

## MINUTES

## Commission Meeting

June 22, 2010

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. Carter Fox )          |                                    |
| J. T. Holland )          |                                    |
| William E. Laine, Jr. )  |                                    |
| John R. McConaugha )     | Associate Members                  |
| Richard B. Robins, Jr. ) |                                    |
| J. Kyle Schick )         |                                    |
| John E. Tankard, III )   |                                    |
| Jack G. Travelstead      | Chief, Fisheries Management        |
| David Grandis            | Assistant Attorney General         |
| John M. R. Bull          | Director-Public Relations          |
| Katherine Leonard        | Recording Secretary                |
| Louise Atkins            | Administrative Office Specialist   |
| Jane McCroskey           | Chief, Admin-Finance               |
| Linda Farris             | Bs. System Specialist, MIS         |
| Rob O'Reilly             | Deputy Chief, Fisheries Mgmt.      |
| Jim Wesson               | Head, Conservation-Replenishment   |
| Joe Grist                | Head, Plans and Statistics         |
| Lewis Gillingham         | Head, Saltwater Fishing Tournament |
| Joe Cimino               | Fisheries Mgmt. Specialist, Sr.    |
| Alicia Nelson            | Fisheries Mgmt. Specialist         |
| Sonya Davis              | Fisheries Mgmt. Specialist, Sr.    |
| Rick Lauderman           | Chief, Law Enforcement             |
| Warner Rhodes            | Deputy Chief, Law Enforcement      |
| Jennifer Baylis          | Marine Police Officer              |
| Richard Haynie           | Marine Police Officer              |

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| Tony Watkinson   | Deputy Chief, Habitat Mgmt. Div. |
| Chip Neikirk     | Environmental Engineer, Sr.      |
| Ben McGinnis     | Environmental Engineer, Sr.      |
| Ben Stagg        | Environmental Engineer, Sr.      |
| Hank Badger      | Environmental Engineer, Sr.      |
| Elizabeth Murphy | Environmental Engineer, Sr.      |
| Randy Owen       | Environmental Engineer, Sr.      |
| Jeff Madden      | Environmental Engineer, Sr.      |
| Jay Woodward     | Environmental Engineer, Sr.      |
| Dan Bacon        | Environmental Engineer, Sr.      |
| Justin Worrell   | Environmental Engineer, Sr.      |
| Bradley Reams    | Project Compliance Technician    |

Virginia Institute of Marine Science (VIMS):

Lyle Varnell                      Carl Hershner

Others present included:

|                 |                  |                   |                    |
|-----------------|------------------|-------------------|--------------------|
| Chad Brooks     | Eddy Theisz      | Stock Dinsmore    | Brian Fletcher     |
| Eddie Firman    | Nate Firman      | Dan Clements, Jr. | Brink Nelms        |
| M. Scott Rupe   | Rebecca Francese | Mac               | Traycie West       |
| Jessica Barker  | Warren Veazey    | Ray Twiford       | Standley F. Jester |
| David C. Walker | James Firman     | Murine Firman     | Benjamin Lindsay   |
| Danny Bowden    | Homer W. Hogge   |                   |                    |

and others.

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Commissioner Bowman called the meeting to order at approximately 9:35 a.m. All Associate Members were present.

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At the request of Commissioner Bowman, Associate Member Robins gave the invocation and John Bull, Public Relations Direct or led the pledge of allegiance.

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**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes to the agenda.

Tony Watkinson, Deputy Chief, Habitat Management explained that the Department of the Navy project number 09-0358 needed to be added to the agenda at the applicant's

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request. He also said that for Item 5, Robert A. and Lynn H. Buckley, #10-0559, their attorney had requested a continuance until the August meeting. Commissioner Bowman said that the Department of the Navy would replace the original number five item.

There were no other changes, Commissioner Bowman asked for a motion to approve the continuance request. **Associate Member Holland moved to approve the request for a continuance. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Commissioner Bowman asked for a motion to approve the amended agenda. **Associate Member Tankard moved to approve the amended agenda. Associate Member Holland seconded the motion. The motion carried, 9-0.**

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**MINUTES:** Commissioner Bowman requested a motion for approval of the May 25, 2010 Commission meeting minutes, if there were no corrections or changes. There were none.

**Associate Member Holland moved to approve the minutes, as circulated. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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Commissioner Bowman at this time 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 \$50,000 with no objections and with staff recommendation for approval).

Tony Watkinson, Deputy Chief, Habitat Management Division, summarized the eight items for the Board. (Note: He added some additional description for Item 2D, "replace marginal wharf", after mid-tide bulkhead.) His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff. There were none.

Commissioner Bowman opened the public hearing. Being there were no public comments, the public hearing was closed. He asked for action by the Board.

**Associate Member Laine moved to approve the page two items, as read. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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2A. M. A. BONGIOVANNI, INC., #10-0558, requests authorization to install 61 linear feet of water reuse pipeline beneath Pohick Creek and encase the pipe with compacted stone as part of the Noman G. Cole, Jr. Pollution Control Plant Water Reuse Project in Fairfax County. Staff recommends a time-of-year restriction from February 15 through June 30 to protect anadromous fish resources in the area and a royalty in the amount of \$183.00 for the encroachment beneath 61 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

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| Royalty Fees (encroachment 61 ft. @ \$3.00/lin. ft)..... | \$183.00 |
| Permit Fee.....  | \$100.00 |
| Total Fees.....  | \$283.00 |

2B. NORFOLK DREDGING COMPANY, #10-0574, requests authorization to dredge 16,300 cubic yards of new material to restore maximum depths of -14 feet at mean low water at their Deep Creek Yard commercial facility at the confluence of New Mill Creek and the Southern Branch of the Elizabeth River at 1520 Shipyard Road in Chesapeake. All dredged material will be transported to and disposed of within the Craney Island Rehandling Basin. Recommend standard dredging conditions and a royalty in the amount of \$7,335.00 for the new dredging at a rate of \$0.45 per cubic yard.

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| Royalty Fees (dredging 16,300 cu. yds. @ \$0.45/cu. yd)..... | \$7,335.00 |
| Permit Fee.....  | \$ 100.00  |
| Total Fees.....  | \$7,435.00 |

2C. ALICE K. DODSON, #09-0695, requests authorization to construct six (6) quarry stone breakwaters, totaling 410 feet in length, and extending a maximum of ten (10) feet channelward of mean low water into the Western Branch of the Elizabeth River in conjunction with a "living shoreline" stabilization project, including intertidal marsh planting and restoration, at property immediately upriver of the Hodges Ferry Bridge (Portsmouth Boulevard) in Chesapeake.

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| Permit Fee..... | \$100.00 |
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2D. CROWN POINT MARINA, INC., #10-0122, requests authorization to construct 740 linear feet of replacement mid-tide bulkhead, replace marginal wharf, install an 8-foot wide by 30-foot long aluminum gangway and eleven (11) 4-foot by 20-foot finger piers at existing slips adjacent to their facility situated along the Perrin River at 9737 Cooks Landing Road in Gloucester County.

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| Permit Fee..... | \$100.00 |
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2E. U.S. ARMY TECHNOLOGY APPLICATIONS OFFICE, #10-0445, requests permission to impact 20 linear feet of Lucky Run and 12 linear feet of Cedar Run for the installation of a fiber optic cable, the new cable will be directionally bored at least ten (10) feet beneath original streambed associated with the Quantico Marine Base telecommunications upgrade project in Prince William County.

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| Permit Fee..... | \$100.00 |
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2F. WESCOTT B. NORTHAM, #08-1977, requests authorization to construct and backfill 548 linear feet of vinyl replacement bulkheading, aligned a maximum of two feet channelward of a deteriorating wooden bulkhead situated along Parkers Creek at 24134 Breezy Point Road in Accomack County. Staff recommends the assessment of a royalty in the amount of \$1,096.00 for the filling of 1,096 square feet of State-owned subaqueous land at a rate of \$1.00 per square foot.

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| Royalty Fees (filling 1,096 sq. ft. @ \$1.00/sq. ft.)..... | \$1,096.00 |
| Permit Fee.....  | \$ 100.00  |
| Total Fees.....  | \$1,196.00 |

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3. CONSENT ITEMS: (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).

3A. CARLTON HARWOOD, #10-0223, requests after-the-fact authorization to retain a second private pier that is 4-feet wide by 30-feet long extending from the upland to form a boatslip, including an attached 4-foot by 12-foot floating jet ski dock; and to retain 92 linear feet of timber sheet-piles installed directly on the channelward side of the existing bulkhead serving 2008 Centel Road in the Bay Island subdivision, situated along Long Creek in Virginia Beach.

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

Mr. Watkinson explained that in January of 2010, Curtis Estes of Eastern Marine Construction, acting as both the agent and contractor for Mr. Harwood, filed an application directly to the City of Virginia Beach to reconstruct the existing piers in response to damage sustained from the November '09 Nor'easter. In what appeared to have been an effort by the City to respond quickly to storm-damage requests, the City accepted the application directly from the agent without providing the Commission a copy until approximately one month later. In the normal processing of a Joint Permit Application, the City did not accept applications directly, but required that they be submitted to the Commission and then copied and forwarded to the City for processing.

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In this case the City accepted and even approved the request prior to forwarding a copy to the Commission.

Mr. Watkinson explained also that since the City was directly accepting and processing storm damage applications, Mr. Estes assumed that work could commence as soon as the local approval was granted. Mr. Estes also advised that they were working as quickly as possible because the City had imposed an end of storm-damage reconstruction date of February 28, 2010.

Mr. Watkinson stated that once staff ultimately received the application on February 11, 2010, the work had been completed. Staff then discussed the situation with both Mr. Harwood and Mr. Estes and visited the site. A Notice to Comply was issued on March 2, 2010, requesting additional information and explaining the Commission’s jurisdiction in reviewing such applications. As staff explained in the correspondence, reconstructing just the main 4-foot wide pier would have been statutorily authorized under Section 28.2-1203(A)(5) of the Code of Virginia, however, reconstructing the second pier and re-sheeting the timber bulkhead would have required Commission authorization. Unfortunately, the Commission had no record of past approval for anything at this property, and therefore the Governor’s Executive Order 106 for emergency reconstruction of previously authorized structures could not be applied in this instance.

Mr. Watkinson said that the applicant and contractor provided a detailed chronology of events and drawings and formally requested after-the-fact authorization for the reconstructed piers and re-sheeted bulkhead. Staff conducted a full public interest review, including a newspaper advertisement, and received no public opposition.

Mr. Watkinson stated that had the application been received and processed before construction, staff would have administratively issued a permit for the reconstruction. Both piers had existed for at least the last 15 years and prior to Mr. Harwood purchasing the property. Given that the contractor / agent actually filed an application to the City of Virginia Beach prior to reconstruction, and the fact that the structures existed prior to Mr. Harwood owning the property, staff recommended after-the-fact approval with only a triple permit fee of \$300.00, and no civil charges for the applicant or contractor. For the record, the Commission had no history of any violations regarding past projects completed by Eastern Marine Construction.

**Associate Member Robins moved to approve item 3A. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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| Permit Fee (A-T-F Triple fees)..... | \$300.00 |
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**4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** There was no closed meeting.

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Commissioner Bowman announced that Bob Grabb, Chief of Habitat Management, would be retiring as of June 30, 2010. He went on to express his appreciation for Mr. Grabb's long career with the Virginia Marine Resources Commission and dedicated service to the State. He noted that the Commission would not be able to replace Mr. Grabb. He noted also that interviews would be done in the next month so that a new Chief would be appointed.

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5. **ROBERT A. AND LYNN H. BUCKLEY, #10-0559.** Commission review, on appeal of the May 12, 2010, decision of the Gloucester County Wetlands Board to deny a request to construct 283 linear feet of vinyl bulkhead and 87 linear feet of vinyl retaining wall at their property situated along the Southwest Branch of the Severn River at 8513 Myrtle Branch Lane in Gloucester County.

Continued at the Request of the Attorney for the Applicants until the August meeting.

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Department of the Navy, #09-0358 replaced the continued Item 5.

5. **DEPARTMENT OF THE NAVY, #09-0358,** requests after-the-fact authorization for the replacement of approximately 300 linear feet of their CEP-102 and CEP-111 bulkheads located on the south side of Pier 1 at Naval Station Norfolk, situated along Hampton Roads in the City of Norfolk. The proposed project also calls for the installation of approximately 300 linear feet of riprap bulkhead toe stabilization overlain by articulated concrete mats extending a maximum of 47 feet channelward of the adjacent bulkheads.

Ben McGinnis, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. He indicated that a letter had been received by Commissioner Bowman from the Department of the Navy requesting a hearing today.

Mr. McGinnis explained that the proposed project included the unauthorized replacement of two (2) adjacent bulkheads located on the south side of Pier 1 at Naval Station Norfolk, situated along Hampton Roads in the City of Norfolk. In addition, the Navy was proposing to place a riprap toe overlain by an 8-inch thick articulated concrete mat, extending as much as 47 feet channelward of the unauthorized replacement bulkheads. To staff's knowledge, installation of the proposed riprap and concrete mats had not yet commenced.

Mr. McGinnis said that the replacement of the bulkheads in question are a part of the Navy's program to systematically replace aging bulkheads located throughout Naval Station Norfolk. Staff was unaware of any other bulkhead replacement projects at Naval

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Station Norfolk that had not received VMRC permits prior to the commencement of construction.

Mr. McGinnis stated that a Joint Permit Application (JPA) for the project was received on March 20, 2009. The application called for the replacement of approximately 300 linear feet of the existing CEP-102 and CEP-111 bulkheads located on the south side of Pier 1 at Naval Station Norfolk, as well as the installation of a riprap apron overlain by an articulated block mat, extending as much as 65 feet channelward of the proposed replacement bulkheads. Shortly after having received the Navy's application, staff was contacted by Ms. Traycie West of the Navy on April 14, 2009, and was informed that construction had commenced on the proposed replacement bulkheads. It was not made abundantly clear at the time, but staff was under the impression that the unauthorized replacement occurred due to a risk of immediate failure of the existing bulkheads.

Ms. West indicated that no work on the proposed riprap had commenced and that the Navy would amend their application to request after-the-fact authorization for the proposed bulkheads and justify the large base width of the proposed riprap stabilization at the toe of the bulkheads. Staff had multiple telephone conversations with Ms. West over the following months to discuss the need for an amended application, as had previously been promised.

Mr. McGinnis noted that unfortunately, in the ensuing six months, staff had only received an engineering justification from the Navy submitted in September of 2009, which partially addressed the need for the project but failed to provide justification for such a large riprap toe structure or for having proceeded without the required VMRC permit for the bulkheads' encroachment over State-owned submerged land. On October 21, 2009, staff sent a letter to the Navy formally requesting a meeting to discuss the project's current status as well as the necessary information required to complete a public interest review for the project.

Mr. McGinnis explained that a meeting was subsequently held on December 16, 2009, at Naval Station Norfolk, and was attended by representatives of the Navy; their counsel; their contractor, Precon Marine, Inc.; as well as VMRC and VIMS staff. At the meeting, the Navy explained that an internal breakdown of communication occurred between construction supervisors and their environmental staff tasked with obtaining the appropriate permits, which resulted in the commencement of the bulkhead replacement without VMRC or U.S. Army Corps of Engineer permits. In a letter to staff dated February 18, 2010, the Navy further explained that while a failure of the bulkheads without repairs may have ultimately been inevitable, the decision to proceed with the bulkhead replacement was due to the internal breakdown in communication.

Mr. McGinnis said that during a December 16, 2009, meeting, the Navy finally explained to staff the necessity of the proposed riprap and concrete mat structure proposed at the toe of the newly replaced bulkhead. This structure was originally proposed to extend as much as 65 feet channelward of the bulkhead, which staff had insisted was excessive in comparison to similar applications previously authorized by VMRC. The Navy presented a new design, which reduced the maximum channelward encroachment of the riprap from

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65 to 47 feet. The Navy had explained that the riprap and concrete mat structure was needed not only for bulkhead scour protection, but also to provide sufficient mass to stabilize the newly installed bulkhead, which apparently was not designed to be self-supporting for budgetary reasons. In the Navy's September 2009 engineering justification, they provided one alternative, which called for a steel-sheet pile bulkhead to a minimum depth of -90 feet. However, this design which would not require the use of a riprap toe and was not selected due to its anticipated costs. The current, unauthorized bulkhead was designed and installed only to depths of -45 feet, identical to the existing depths at the bottom of the dredged basin adjacent to Pier 1, just 75 feet channelward of the existing bulkhead. Without sufficient mass channelward of the new bulkhead to help hold it in place, the bulkhead would fail at or near its toe. Staff questioned representatives of the Navy's contractor, Precon Marine, at the December meeting as to why they chose to initiate bulkhead replacement activities without confirming the work was being done in compliance with all applicable permits, particularly one from VMRC. The response provided by Mr. M. Scott Rupe of Precon Marine, during that meeting and again in a January 4, 2010, letter to staff was that Precon was operating under a notice to proceed from the Navy with no stated work restrictions, and that they had no reason to believe the Navy did not already have the necessary permits in place. Unfortunately for Precon Marine, this appeared to be nearly identical in circumstance to a recent violation they were also involved in, as the contractor.

Mr. McGinnis explained that in that particular case, Precon Marine was the contractor for a U.S. Army Corps of Engineers project (VMRC #08-0665), which involved the unauthorized construction of a temporary offshore work platform (trestle) constructed to allow for maintenance and repair activities to the 42<sup>nd</sup> Street stormwater outfall structures that extend into the Atlantic Ocean in the City of Virginia Beach. That case was brought before the Commission in May of 2008, as a consent agenda (Page 3) item, and Precon Marine was not assessed a civil charge.

Mr. McGinnis said that the Virginia Institute of Marine Science (VIMS) Shoreline Permit Application Report, dated May 19, 2010, indicated that the unauthorized bulkhead was not properly designed to counter balance itself against the load of the upland soils and associated infrastructure, and that the placement of the riprap at the toe of the bulkhead to provide the mass necessary to counter balance the bulkhead would result in the conversion of a little over 0.25 acres of native sedimentary substrate to non-native rock habitat. VIMS stated that this conversion will result in the displacement of infauna worms, shellfish, and a loss of prey for the fish and crabs that feed on them. Their comments concluded stating that their preferred alternative would be to replace the bulkhead in place or immediately channelward to eliminate most of the proposed impacts to subaqueous bottom.

Mr. McGinnis stated that no other agencies or individuals have raised concerns or objections to the project. He noted that the Virginia Port Authority had sent a letter to VMRC in which they stated they had no problem with the project.

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Mr. McGinnis said that while the channelward encroachment of the unauthorized replacement bulkheads itself would normally be considered acceptable to staff, the Navy's choice to short-sheet the bulkhead design for budgetary reasons essentially forces an enormous encroachment over State-owned submerged land by the proposed riprap and concrete mat toe stabilization structure. Staff believed that this design was inconsistent with past Commission permits for similar commercial/industrial bulkhead projects and would not have been supported had VMRC review been conducted prior to the bulkheads' unauthorized installation. Staff was concerned that if the newly constructed bulkheads were not properly reconstructed or stabilized, they could be subject to future failure.

Mr. McGinnis stated that staff was unable to recommend approval of a project primarily designed as a cost saving measure for the Navy, to the detriment of the State-owned subaqueous lands. The Commission, as stewards, were charged with protecting them under the Public Trust. Accordingly, staff recommended that the Navy's request be denied and that Navy be directed to reconstruct the unauthorized bulkheads in an appropriate manner with the proper sheet length. Staff acknowledged the legal difficulties in compelling the federal government to reconstruct the bulkheads, but felt that this recommendation was consistent with how the matter would be handled, if the applicant were a private entity.

Mr. McGinnis stated also that if the Commission should elect to approve the after-the-fact bulkheads and the proposed riprap, however, on the advice of counsel, it appeared the Commission was unable to impose a civil charge upon the Navy, since they were under no obligation to pay such a charge. The Commission did have the authority to seek such civil charges against the contractor, Precon Marine, Inc., however, pursuant to Section 28.2-1213 (B) of the Code of Virginia. In this matter, staff would recommend civil charges for the contractor, for each of the CEP-102 and CEP-111 bulkheads, taking into consideration a major degree of non-compliance and significant degree of environmental impact. This recommendation takes into account Precon Marine's familiarity with VMRC permits as a local marine contractor, their past violation history as previously mentioned, and the consequent encroachment and environmental impact to State-owned submerged land resulting from the installation of bulkhead design, which would not likely have been authorized had the Navy and Precon Marine attempted to obtain a VMRC permit prior to construction. This civil charge would be in lieu of any further enforcement activity that the Commission might pursue against the contractor.

As there were no questions of staff, Commissioner Bowman asked the representative for the applicant to come forward and comment.

Chad Brooks, representing the Department of the Navy, was sworn in. His comments are a part of the verbatim record. Mr. Brooks said that the staff was expressing the case in broader aspects in accordance with the permit process and that eminent failure was correct. He said that this area was built in 1943 and was due to be replaced, but budget restraints delayed the construction of a new pier for the future. He said that amount of area being encroached upon was appropriate for the safety of the bulkhead and the area

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had been reduced from the original footage to 47 feet. He said this was similar to other permitted projects.

Commissioner Bowman asked when was the new construction to occur. Mr. Brooks stated that the pier construction was uncertain but the plan was in ten years. He said that they recognized their error of not getting prior approval and now ask for after-the-fact approval. He said they had mitigated impacts by making them minimal without impacting the integrity of the bulkhead.

Associate Member Tankard asked how much cost savings was there. Mr. Brooks responded \$7.2 million for the project, which was significant savings.

Associate Member Schick asked if rock being placed in front of the bulkhead was in the original design. Mr. Brooks responded yes, that when an inspection was made it showed the rocks were needed for the toe to be stabilized.

Associate Member Fox asked what was the function of the concrete mat. Mr. Brooks stated that it added mass and prevented sedimentation and the need to dredge. Associate Member Fox asked what would happen if it were not used. Mr. Brooks explained that the bulkhead would shift requiring maintenance.

Associate Member Schick asked if the engineering design was done in-house. Mr. Brooks responded that it was done in-house when the project was designed.

Associate Member McConaugha asked what was the depth at the bulkhead originally.

Eddy Theisz, representing the Department of the Navy, was sworn in. His comments are a part of the verbatim record. Mr. Theisz said this was really replacement funding and the intended depth to be maintained was minus 20 feet. He said there were gaps open in the bulkhead and at the toe. In the corner it was at minus 30 feet. He said they did what they could and still stayed within the budget. He said all the bulkhead was in danger at minus 30 feet for damage. They were only filling holes causing a lot of mass and it was not considered replacement.

Associate Member Robins asked if this was a short-term project and the pier was necessary and the mass was because of the short time. Mr. Brooks explained that they were uncertain when the new projects will be done, but further erosion risked failure of the bulkhead and lose of operational space.

Associate Member Robins asked if as far as the long-term goes, would there be additional encroachment or removal. Mr. Theisz explained that on the water side of the wharf it would require it to be removed during the construction and after it were finished it would have to be put back.

Commissioner Bowman asked if the contractor's representative was present and wished to comment.

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Scott Rupe, representative for Pre-Con, contractor for the applicant, was sworn in and his comments are a part of the verbatim record.

Commissioner Bowman asked why he had started the installation before making sure the permits were covered and if he understood why they needed to make sure the permits existed. Mr. Rupe stated he understood that now.

Associate Member Schick asked if he usually asked other permittees. Mr. Rupe responded yes. Associate Member Schick asked if he considered it might be under VMRC jurisdiction. Mr. Rupe responded no. Associate Schick noted that it was necessary to ask. Mr. Rupe stated he did not have experience working with the Federal government. He said he assumed and that was a mistake. He said he thought it was under the Navy jurisdiction not VMRC, but he knew better now. Commissioner Bowman asked if the Navy told him it was under Federal jurisdiction. Mr. Rupe responded no.

Commissioner Bowman asked if anyone was present in opposition who wished to comment. There were none.

Commissioner Bowman announced that the matter was before the Commission.

Associate Member Tankard said he agreed that the process was important and if they are given a pass this time they should not forget the need for following the process.

Associate Member Robins said this was an unfortunate case and the State was being asked that a significant impact be approved because the applicant avoided following the process. He said he hoped that in the future the process would be followed.

Associate Member Schick stated that the Department of the Navy did have qualified staff that knows to communicate and to get this done properly.

Associate Member McConaugha said that he agreed with all that had been said about the process and if the structure should fail before the pier is done, the Navy would come back before anything is done.

Commissioner Bowman stated that the Navy had been agreeable and provided information for the after-the-fact application, which had improved the relationship between the Commission and the Navy.

**Associate Member Holland stated he too agreed with all that was said and moved to approve the project. Associate Member Schick seconded the motion. The motion carried, 9-0.**

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| Permit Fee..... | \$100.00 |
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6. **STEVE BRICE, #10-0035**, requests authorization to install two (2) 65-foot long pre-cast concrete breakwaters and a 40-foot long pre-cast concrete groin and to dredge and excavate approximately 400 cubic yards of sand from the south side of a spit and utilize the material to create a 2-foot high by 240-foot long dune adjacent to his property situated along Meachim Creek and the Rappahannock River off Dunlevy Lane in Middlesex County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

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

Mr. Neikirk explained that the project site was located along a spit of land separating the Rappahannock River and Meachim Creek in the Topping area of Middlesex County. The shoreline faced toward the north with long northerly fetches. The Brice family owned four large parcels in the immediate vicinity. This project involved a 260-foot low beach wash over area connecting a parcel owned by Ms. Duszak and a peninsula with the Rappahannock on the north and Meachim Creek on the south. The drift of sand was predominately downstream (west to east) along this section of the Rappahannock River.

Mr. Neikirk said Mr. Brice was proposing to construct two (2) 65-foot long pre-cast concrete breakwaters located approximately 90 feet channelward of the existing mean high water line. A 40-foot long pre-cast concrete groin was proposed downstream of the breakwaters near the location where the backshore increases in elevation. No beach nourishment was proposed. Mr. Brice also proposed to dredge and excavate approximately 400 cubic yards of sand from the south side of a spit and utilize the material to create a 2-foot high by 240-foot long dune along the beach area landward of the breakwaters. Under a separate application Ms. Duszak was proposing to replace a damaged timber groin with a 77-foot precast concrete groin near the shared property line.

Mr. Neikirk stated that no structures or improvements were threatened by erosion at this site. In fact, there were no structures located downstream of the Duszak property. The project was being proposed in an attempt to prevent the low beach from being breached and causing the peninsula to become separated from the mainland. Mr. Brice did not want to lose access to the peninsula and it's approximately 1600 linear feet of shoreline downstream of the project site. He also feared that if the beach were to be breached, erosion of the peninsula would increase and a second mouth to Meachim Creek would adversely affect the existing shoaling problems at the mouth of Meachim Creek. The peninsula and an associated chain of islands used to extend approximately 3000 feet further downstream across the current wide mouth of Meachim Creek. As this land had eroded, the property within Meachim Creek had been subjected to increased wave exposure and associated erosion. Additionally, the associated sediment had resulted in shoaling at the creek mouth.

Mr. Neikirk noted that the construction of the groin and the beach excavation would impact approximately 1900 square feet of jurisdictional beach. Middlesex County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which were

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made available to them by virtue of recent Code changes that became effective on July 1, 2008. As a result, the Commission was charged with administering the ordinance pursuant to Chapter 14, Article 3, of Title 28.2 of the Code.

Mr. Neikirk said that in VIMS revised report, dated June 15, 2010, they noted that no beach nourishment was proposed and there were no structures or improvements on the narrow sand feature. They stated that the site was immediately downstream of a successfully functioning groin field. They recommended that if a structure was considered justified to protect the narrow sand feature, that the construction of an additional groin with beach nourishment would be environmentally acceptable. They also recommended that the breakwater system should incorporate significant beach nourishment in the project design. They explained that the beach should provide the actual erosion protection while the breakwaters served to hold the beach in place. The placement of the beach nourishment would also serve to minimize down-drift shoreline impacts resulting from the interruption of sand transport. In the absence of beach nourishment, VIMS believed locating the structures closer to shore might provide greater shoreline protection while waiting for the natural beach fill. They suggested the breakwaters could be moved further channelward if the sand tombolos form landward of the breakwaters, as hoped. They anticipated only temporary disruption associated with the excavation of the beach for the creation of the small dune. Finally, they recommended planting the dune and all nourished areas to help stabilize those features.

Mr. Neikirk also said that the Shoreline Erosion Advisory Service provided comments in a letter, dated March 15, 2010. They also noted the lack of beach nourishment and stated that the breakwaters were positioned further offshore than typically recommended for gapped breakwaters. With respect to the groin, they questioned the stability of the structure in this exposed location and suggested that a conventional sheet-pile or riprap groin might provide a better long-term solution at this site.

Mr. Neikirk explained that in the Department of Conservation and Recreation's report, dated March 19, 2010, they stated that they did not anticipate that the project would adversely affect any of their programs but they noted the applicability of the Chesapeake Bay Act requirements that were regulated by the local government. They also noted that the project must comply with the Virginia Erosion and Sediment Control Handbook and Virginia Storm Water Management Regulations.

Mr. Neikirk stated that staff met with Mr. Scott Hardaway (VIMS Shoreline Studies Programs), Mr. Mike Vanlandingham (SEAS), Mr. Warren Veazey (agent), and Mr. Michael Brice (co-owner) at the site on April 26, 2010. At this meeting, the purpose of the project and alternative designs were discussed, as well as the possibility of incorporating beach nourishment into the project design. Mr. Veazey and Mr. Brice explained that the pre-cast breakwater units would be cost-effective in this situation due to the limited access to the site. The breakwater units can be floated to the site and sunk into position. They believe it would be difficult and cost-prohibitive to access the site with the material and equipment needed to construct a typical stone breakwater system. The lack of access is also the reason beach nourishment has not been proposed. During

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this meeting they also discussed the possible merits of “harvesting” a portion of the sand that has washed over into Meachim Creek to create a small dune along the beach area landward of the breakwaters.

Mr. Neikirk said that Mr. Hardaway and Mr. Vanlandingham had expressed their concern over the lack of beach nourishment and positioning breakwaters further offshore than was typically recommended. There was discussion about the possibility of placing sand as a “feeder beach” at the proposed access point on a parcel owned by the Brice family that was located west (up-drift) of the project site. Mr. Hardaway explained that the breakwater design parameters stated in his publication “Shoreline Management in Chesapeake Bay” (Hardaway and Byrne 1999), were for headland breakwater systems with an adequate amount of beach nourishment to establish equilibrium landward of the breakwaters.

Mr. Neikirk noted that following the on-site meeting, Mr. Veazey submitted revised drawings that included the sand excavation and dune creation. No additional beach nourishment was included and the breakwaters were left in their originally proposed location.

Mr. Neikirk stated that no other state agencies had commented on the proposed modification. No comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the modification.

Mr. Neikirk said that staff appreciated the applicant’s effort to protect the narrow spit of land and believed that a breach of the low beach area could result in increased erosion along the remainder of the peninsula and increased shoaling in Meachim Creek. Continued loss of the peninsula would also expose more properties within Meachim Creek to increased wave attack and erosion. Staff also understand the applicant’s desire to protect this area in a cost-effective manner and realized that access to the site was difficult.

Mr. Neikirk pointed out to the Commission that the long-term survivability of these pre-cast breakwater units was yet to be determined. This area was exposed to significant storm waves. In his publication, “Shoreline Management in Chesapeake Bay”, Mr. Hardaway recommended armor stone weighing between 800 and 2000 pounds for breakwater construction in similarly exposed locations. In addition to their relatively low cost, one of the benefits of the pre-cast breakwater systems that was often expressed by Mr. Veazey was the ability to float the breakwaters into position in areas with limited accessibility. They also stated that they can be re-floated and re-positioned if necessary.

Mr. Neikirk said that as evidenced by the wide beach and full groin cells up-drift (west) of the project site, there appeared to be a significant amount of sand moving along this shoreline. Staff was uncertain, however, if the proposed breakwaters positioned 90 feet channelward of mean high water would accumulate any appreciable amount of sand in a timely manner. Without a sandy beach landward of the breakwaters, it was unlikely the breakwaters would provide any significant protection to the existing beach area.

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Mr. Neikirk explained that although access to the site was difficult, based on the recommendations of SEAS and VIMS' Center for Coastal Resource Management and conversations with Mr. Hardaway with VIMS Shoreline Studies Program, staff recommended the placement of at least 360 cubic yards of sandy beach nourishment material between the created dune and the beach area landward of the breakwaters. If the placement of the beach nourishment was cost prohibitive and a condition to require such would kill the project, staff would recommend relocating the breakwaters closer to shore. It was believed that positioning the breakwaters closer to shore would increase the likelihood of capturing sand and developing a tombolo between the existing beach and breakwater structures. Positioning the breakwaters closer to shore would also likely increase the ability of the structures themselves to provide some degree of shoreline protection until such time that a beach forms landward of the breakwaters. If the breakwaters function as anticipated by the agent and tombolos form landward of the breakwaters, Mr. Brice could seek authorization to re-float and re-position the breakwaters further channelward to incrementally increase the beach width.

Mr. Neikirk stated that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with a condition that a minimum of 360 cubic yards of sand to be placed as beach nourishment landward of the proposed breakwater. If the beach nourishment requirement is unacceptable to the applicant, staff would be willing to recommend approval of a modified proposal to position the breakwaters no more than 50 feet channelward of mean high water. In either case, staff would also recommend a condition to plant the created dune and nourished area with appropriate beach and dune vegetation. Finally, staff would recommend a royalty in the amount of \$0.05 per square foot for the encroachment of any beach nourishment channelward of mean low water.

Commissioner Bowman asked for questions of staff.

Associate Member Robins asked if the harvesting of sand discussed at the site visit. Mr. Neikirk stated that all agencies thought it was a good idea as some would wash over the groin and would jumpstart the dune. Associate Member Robins stated that those are working, but VIMS preferred the breakwater and this could be a way to see their effectiveness and learn. Mr. Neikirk said that the groin on one end with sand was agreeable, but some areas were very low so there was no elevation behind the groin, which could cause it to not work.

Associate Member Tankard said that if the groin were working then there would be more erosion further down and accretion would occur with the groin and the breakwater. Mr. Neikirk responded that with the sand moving and the breakwater so far offshore it was not effective and access was difficult.

Associate Member Schick asked if the boxes were closer to the shore, about 50 feet, would it withstand storm action. Mr. Neikirk stated he was not sure, but preferred the regular breakwater. Associate Member Schick asked about sand being excavated and

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bringing it to the site and how it would be brought in. Mr. Neikirk stated by truck, as it was too shallow to use a barge.

Associate Member Fox asked if the adjacent land could be used for access with the truck. Mr. Neikirk showed the location and said that it was another Brice property.

Commissioner Bowman asked if the applicant or their representative wished to comment.

Warren Veazy, contractor, was sworn in and his comments are a part of the verbatim record. Mr. Veazy explained that he would have to consult with the applicant about the staff recommendation, but there would be a concern with the cost.

Associate Member Fox asked him why was it proposed for 90 feet offshore. Mr. Veazy stated they were following the recommendations of Scott Hardaway.

Associate Member Schick asked if there was fill to be placed behind it. Mr. Veazy said not really that sand being added would be more costly and this way would allow for natural accretion. He said there was enough sand there that it would fill up in two to three years.

No one was present in opposition. Commissioner Bowman stated the matter was before the Commission for discussion or action.

Associate Member Robins asked if the sand were placed in a feeder beach would the breakwater need to be moved forward 50 feet. Mr. Neikirk indicated sand placed there would move quickly. The 360 cubic yards of sand could be placed and allow the 90 feet.

Associate Member Fox asked if the sand from the feed beach did not all go there would additional sand be needed. Mr. Neikirk stated the groin is now full and this would speed up the transport of sand.

Associate Member Schick asked if have sand is placed on a feeder beach could they keep the breakwater at 90 feet out. Mr. Neikirk responded yes.

Associate Member Fox stated is concern with the 90 feet and said that he would feel more comfortable with 50 to 60 feet. He said the feeder beach would move the 360 cubic yards of sand. Mr. Neikirk stated that there was more sand closer to the shore.

Mr. Veazy stated that there was no protection for the highland, which is used only for hunting and other recreational purposes. He said with more sand there it would be more costly and it would fill up without it quickly in two to three years.

Associate Member Fox asked if closed to shore would cost more. Mr. Veazy responded no, more sand would cost more. He stated it was designed by engineering standards and was not that far off shore.

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Commissioner Bowman asked Carl Hershner of VIMS to address the matter. Mr. Hershner explained that the sand behind the breakwater would reflect the wave action and there was a risk of the sand being caught by the groin. He said when there is no beach the structure was better closer to shore and would be more effective. He said it would be filled more rapidly by being closer not by adding more sand.

Associate Member Schick suggested that it would fill up in 2 to 3 years and later the breakwater could be moved out to the 90 feet and continue to add sand.

Commissioner Bowman asked for action by the Commission.

**Associate Member Fox made a motion to approve the breakwater at an adjusted distance of 60 feet channelward of mean high water with a minimum of 400 cubic yards of sand placed upstream of he breakwaters. Associate Member Schick seconded the motion. He asked that it be added that it could be considered that the breakwater be moved out later as the sand was increased. Associate Member Robins reminded the members of the other conditions recommended by staff for the dune vegetation, feeder beach and royalty fees. Tony Watkinson, Deputy Chief, Habitat stated that the feeder beach would nourish the area behind the breakwater and there could be some royalty fees assessed, but staff could not say how much until the sand is there. Associate Member Tankard said that because of the public good being done here the Commission should forego assessment of any royalty fees to compensate the applicant because of the increased sand cost. Associate Member Fox suggested that this was an experimental breakwater and the staff should be notified of its success. The motion carried, 9-0. The Chair voted yes.**

|                 |          |
|-----------------|----------|
| Permit Fee..... | \$100.00 |
|-----------------|----------|

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Commissioner Bowman left the meeting at approximately 11:10 a.m. Associate Member Holland acted as Chairman in his absence.

- 7. **PAUL GARBETT, #10-0697**, requests authorization to construct 100 linear feet of riprap revetment along the channelward side of a deteriorated timber bulkhead adjacent to their property situated along the Chesapeake Bay at 76 Cardinal Trail in Middlesex County. The project requires a Coastal Primary Sand Dunes and Beaches permit.

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

Mr. Neikirk explained that the project site was located along the Chesapeake Bay, near Stingray Point, in Middlesex County. The shoreline faced toward the southeast. The property was approximately 100 feet wide with a sandy beach channelward of a severely

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damaged timber bulkhead. The yard landward of the bulkhead was low and severely eroded. In fact, if the bulkhead did not break the continuity of the beach, much of the property landward of the bulkhead would also be characterized as a beach.

Mr. Neikirk said that Mr. Garbett was seeking authorization to construct an 8-foot wide by 4-foot tall riprap revetment channelward of the deteriorated bulkhead. Most of the remainder of the shoreline along this reach was already protected by riprap with little or no beach remaining channelward of the structures.

Mr. Neikirk said further that the construction of the revetment channelward of the deteriorated bulkhead would impact approximately 800 square feet of jurisdictional beach. Middlesex County had not yet adopted the beaches and dunes ordinance which was made available to them by virtue of recent Code changes that became effective on July 1, 2008. As a result, the Commission was charged with administering the ordinance pursuant to Chapter 14, Article 3, of Title 28.2 of the Code.

Mr. Neikirk stated that in the VIMS report, dated June 9, 2010, they stated that a breakwater would be the preferred alternative for the protection of this reach of shoreline but noted that the construction of a proper breakwater system would require the participation of multiple property owners. They stated that another alternative would be to remove the bulkhead, grade the bank, and install a revetment aligned landward of the remaining bulkhead structure. They had also recommended the planting of appropriate vegetation in the area landward of the revetment and the discontinuation of routine mowing to the edge of the shoreline structure.

Mr. Neikirk noted that no other state agencies had commented on the proposed modification. No comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the modification.

Mr. Neikirk stated that staff agreed that a properly designed offshore breakwater system coupled with appropriate beach nourishment would serve to protect the property while preserving many of the beneficial functions of the beach. However, given the limited width of the property and the fact that the adjoining shoreline was already protected by a riprap revetment, a breakwater system was probably impractical. A properly designed and aligned revetment at this location appeared to be warranted, however the design did not appear to be adequate to withstand the expected wave climate along this exposed Chesapeake Bay Shoreline. The application stated the armor material would weigh approximately 200 pounds but guidance provided in a VIMS publication, entitled, Shoreline Management in the Chesapeake Bay by C.S. Hardaway, Jr. and R. J. Byrne, said that the armor material along such an exposed shoreline should weigh between 1000 and 2000 pounds and the revetment should have a toe or apron to reduce the potential for scour undermining the structure.

Mr. Neikirk said that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1402(10) (B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with a condition that the armor material must

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be Class 3 or larger and the toe of the revetment must be buried at least two feet below the elevation of mean low water and aligned along the alignment of the deteriorated bulkhead. Staff also recommended encouraging the applicant to nourish the beach channelward of the revetment with appropriately sized sand to provide additional protection to the property and the toe of the new revetment. The placement of beach nourishment material was a statutorily authorized activity under the Coastal Primary Sand Dunes and Beaches ordinance.

Associate Member Holland asked if the applicant or his representative wished to comment.

Bryan Fletcher with Deltaville Marine Construction and representing the applicant was sworn in and his comments are a part of the verbatim record. Mr. Fletcher expressed his concerns that in the staff recommendation they wanted the toe to start at the wall and this would lose some of the yard if they had to do that. He said they wanted to protect the property and did not want a turn, but to go straight.

Associate Member Holland asked if there were any questions.

Associate Member Holland asked for a motion.

**Associate Member Robins moved to accept the staff recommendation, but modified so that the revetment would be straighten. Associate Member McConaugha seconded the motion. The motion carried, 8-0-1. Commissioner Bowman abstained.**

Associate Member Robins stated for clarification that the motion included all of the staff recommendation with the class 3 stone.

Mr. Fletcher stated that the class 3 stone was hard to get and they wanted the class 2 which was the type that was there along with class 1. He said that next door they had used some class 1 and 90% class 2, which was shown in the slide.

Associate Member Holland asked staff to explain the reason for the staff recommendation for class 3 stones. Mr. Neikirk stated that he followed the guidance of VIMS and their handbook. After further discussion, Associate Member Schick asked if the maker of the motion would modify it. **Associate Member Robins agreed that the motion be modified to say class 2. Associate Member McConaugha seconded the modified motion. The motion carried, 8-0-1. Commissioner Bowman abstained.**

No applicable fees – Coastal Primary Sand Dunes and Beaches Permit.

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8. **NORBERT F. SPANGLER, JR, ET AL, #10-0703**, requests authorization to replace a 50-foot long timber groin and to construct 40 linear feet of replacement timber bulkhead aligned immediately channelward of a deteriorated bulkhead adjacent to their property situated along the Rappahannock River at 684 Riverside Drive in Middlesex County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

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

Mr. Neikirk explained that the project site was located along the Rappahannock River, on White Point, in the Deltaville area of Middlesex County. The shoreline faced towards the north and was exposed to long northerly fetches. The property was approximately 50 feet wide with a sandy beach channelward of a deteriorated railroad cross-tie bulkhead. The house was approximately 15 feet landward of the existing bulkhead. A deteriorated timber groin was located near the western property line and abutted what appeared to be a deteriorated riprap groin.

Mr. Neikirk said that the White Point shoreline was currently protected by a variety of timber and vinyl bulkheads, riprap revetments and both timber and riprap groins of various lengths and spacing. This shoreline was regularly damaged during storm events and would benefit from the development and implementation of a coordinated shoreline management plan.

Mr. Neikirk stated that the applicants were seeking authorization to construct a 50-foot long timber groin immediately adjacent to the deteriorated groin and to construct 40 linear feet of timber bulkhead immediately channelward of the deteriorated bulkhead.

Mr. Neikirk said that the construction of the groin and bulkhead would directly impact approximately 90 square feet of jurisdictional beach and subaqueous land. Middlesex County had not yet adopted the model Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes that became effective on July 1, 2008. As a result, the Commission was charged with administering the ordinance pursuant to Chapter 14, Article 3, of Title 28.2 of the Code.

Mr. Neikirk noted that in the VIMS report, dated June 9, 2010, they stated bulkheads were not an appropriate shoreline treatment, from an environmental perspective, along high energy shorelines because they sever the connection between the adjacent upland and the near-shore environment. They also noted that bulkheads often contribute to their own destruction because they reflect wave energy and erode the shoreline on the channelward side of the structure. As an alternative, they recommended removal of the existing bulkhead and the construction of a riprap revetment with the toe aligned along the alignment of the old bulkhead. VIMS stated that riprap revetments tended to dissipate wave energy and provided more habitat value than bulkheads and they typically lasted longer than bulkheads. With regards to the proposed groin, VIMS questioned the need for the structure since the revetment on the adjacent shoreline appeared to be serving as a

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groin. If it was deemed necessary, VIMS recommended the groin be constructed utilizing a low-profile design.

Mr. Neikirk stated that no other state agencies had commented on the proposed modification. No comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the modification.

Mr. Neikirk said that a properly designed offshore breakwater system coupled with appropriate beach nourishment would serve to protect the property while preserving many of the beneficial functions of the beach. However, without a coordinated effort being undertaken by the neighboring property owners along White Point, a breakwater system was probably impractical. Staff agreed that a properly sized riprap revetment would be preferable at this site but due to the proximity of the house, staff questioned whether it could be installed landward of the existing bulkhead. Staff also questioned the need to construct a new timber bulkhead adjacent to the riprap groin that currently extended along the western property line.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10) and §28.2-1205(A) of the Code of Virginia, staff recommended denial of the project, as currently proposed, however staff would recommend approval of a modified proposal to construct a properly designed riprap revetment extending a maximum of six (6) feet channelward of the existing bulkhead and the repair and enhancement of the existing riprap groin along the western property line in lieu of constructing an additional timber groin with a condition that the riprap groin must be constructed with a low-profile design. If the applicant was unwilling to modify his proposal, as recommended, he could reconstruct the bulkhead and groin in the same location provided the groin was constructed with a low-profile design. Finally, staff also recommended the applicant consider nourishing the beach with appropriately sized sand to provide additional protection to the property. The placement of properly sized beach nourishment material on an existing beach area was a statutorily authorized activity under the Coastal Primary Sand Dunes and Beaches Ordinance.

Associate Member Holland asked for questions of staff.

Associate Member Robins said that the staff recommendation was to not modify, but to replace the groin with a low profile groin in the same footprint.

Associate Member Holland asked if the applicants or their representative wish to comment. There were none, therefore, he stated that the matter was before the Commission for discussion or action.

**Associate Member Laine moved to accept the staff recommendation to deny the project as proposed but to allow a modified proposal to construct a properly designed riprap revetment extending a maximum of six (6) feet channelward of the existing bulkhead and to repair and enhance the existing riprap groin adjacent to the damaged timber groin. If the modified proposal is unacceptable, they agreed to**

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**allow Mr. Spangler to remove and reconstruct the timber bulkhead and groin in the same location provided the groin is constructed utilizing a low-profile design. Associate Member Robins seconded the motion. The motion carried, 8-0-1. Commissioner Bowman abstained.**

No applicable fees – Permit Denied.

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9. **ERMA GARY, #10-0486**, requests authorization to remove two deteriorated groins and construct two (2) new low-profile timber groins extending 48 feet channelward of mean high water adjacent to her property situated along the Rappahannock River at 173 River Bank Drive in Middlesex County. The project requires a both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

Commissioner Bowman returned to the meeting at approximately 11:40 a.m.

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

Mr. Neikirk explained that the project site was located along the Rappahannock River, in the lower portion of Middlesex County. The shoreline faced towards the north with long northerly fetches. The property was approximately 120 feet wide with a sandy beach contained within an established groin field channelward of a timber bulkhead. The bank landward of the bulkhead was high and steep. There were numerous groins upstream and downstream of the property. The groins on the Gary property and many of the neighboring properties were installed by the original subdivision developer in the early 1970s and they appear to have been successful in maintaining a beach along this section of shoreline.

Mr. Neikirk said that the applicant was seeking authorization to replace the two groins on his property. The deteriorated groins were to be removed and the new groins were proposed to be constructed in the same footprint utilizing a low-profile design.

Mr. Neikirk stated that the construction of the groins would impact approximately 108 square feet of jurisdictional beach and subaqueous bottom. Middlesex County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes that became effective on July 1, 2008. As a result, the Commission was charged with administering the ordinance pursuant to Chapter 14, Article 3, of Title 28.2 of the Code.

Mr. Neikirk noted that in the VIMS report, dated June 9, 2010, they stated that by design, groins interrupted the transport of sand to down-drift properties, leading to potential increased erosion to those down-drift properties. They noted, however, that replacing groins within an established and stable groin field on sandy shorelines was acceptable.

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To minimize potential impacts, they recommended the groins be constructed utilizing a low-profile design and they recommended the groin cell be nourished with clean sand.

Mr. Neikirk noted also that no other state agencies had commented on the proposed modification. No comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the modification.

Mr. Neikirk said that it appeared to staff that the groins along this reach of shoreline had been generally successful in maintaining a beach between the high bluff and the Rappahannock River and we believe replacement of these groins is reasonable and warranted. Based upon staff’s recommendation to the permitting agent, the groins were recently revised to utilize a low-profile design. Staff generally recommends nourishing groin cells to minimize impacts to downdrift properties but in this instance access to the shoreline is limited due to the high steep bank landward of the beach. During a site visit conducted last month it was noted that the groin cells on the adjacent downdrift property appeared to be full of sand. Accordingly, even without nourishment, impacts on the adjacent downdrift property should be minimal.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1402(10) (B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed.

Associate Member Holland asked for questions of staff. There were none.

Associate Member Holland asked if the applicant or his representative was present. He asked if anyone was present in opposition. There were none. He asked for action by the Board.

**Associate Member Schick moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 8-0-1. Commissioner Bowman abstained.**

|   |         |
|---|---------|
| Royalty Fees (encroachment 40 lin. ft. @ \$0.50/lin. ft)..... | \$20.00 |
| Permit Fee.....   | \$25.00 |
| Total Fees.....   | \$45.00 |

\* \* \* \* \*

- 10. CHIPPOKES ESTATES, LLC, #10-0438**, requests authorization to place up to 1,800 linear feet of rip rap stone revetment, landward of mean low water, along their shorefront beach property situated adjacent to the James River in Surry County. The project requires a Coastal Primary Sand Dunes and Beaches permit.

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

Mr. Stagg explained that the project was located along the James River near the mouth of Chippokes Creek between Chippokes State Park and the Hog Island Wildlife Management area in Surry County.

Mr. Stagg said the applicant requested authorization to place a riprap revetment at the base of an eroding bluff that was approximately 30 feet high. The applicant previously requested authorization in 2008 for a similar project (JPA# 2008-0938) and received a permit from the Surry County Wetlands Board on July 28, 2008 for impacts occurring channelward of the high water line along the sandy shoreline. A small section of the riprap was installed at the northernmost area of the project, however, the project was not completed and the wetlands permit expired on July 28, 2009. The applicant requested an extension earlier this year, but, since the wetlands permit had expired over six months prior to the request, the submission of a new application was required by the County.

Mr. Stagg stated that effective July 1, 2008, as a result of amendments to § 28.2-1403 of the Code of Virginia, Surry County was added as a jurisdictional County under the Coastal Primary Sand Dunes and Beaches Ordinance. The previous application was submitted before July 1, 2008 and fell under the jurisdiction of the Surry County Wetlands Board. However, in light of the changes to the Code, the project now falls under the Coastal Primary Sand Dunes and Beaches Ordinance. Since Surry County has not yet adopted the beaches and dunes ordinance which was made available to them by virtue of recent Code changes, the Commission was charged with administering the ordinance pursuant to Chapter 14, Article 3, of Title 28.2 of the Code.

Mr. Stagg noted that the project, as currently proposed would impact approximately 10,800 square feet of jurisdictional beach. The base of the bluff had retreated landward since the previous application and the alignment of the riprap had been shifted landward to reflect that erosion.

Mr. Stagg said that in a July 22, 2008 report for the original project VIMS, in their Shoreline Permit Application Report, suggested the preferred approach for this high-energy sandy shoreline was to provide protection through sand nourishment and construction of an offshore rock breakwater(s). They further noted that while a breakwater system was preferable a revetment would also be an acceptable alternative for stabilization along this shoreline, since considerable grading was needed to stabilize the eroding bluffs. They did, however, note concerns with the height of the proposed revetment (18 feet above grade) since no justification was given related to potential wave heights at this location. VIMS also noted that the stone was undersized considering the fetch at the site, along with the steep proposed slope (1.5:1). They suggested using Class 2 and/or Class 3 size stone and using a slope of 2:1, if possible. Finally, they recommended that all impacted shoreline areas be restored to their natural contours, and in any areas where adjacent Phragmites existed and posed a risk of invasion, included a protocol of options for Phragmites control.

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Mr. Stagg explained that the Department of Historic Resources commented that there would be no historic properties impacted by the project. The Department of Environmental Quality indicated, provided the project met U. S. Army Corps of Engineers general permit requirements, no Virginia Water Protection (VWP) permit would be required. No other agencies had commented on the proposal and the project had received no protests.

Mr. Stagg said that recent visits to the site reflected a partial failure of the previously installed riprap at the northernmost area of the site. This appeared to be directly related to both the steep slope and use of undersized stone. The applicant's agent provided revised drawings on June, 19, 2010 along with email correspondence that indicated agreement to modify the proposed bank slope to 2:1 and to use larger Class 3 stone at the toe of the revetment.

Mr. Stagg noted the partially collapsed portion of the previously installed revetment and that some stone was now scattered along both the beach and subaqueous bottomlands. The bank had been graded following the original application in 2008, and considerable erosion from wave action and upland runoff continued to occur at the site. VIMS had provided FEMA flood surge frequencies and associated tidal elevations for Surry County and they are noted here:

|                     |                          |
|---------------------|--------------------------|
| 10 % annual chance  | 5.3 ft. = 10 year storm  |
| 2 % annual chance   | 6.7 ft. = 50 year storm  |
| 1 % annual chance   | 7.4 ft. = 100 year storm |
| 0.2 % annual chance | 8.7 ft. = 500 year storm |

Mr. Stagg stated that therefore, when factoring in an approximate 2-foot tidal range, a 500-year storm event should result in storm surge of just below 11 feet above MLLW. FEMA storm surge data would indicate the proposed height of the structure (up to 20 feet above mean low water) would exceed predicted storm surge heights of a 500 year storm event. Installation of the structure above this predicted height appeared to be at the discretion of the applicant.

Mr. Stagg explained that after evaluating the merits of the project and after considering all of the factors contained in §28.2-1402(10) (B) of the Code of Virginia, staff recommended approval of the project with a condition that the armor material must be Class 3 at the base of the structure including the failed section, that the structure be installed on a 2:1 slope and the material that had shifted into the intertidal area and beyond mean low water be retrieved and used during installation of the remainder of the project.

Commissioner Bowman stated for clarification that geographically this was Northern Chippokes Creek near the power plant. He asked for questions of staff.

Commissioner Bowman asked if the applicant representative was present and wished to comment.

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Matt Hall, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Hall stated that they agreed with the staff's recommendation and would answer any questions from the Board. There were none.

Commissioner Bowman asked if anyone was present in opposition and wished to comment. There were none.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Schick seconded the motion. He suggested that the motion included the requirement for a 9-foot level with class 3 stones. The motion carried, 9-0. The Chair voted yes.**

No applicable fees -- Coastal Primary Sand Dunes and Beaches Permit.

\* \* \* \* \*

- 11. DWIGHT SCHAUBACH, #09-1478**, request after-the-fact authorization to retain a previously constructed private pier, larger than the original application request, situated along the Nansemond River, at 8354 Crittenden Road in the City of Suffolk. The existing pier consists of a 7-foot wide by 160 foot long open-pile private pier, a 29-foot wide T-head, two 6-foot wide by 40-foot long finger piers creating a single boatslip with lift. The total square footage of the T-head and associated finger piers is 1,034.75 square feet.

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

Mr. Stagg explained that the project was located along the Nansemond River upstream of the Mills Godwin Bridge (Route 17) in the City of Suffolk. A pier had existed at this site since the mid 1990's and had been damaged and reconstructed after numerous storms over the ensuing years. The existing T-head square footage included an irregularly shaped T and two six-foot by forty-foot finger piers creating a single boatslip.

Mr. Stagg said that this was a residential area and there were numerous piers in the area. Mr. Schaubach owned a considerable amount of shoreline which included several platted lots. The existing pier, however, was the only pier on his property.

Mr. Stagg stated that a Joint Permit Application was received on October 13, 2009 requesting authorization to install a "replacement" boathouse roof (with dimensions of 24 feet by 46 feet) at the applicant's existing private pier. The application also requested authorization to install two floating dock units measuring 8 feet by 24 feet and 6 feet by 48 feet respectively, to create a second boatslip at the pier. During the site visit to evaluate the request, it was noted that the floating dock sections were already installed, that the existing fixed T-head of the pier exceeded the current 400 square foot area allowed by Code without a permit, and that the main pier stem was 7 feet in width. Staff informed the applicant's representative that, since the existing pier deck already exceeded

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400 square feet, the installation of the floating dock space appeared to constitute a violation of the Code of Virginia. Staff further noted that no boathouse roof had ever been previously authorized at the site and the current request exceeded 700 square feet, and therefore was not authorized by statute, as provided by Code. The applicant's representative indicated he believed the fixed pier had originally been constructed in the same dimensions, as it now existed. As such, staff agreed to research previous applications to determine what had been previously authorized. The applicant's representative agreed to have the floating dock sections removed immediately. This was done within a matter of days.

Mr. Stagg noted that the original application to construct a pier at this location was received in 1995. The drawings received with that application reflected a proposed 6-foot wide by 373-foot long private pier, extending approximately 180 feet channelward of the mean low water line, and a 6-foot by 45-foot T-head and associated mooring piles channelward of the T-head. No roof structures was requested or depicted in the drawings.

Mr. Stagg said that a letter indicating the pier met the Code requirements at that time for permit exemption was sent on June 19, 1995. The pier was apparently constructed sometime after the receipt of that letter. Aerial photography indicated a pier in this location in 2002, with a T-head larger than the one depicted in the 1995 application and the existence of a roof structure. It was unclear from the photography if the main pier stem was 6 feet or 7 feet in width at that time.

Mr. Stagg explained that on September 9, 2005, staff received a request (JPA #05-2093) to reconstruct/repair the structure at this location pursuant to the Governor's Executive order related to Hurricane Isabel. The applicant received authorization to reconstruct/repair any previously authorized structure in the same or smaller footprint. Aerial photography from 2007 indicated the pier was reconstructed and repaired after Isabel with a slight upland adjustment to the alignment. While the letter sent to the applicant after Hurricane Isabel did authorize reconstruction, it was only for previously authorized structures at the site. Since the only authorization granted at this site was in 1995, for a 6-foot wide pier with a 6-foot by 48-foot T-head, staff contended that the current configuration had never been properly authorized. Additionally, no roof structure was ever requested or approved at this location.

Mr. Stagg also explained that staff had attempted to work with the applicant to address these outstanding issues. The applicant has indicated that the pier is used by multiple family members with at least two separate residences along this shoreline. Staff indicated that should the applicant provide additional information verifying the existence of individual parcels at this location and the desire to use this pier as the single access point for those residences the pier could be considered a community use structure, provided the applicant would agree to forgo the construction of any additional private piers on the remaining waterfront parcels. The applicant agreed to consider this but decided not to pursue this option. Therefore, staff informed the applicant that no additional action would be considered on the proposed boathouse roof or floating docks until the current fixed pier was properly authorized. Since §28.2-1203 of the current Code of Virginia

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only allowed for pier decks of up to 400 square feet without a permit, staff considered the currently existing 1,034 square feet of T-head and associated 6-foot wide catwalk piers to be a violation since the current configuration was never previously authorized by the Commission.

Mr. Stagg said that, as such, the applicant was also requested to consider a reduction of the size of the currently existing pier to bring the dimensions into compliance with the Code. The applicant's contractor had determined, however, that the currently constructed pier could not be safely altered without complete removal and reinstallation. Mr. Schaubach, therefore, continued to seek approval of the current structure. He had maintained that the pier, as it currently existed, was the same dimensions as originally constructed in 1995, at that time there were no size restrictions contained within the Code of Virginia for private piers. Additionally, the applicant used a "gator" type vehicle to access the pier, which required a wide main pier and adequate turning area at the T-head. He indicates the vehicle was necessary for use by a physically handicapped family member that could not walk the considerable distance down a slope and out onto the pier safely. The applicant also indicated he owned a large boat (13.5 feet by 44 feet) that required a sizeable slip.

Mr. Stagg stated that there was an oyster ground lease channelward of the end of the existing structure but the lease was not impacted by its current location.

Mr. Stagg noted that no other agencies had commented on the proposal and the project had received no objections.

Mr. Stagg said that staff could not determine with certainty when the current configuration of the pier was actually constructed, but could determine that a similarly sized structure with the same configuration had existed at this location since at least 2002, based upon aerial photography. However, the current configuration did not match the original request and was considerably larger than the initial application drawings depicted. Any subsequent authorizations related to storm damage and Executive Orders promulgated by the Governor of Virginia were based upon reconstruction of previously authorized footprints.

Mr. Stagg stated that in this case, it appeared clear that the applicant was aware of the necessity to apply for construction over State-owned subaqueous lands, based upon the 1995 application and subsequent application after Hurricane Isabel damage. However, staff was uncertain the applicant was fully aware of the changes to the Code related to the size of pier structures that were instituted after the initial application.

Mr. Stagg said that while staff would unlikely be able to support the current pier width and deck size for new construction, the applicant had maintained he only reconstructed the pier as it existed after 1995 before it was destroyed by Hurricane Isabel. As such, considering there had been no protest of this structure and considering the applicants access needs Staff did not recommend the structure be removed and that it be authorized, as it now exist. Should the Commission deem a civil charge was warranted, staff would

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recommend it be based upon minimal environmental impact and minor degree of non-compliance. If the applicant still wants to seek permission to install additional floating platforms and a roof over the boatslip, the applicant can submit a new application, with the proper water dependent justification, for which the project would be subjected to VMRC's normal public interest review and subsequent action.

Commissioner Bowman asked for questions of staff.

Associate Member Schick asked if 6 inches could be cut off from each side. Mr. Stagg stated he was not sure it could not be done, but on the T-head he could not see how it could be reduced because the pilings are at the edge.

Associate Member Schick explained that the Habitat Management Advisory Committee had addressed this and recommended that a smaller vehicle be used as it could not be justified to use the larger vehicle. He said the "Gator" was not appropriate. Mr. Stagg said six feet would work with the "Gator" with maybe the addition of a bumper.

Commissioner Bowman asked if the applicant or his representative wanted to comment.

Rick Nelms, contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Nelms explained that after 2005 the applicant had surgery as a result of a car accident. He said the boathouse and pier were there as they existed, but damaged. He said he was hired to put it back to way it was in 1995. He said in 2005 the pier was rebuilt with a permit. He said when he submitted an application for the permit, staff found the discrepancy and after that it was put back to the same dimensions as it was.

Associate Member Robins asked about when it was rebuilt. Mr. Nelms said it after Hurricane Isabel and Ernesto storm.

Associate Member Schick asked if it was rebuilt after it was destroyed by a storm. Mr. Nelms stated that the pier was gone from the land end to the boathouse. He said there was an existing boathouse with a roof and the roof had been torn off as well as the mechanisms of the boat lift. He said the roof repair was minor.

Commissioner Bowman stated that this was a bad weather area.

Associate Member Schick asked if they pursued getting the permit with VMRC. Mr. Nelms explained that the permit was issued in 2005 and originally there was no width restrictions. He said they were told to build it as it was and they did.

Commissioner Bowman asked about how much frontage was there. Mr. Nelms stated 200 plus acres and this was on the protective side of the river.

Commissioner Bowman asked if anyone was present in opposition to the project. There were none. He said the matter was before the Commission.

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Associate Member Schick stated that in 1995 there was a standard application and in 2005 there was a 6-foot wide requirement. He said the Governor’s Executive Order said to not build what was not permitted. He said that future applications should address the oversized sections.

**Associate Member Robins stated he concurred with Associate Member Schick that additional work will need to be advertised for public interest review. He stated that the contractor did try to reconcile what was there. He moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.**

|                 |          |
|-----------------|----------|
| Permit Fee..... | \$100.00 |
|-----------------|----------|

\* \* \* \* \*

The Commission meeting adjourned for lunch at approximately 12:20 p.m. and reconvened at approximately 1:02 p.m.

Commissioner Bowman did not return to the meeting and left for the remainder of the day. Associate Member Holland continued the meeting, as acting Chair.

\* \* \* \* \*

**12. PUBLIC COMMENTS:** There were none.

\* \* \* \* \*

Associate Member Bowden requested that item 15 be heard now because the parties were present and one had health problems and had asked to be heard as early as possible.

**15. CASES OF VIOLATION:** Regulation 4 VAC 20-252-10 et seq., concerning individual quota overages in 2009.

Joe Grist, Head, Plans and Statistics, gave the presentations. His comments are a part of the verbatim record. He was agreed that the Commission start with Mr. Lindsay

**Benjamin Lindsay**

Mr. Grist explained that the Regulation for 2009 was included in the evaluation since the regulation at that time was different than it is now and these violations occurred under the previous regulatory language. He said in 2010 the regulation was amended so the matrix was based on poundage instead of percentages.

Mr. Grist stated that the staff recommendation was to reduce his quota for 2010 if there was any left. He said in the evaluation package on page six it showed the various individuals and their overages. He said Mr. Lindsay was 2.2% over.

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Associate Member Holland asked Mr. Lindsay to come forward and comment if he wished to on his behalf.

Mr. Lindsay said that he thought he had caught 184 pounds, but it turned out he had missed turning in two of his tickets and he stated he was guilty.

Mr. Grist stated that this was his 2<sup>nd</sup> offense.

Associate Member Holland asked for a motion from the Board.

**Associate Member Schick moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 8-0.**

\* \* \*

**Ray Twiford**

Mr. Grist explained that this was Mr. Twiford's first offence and he was over by 8.8% for 2009. He stated that staff recommended a reduction in his 2010 quota.

Associate Member Holland asked Mr. Twiford if he wished to comment.

Mr. Twiford said that he had misunderstood what his quota amount was and thought it was 693 pounds, which meant he was 5 pounds under. He said the actual amount he found out was 588 pounds.

**Associate Member Bowden moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0.**

\* \* \*

**Gene Hundley – not present**

Mr. Grist explained that the information about the notification for the meeting was found on page 10 and 11. He further explained that Mr. Hundley was not present at the hearing for medical reasons.

Mr. Grist said that the staff recommendation was for reducing the 2010 quota by 8.1% the amount of overage for 2009.

Associate Member Holland asked for action by the Board.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 8-0.**

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Mr. Grist stated that this was the second offense and Mr. Walker was 2% over his 2009 quota. He said staff recommended a 2% reduction.

Associate Member Holland asked Mr. Walker if he wished to comment. He did not comment.

Associate Holland asked for action by the Board.

**Associate Member Bowden moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0.**

\* \* \*

**Paul Somers – not present**

Mr. Grist explained that information regarding Mr. Sommers could be found on pages 15-18 of the evaluation. He said that Mr. Sommers had sent in a personal letter and explained that he could not be present at the hearing.

Mr. Grist stated that it was a second violation and the staff recommendation was the same.

Associate Member Holland asked for action by the Board.

**Associate Member Schick moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 8-0.**

\* \* \*

**Millard Bryant – not present**

Mr. Grist said that Mr. Bryant has submitted a letter stating he would not be attending. He said this was a second violation and it was a 2.5% quota overage. He said the staff recommendation was for a reduction in his 2010 quota.

Associate Member Holland asked for action by the Board.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.**

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**Stanley Jester - present**

Mr. Grist explained that information for Mr. Jester was on pages 23 and 24 of the evaluation. He said this was a second violation and the 2009 overage was 3.2% and staff was recommending a reduction in his 2010 quota.

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Mr. Jester stated that the percentage was misleading as the percentage was not much when you were looking at 500 pounds.

Associate Member Holland asked for action by the Board.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.**

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**13. BLACK SEA BASS:** Public hearing to consider amendments to Regulation 4VAC20-950-10 et seq. that would revise the closed season for the recreational black sea bass fishery.

Alicia Nelson, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record.

Ms. Nelson explained that this was a public hearing. She said in 2009, the NMFS closed the recreational black sea bass fishery, in federal waters from October 5 to December 31, 2009, because the quota had been exceeded. That closure extended until May 21, 2010. That closure affected only federal waters, but some states closed their waters from October through December.

Ms. Nelson said that originally, the MAFMC established a 2010 open season for the recreational black sea bass fishery from May 22 through August 8 and from September 4 through October 4. This closure was based on a 44% landings reduction from earlier, February 2010, projected landings that indicated a large 2009 overage. After the final 2009 landings estimates were available, only a 21.4% reduction was required for the 2010 season. The ASMFC approved a new 2010 black sea bass recreational season as May 22 through October 11 and November 1 through December 31 which is projected to achieve a 26% reduction in landings.

Ms. Nelson said that staff recommended amending Regulation 4VAC 20-950-10, et seq., to establish the open recreational black sea bass season as May 22 through October 11 and November 1 through December 31.

Associate Member Holland opened the public hearing. There being no public comments, he closed the public hearing. He said the matter was before the Commission.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.**

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- 14. REVOCATION HEARINGS:** Cases concerning revocation of permits and licenses, under the authority of Section 28.2-232 of the Code of Virginia and Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass."

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record.

**Gordon Jett**

Mr. Grist said that Mr. Jett was notified that a hearing would be held at the June 22, 2010 Commission meeting regarding his violations pertaining to striped bass. He explained that due to surgery Mr. Jett was not at the meeting and informed staff that he would be sending a medical note to the Commission.

The staff recommendation was to revoke all of Mr. Jett's commercial licenses for two years.

Associate Member Holland asked for questions of staff. There were none. He stated that the matter was before the Commission.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 8-0.**

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- 16. BLUEFISH:** Public Hearing to establish the 2010 commercial bluefish quota, as part of Regulation 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," and a report on the status of the stock of bluefish.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly stated that this was discussed at the last meeting and it is an annual event to establish the quota for bluefish. The quota for 2010 would be slightly more than in 2009 and is 1,213,280 pounds. He indicated that the change in the amount was shown in the draft regulation on page 1.

Mr. O'Reilly explained that staff recommended adopting the quota.

Associate Member Holland opened the public hearing. There being no public comments, he closed the public hearing. He said the matter was before the Commission.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.**

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**STATUS OF BLUEFISH REPORT**

Mr. O'Reilly provided a brief bluefish status report that had been requested by Commissioner Bowman at the previous meeting. His report is a part of the verbatim record.

\* \* \* \* \*

- 17. DISCUSSION:** Request for a July public hearing to establish the 2010 fall recreational striped bass management measures (Regulation 4 VAC 20-252-10 et seq.)

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that this was a reoccurring event for striped bass to set the recreational quota for the Bay. He said that the quota from 1997 through 2003 was generally the same. Harvest was about 30% below the quota for the last few years. He noted that in 2001 to 2006 there were significant overages. In 2007-2008 there was a no-take slot limit, between 28 inches to 34 inches size limit to limit harvest and prevent further overages.

Mr. O'Reilly said that staff was recommending a 2-fish limit, 18" minimum size with 1-fish over 28". He said with the 30% underage, the fishermen can still take 2 big fish and it was reckless to take two large fish which only adds poundage to the quota which causes it to be used up faster. He said the Ad-hoc committee approved the staff recommendation.

Associate Member Holland stated the matter was before the Board.

**Associate Member Robins moved to advertise the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0.**

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- 18. PUBLIC HEARING:** Concerning adoption of emergency amendments to Regulation 4 VAC 20-752-10 et seq. that pertain to the blue crab sanctuaries.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly said that last month the Commission discussed how the latitude/longitude coordinates did not match the navigation aids described along the boundary of the sanctuary. He said at that time staff recommended the removal of the coordinates and simply to leave the navigational aids names in the regulation until the corrected coordinates could be provided.

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Mr. O'Reilly stated that staff recommended the removal of the coordinates as an emergency regulation.

Mr. O'Reilly explained that at the bottom of Page 1 of 4 in the draft regulation there was a name change from the Harrison pier to Oceanview Fishing pier. This was a housekeeping change. He said that in the Code Section 28.2-709, Harrison pier was mentioned and staff had notified Richmond of the need to make a name change. He said staff recommended this name change be added.

Associate Member Holland opened the public hearing. There were no public comments, therefore he closed the public hearing. He said the matter was before the Board.

**Associate Member Schick moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.**

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**OYSTER VIOLATION:**

An oysterman charged with harvesting oysters on public rocks out of season asked for the return of his dredge equipment that was confiscated by the Virginia Marine Police. He was told the equipment was evidence and that he should discuss the matter with the court.

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There was no further business and the meeting was adjourned at approximately 1:45 p.m. The next regular meeting will be held Tuesday, July 27, 2010.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary