

MINUTES

COMMISSION MEETING

January 23, 2024

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia with the following present:

Jamie L. Green	Commissioner
Lynn Kellum	
William Bransom	
Jeremy Headley	Associate Members
A.J. Erskine	
Heather Lusk	
Patrick Hand	
Jeanette Edwards	
Kelci Block	Assistant Attorney General Via Phone
Lisa Pyle	Recording Secretary
Jamie Hogge	Recording Secretary
Todd Sperling	Bs. Systems Manager
Jennifer Farmer	Regulatory Coordinator
Herbert Bell	Deputy Chief, Law Enforcement
Brian Elliot	Marine Police Officer
Zach Widgeon	Director of Communication
Randy Owen	Chief, Habitat Management
Justin Worrell	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Tiffany Birge	Environmental Engineer, Sr.
Lauren Chartrand	Environmental Engineer, Sr.
Brad Reams	Habitat Compliance Officer
Adam Kenyon	Chief, Shellfish Management
Andrew Button	Deputy Chief, Shellfish Management

Joe Grist	Deputy Chief, Fisheries Mgmt.
Joshua McGilly	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Brooke Lowman	Fisheries Mgmt. Specialist
Alexa Galvan	Fisheries Mgmt. Specialist
Jill Ramsey	Fisheries Mgmt. Specialist
Alicia Nelson	Natural Resource Manager
Andy Dong	Natural Resource Specialist
Lewis Gillingham	Director, SWFT
Kirsten Travis	Environmental Engineer, Sr.
Khadijah Payne	Environmental Engineer, Sr.
Claire Gorman	Environmental Engineer, Sr.
Kirsten Travis	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Alex Sabo
Emily Hein	Charles Campbell	

Others present:

Ronnie Franks	Jeff Brown	Rod Emmons
Rick Vaughan	Brian Hallbers	Zach Martin
Steve Huff	Paul Fox	Jackie Shannon
Patty Murray	Beth Murray	Chris Ludford
Richard Harding	Roberta Kellam	Tom Burkett
Tom Sharp	JC Hudgins	Elizabeth Sharp
Bryan Peeples	David Obrien	Julie Kacmarcik
Chris Stowell	Nick Kincaid	Emma Cummings
	and others.	

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

Associate Member Erskine moved to approve the agenda. Associate Member Bransom seconded the motion. The motion carried, 7-0.

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MINUTES: Commissioner Green asked if there were any changes or corrections to be made to the December 5, 2023, Commission Meeting minutes.

Associate Member Erskine moved to approve the minutes as presented. Associate Member Headley seconded the motion. The motion carried, 7-0.

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

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

Randy Owen, Chief, Habitat Management, reviewed the Page 2 item 2E for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

2A. CSX TRANSPORTATION INC., #2023-2504 requests authorization to install nine (9) linear feet of riprap within 140 square feet of vegetated tidal wetlands associated with the construction of a culvert outlet splash pad at Roaches Run in Arlington County. The project requires a VMRC wetlands permit.

2B. CITY OF HAMPTON, #2023-1483 requests authorization to mechanically dredge approximately 66,650 cubic yards (33,025 maintenance and 26,950 new) of state-owned submerged bottomlands to a maximum depth of -7 feet mean low water in Back River and to a maximum depth of -5 feet mean low water in Long Creek in the City of Hampton. Dredged spoils will be offloaded at the DWR Fox Hill Boat Ramp and transported to an approved upland disposal facility. The project requires a VMRC subaqueous permit.

Fees:	\$ 600.00
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- 2C. **ZORYLU BONILLA, #2023-2255** requests authorization to construct two (2) 25-foot stone revetments and a trip sill on a beach adjacent to property serving 15165 Russell Drive situated along Onancock Creek in Accomack County. This project requires a VMRC dune and beach permit.
- 2D. **CITY OF LYNCHBURG, #2023-2247** requests authorization to construct a 12-foot diameter concrete combined sewer overflow storage tunnel from the existing Blackwater Creek Interceptor to the City-owned pump station near the confluence of Blackwater Creek and the James River, crossing under Blackwater Creek four (4) times as part of the CSO52 Storage Tunnel and Pump Station Project in the City of Lynchburg. The project requires a VMRC subaqueous permit.

Fees:	\$ 600.00
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- 2E. **YORK RIVER YACHT HAVEN, #2023-2491** requests authorization to install a 620-foot-long vinyl bulkhead an average of 1-foot channelward of an existing bulkhead along the Sarah Creek shoreline at 8109 Yacht Haven Road in Gloucester County. The project requires a VMRC subaqueous permit.

Fees:	\$ 600.00
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No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member Headley moved to approve the Page 2 items 2E through as presented. Associate Member Bransom seconded the motion. The motion carried - 0.

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- 3. **CONSENT AGENDA ITEMS –There were no consent agenda items.**

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

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5. **U.S. ARMY CORPS OF ENGINEERS & CITY OF VIRGINIA BEACH, #2023-1589** requests authorization to broadcast germinated eelgrass (*Zoostera marina*) and widgeon grass (*Ruppia maritima*) seeds within a 45.72-acre private oyster lease (Lease #21048) for the purpose of establishing a new submerged aquatic vegetation (SAV) bed within Broad Bay as part of the Lynnhaven River Basin Ecosystem Restoration Project in the City of Virginia Beach. This project is protested by nearby property owners.

6. **U.S. ARMY CORPS OF ENGINEERS & CITY OF VIRGINIA BEACH, #2023-1590** requests authorization to broadcast germinated eelgrass (*Zoostera marina*) and widgeon grass (*Ruppia maritima*) seeds within a 35.89-acre private oyster lease (Lease #21049) for the purpose of establishing a new submerged aquatic vegetation (SAV) bed within Broad Bay as part of the Lynnhaven River Basin Ecosystem Restoration Project in the City of Virginia Beach. This project is protested by nearby property owners.

Tiffany Birge, Environmental Engineer, gave the briefing of the information provided in the staff's evaluation for items 5 and 6, with PowerPoint slides. Her comments are part of the verbatim record. The Corps of Engineers and the City of Virginia Beach have historically partnered together to restore the Lynnhaven River watershed via various ecosystem restoration projects, aimed at enhancing critical habitats. The purpose of these projects is to restore historic SAV habitats in the Lynnhaven River Basin, resulting in basin-wide ecological benefits, including enhanced water quality and species diversity. The applicants plan to plant a cumulative total of 25 acres of SAV, with plans to hand-broadcast roughly 100,000 germinated eelgrass and widgeon grass seeds. If approved, both locations would be monitored for a year and the results would be used to establish other areas within the lease that may support SAV under the same permit. Planting depth is proposed to be between a meter to a meter and a half at mean low water.

Both the US Coast Guard and the Department of Health stated that they found the projects to be acceptable and that there would be no change in shellfish classification areas. VIMS also evaluated the proposals and stated that the local observed water quality data combined with expected sea level rise and increased temperatures create some concern regarding the long-term success of the projects, and that if approved and constructed, they anticipated that continued maintenance of the established SAV would be necessary. The VMRC would be the only permitting agency on these projects. Public comments mainly expressed concern for safety and waterway navigation and restriction. Specifically, the comments argued that an established SAV bed would pose a safety hazard and/or property damage in the form of propeller entanglement. The City of Virginia Beach has stressed that the SAV proposal is adequately located and is in the best interests of the city and its citizens.

Should the Commission choose to approve the proposal, staff recommends that the approval include a special permit condition that the Permittee agrees to provide copies of all SAV monitoring surveys completed post-planting to the VMRC.

Colonel Brian Hallbers was sworn in and spoke on behalf of the Corps of Engineers. His comments are part of the verbatim record. Colonel Hallbers stated that the Corps received a letter from the City of Virginia Beach asking for aid in the restoration of Broad Bay. He also stated that the VA Department of Equality listed the area as impaired in 2004, and that the area was selected due to that fact and the likelihood of successful restoration there. Associate Member Bransom asked about the choice of widgeon grass, to which Colonel Hallbers responded that it was chosen because it is more survivable in the temperatures and level of sun exposure in the area.

Heather Lockwood, project manager, was sworn in and spoke. Her comments are part of the verbatim record. Ms. Lockwood gave a thorough breakdown of the project. She cited public concerns over the project safety and cost, remarking that the project is federally funded with a budget of a few hundred thousand dollars, and that there will be no signs, pilings, or anticipation of grasses growing and impeding recreation. Ms. Lockwood also noted that the Corps is required to monitor the site for up to ten years, and that there will be planting and pausing to conduct observations before continuing onto subsequent phases.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Erskine made a motion to approve both items 5 and 6. Associate Member Edwards seconded the motion. The motion carried, 7-0.

- 7. **GREGORY WILLIAMS, #2023-2633** requests authorization to construct a second 19-foot by 36-foot boathouse with 3-foot finger piers adjacent to an existing pier and boathouse serving 905 Bay Circle situated along Occoquan Bay in Prince William County. This project is protested by an adjacent property owner.

Fees:	\$ 300.00
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Khadijah Payne, Environmental Engineer, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Her comments are part of the verbatim record. Staff recommends approval of the boathouse as proposed with a permit condition requiring a pre-construction meeting to include a site inspection and the applicant surrendering a bill of sale for two additional personal watercrafts to justify the need for a second boathouse.

Bryan Peeples, attorney representing the applicant, was sworn in and spoke. His comments are part of the verbatim record. Mr. Peeples cited complaints from the applicant’s neighbor but asserted that there would be no navigational concerns and that the proposed jet ski lift is not close to the riparian line. He also remarked that the complainant built a structure without a permit, a project for which the contractor, Shoreline Services, was held accountable by the VMRC. Mr. Peeples stated that the alternative plans proposed by the neighbor would be unsuitable, and that the current plan is the best option. He also remarked that the staff recommendation of a bill of sale is unfair.

Carl Eason, attorney representing the complainant, Mr. Emmons, was sworn in and spoke. His comments are part of the verbatim record. Rodney Emmons was also sworn in and spoke, and his comments are also part of the verbatim record. Mr. Emmons asserted that it was the contractor and not Mr. Emmons who was held culpable for the prior non-compliant project.

The matter was before the Commission for discussion and action.

Associate Member Erskine made a motion to accept staff recommendations, without permit condition of request of bill of sale Associate Member Bransom seconded the motion. The motion carried, 7-0

8. **CONSIDERATION OF CIVIL CHARGE ASSESSMENTS** to the marine contractor, Earth Resources, and the marine agent, Roger McKinley, for their respective roles in the installation of nine (9) shoreline projects prior to Commission subaqueous permits being issued. The unauthorized installations occurred in the following Counties: Gloucester, Lancaster, Mathews, Middlesex, Northumberland, and Westmoreland.

Justin Worrell, Deputy Chief, Habitat, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. His comments are part of the verbatim record. Staff recommends that Earth Resources be assessed \$3,000 for each of the nine violations, totaling \$27,000. Staff also recommends that Roger McKinley be assessed \$1,000 for each of the nine violations, totaling \$9,000. Staff acknowledges that Mr. McKinley did not physically install the projects over state-owned submerged lands, however, per their investigation, it is clear that he played an integral and specific role in advising the contractor to proceed with each installation. In addition, Mr. McKinley was sent multiple reminders of the permit issuance requirements for numerous projects. Habitat staff decided to issue after the fact permits to the applicants upon receipt of required payments after confirming that the applicants had no involvement or understanding of the permit process.

Jeff Brown, contractor for Earth Resources, was sworn in and spoke. His comments are part of the verbatim record. Mr. Brown attested that from March, 2023, until his retirement in January, 2024, he made sure that all permits were in hand prior to the start of projects. Mr. Brown also stated that he is the first in line for permit action and that he sets clients up with agents, after which he is no longer responsible.

Mr. McKinley was not present at the meeting. Mr. Worrell asked if a letter was appropriate to send to Mr. McKinley. Kelci Block answered that there should be a letter sent from VMRC stating the Commission's decision and referring Mr. McKinley to the state attorney's office. Associate Member Hand asked if permits are meant to be posted at job sites, to which Mr. Worrell responded yes, they are.

No one spoke in support or opposition.

The matter was before the Commission for discussion and action.

Associate Member Hand stated that ignorance is not an excuse in this matter. Associate Member Headley remarked that a \$3,000 penalty was too harsh for the contractor and asked for an amendment to \$1,000. Mr. Hand stated that he felt the penalty is necessary as a deterrent. Associate Member Bransom proposed an amendment for a reduction to a \$2,000 penalty for the contractor, which Mr. Hand rejected.

Associate Member Headley made substitute motion to levy \$1,000 per violation on the contractor and \$3,000 per violation on the agent. Associate Member Kellum seconded the motion. The motion failed, 3-4. Associate Members Hand, Bransom, Lusk, and Edwards opposed.

Associate Member Hand made a motion to levy a \$3,000 fine on each project for both agent and contractor. Associate Member Bransom seconded the motion. The motion carried, 4-3. Associate Members Headley, Erskine, and Kellum opposed.

Mr. Brown accepted the civil penalty of \$27,000. Mr. McKinley was not present to accept the fines.

- 9. SHELLFISH Paul Fox, Oyster Planting Ground Application #2019-086** requests authorization to lease approximately 4.5 acres of oyster planting ground in the Chesapeake Bay in Lancaster County. The application is protested by 1 nearby property owner.

Adam Kenyon, Chief, Shellfish Management Division, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. His comments are part of the verbatim record.

Paul Fox, applicant, was sworn in and spoke. His comments are part of the verbatim record. Mr. Fox reiterated his desire to proceed with his project.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Lusk made a motion to approve the after-the-fact permit. Associate Member Erskine seconded the motion. The motion carried, 7-0.

- 10. **SHELLFISH Thomas James, Oyster Planting Ground Application #2016-063** requests authorization to lease approximately 21 acres of oyster planting ground in the Chesapeake Bay in Northampton County. The application is protested by 29 nearby property owners.

Adam Kenyon, Chief, Shellfish Management Division, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. His comments are part of the verbatim record. Staff has denied the application based upon consideration of the objections raised by local residents, comments concerning support of the request, and consideration of the public trust doctrine. The applicant has appealed staff’s decision to deny the application and has requested a hearing before the Commission to reverse the decision.

Thomas James, applicant, was sworn in and spoke. His comments are part of the verbatim record. Mr. James conceded to staff’s recommendation to deny his application, citing that the sands have shifted since he originally applied for the lease.

No one spoke in support of the project.

Attorney Bryan Peeples spoke in opposition to the project and in support of staff’s recommendations. His comments are part of the verbatim record. Mr. Peeples cited that the area is heavily used for recreation. He also cited the shifting sandbar.

Four other residents were sworn in and spoke in opposition to the project and in support of staff’s recommendations. Their comments are part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Bransom made a motion to approve staff recommendation. Associate Member Hand seconded the motion. The motion carried, 7-0.

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- 11. **PUBLIC COMMENT:**

Chris Stowell Oyster License Reinstatement:

Chris Stowell, commercial fisherman, was sworn in and spoke. His comments are part of the verbatim record. Mr. Stowell requested that the Commission allow him to purchase a 2024 oyster license, as well as pay the associated back-fees. He last purchased the license in 2021. Mr. Stowell stated that he attempted to purchase an oyster license in 2023 but was told by the VMRC that he was unable to as he had not purchased it the previous year (2022). Adam Kenyon remarked that after 2020, there was a change in how users were notified of which licenses they purchased, and that the change has caused some confusion.

Associate Member Lusk made a motion to reinstate Mr. Stowell's license, provided he pays back-fees. Associate Member Edwards seconded the motion. The motion carried, 7-0.

Five members of the public were sworn in and spoke. Their comments are part of the verbatim record.

Julie Kacmarcik asked that the Commission support the December 12, 2023 Chesapeake Legal Alliance petition to eliminate industrial reduction fishing in the Bay. Ms. Kacmarcik cited the return of osprey to the Bay and their need for menhaden. She also urged the Commission to keep their oath of protecting the Commonwealth in mind when making decisions on industrial reduction fishing.

Roberta Kellam cited a research article from the Frontiers in Marine Science on the impact of menhaden stock on osprey breeding performance, urging the Commission to review the study. Ms. Kellam also cited House Bill 19 and the fact that it is being challenged by Omega Protein. Ms. Kellam asked that the VMRC and VIMS implore Omega to cease their challenge of this bill.

Emma Cummings remarked on previous requests for Dr. Bryan Watts to speak to the Commission about menhaden and osprey. She urged the Commission to put the Bay before dollars and called for a moratorium on menhaden fishing.

Chris Ludford remarked that government entities were previously not allowed to own leases in Virginia and asked that the Commission challenge that. He also stated that aquaculture can enhance and attract SAV.

Tom Burkett cited a Northampton County resolution on menhaden that seeks to move the menhaden fishery. He stated that the county faces more menhaden extraction than any other county in Virginia, and that frequent spills have impacted residents and tourism.

Associate Member Lusk asked VIMS for more information on their study. Mark Luckenbach stated that House Bill 19 will be directing what the study will look like, but that the status of the bill is unknown. He also stated that he was unsure if there will be cooperation with Omega Protein should the bill pass. Mr. Luckenbach remarked that the study will not answer every question, but it will reduce the uncertainty on the effects of the fishery on the menhaden population.

12. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest", to adjust the public oyster harvest seasons.

Adam Kenyon, Chief, Shellfish Management Division, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. His comments are part of the verbatim record. Staff recommends adopting Amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" that do not to extend any area beyond those shown draft regulation.

Jeff Kellum was sworn in and spoke. His comments are part of the verbatim record. Mr. Kellum spoke in favor of SMAC recommendation. He urged the Commission to open Area 2 for the last two weeks of March instead of the first two weeks, stating that it would be a great opportunity to cultivate the bottom.

JC Hudgins was sworn in and spoke. His comments are part of the verbatim record. Mr. Hudgins spoke in support of the February and March changes, citing that the watermen are having a good season. He urged the Commission to approve staff recommendation, with the stipulation of converting Area 1 to hand scrape.

Richard Harding was sworn in and spoke. His comments are part of the verbatim record. Mr. Harding spoke in support of staff recommendation, remarked on a reduction in oyster quality in Area 1.

The matter was before the Commission for discussion and action.

Associate Member Kellum asked for an amendment to change Areas 1 and 2 to be open for the last two weeks of March instead of the first two weeks.

Associate Member Headley made a motion to approve staff recommendation with the amendment to change Areas 1 and 2 to the last two weeks of March. Associate Member Hand seconded the motion. The motion carried, 7-0.

- 13. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1120-10 et seq., "Pertaining to Tilefish and Grouper" to change the recreational blueline tilefish season to coincide with the beginning of the recreational black sea bass season.

Joshua McGilly, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. His comments are part of the verbatim record. Staff recommends the Commission approve amending Chapter 4 VAC 20-1120-10 et seq., "Pertaining to Tilefish and Groupers" to change the recreational Blueline Tilefish season to coincide with the beginning of the recreational black sea bass season.

No one spoke in support or opposition.

The matter was before the Commission for discussion and action.

Associate Member Bransom made a motion to approve staff recommendation. Associate Member Kellum seconded the motion. The motion carried, 7-0.

- 14. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass" to amend the 2024 recreational black sea bass season, including a February opening.

Alexa Galvan, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Her comments are part of the verbatim record. Staff recommends the Commission amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to amend the 2024 recreational black sea bass season, including a February opening. Staff offered three options to consider: Opening the full 29-day season, opening only weekends and holidays, and not opening the February season.

Seven members of the public were sworn in and spoke in support of opening a February season. Their comments are part of the verbatim record. No one spoke in opposition.

The matter was before the Commission for discussion and action.

Associate Member Lusk excused herself for the remainder of the meeting.

Associate Member Headley asked Ms. Galvan if a Monday/Wednesday/Friday season would be possible, to which Ms. Galvan responded that she would be concerned for private anglers who would only be able to fish on the weekends. She stated that it could exclude a sector of recreational fishermen.

Associate Member Edwards remarked that the livelihood of fishermen needs to be taking into consideration.

Associate Member Erskine made a motion to approve staff recommendation to open the sea bass fishery for the month of February. Associate Member Hand seconded the motion. The motion carried, 6-0. Associate Member Lusk did not vote.

15. PUBLIC HEARING: Proposal to amend Chapter 4VAC20-960-10 et seq., "Pertaining to Tautog" to remove all fees associated with unreturned commercial tautog tags or tags returned after the yearly February 15th deadline.

Joshua McGilly, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. His comments are part of the verbatim record. In 2019, the ASMFC implemented a commercial tautog tagging program for all states that have an active commercial tautog fishery to combat the illegal harvest and sale of tautog. Commercial harvesters are allotted tags each year depending on the number of tags they used the previous year, and they are required to return all unused tags from the previous calendar year to the Commission by the 15th of February of the current year. Currently, any harvester with any unused tags that are not returned is required to pay \$0.28 per tag, regardless of the reason for the tags not being returned. Staff recommends the Commission approve amendments to Chapter 4 VAC 20-960-10 et seq., "Pertaining to Tautog" to remove all fees associated with unreturned commercial tautog tags or tags returned after the yearly February 15th deadline.

Mr. McGilly remarked that there is still a sanction in place for commercial watermen who don't report their harvests.

No one spoke in support or opposition.

The matter was before the Commission for discussion and action.

Associate Member Bransom made a motion to approve staff recommendation. Associate Member Erskine seconded the motion. The motion carried, 6-0.

Commission Meeting

**19191
January 23, 2024**

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There being no further business, the meeting was adjourned at approximately 3:14 p.m.
The next Commission meeting will be Tuesday, February 27, 2024.

Jamie L. Green, Commissioner

Lisa Pyle, Recording Secretary