrest if he understood he was in the wrong and would not do it again. Mr. Forrest responded, yes.

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

The lunch break was called for at approximately 12:38 p.m. The meeting was reconvened at approximately 1:20 p.m. Commissioner Bowman left the meeting for the rest of the meeting and Associate Member Holland assumed the chairman's duties from this point on in the meeting.

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13. FAILURE TO REPORT HARVEST in accordance with 4 VAC 20-610-10 et. seq.

Alton Pruitt Jr. 306393 0389
Brian Pruitt 762298 7236

Associate Member Robins excused himself from participating in this issue.

Kelly Lancaster, Fisheries Management Specialist, gave this presentation. Her comments are a part of the verbatim record. Ms. Lancaster stated that both Alton Pruitt and Brian Pruitt were present now.

Ms. Lancaster explained said that Regulation 4 VAC 20-610-10 et seq. makes it unlawful for any person holding a Commercial Fisherman Registration License (CFRL) to fail to fully report their catches and related information, as set forth in this regulation. She further explained that Subsection 60 D states that registered commercial fishermen shall submit a monthly catch report to the Commission no later than the 5th day of the following month and Subsection 60 F states that registered commercial fishermen not fishing during a month shall so notify the Commission no later than the 5th of the following month (by postage-paid postal card, provided by the Commission, or by calling the Commission's toll-free telephone line). She explained also that since January 2001, it had been mandatory for the commercial fishermen to report months of no activity and fishing offshore on species that are not federally permitted or sold to a federally permitted dealer.

Ms. Lancaster stated that Alton Pruitt, Jr. and Brian Pruitt harvested from the waters of the Commonwealth or sold federally harvested species to a non-federal buyer but did not report on state (VMRC) harvest reports. She said that during a routine audit of local seafood buyers, staff discovered that each of these individuals have never properly reported their harvested conch (channel or knobby whelk) or horseshoe crab. She stated that they were called by staff on Friday, June 30, 2006 informing them that they had improperly reported and needed to contact staff at VMRC or the matter would go before the Commission. She said that on Monday, July 10, 2006 these individuals were sent certified letters to appear at the July 25, 2006 Commission meeting. She said that Alton Pruitt spoke with the Commissioner and requested that the suspensions on both he and Brian be lifted. In response to his request on July 27, 2006, Commissioner Bowman lifted the suspension of Alton and Brian Pruitt's licenses, based on their contention they

did not know to appear at the July 2006 meeting and his statement that he and his son would be in attendance at the August Commission meeting. Someone other than Alton Pruitt or Brian Pruitt had signed for the certified letter staff sent to Mr. Pruitt, directing him to appear before the Commission, on July 11, 2006.

Ms. Lancaster stated that from July 18 through 25, 2006 staff received all of his harvest reports for February through June 2006.

Associate Member Holland asked them to come forward and be sworn in. He asked them if they understood how to report and why it was necessary. He also asked if the reports were in the mail, which would make them up-to-date. Alton Pruitt responded yes and explained that he had put the reports that are missing in the mail to get him up to date and that Brian Pruitt his son had worked with him. He said Brian did not sell to Bernie's Conch. His comments are a part of the verbatim record.

Ms. Lancaster explained that Alton did not report selling to three buyers. She said that Brian had verbally reported he worked with his father and she had explained to Brian how to report on his father's report and that it had to be in writing. She said that as of this date they still did not have all of their reports in or they were incomplete. She further said that staff was recommending that they be put on a one year probation.

Associate Member Schick asked if they were saying that they had reported all the conchs they had caught and sold and these other buyers had all reported buying from them, but had not. Ms. Lancaster stated that Bernie's Conch was the only one in question and they both stated that they never sold to Bernie's Conch. She said Alton Pruitt still needed to report for the other buyers that they did sell to but did not report.

Associate Member Bowden stated that there were several Brian Pruitt's and it could have been one of the others and just a mistake was made, as simply as putting a number wrong. He went on to explain to the watermen that the staff was always happy to answer any questions they had in order to help them.

Associate Member Bowden moved to accept the staff recommendation. Associate Member McLeskey seconded the motion. The motion carried, 6-0-1. Associate Member Robins abstained.

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7. PUBLIC COMMENTS: Additional public comment period was opened.

Kelly Place – King Williams Reservoir Project. Mr. Place's comments are a part of the verbatim record. Mr. Place wanted to inform the Commission about recent events that had occurred: the City of Newport News had requested an extension to the Department

of Environmental Quality permit and which was scheduled, he believed, to be approved. He said that he was concerned that conditions established in the VMRC permit to protect the American shad in the area would be circumvented because of this extension request.

No action was taken.

Douglas Jenkins, Sr., President of the Twin Rivers Watermen Association, was present and his comments are a part of the verbatim record. Mr. Jenkins stated he had just one item to discuss. He said as a result of crab potters placing their pots in the water and calling them fish pots, prior to the crabbing season starting, the regulation was amended to prohibit fish pots from being placed in the water prior to the April 1st. He said in March, in the James River, a number of tickets were issued to watermen for placing their eel pots in the water due to the fact that in the regulation fish pots were being called eel pots. He said staff had told him that the crab season could possibly start earlier next year.

Associate Member Holland said that the staff would be asked to look into this matter. No further action was taken.

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Associate Member Holland asked for a motion to adjourn the meeting.

Associate Member Bowden moved to adjourn the meeting. Associate Member McLeskey seconded the motion. The motion carried, 7-0.

There was no further business and the meeting was adjourned at approximately 1:42 p.m. The next meeting will be Tuesday, September 26, 2006.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary