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P R E S E N T

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HONORABLE PETER FRANCHOT, Comptroller;

SHEILA C. MCDONALD, Secretary, Board of
Public Works;

AL COLLINS, Secretary, Department of General
Services;

THOMAS HICKEY, Director of Procurement,
Department of Transportation;

EMILY WILSON, Director, Land Acquisition
and Planning, Department of Natural
Resources;

ZENITA WICKHAM HURLEY, Special Secretary,
Governor's Office of Minority Affairs;

MARY JO CHILDS, Procurement Advisor, Board
of Public Works; and,

MARION BOSCHERT, Recording Secretary, Board
of Public Works.

C O N T E N T S

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Remarks about Procurement Process for DHMH RFP for REM Case Management Program		Bruce Bereano Robert Dashiell Michael Yuhas	15 27 29
Bond Sale			24
Waiver of Selection Process for Architectural and Engineering Services for D/E Connector at BWI Airport	DOT Item 40-GM, p. 84	Thomas Hickey Roxie Herbekian Thomas Cafcas Jasmine Jones Yaseen Abdul-Malik Paul Wiedefeld Louisa Goldstein	34
Bond Sale Resolutions and Update	SEC Item 1, p. 1	Treasurer Kopp Amber Teitt	54
Naming of the Linda L. Tanton Technology Center	SEC Item 29, p. 36	Comptroller Franchot Treasurer Kopp Linda Tanton	59
Naming of the Donald E. Backe Accessible Boating Piers at Sandy Point State Park	SEC Item 30, p. 37	Joseph Gill Mrs. Lyn Backe	68
Neighborhood BusinessWorks Grant for Towson Greene Turtle	SEC Item 35, p. 47	Sheila McDonald Carol Gilbert	74

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Brookeville Road Alignment	DOT Item 36-GM, p. 78	Thomas Hickey Sen. Karen Montgomery Katherine Farquhar	89
Comprehensive Design Services at BWI Marshall, Martin State and Other Regional Airports	DOT Item 10-AE-MOD, p. 23	Thomas Hickey Paul Wiedefeld	97
DoIT Agenda	DoIT	Elliot Schlanger	103
USM Agenda	USM	Joe Evans	104
DNR Agenda	DNR	Emily Wilson	104
Sale of Citizens Care and Rehabilitation Center and Montevue and Use of Proceeds	DGS Item 35-CGL, p. 65	Al Collins John Mathias Donald Linton Dr. Sonja Sperling Blaine Young Lori Depies	105

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Wetlands License for Four Seasons at Kent Island	SEC Item 34, p. 44	Sheila McDonald J.B. Howard Adam Snyder Doldon Moore Robert Summers Charles Schaller Greg Bedward Gregg Todd Steven Arentz Jay Falstad Dan Saunders Macy Nelson Rosemary Green David Foster Robert Foley Mark Nitkoski Mary Kerr Hal Fischer Sandra Herbert Ann Williams Will Baker Gene Ransom Suzanne Hogan Mike Roberts	134

P R O C E E D I N G S

GOVERNOR O'MALLEY: Ladies and gentlemen, thank you for your patience. It is now 10:37. We have a lot of business that we need to get through the eye of this needle today. We have the Four Seasons project, which a 13-year odyssey is back having been remanded by our highest court on unanimous decision to this Board of Public Works with the instructions that we are to evaluate only the impact on the wetlands permit. We also have good folks here from Unite Here --

(Applause.)

GOVERNOR O'MALLEY: -- who want to be heard on the Department of Transportation items that they are supportive of but want to make a point on another matter not before the Board. And then we also have Mr. Bereano, I understand, also on a matter that's not on the Board Agenda, chose today as the day when he wanted to make his point. And so in addition to all of that we're here rather than up the road at the State Capitol Building because we have a bond sale today, Madam Treasurer. Is that correct?

TREASURER KOPP: That's correct. We, at 11:00, could I just --

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: -- set the background now. And we can go through and we'll expedite it if we can. At 11:00 we are going to have a sale of \$475 million in Maryland State Bonds, \$434 million tax exempt, \$40 million taxable. And I just would like to point out, although I know you know, after our talk with the rating agencies June 26th we were again given AAA ratings by all three agencies. But the, one of only nine states ever to have that, and AAA ratings that we have held since the ratings began. But one of them was with a negative outlook. Moody's retained a negative outlook due to what they called Maryland's indirect linkages to the weakened credit profile of the U.S. government, which has been assigned a negative outlook by Moody's in 2011. However, on July 19th, last week, Moody's revised the State's outlook from negative to stable when they took a similar action on the U.S. government. So Maryland, and I must say our sister state of Virginia also, once

again, and all the jurisdictions in Maryland that are AAA rated, now have pure AAA ratings, stable, no negative alert because for some reason Moody's believes that the federal government has recently taken good action.

GOVERNOR O'MALLEY: Well they have cut, I mean the deficit has been cut in half, the projection, over the last six months.

TREASURER KOPP: The deficit has been cut in half and the economy seems to be gaining some traction. Regardless of what we think about what's going on in Washington, it's very good news for Maryland. So at about 10:55 Amber Teitt will come in and prepare the screen for the Series A \$435 million tax exempt and then it will happen. They will go out, they will calculate it. And at 11:30 or so she will show us the bids that come in for the Series B. And we will go through a series of motions to approve. And as you know since about 60 percent of the issuance goes to building schools, colleges, educational facilities in Maryland, and the rest to health and other public purposes, I think it's going to be a good

day for the taxpayers, for the bond buyers, and for the infrastructure of the State of Maryland.

GOVERNOR O'MALLEY: Thank you, Madam Treasurer. Mr. Comptroller?

COMPTROLLER FRANCHOT: Thank you, Governor. And compliments to the Treasurer for her leadership and fiscal stewardship, and to you and the legislative leaders. I'm actually looking forward to the bond sale when there's no interest rates at all but, or a higher, an interest rate that we can't even measure. But Treasurer Kopp, you've done a fabulous job with the fiscal leadership.

TREASURER KOPP: Thank you. I appreciate it. The whole, Maryland is a very sound State. And the ratings and the willingness and eagerness of people to invest in the State of Maryland I think is testimony to it. I'm not sure that a zero interest rate for the long run is actually such a great thing -

-

COMPTROLLER FRANCHOT: We're headed in the right direction. But let me build on your statement about the borrowed money being used for schools to say

that in my 27 years of public life I've always been a huge advocate of education but particularly the arts in education. And the reason for that is that throughout history economic growth has been closely intertwined with the arts. Whenever you look around our great State there is a very definite connection between the economic potential of the State and the ability of our State to cultivate the creative spirit of young people and inspire in them an embrace of diversity and beauty in their surroundings.

I often say around the State art is what makes life worth living, the beauty of art. And I'm very proud of the significant investments that we have approved at the Board of Public Works together. And as I mentioned the leadership of the Treasurer and the Governor allowing us to have those investments. But I'm particularly interested in those facilities that are constructed to promote arts education. And that's why I'm pleased to announce today the creation of the Maryland Masters Award to celebrate Maryland's achievements through the arts.

This new program will recognize those young people who have displayed extraordinary artistic skills along with a vision for Maryland's future. The ultimate goal is for students in grades K through 12 to display a piece of their original artwork here in the Comptroller's Building, Treasury Building. To accomplish this my office is reaching out to the superintendents of each of Maryland's 23 counties and Baltimore City to have asked them to provide a piece of artwork from students at an elementary school, a middle school, and a high school in their jurisdictions. The art will be displayed for two months. Students will be invited to join my colleagues and me for unveiling ceremonies, which I hope Madam Treasurer and Governor if your schedule permits you can attend.

I have the privilege in my office down the hall of having several original Herman Maril paintings on loan to me from the Archives, and also several wonderful paintings by Baltimore artist Gladys Goldstein, who passed away recently. Both of these artists were two of the most famous 20th Century

artists in Maryland. Herman Maril taught for 40 years at the University of Maryland and his artwork is, and Ms. Goldstein's, no relation to Louis by the way, but nonetheless both of them are world renowned artists and two of my personal favorites.

And with the tremendous home grown talent we have in Maryland I'm looking forward to showing off Maryland Masters in the future and having their artwork up next, really the artwork of the future up with the art of the past. And I'm delighted that we're in the building where it's actually going to be displayed and I'm pleased to announce that today. Thank you.

GOVERNOR O'MALLEY: Thank you, Mr. Comptroller.

TREASURER KOPP: Could I just interrupt?

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: Just for a second, a minute, talking about artwork. On the back of that wall, you might want to --

COMPTROLLER FRANCHOT: Yes. On the back wall is a portrait, a photograph, of the 31st

Comptroller of the State of Maryland, Bobby Swann. Who when Louis Goldstein passed away very suddenly, Bobby Swann was the Deputy who was appointed the 31st Comptroller and served for almost a year. He was never really given proper credit. Everybody called him an Interim Comptroller, or you know, an accidental Comptroller, or not really the Comptroller. But in fact he was the 31st Comptroller of the State. And we asked him to come, and we presented this proclamation. I see Louisa Goldstein, Louis Goldstein's daughter who was the MC of that ceremony and did a very good job. But I really appreciate Bobby Swann because for 40 years this agency was Louis Goldstein's. And when he died unexpectedly there was a lot of turmoil. And this gentleman, Bobby Swann, navigated through all of that. And he's never gotten quite the credit that he deserves. And thank you for noting that, Madam Treasurer.

GOVERNOR O'MALLEY: Let's do this, folks. Before the bond sale comes up at 11:00, let us hear from the two items that are not on our Agenda as succinctly as you can, rather than have you wait until

after the wetlands permit hearing on which many people in the hall want to testify. Let's get you up and on your way, say your piece, make your record. And why don't we begin with Mr. Bereano --

TREASURER KOPP: Let me just interrupt --

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: -- to say that we've got five minutes before --

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: -- Amber comes in.

GOVERNOR O'MALLEY: Mr. Bereano, why don't you come forward, and followed by the delegation from Unite Here.

SECRETARY MCDONALD: They are actually on an item.

GOVERNOR O'MALLEY: Pardon?

SECRETARY MCDONALD: They are actually on an item.

GOVERNOR O'MALLEY: They are not --

SECRETARY MCDONALD: All right. Okay.

MR. BEREANO: Thank you very much, Governor.

GOVERNOR O'MALLEY: Thank you, Mr. Bereano.

MR. BEREANO: Thank you, Comptroller, Madam Treasurer. For the record, Bruce Bereano. I'm here with Mr. Michael Yuhas with Integra Healthcare. And I'll try to be brief, Governor and members of the Board, given the time limitations.

I'm here concerning a matter, the REM program, which is the rare and extensive management program out of the Department of Health and Mental Hygiene, and the RFP that was issued in December of last year. My client, Integra Healthcare, is a Maryland corporation. Mr. Yuhas is the President and CEO. It's been a company here in Maryland since 1990 in Owings Mills, Maryland, and its employees and Mr. Yuhas all live in the State of Maryland.

There were four incumbents that were awarded the original contract by the Department of Health and Mental Hygiene. My client, IHAS, MRS, and Coordinating Center. And the RFP came out to rather than have four, go to one vendor instead of that. We all went through the process all believing that the procurement process would be followed as it normally was. And it was only after an award was made that we

learned for the first time than rather than this matter being allowed to then go before the Board of Public Works possibly, or to the Board of Contract Appeals depending upon the matter as the law generally allows for, the department took the appeals, did not act on the appeals, and bucked it over to the Office of Administrative Hearings.

So right now you have a proceeding going on with the OAH. It's been docketed for trial in October. They are going to decide the protest letters that were sent in, my client was one of the unsuccessful bidders. The other two incumbent vendors were unsuccessful bidders as well. So rather than our ability to go before the Board of Contract Appeals, or depending upon the circumstances go before the Board of Public Works, we were sent to the Board of Administration Hearings which respectfully does not have the experience or the expertise in procurement law, and from there we go to the Circuit Court. And we were never told about this matter whatsoever.

We have all protested the matter. So you have a matter pending now before OAH. And some of the

vendors have also filed papers with the Board of Contract Appeals. So what you have now, and I'm not trying Governor to be disrespectful to DHMH, I really am not. But very respectfully you have a situation which is not only confusing but could really become very convoluted and just governmentally embarrassing because things have just not been getting done. You have two trains going down a track. You have this proceeding at OAH, and you have a proceeding at the Board of Contract Appeals. This Board is being sidetracked and skirted.

The history of this REM program procurement, going back to 2008, has been that it's always been before the Board of Public Works. Four times, Governor and members of the Board, the original contract and three extensions thereof have come before you. It's been on your Agenda. You've heard it. You've asked your questions. You've evaluated it. This REM program is very serious. It's a very important program. It's federal dollars. It's \$45 million over a five-year period of time. It's dealing with very fragile, very complicated health people that

are living in the community. So it's very serious to the residents or the recipients of this program.

Respectfully at no time did the Department of Health and Mental Hygiene tell any of the bidders, not in the RFP document, not in the pre-bid conference, not in the debriefing, not even in the extension of our contract while the appeals were pending, that this matter was going to go before the Administrative Hearings Office as opposed to giving our rights under the procurement to go before the Board of Contract Appeals. It's the position of the Department of Health and Mental Hygiene that this is not, that this is exempt from the procurement law. Respectfully though, if you look at the exhibits and the papers that I've given you, particularly Exhibits I think No. 6 and No. 7, I don't think the department has complied with the law. And certainly they have not complied with the law, I've checked with the office here at the Board of Public Works, they have not followed the law in terms of filing their procedure, and their format for thinking that they are exempt from the procurement law on this contract, nor

have they yearly given a review so that you can oversee what they are doing.

So respectfully the law has not been followed by the department, nor have they been open and candid from any of the documents that this was not a procurement matter that way, and we would have our normal procurement rights. Which means that it is very significant to those bidders such as my client that was not a successful bidder.

Well what you have now is you have these two proceedings pending. If you look at Exhibit No. 11 there is a docketed matter before the Office of Administrative Hearings, they have three-day trial set in October on this matter. And at the same time some of the unsuccessful vendors have filed with the Board of Contract Appeals, if you look at Exhibit No. 12 and No. 13., and it's docketed there. So you have two State agencies that are looking at this same thing that could rule differently. They are not required to interact or abide with each other. And respectfully you have two trains going down where you really could

have an awkward, difficult situation. And it's very, very unnecessary.

What we are asking the Board, because I think the Board has an interest having four times considered this matter and this whole REM program previously, the department says now very briefly that they don't think that this new procurement is under the procurement law, that they are exempt. I respectfully disagree with that. And that's, the Board of Contract Appeals has been asked to rule on that. OAH is going to rule on that. And that remains to be seen. They clearly have not complied with Section 12.401 of the procurement law by having their own standards if they are exempt, and letting you know, and having it reviewed yearly.

What I would ask this Board very respectfully is let's avoid this confusion and train wreck. Because really the people getting hurt are the people that are the recipients of the contract. And I would ask respectfully that the Board importune the Department of Health and Mental Hygiene to through its counsel ask the Office of Administration Hearings to

suspend those proceedings. Not dismiss them, not diminish any rights that the State wants to have. But so that there is only one proceeding, and that is the Board of Contract Appeals where some of the unsuccessful vendors have filed appeals. And I would ask for a ruling by that Board, which is statutory and has the expertise in procurement law and is a very respected Board, to rule on the jurisdiction of whether this is a procurement matter or a non-procurement matter. And then we would have less confusion, we would have certainty. Because we don't know what is going to happen.

And then in the meantime we all filed extensions, which the department asked us to. They didn't bring those extensions to the Board like they did the last three times but we all filed extensions. And that extension is also in the packet I gave you. And in that extension it clearly states that everything would remain the same, status quo, while these appeals were being considered. And there are four current vendors. And randomly we get referrals from the department of new cases that come up, of the

four vendors. Well after we filed the extension, excuse me after we filed the, the extension that the department gave us, and the department in the extension said the contract would remain the same other than the fact that it would be extended for 90 days. The department issued a letter saying as of July 1 all further referrals of REM cases would go to the Coordinating Center, which is the one that they awarded the contract to.

So they ask us, they say one thing, respectfully, we signed a contract. They signed a contract saying status quo, we are going to keep everything the same. And then five days later they say, oh, by the way all further referrals are now going only to the one vendor.

GOVERNOR O'MALLEY: Mr. Bereano, we've got to --

MR. BEREANO: Okay. I'm sorry. I'm sorry. I just, I'll say in conclusion, Governor, I appreciate that --

GOVERNOR O'MALLEY: And then we'll come back here for Mr. Dashiell and the other gentleman --

MR. BEREANO: Okay, and I thank you very much. I just, I think it's unfair and it hasn't been open and it hasn't been clear. It's just not the way that this procurement should run. And maybe if I could have a word or two afterwards? But I, Governor, I thank you very much for listening to us. This is a serious matter and it's going to create a very bad precedent if it's just left alone and something is not done. Because --

GOVERNOR O'MALLEY: And all of us received your materials --

MR. BEREANO: And thank you.

GOVERNOR O'MALLEY: -- and are aware of the need for some deconfliction, certainly, and some clarity --

MR. BEREANO: And that's all I'm seeking. That's all we're seeking.

GOVERNOR O'MALLEY: -- the balls and strikes.

MR. BEREANO: Oh well wait, I know Mr. Yuhas would like to say something. But we'll wait.

GOVERNOR O'MALLEY: All right.

MR. BEREANO: Thank you very much, Governor.

GOVERNOR O'MALLEY: Hold on one second.

Madam Treasurer, it's now about two minutes to 11:00.

TREASURER KOPP: Governor, in preparation to the numbers going up I'd like to make a motion that the Board adopt the resolutions that are before us today concerned the State and Local Facilities Loan of 2013, Second Series in particular. I move that the Board ratify and approve the preliminary official statement dated July 12, 2013; the summary notice of sale for the 2013 Second Series A and B Bonds published on July 10, 2013 in *The Bond Buyer*; and the resolutions the Board adopted on July 3, 2013 concerning the bond sale; and would ask for a second and a vote.

GOVERNOR O'MALLEY: The Comptroller moves approval, seconded by the Governor. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.

TREASURER KOPP: Thank you.

(Laughter.)

TREASURER KOPP: They should be there any moment.

MS. TEITT: Good morning, Governor, Comptroller, and Treasurer. I just wanted to point out a couple of things on the bond sale just leading up to it while we're waiting for --

TREASURER KOPP: Let me just recognize Amber Teitt, who is the debt manager for the State.

MS. TEITT: Thank you, Treasurer. We have a little less than two minutes here. What we're going to do is first review the bids as they come in for the Second Series A Tax Exempt Bonds, which we are issuing \$435 million. I did want to bring to everyone's attention that we did receive confirmation of State's triple AAA rating from all three of the rating agencies. And on July 19th Moody's actually revised the State's outlook from negative to stable following a similar action on the U.S. government on July 18th.

GOVERNOR O'MALLEY: Hurray. Is there applause from the audience?

(Applause.)

GOVERNOR O'MALLEY: I'm trying to keep this interactive.

TREASURER KOPP: As well they should have.

MS. TEITT: Correct. And so we'll just, first we just want to show the bidders who have registered for this series. We have one added. We now have eight bidders on the tax exempt series. And then we'll go back to the bid screen and see the bids as they come in. So just leading up to 11:00 everything will start to flow in here. And once we have received all of the bids we will exit to verify them and come back shortly.

We will also be receiving bids on a \$40 million taxable sale at 11:15 and we'll review those with the Board when we return after those have been verified.

So it looks like preliminarily that J.P. Morgan is the winning bidder with a TIC of 3.15. We will go back and verify that and return with the final results.

TREASURER KOPP: Very good.

MS. TEITT: It is very good. Based on where the market has been going recently that is actually one basis off what we were expecting. So great news.

TREASURER KOPP: That's very good.

MS. TEITT: Which means that --

GOVERNOR O'MALLEY: Off in a good way?

MS. TEITT: Yes.

GOVERNOR O'MALLEY: I mean, better? One basis point better than what you --

MS. TEITT: Correct --

GOVERNOR O'MALLEY: Good.

TREASURER KOPP: All righty. We'll be looking forward to --

GOVERNOR O'MALLEY: Important word, better.

TREASURER KOPP: Yes. To hear the results.

GOVERNOR O'MALLEY: Okay. And so now we return to our originally scheduled broadcast. Mr. Dashiell?

MR. DASHIELL: Yes, sir. Thank you, Governor, Madam Treasurer, Mr. Comptroller. I don't get a chance to say this very often. I represent IHAS, Integrated Health Auditing Systems, we are one

of the so far unsuccessful bidders. But me, too. I actually agree with the position advanced on behalf of Integra. And I want to give you just one other very salient reason why I think this Board needs to act here rather than have the matter proceed as the department would have it before the Office of Administrative Hearings.

Number one, you heard that this really is a procurement and I agree with that. But the problem is if this matter proceeds before the Office of Administrative Hearings we will never see the light of day about the reasons why this thing really happened because under their, under the rules that the department has urged the Office of Administrative Hearings to apply, which so far they seem to be willing to do, we only get to discover those matters that the department wants us to see. There is no discovery under the departmental rules. The only discovery is what they are willing to stipulate to. So if they don't want us to know it, they don't enter a stipulation and we never find out. And that is why it is critical that this matter be a procurement so

that all the interested parties have the opportunity to delve in, find out what the facts are, find out why this system is proposed to be changed from four vendors to just one, and find out for sure why the one vendor was selected over the other three when everybody was doing a satisfactory job and has been from the very beginning.

So I don't know, I don't know what Integra is asking the Board, I don't know what the Board may be inclined to do. But I can tell you that bad things happen in Maryland when procurement is not made in a transparent way. That's why the procurement law was enacted. And if it proceeds the way it's going now we will never know the reasons here. Thank you.

GOVERNOR O'MALLEY: Thank you, Mr. Dashiell.
Anyone else?

MR. BEREANO: Can my client come up?

GOVERNOR O'MALLEY: Sure.

MR. BEREANO: Thank you, Governor.

MR. BEREANO: This is Michael Yuhas.

MR. YUHAS: Madam Treasurer, Mr.
Comptroller, Governor, thank you very much. I

appreciate your letting us be here. I am not a procurement expert nor an attorney, and I'm not here to whine about losing the contract. The concern we have is the concern I have as the head of a Maryland based business is we have been putting together some incredibly innovative approaches to managing healthcare, healthcare costs for some of the costliest, neediest people. We entered into a procurement here that has raised flag after flag for me just in terms of not passing the smell test. Many people are raising legal issues. I can't raise them. I can't speak to those, I don't know the law well enough. But I can tell you point after point after point during the process there have been flags that have come up that have made the communication appear contradictory, confusing. The criteria for selection being very, very unclear.

All we're trying to do is have a fair shot at going after this, as we think we could tremendously help the State with. And in this case we don't think that's happened. And I am simply asking that the Board exercise its authority, its jurisdiction, to

take a look at the process. If it's fair, if it's clean, if it's been done properly, so be it. We'll move on. But we have an opportunity in our company to be growing incredibly much more outside of Maryland than in Maryland, and that bothers me as a Maryland based company owner. And I think that somebody should take a more careful look. So thank you very much for your time.

GOVERNOR O'MALLEY: Thank you. Okay, let's do this. Mr. Bereano, do you want to be heard again?

MR. BEREANO: Just in conclusion.

GOVERNOR O'MALLEY: Sure.

MR. BEREANO: Thank you, Governor.

GOVERNOR O'MALLEY: Sure.

MR. BEREANO: I know you have a lot, and I know we have overstayed my stay.

GOVERNOR O'MALLEY: Okay.

MR. BEREANO: We would just ask the Board alternatively either, as I said, ask that the OAH proceedings just be stayed and that either your attorney, your general, your counsel, independently reporting to the Board, do an opinion of counsel

whether this is a procurement matter or not. Because as Mr. Dashiell said, we're losing tremendous rights and abilities not being able to go before the Board of Contract Appeals. Or if you don't want to do it that way, just ask the department to go to OAH and ask them to just stay the matter so the Board of Contract Appeals can rule is this a procurement matter or not. We really think it is a procurement matter and that the department under the law has not abided by the law, not just 11.101, but 12.401 as well.

And you can look in the paper, I'll say in conclusion, and I'm not trying to be disrespectful of the department, but they have not been, they have not been clear, they have not been fair. They have not been transparent in all of the documentation, making clear this matter was not going to to the Board of Contract Appeals, it was going to go to OAH. There's not a single piece of paper that says that in this whole procurement process. And when you don't have transparency, problems develop. And you have a train wreck that may well happen. I'm asking the Board to please prevent it. You have the ability to do so,

respectfully. Thank you immensely for listening to us.

GOVERNOR O'MALLEY: Sure. Let's do this. I would suggest that the Board, unless you all have better ideas, that our counsel, Greg, our counsel to the Board of Public Works confer with the Attorney General and get back to us on the threshold question of whether or not in your opinions this is or is not a procurement. And in the meantime I would direct our staff, Ashley Valis, if you could have Mr. Newman look into this matter? And let the Secretary of Health and Mental Hygiene in the meantime. And if you would, if you could, I mean you had the, Mr. Bereano's record and Mr. Dashiell's eloquent record as well. Maybe you could turn that around to the Attorney General's Office and share it with the --

MS. VALIS: Will do, Governor.

GOVERNOR O'MALLEY: Okay? All right, good.

MR. BEREANO: Thank you --

GOVERNOR O'MALLEY: Sure.

COMPTROLLER FRANCHOT: I would strongly support that. We have an obvious problem sometimes

with the training of procurement officers. And this may be something that falls into bureaucracy that is not properly attuned to what exactly the procurement law is, and the importance of this Board of Public Works. So I hope we can resolve this without a whole lot of back and forth. And if it is a procurement, get this properly in the Board of Contract Appeals, and ultimately before this Board.

GOVERNOR O'MALLEY: Can you get back to us within two weeks?

MS. VALIS: Yes, sir. I will report in two weeks.

GOVERNOR O'MALLEY: Okay, thanks. Okay. Thank you, one and all. Let's hear from the delegation from Unite Here.

GOVERNOR O'MALLEY: Roxie Herbekian, Yaseen Abdul-Malik, Jasmine Jones, Thomas Cafcas.

MS. HERBEKIAN: Good morning. Thank you very much for the opportunity to speak this morning. My name is Roxie Herbekian and I'm the President of Unite Here Local 7. Unite Here is a labor union that represents approximately 300,000 workers in the

hospitality industry in the United States. 30,000 of those folks work at airports, in approximately 60 airports around the country. Unite Here Local 7 represents 200 food and retail workers at BWI Airport currently, and we are organizing another 800 food and retail workers who will work under the Air Mall umbrella.

I'm here to speak in favor of approving the \$6 million contract for design services to draft the blueprints for the expansion of Thurgood Marshall BWI Airport. The administration is projecting that the Transportation Investment Act project will support 57,000 jobs. The expansion will allow increased traffic to our airport and modernize the airport to better serve both domestic and international travelers. This comes on the heels of record numbers of travelers coming through Thurgood Marshall Airport. The number of international passengers increased by nearly 21 percent in 2012 over the preceding year. And this summer BWI has I think two months where we surpassed the number of travelers for both National Airport and Dulles Airport.

So all of this, including the planned expansion, could be good news for workers. However, a busy expanding airport does not guarantee, while it guarantees more job opportunity, it doesn't guarantee or ensure that Maryland residents will be able to live on the wages and benefits provided by these jobs.

Under the Air Mall developer model that was instituted under Governor Ehrlich we have seen the quality of jobs, food and retail jobs at the Airport decline.

This has not been good from the employees or for the taxpayers of Maryland. There is a continual change of employers under the Air Mall developer model.

Hundreds of food and retail workers have lost their jobs through no fault of their own when one employer leaves and another employer comes in to provide the same services. This has been devastating for many workers at the Airport. In fact Betty Schuler, who is with us here today, is one of those workers. It has driven down wages. In one example, FSP America, a food and beverage company, left the Airport. Another company, Creative Food Group, assume the food and beverage locations. Wages were reduced by three to

four dollars and hour. And where FSP America had provided health insurance and paid days off, Creative Food Groups this day provides neither.

In a recent study of BWI food and retail workers by Good Jobs First, it was revealed that large numbers of employees have no health insurance at all. The State is subsidizing health insurance, food stamps, other public benefits of this group of 800 workers to the tune of over \$2 million a year.

Food and retail workers at Thurgood Marshall BWI Airport are organizing to address these issues. They have submitted a bill of rights to Air Mall that calls for living wages, full time work opportunities, affordable health insurance, and a fair process for unionization. So we ask that while the administration works to expand and improve the Airport that it also support improving the quality of jobs for the Maryland residents who work in food and beverage at our Airport. Thank you.

GOVERNOR O'MALLEY: Thank you.

MR. CAFCAS: Good morning. Thank you for your invitation to testify today. My name is Thomas

July 24, 2013

38

Cafcas and I am a researcher with Good Jobs First, a national, non-partisan, nonprofit research center tracking best practices in economic development in all 50 states. And I am here to speak in support of approving State money begin expansion plans at BWI Marshall Airport. My comments will be in relation to the jobs produced at our Airport infrastructure. But before I continue I would like to offer praise to the State of Maryland.

In 2010 I testified before the Maryland Business Tax Reform Commission. After the testimony DBED approached me and asked how Maryland could do better. I worked with them to help develop the Maryland Finance Tracker, which was unveiled in January of 2012. And I'm happy to report that many of my recommendations to the State were implemented.

Good Jobs First will issue another 50 state report card in the near future. And some of the issues that are covered in Finance Tracker will

July 24, 2013

spotlight Maryland as a leader nationally. Maryland also led the nation twice in disclosing information about the Recovery Act spending, so congratulations.

GOVERNOR O'MALLEY: Thank you.

MR. CAFCAS: But I am here again in Annapolis to point out some other critical improvements that could be made. As Maryland continues making critical infrastructure investments for a 21st Century economy, it is imperative that we ensure quality job creation. In 2011 we published an analysis of wages and benefits paid to retail workers at BWI and revealed massive hidden taxpayer costs in our report, "Behind the Counter at BWI." Two years ago we revealed the following: a median pay of \$8.50 an hour, much lower than the \$10.88 required at other economic development projects; 40 percent of the BWI retail workers had no health insurance; of the workers with healthcare two in five rely on Medicaid; two in three workers with coverage for their children rely on MCHP; one out of six workers surveyed relied upon food

July 24, 2013

40

stamps; and BWI workers generally lack paid sick leave which is a potential health risk for travelers.

Whether what was true two years ago is still true today is unclear. But as the Board of Public Works moves forward I ask that you keep in mind the quality of jobs created at BWI as it continues to expand. Maryland ought to be measuring its return on these investments. The investments at BWI were justified upon the premise that these dollars would boost the local economy. But if the State of Maryland does not ensure that BWI workers have high quality jobs, the local economic benefits will fall far short of projections. Thank you.

GOVERNOR O'MALLEY: Thank you.

MS. JONES: Good morning --

GOVERNOR O'MALLEY: Hi.

MS. JONES: -- Comptroller, Governor, Treasurer. My name is Jasmine. I was going to read off this paper but I can't, I'm not going to be able

July 24, 2013

to do it. I work at BWI for Aero Service Group. We just opened up a restaurant, we have five restaurants in total. I've worked at four out of the five. I'm pretty sure I'll be working at the fifth one, also. Governor, I love my job. I enjoy working there. I enjoy working with people. I enjoy the food service work just period, all in itself. But there comes a time where we need healthcare, we need time off. We need to be able to take care of ourselves without getting on public assistance. I don't want to get on public assistance but I also can't afford to go to the doctor by myself.

With that being said, we want the union. And a lot of Air Malls, they are not recognizing the union and that's fine. We do know that we are going to expand. And I'm hoping that it does expand because we do want better jobs and we want the jobs to be good jobs. We don't want them to be better jobs. We want them to be, you know, full time work and be able to, you know, make an honest living without having to put

July 24, 2013

42

five and six paychecks together in one household. All I'm asking for is a blueprint for better jobs, the blueprint for our beginning. Thank you.

GOVERNOR O'MALLEY: Thank you.

(Applause.)

MR. ABDUL-MALIK: Good morning. My name is Yaseen Abdul-Malik and thanks for the opportunity to speak today. I was born and raised in the East Arlington area of West Baltimore. I'm a graduate of Edmondson West Side Skills Center, which specializes in trades. I went there because my father had gone there. He studies printing at Edmondson, which subsequently led to his employment at the Maryland Department of Human Resources in the printing department right on Saratoga and Eutaw Street. He still works for the department now as an inspector.

While attending Edmondson I studied computer repair, basic telecommunications, and basic electronics and graduated in 2003. But things had

July 24, 2013

changed. I unlike my father could not find a job in the field that I trained for. The jobs that were available were sales and food service. For my first three years out of high school I did door to door sales and food service jobs. I found my way to the Airport because there were job opportunities at Thurgood Marshall Airport. I started six years ago at Potbellies, a sandwich shop, and then I took a second job a few years ago at McDonald's. I'm still employed at both jobs working about 60 hours a week between the two but I still live paycheck to paycheck. I only have myself to take care of but a lot of my coworkers have a pretty hard time. One of my coworkers, a young man at McDonald's, was getting four days a week, which amounts to about 30 hours. Then the company hired more workers and cut him down to one day a week. Recently he told me he has a baby on the way but with the cutbacks he has got to find another way or some way to make a living. For what jobs are out there?

July 24, 2013

44

There are a lot of people like me working at the Airport. We have gone to school for other things but the jobs that are available are food or retail so that's what we settle for. We support the contract that the Board of Public Works is considering today. With the expansion of the Airport I'm sure that Air Mall will be making deals for more food and retail outlets in the new and expanded piers. We are asking that at the State is encouraging the development of these food and retail jobs let's not keep having more of the same poverty wage jobs with no benefits. We need food and retail jobs that are decent jobs that would allow us to provide for ourselves and our families and jobs that will enrich our communities. Thank you.

GOVERNOR O'MALLEY: Thank you.

(Applause.)

MS. HERBEKIAN: Thank you, Governor.

July 24, 2013

GOVERNOR O'MALLEY: Sure, thank you. Now is this on the DGS? Or is this on the Transportation --

SECRETARY MCDONALD: It's the DOT.

MR. HICKEY: It's on the Department of Transportation Agenda, Item 40.

GOVERNOR O'MALLEY: Okay.

MR. HICKEY: And it's a waiver of the anti-selection process for the --

GOVERNOR O'MALLEY: Right. And they are all supportive of that. The broader point is, is there anybody here from Transportation?

MR. HICKEY: Paul Wiedefeld is here from Maryland Aviation Administration.

GOVERNOR O'MALLEY: Is he? Where is he? Paul, come on down, man. Even though we are not on your Agenda yet. In fact, we're not on any part of the Agenda yet.

(Applause.)

TREASURER KOPP: -- that last --

GOVERNOR O'MALLEY: The bond --

July 24, 2013

46

TREASURER KOPP: The bond was, and this --

GOVERNOR O'MALLEY: -- tangentially --

TREASURER KOPP: -- tangentially tied to an item.

GOVERNOR O'MALLEY: Paul, what's the deal? Air Mall people, I mean, that was a contract entered into before this administration?

MR. WIEDEFELD: In 2003.

GOVERNOR O'MALLEY: 2003. And we're saddled with that cruddy contract for how long?

MR. WIEDEFELD: 2022.

GOVERNOR O'MALLEY: 2022? Does it cover any and all expansion?

MR. WIEDEFELD: No. What it does is they put in, Air Mall and its tenants have put in almost \$59 million in investments and that's why the long term.

GOVERNOR O'MALLEY: Okay. But none on the C, D, and E?

July 24, 2013

MR. WIEDEFELD: No. Right now --

GOVERNOR O'MALLEY: Okay.

MR. WIEDEFELD: -- on the E expansion.

GOVERNOR O'MALLEY: You don't know if you are going to expand --

MR. WIEDEFELD: Food and beverage and retail on that yet. We don't know yet.

GOVERNOR O'MALLEY: Okay. If we do, I want a new process. I don't want to be saddled with, I mean Air Mall has had plenty of time to make some progress on better jobs there. It's pretty obvious they are not going to do it.

(Applause.)

GOVERNOR O'MALLEY: They are also pretty smug about it. You know? They feel like they are in the catbird seat. They've got a long term contract until 2022, they don't have to conquer the hand. So these hands don't want them, we want a new process if there's going to be food and beverage on C, D, and E. And I would think that for the amenity of our

July 24, 2013

48

passengers we would want food and beverage on C, D, and E. And my bet is that if someone bids, and that actually abides by our living wage statutes and treats their employees more decently, they are going to have much better and more consistent service on C, D, and E as well. So --

MR. WIEDEFELD: I understand, Governor.

GOVERNOR O'MALLEY: Thank you. Sure, Mr. Franchot?

COMPTROLLER FRANCHOT: I just want to second the Governor. Because I was heavily involved with this issue when I was in the Legislature. And if you recall, because I think you were with the Airport back then, we brought in this company threw out the incumbent, a Maryland based company, Host, which had a different business model. And all the employees at the concessions were members I think of a union, or collectively organized. And it wasn't perfect. But it was at least a, something that should have been

July 24, 2013

allowed to bid. They contend they were not allowed to bid on the new contract. It came up before the Board. I believe the Treasurer, I don't want to put words in her mouth, voted against awarding it to Air Model, or Air Mall, or whoever they are. And you know, as a result we've got this situation where a lot of people were saying back then this is not going to produce the type of environment that we want at BWI. And I think probably, just as a matter of history and record, it's probably the reason I decided to run for Comptroller. I was so furious at the, A, tossing out a Maryland based company without even allowing them to bid; and B, bringing in people that didn't have, didn't share our same values as far as protecting the workers and their families who are employed out there.

So I couldn't be more supportive of the Governor and whatever he wants to do as far as the international terminal. I'm happy to support it. I do have some questions about Ghana Airlines, and Aer Lingus, and these other efforts were made with

July 24, 2013

50

international travel. So I'm not sure it's the promised land as far as new job. But I would be interested in revisiting if at all possible the arrangement we have with Air Mall. Because it's very unsatisfactory from a worker's perspective. And the fact that it was extended at the end of the previous Governor's term in a very arbitrary way to 2022 I think is equally unwise and unacceptable. But it is what it is. Thank you.

(Applause.)

TREASURER KOPP: Since my name came up, I must say I didn't support the original contract. The Comptroller is right. I do think the Airport has developed extremely well. It looks great. It's running great. It's making money. And I really appreciate it. But I think to think that we can overlook the working conditions and the situation of our fellow citizens who work there is just wrong. And I don't know what the legal constraints are on a

July 24, 2013

contract or providing, I don't know, I'm not an attorney. My colleagues are attorneys. But I do think it's imperative that our representatives at the Airport need to talk to the employees and work out something so that people don't have to, who are working indirectly for the citizens of the State can work in dignity.

(Applause.)

GOVERNOR O'MALLEY: And Paul Wiedefeld, was I right in assuming that living wage does not apply?

MR. WIEDEFELD: It does not.

GOVERNOR O'MALLEY: Because the contract was in place before the living wage statute?

MR. WIEDEFELD: That's right, and also the type of contract this is as well.

GOVERNOR O'MALLEY: What do you mean, the type of contract?

MR. WIEDEFELD: I'd have to get my legal people here to explain it. But basically it's under,

July 24, 2013

52

it does not fit under -- Louisa, if you wouldn't mind?
She can give a little bit of history on that.

MS. GOLDSTEIN: Good morning.

GOVERNOR O'MALLEY: Hi.

MS. GOLDSTEIN: I'm Louise Goldstein,
counsel to the Maryland Aviation Administration. This
contract, like all of our leases and concession
contracts, is out of the procurement law, it's outside
of the scope. And because of that the living wage law
does not apply to it. We have this from our taxicab
contract which came --

GOVERNOR O'MALLEY: Mm-hmm.

MS. GOLDSTEIN: -- before the Board in 2011
and we sent advice to the Board about that at that
point.

GOVERNOR O'MALLEY: Outside the scope of
procurement?

MS. GOLDSTEIN: Yes, sir. Yes. And it has

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July 24, 2013

TREASURER KOPP: Does that mean --

MS. GOLDSTEIN: No but this --

GOVERNOR O'MALLEY: -- but it contorts themselves because of procurement processes so that --

MS. GOLDSTEIN: But this was a legislative outside the scope, it's in the statute. And the Board of Public Works promulgated a regulation about transportation contracts, revenue producing, which provide services to the public or passengers. And the ARAMARK contract went to the Maryland State Board of Contract Appeals. And their decision was that they did not have jurisdiction over this because of the outside the scope provision in the statute.

GOVERNOR O'MALLEY: Okay. All right.

Thanks.

MS. GOLDSTEIN: Thank you.

GOVERNOR O'MALLEY: Thank you.

MR. WIEDEFELD: If I can just, I just do want to let you that we are working with the Secretary of State, Unite Here, Air Mall, some of the tenants,

July 24, 2013

54

and some of the owners, to try to work through some of these issues just as the Treasurer has requested.

GOVERNOR O'MALLEY: Good. Good. Okay. All right. Thank you all very much, Unite Here, I appreciate it. Thanks for coming by.

(Applause.)

GOVERNOR O'MALLEY: Okay. We're back to, we're switching channels now back to the bond issue.

TREASURER KOPP: Thank you. Thank you, Governor, Comptroller for -- for the Second Series A Bonds, that was the, the motion is that J.P. Morgan Securities, LLC be declared the successful bidder for the Second Series A Tax Exempt Bonds in the aggregate principal amount of \$435 million, subject to resizing as provided in the revised official notice of sale, with a net premium of \$49,236,688.31. I don't know how that compares to what we anticipated?

July 24, 2013

MS. TEITT: It is that, the Series A sale, the TIC is one basis point better than our preliminary market runs that we had --

TREASURER KOPP: Lower.

MS. TEITT: -- received, that's correct. And so in, the market has been going up the past couple of days so that's --

TREASURER KOPP: -- premium that was --

MS. TEITT: We had no estimated premium.

TREASURER KOPP: No estimated. So this is an addition of \$49 million --

MS. TEITT: Correct.

TREASURER KOPP: -- bottom line to the taxpayers, \$49 million to the taxpayers. And further move that the Second Series A Bonds be issued in the resized amounts and maturities, and at the interest rates and prices set forth in the successful bid for the bonds.

GOVERNOR O'MALLEY: Seconded by the Comptroller. All in favor signal by saying, "Aye."

July 24, 2013

56

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.

TREASURER KOPP: And for the Second Series B Bonds, which were the taxable, I move that Jefferies, LLC be declared the successful bidder for the second series of taxable bonds in the aggregate principal amount of \$40 million subject to resizing as provided in the revised official notice of sale with a discount of \$79,022.47 and a true interest cost of 1.176498 percent. And I further move that the Second Series B Bonds be issued in the resized amounts and maturities and at the interest rates set forth in the successful bid for the bonds.

GOVERNOR O'MALLEY: Seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

July 24, 2013

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

TREASURER KOPP: Thank you. And I further move that the Board authorize and approve the issuance of the final official statement for the bonds.

GOVERNOR O'MALLEY: So moved. Seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

TREASURER KOPP: Thank you, Governor. Amber also points out that Prince William County, AAA rated neighbor in Northern Virginia, sold about \$29 million at the same time that we did with a preliminary TIC of 3.40 compared to 3.15 on our sale. Which is interesting and good. Prince William has a 20-year debt, which would account for some of the difference.

July 24, 2013

58

But the strength of Maryland accounts for most of it.
So I congratulate you and the taxpayers. Thank you.

GOVERNOR O'MALLEY: Thank you, Madam
Treasurer, for your able leadership of the Treasurer's
Office and for being so outstanding.

TREASURER KOPP: Amber, Amber and her team
deserve all --

MS. TEITT: It was a team effort, thank you.

GOVERNOR O'MALLEY: Thank you all.

MS. TEITT: Sure. I'll just take a moment
to introduce everyone. This is Camille Dawson, a new
financial analyst in the Treasurer's Office working
her first sale. And so we are anticipating successful
completion and this is a great next step towards that.
Thank you.

GOVERNOR O'MALLEY: Thank you. Okay. Let's
go, we have a matter, Mr. Comptroller, that, and I was
yielding to you in the naming of a, in honor of a
person?

July 24, 2013

COMPTROLLER FRANCHOT: Yes. It's actually Item 29, Governor, on the Secretary's Agenda.

GOVERNOR O'MALLEY: Secretary's Agenda, Item 29.

COMPTROLLER FRANCHOT: If I can go a little bit out of order, if I could? I'm very excited about this item. The Board today with this item is giving due recognition to one of the most remarkable public servants that I've ever had the privilege of serving with. And it's fitting that we're doing it frankly at one of the very meetings that we have in the Treasury Building.

Linda Tanton is not a household name in Maryland, and frankly she wouldn't have it any other way. But every taxpayer in the State of Maryland owes Linda Tanton a debt of gratitude. Those of us who now enjoy the simplicity and convenience of filing our taxes electronically, paying bills online, especially receiving their tax refunds within three business days, should thank Linda Tanton for her nationally

July 24, 2013

60

recognized leadership in the field of electronic tax administration.

Those of us who believe that everyone should pay their fair share of taxes and should be tracked down and held accountable when they don't need to thank Linda Tanton. Because she's been front and center on every major compliance initiative in this office, from our efforts to crack down on Delaware holding companies and captive rates, to the implementation of the nation's first federal vendor offset program, and the development of state of the art data warehouse systems. All of which has enabled us to get out there and collect over \$2 billion over the last seven years in heretofore uncollectable tax revenues from people who thought that they had gotten away with having to settle up with the State of Maryland. Two billion dollars that has been used, to among other things, improve our schools, provide

July 24, 2013

affordable healthcare, keep our communities safe,
safeguard our natural resources.

Every woman who has worked up the ranks and now holds a senior leadership position in State government owes a word of thanks to Linda Tanton who was such a trailblazer in this regard. She came of age when State government, like much of society as a whole, was truly an old boys club and women just weren't supposed to make it to the top. But Linda Tanton did because she was just that smart and that good. She worked her way up through the ranks under Louis Goldstein, became the first woman ever to serve as Director of Compliance, one of our major, major divisions; the first woman to be appointed Deputy Comptroller of the State of Maryland thanks to William Donald Schaefer who was legendary for appointing tough, capable women to senior leadership positions they richly deserved. And in that capacity she earned renown as one of our nation's most innovative and accomplished state tax administrators while serving as

July 24, 2013

62

a mentor to the very women such as Rhea Reed, our Director of Revenue Administration; Sharonne Bonardi, our Director of Compliance; Vinnie Lee, our IT Director; and Renee Kenney, her able Deputy; who are helping me as I speak now lead the Comptroller's Office today.

So I am very honored to be here with my two Board colleagues, hopefully we can approve Item 29 on the Secretary's Agenda, which will officially designate our Annapolis Data Center as the Linda L. Tanton Technology Center in recognition of her nationally renowned use of innovative technology that has benefitted every man, woman, and child in Maryland. I'd like to ask if my Board colleagues wanted to add a comment? And at the risk of embarrassing Linda any further, I'd like to have her and her family come up. But Governor, or Madam Treasurer?

GOVERNOR O'MALLEY: Sure. Madam Treasurer?

July 24, 2013

TREASURER KOPP: I would just like to second the motion. It's been a pleasure and an honor for me to work with Linda over the years. And I think we can mention it too briefly at times, but to be the head of Compliance, the leader of a large organization, toughing it out in State government when you look around and you are the only woman leading a significant section of a very large office, is an outstanding thing. And to do it so extremely well that people follow not because she is a trail blazing woman leader but because she clearly is the leader of the team, is even more extraordinary. I just want to say on behalf of our colleague the Secretary of Budget, who is off in Alaska at the moment, that she wanted me to add that Linda was an outstanding member of the Board of the State Employees Supplemental Retirement System, representing I would bet most of the people in this room in their contributory retirement system speaking up for employees. And also critically when necessary she took a hand in

July 24, 2013

64

everything from awarding contracts to helping guide financial reporting. And as a fellow Board member I just want to personally thank her for everything she has done.

GOVERNOR O'MALLEY: Thank you. Linda, why don't you come on down with your family and we'll do a picture. Come on down.

(Applause.)

COMPTROLLER FRANCHOT: Bill, come on up.
Andrew?

GOVERNOR O'MALLEY: Come on around.

TREASURER KOPP: She's already gotten certificates.

GOVERNOR O'MALLEY: Thank you.
Congratulations to you.

COMPTROLLER FRANCHOT: And I'd like to present on behalf of frankly the three of us a wonderful thing you can put up in your home, maybe,

July 24, 2013

hopefully. Linda L. Tanton Technology Center,
dedicated on July 24, 2013.

GOVERNOR O'MALLEY: Everybody squeeze
together. It will feel unnatural but it will look
good.

(Laughter.)

GOVERNOR O'MALLEY: Linda, anything you want
to say?

MS. TANTON: Ah, well I'm overwhelmed,
actually. And you know, I told the Comptroller when
retired I loved working for the State and for the
Comptroller's Office. And I had the distinct pleasure
of working for four very different Comptrollers.
Different personalities but they all had a number of
things in common, including letting their top managers
do their thing. And they encouraged, not just let us
but they encouraged innovation and fulfilling our
mission of collecting taxes and serving the taxpayers
of the State of Maryland. And so a number of us
flourished in that environment. I'm truly honored by

July 24, 2013

66

this. But I think all three of you are well aware that there are hundreds of top managers in this State who come to work everyday and with enthusiasm and a desire to do a good job for the citizens of the State and I'm just one of them.

GOVERNOR O'MALLEY: Thank you.

(Applause.)

GOVERNOR O'MALLEY: Okay. We are now on the body of the Agenda. I'm going to start from the back and move my way up to the Secretary's Agenda --

SECRETARY MCDONALD: Governor, we, we have -

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GOVERNOR O'MALLEY: -- sure --

SECRETARY MCDONALD: Right, we also have the other naming item.

GOVERNOR O'MALLEY: The Comptroller I believe wants to move approval of Item 29.

COMPTROLLER FRANCHOT: Yes.

July 24, 2013

GOVERNOR O'MALLEY: Seconded by the Treasurer, all in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

SECRETARY MCDONALD: Right, I can introduce my whole Agenda and then hold Four Seasons until the end, or I can bring forward the one other naming item, or we can go with Department of General Services.

GOVERNOR O'MALLEY: There is one more item, naming item?

SECRETARY MCDONALD: There is. I think I could --

GOVERNOR O'MALLEY: Okay.

SECRETARY MCDONALD: -- quickly, because if we hold Item 34 we might be able to get through the Secretary's Agenda efficiently. There are 35 total items on the Secretary's Agenda today. Five reports of emergency procurements. The Board has already

July 24, 2013

68

approved Item 1, the bond sale. The Board has already approved Item 29, the Linda Tanton Center naming. We have Item 34, which is Four Seasons and we will hold that until the end. There is another item, a recommendation from the Secretary of Natural Resources to approve naming a pier in honor of Mr. Donald Backe and that is Item 30 --

GOVERNOR O'MALLEY: Is Mr. Backe and his family here?

SECRETARY MCDONALD: Well it's in memory of Mr. Backe instead of in honor.

GOVERNOR O'MALLEY: I'm sorry.

SECRETARY MCDONALD: So Mr. Backe's widow, yes, Mr. Backe's widow is here.

GOVERNOR O'MALLEY: All right, sure.

SECRETARY MCDONALD: We had one in honor of Ms. Tanton and one in memory of Mr. Backe.

GOVERNOR O'MALLEY: Who wants to present on this?

July 24, 2013

SECRETARY MCDONALD: I believe the Secretary of Natural Resources is here.

GOVERNOR O'MALLEY: Okay, Mr. Secretary?

SECRETARY MCDONALD: There we go. We had arranged for a nice place for them to sit in our office, so they are here now.

GOVERNOR O'MALLEY: Okay.

MR. GILL: Good morning, Governor, Madam Treasurer, Mr. Comptroller. I have with me Lyn Backe, the spouse of Donald Backe, and I am very happy to be here to present this item. And the particular item is to name the accessible boating piers at Sandy Point State Park in honor of the late Donald E. Backe.

Don was an outdoor enthusiast who loved the Chesapeake Bay. When a car accident 25 years ago left him paralyzed from the waist down, he believed his passion for sailing was lost along with his legs. After a lengthy rehabilitation, however, he found that he could sail again. And it was this discovery, he said, that literally saved his life. Don proceeded to

July 24, 2013

70

dedicate his life to making sure that boating and other recreational opportunities were available to everyone. He became a tireless advocate for people with disabilities, lending his energy and expertise to a variety of issues, programs, and services.

Don is the founding Executive Director of Chesapeake Region Accessible Boating, the acronym is CRAB, a nonprofit organization that helps those with physical and developmental challenges set sail on the Chesapeake Bay. He served with distinction on DNR's disability advisory council for more than 20 years. In January of this year Don received the 2012 Old Pulteney Maritime Heroes Award from the U.S. Sailing Foundation for his outstanding work in this area.

Before I conclude let me recognize Secretary Cathy Raggio, who has just joined us. Madam Secretary. Last item, perhaps Don's greatest ability was his ability to teach people. He not only led us down the path to making accessible our own

July 24, 2013

State recreational facilities the norm, he encouraged and inspired those with developmental disabilities to pursue their own outdoor passions. And he made sure that we at the Department of Natural Resources understood the importance of accessible design.

Don passed away sadly in April at the age of 77, but his legacy lives on. The Donald E. Backe Accessible Boating Piers at Sandy Point State Park, home to Don's organization, will continue to serve and inspire for generations to come. Do we have a rendering that we can show?

GOVERNOR O'MALLEY: That's beautiful. Mrs. Backe, anything you would like to say?

MRS. BACKE: Just very briefly, Sandy Point State Park was indeed as much home to Don as the home we made together. And he was particularly proud of the State of Maryland for the proactive way they addressed the growing national awareness of the need for accessible things. His family and I very much appreciate this honor. Thank you.

July 24, 2013

72

GOVERNOR O'MALLEY: Thank you. If you all could just all come up? And Cathy, you come up, we'll come around front here.

Cathy, why don't you come over here? Jay, why don't you come in the hall, over there where Greg is, and maybe you can get a better angle on all of this.

Joe, come on up.

MR. GILL: Thanks.

GOVERNOR O'MALLEY: Here we go. Anybody else? Any other Backe family members? Do you all want to come around? Or friends? Come up a little further, okay? There you go. Jay, if you go where Greg is you'll get a better angle. But I'm not a photographer.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: Thanks a lot of all you've done for so many people. Thanks a lot. Thank you.

Anything else, Joe?

July 24, 2013

MR. GILL: Can we get a motion?

GOVERNOR O'MALLEY: Sure. The Governor moves to approve the Agenda Item 34, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it. Mrs. Backe, it was unanimous. We never do that.

(Laughter.)

GOVERNOR O'MALLEY: Thank you. Okay. The balance of the Secretary's Agenda with the exception of Item?

SECRETARY MCDONALD: Thirty-four.

GOVERNOR O'MALLEY: I'm sorry.

SECRETARY MCDONALD: You have moved approval of Item 30. We heard you say Item 30.

GOVERNOR O'MALLEY: I'm sorry, 30. Correct the record --

July 24, 2013

74

SECRETARY MCDONALD: So we are holding Item 34. It was a Freudian slip.

(Laughter.)

GOVERNOR O'MALLEY: That was Item 30 that I just moved approval of.

SECRETARY MCDONALD: We knew what you were thinking.

GOVERNOR O'MALLEY: We are holding Item 34, which is the one of great interest to all, the 13-year odyssey of the Four Seasons wetland permit. So now the balance of the Secretary's Agenda, except for Item 34.

TREASURER KOPP: I have one very brief question, Governor.

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: About 35, the Greene Turtle.

SECRETARY MCDONALD: That is the Department of Housing and Community Development request to use

July 24, 2013

general obligation bond proceeds for a \$242,000 loan.

And we have --

MS. GILBERT: Carol Gilbert, Assistant Secretary for DHCD. Good morning.

TREASURER KOPP: Good morning. Can you just assure me, first of all I assume because I haven't heard to the contrary that it's an appropriate use of the bond funds. And I know it's gone through the process. Can you just state for the record how this is of such public importance that we ought to be doing this?

MS. GILBERT: Sure. The Neighborhood BusinessWorks program supports neighborhood retail, neighborhood serving retail. And this restaurant is expanding, doubling in size to serve the Towson area and it is reinvesting in its physical plant and actually another story in that it will double the jobs available at the restaurant. One of the borrowers is

July 24, 2013

76

here today, Mr. Jeff Guidera, I believe. He can come forward if you have any questions for him. The --

TREASURER KOPP: I'm not sure I really do have questions for him. But I just want to hear from the department why this is appropriate.

MS. GILBERT: We think it's a terrific economic development project as well as a revitalization project for the part of Towson that has the characteristics of an old Main Street business district. And the Greene Turtle restaurant franchise itself is a Maryland based and created franchise, back in Ocean City 35 years ago. One of the other borrowers on this team was one of the founding members of the team that created that Maryland based business, which has now grown to about 37 Greene Turtles, 25 of which are in Maryland.

TREASURER KOPP: And it's jobs, it's the revitalization of the neighborhood --

MS. GILBERT: Correct.

July 24, 2013

GOVERNOR O'MALLEY: Towson has been struggling, has it not?

MS. GILBERT: It has been. And it may struggle more in terms of the, because of new national chains coming in with the new Towson Circle redevelopment. And we really like to invest in the traditional businesses, the locally owned businesses that are part of the traditional business history.

TREASURER KOPP: So both business development and jobs --

MS. GILBERT: Right.

GOVERNOR O'MALLEY: And it's an older, I don't mean to, I used to be in a law office a block away from here. I'm just getting out of politics. And that mall up there at Towson, not, whatever that mall is right in the center. Not the big mall, yeah, the one, the smaller one, Towson Commons catty-corner from the public library has been vacant for how long?

MS. GILBERT: It has a lot of vacancies. It has struggled as well.

July 24, 2013

78

GOVERNOR O'MALLEY: It's been a white elephant for about the last four or five years, right?

MS. GILBERT: Mm-hmm.

GOVERNOR O'MALLEY: Is this something county supports?

MS. GILBERT: Yes, they have given a grant of \$90,000 and the overall project cost is about \$800,000.

GOVERNOR O'MALLEY: What's the address?

SECRETARY MCDONALD: 408 York Road.

MS. GILBERT: Thank you.

GOVERNOR O'MALLEY: Okay. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yeah, I'm glad the Treasurer brought this up. I had almost forgotten. You know, I love Greene Turtle. Great wings. I mean, really, a fabulous business. And I don't have anything against any of the 37 Greene Turtles. Many of them I have visited. And you know, God bless their success. But to give \$240,000 out of your

July 24, 2013

Neighborhood Business Development program to the owners of this Greene Turtle, and they are a wonderful family, I don't have anything against them, apparently to build a rooftop dining room and to buy the furniture. The Governor asked about Baltimore County. Is their loan waivable? Can they turn that into a grant?

MS. GILBERT: -- \$69,000 grant.

COMPTROLLER FRANCHOT: Okay. As I said, I've visited a lot of these Greene Turtles. They are not struggling. They are, particularly this one, it's a sports bar in a college town. I'm not sure about that, I'm not familiar with the building that they are in but I am familiar with Greene Turtle's business. And for us to step in and give them this loan, I mean, it kind of reminds me of that chain hotel that we financed over in Prince George's County on the beltway, or my least favorite Popeye's fast food restaurant we gave money to on Route 50 in Cambridge. So I support, obviously, giving money to businesses in

July 24, 2013

80

struggling older communities that need help. But this use of taxpayers' money to fund the expansion of a sports bar in the middle of an affluent college town that frankly is already in the midst of an exciting renaissance. I mean here's a recent quote from the *Baltimore Sun* story on the Greene Turtle's expansion. "Just a block away to the east the framing for the Cinemark movie theater at Towson Square is rising above the building's underground parking structure. Across from that at the intersection of York Road and Chesapeake Avenue the Towson Road project will replace storefronts and a parking lot with skyscrapers."

So you know, sincere respect to the current owners. As I said, I have no objections to their success and it's a close knit family, and you know, I like them. But, boy, if they can't make a go of it without taxpayers' money, nobody can.

MS. GILBERT: The --

July 24, 2013

COMPTROLLER FRANCHOT: And if I could just finish, because I mentioned the hotel up in Prince George's, and the Hampton Inns, I guess, and Popeye's right in the heart of hamburger alley in Cambridge where we already have, get this, McDonald's, Burger King, Taco Bell, Hardee's, Dairy Queen, and Kentucky Fried Chicken right next to them. And we gave them money out of your fund. And the communities that I go to that truly deserve this all around the State, a lot of these older communities have stores that have lease signs up, and for sale signs, and going out of business. A lot of them are hanging on by their fingernails. Those are independent, locally owned family businesses. They are determined to hang in there until someone turns the lights out. But you know, they don't get this seed money. Of if it goes to the Greene Turtle it's not going to them. And so I just object to the fact that we're giving this money to a business that is doing very well. It should succeed without our active support. And let's get the

July 24, 2013

82

program back to where it should be, which is helping challenged businesses in older neighborhood areas.

MS. GILBERT: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes?

MS. GILBERT: This program is a gap financing program. We don't step in to help a business locate or expand into a traditional business district unless they can't get the sufficient financing for the project that they are envisioning. And we do think this business has recognized that the tremendous amount of new investment coming from national chains, including restaurants, is, makes it incumbent upon them to reinvest in their own business expansion and make themselves more attractive and competitive within the context of Towson. And it's the part of Towson that is that walkable, you know, traditional character of the Main Streets that we always want to help to try to help strengthen. And this particular expansion will create another 120 jobs

July 24, 2013

available to that college community. And we do think of it as a strong revitalization project as well as an economic development project.

COMPTROLLER FRANCHOT: I understand. And I'm going to vote no even though I have great respect for Greene Turtle, obviously this particular one. I just think it's wrong to put that kind of money into a sports bar in a college town where the renaissance is already well underway. I mean, this is not ten years ago.

GOVERNOR O'MALLEY: Madam Treasurer, anything else to add? Other questions?

TREASURER KOPP: Yeah. I gather my question was not expected. And what I, I hear what you are saying. I would love to see some numbers attached to the expectations, to the payback. I mean, a worksheet. Would that, if we deferred this would that be possible, to get a clearer written explanation and justification for this project? Because otherwise I have concern, too. I mean, if the argument is other

July 24, 2013

84

things are coming in and growing and so we want to help this one company, it sounds to me like there is revitalization going on without it. So I just would like to understand more why this, as the Comptroller said, why this program should be used for this purpose.

MS. GILBERT: Revitalization in the Walmart sense, where Walmart locates close to a traditional business district --

TREASURER KOPP: I get what you are saying. I would love to see a clear, numbers driven, fact based explanation.

GOVERNOR O'MALLEY: Assuming that Comptroller supports the Treasurer and her desire to postpone this for one meeting, we can all talk about this the next time.

MS. GILBERT: Yes.

GOVERNOR O'MALLEY: Because we still have yet to get to the Agenda. So the Treasurer moves to

July 24, 2013

defer this till the next meeting, the Comptroller seconds. All in favor signal by saying, "Aye."

TREASURER KOPP: Aye.

COMPTROLLER FRANCHOT: Aye.

GOVERNOR O'MALLEY: The ayes have it. The, and bring the but for analysis. And I mean this is the third time, I mean, you all should know that if it's ever a restaurant or bar the Comptroller, the Board will have the same questions. So come up with the criteria. All of these same arguments were made when people said we shouldn't have invested in Belvedere Square down the road, 13 years ago. In retrospect everybody thinks it was a great things to do. So just lay the criteria. Does it work? Is it reasonable? What's the but for analysis? Bring it to them. I've found that this Board is pretty reasonable.

TREASURER KOPP: Thank you, Governor. And I would say --

July 24, 2013

86

GOVERNOR O'MALLEY: The majority of the Board.

(Laughter.)

TREASURER KOPP: -- in general.

GOVERNOR O'MALLEY: Criteria. Maybe, just like we used to have with the Open Space, everybody could always ask why that Open Space? People don't often ask anymore why that Open Space because they have an objective criteria and they have a point system. Okay, thanks. Anything else on the balance of the Secretary's Agenda -- thanks for that, Ms. McDonald. Anything else on the balance of the Secretary's Agenda? Do you have somewhere to go, Peg? No? Okay. The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: The ayes have it. We now go to Department of General Services. Anybody

July 24, 2013

have any questions on Department of General Services
Agenda items?

MR. COLLINS: I have one item, Governor, of
which to speak. Item 35.

GOVERNOR O'MALLEY: Item 35?

MR. COLLINS: Yes, sir. Involving a land
sale, a property sale by Frederick County. We support
the sale but their present users object to the sale
moving forward.

GOVERNOR O'MALLEY: Oh, that's right. I
forgot. We have this one, too.

MR. COLLINS: Yes, we do.

GOVERNOR O'MALLEY: Okay.

MR. COLLINS: I'll hold a few --

GOVERNOR O'MALLEY: All right. What item is
that?

MR. COLLINS: It's Item 35, sir.

GOVERNOR O'MALLEY: Okay. We're going to
hold Item 35. Anything else on the balance of the
Department of General Services Agenda items?

July 24, 2013

88

MR. COLLINS: I have 28 items remaining and we would be glad to answer any questions if the Board has any questions, we'd be glad to answer.

COMPTROLLER FRANCHOT: Move approval.

GOVERNOR O'MALLEY: The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: So that's every item except for Item 35?

MR. COLLINS: Except Item 35, yes sir.

GOVERNOR O'MALLEY: Which we will be coming back to.

MR. COLLINS: Yes, sir.

GOVERNOR O'MALLEY: We now move on to the Department of Transportation. Any questions on the Department of Transportation Agenda items?

July 24, 2013

MR. HICKEY: Good morning. We have 40 items on the Agenda today. Senator Karen Montgomery is here in support of Item 36. I don't know if you want to hear from her, but she is here.

GOVERNOR O'MALLEY: Good.

MR. HICKEY: This is the Brookeville project, Maryland 97.

GOVERNOR O'MALLEY: Okay. Do you have any questions on Department of Transportation Agenda items?

COMPTROLLER FRANCHOT: No, I'm sorry. Is Senator Montgomery speaking?

SENATOR MONTGOMERY: We have two councilpeople here from Brookeville. And I don't know if they are being allowed to get through. But --

GOVERNOR O'MALLEY: Senator Montgomery, if you want to come up to the microphone you are welcome to do that, and bring them with you.

SENATOR MONTGOMERY: Oh, I'd be happy to do that.

July 24, 2013

90

GOVERNOR O'MALLEY: Brookeville, what item is this?

MR. HICKEY: This is Item 36.

SENATOR MONTGOMERY: Thirty-six, sir.

GOVERNOR O'MALLEY: Okay.

SENATOR MONTGOMERY: Brookeville is an historic town built on an old country trade route that worked fine when we had horses and carriages. I personally bought a house there 30-some years ago, almost 40, as have most of the other relatives in the area. Not relatives to me, but we all feel family. We were told, we went to Rockville, when we purchased the property the bypass or the road straightening in Brookeville would be in within three years. That was 38 years ago. It has been on the books for 40-some years. It has made it almost to the top and then get kicked down.

GOVERNOR O'MALLEY: Who was the Governor then?

July 24, 2013

SENATOR MONTGOMERY: The Governor was Parris
Glendening --

GOVERNOR O'MALLEY: Thirty-eight years ago?

SENATOR MONTGOMERY: No, when the argument
occurred with the County Executive of Montgomery
County in front of my house at a very busy
intersection as to whether or not this increased the
possibility of greater growth. Well, we had no growth
in Brookeville because it's a historically designated
town. But above us, north on Route 97, lots of
growth. We could not cross the street in the town
anymore.

I understand every single hoop, every single
wobble-wabble, every single historic excavation, every
single thing to do with the environment has been done.
At this point I usually don't crawl on my knees, or
beg, or prostrate myself and bang my head on the
floor, but I'm about ready to. Because 40 years is
too long. We are going to have a huge event in
Brookeville involving 10,000 people we think, perhaps

July 24, 2013

92

others up here might be involved. It is to celebrate the night that President Madison did spend in Brookeville after fleeing the White House. We have historians, archaeologists, everything, and perhaps you all might wish to be involved in a role. But I think we need to start now. We need to build it. This is a great little town. It needs to be preserved as an important part of Maryland's history. And I believe we have, I don't know where --

GOVERNOR O'MALLEY: -- behind you.

SENATOR MONTGOMERY: Okay. Our two illustrious town commissioners.

GOVERNOR O'MALLEY: Okay. And for the record, I would like to attend as Sam Smith on that occasion --

(Laughter.)

GOVERNOR O'MALLEY: -- taking a brief break from the defenses of Baltimore I would like to go welcome President Madison as he comes into Maryland.

July 24, 2013

MS. FARQUHAR: Thank you. My name is Katherine Farquhar. I'm here with Sue Daley. We are two of the Town Commissioners. I just want to say that earlier this week 86-year-old Les Unglesby who was a young father and husband at the time the Brookeville Bypass was first proposed passed away. During Les' time living on a curve in a historic house in Brookeville, the curve being going down and around that hill where most of the accidents, slipping cars, and increasing traffic could be noticed, he lived on that curve for many years and was very active in trying to get the road straightening project moved forward. During Les' time the traffic increased to include buses and trucks. The houses' foundations in these historic houses began to be shaken and disturbed. And in more recent years we looked to the Madison visit of 2014 as a historical occasion that we wanted to prepare for and have the Town preserved beyond. So we thank you for your consideration of this. And in honor of Les Unglesby and the others who

July 24, 2013

94

have gone before him who have basically been two generations who passed while we hoped this would happen we stand before you today.

GOVERNOR O'MALLEY: Okay.

MS. FARQUHAR: Thank you.

GOVERNOR O'MALLEY: Anything else? All right. We are all in favor of this. And I would appreciate your procuring of a horse for me --

(Laughter.)

GOVERNOR O'MALLEY: -- on that date.

MS. FARQUHAR: Its name is Blaze. He's all set.

GOVERNOR O'MALLEY: Really?

(Laughter.)

TREASURER KOPP: Now you're going to have to do it.

GOVERNOR O'MALLEY: No, I will. I'm serious.

MS. FARQUHAR: We'll be expecting you, sir.

July 24, 2013

GOVERNOR O'MALLEY: Good, I need a horse.

(Laughter.)

SENATOR MONTGOMERY: We have several in case you get tired of one.

GOVERNOR O'MALLEY: Good. I'll have the uniform. If you could make it a white horse?

(Laughter.)

GOVERNOR O'MALLEY: All right. Actually, I'm agnostic on the color of the horse.

TREASURER KOPP: Governor?

GOVERNOR O'MALLEY: Yes?

TREASURER KOPP: Can I just say I think there was some concern because it is not in the normal place for development. But I think it's very important to point out that not only that a great deal of time has passed but also very significant mitigating steps have been taken to assure that this is not in fact platform for development really, but a way to ease living in that area. Including the

July 24, 2013

96

support of Montgomery County to assure no further access, sprawl, etcetera. So I support it strongly.

SENATOR MONTGOMERY: Thank you all. We are grateful.

MS. FARQUHAR: Thank you.

GOVERNOR O'MALLEY: Thank you. Mr. Comptroller?

SENATOR MONTGOMERY: And I don't have to crawl downhill.

GOVERNOR O'MALLEY: Mr. Comptroller?

SENATOR MONTGOMERY: Thank you.

COMPTROLLER FRANCHOT: I just want to thank Senator Montgomery for speaking. But also could you get one of those masks for the Governor also, if he's going to have that big white horse?

GOVERNOR O'MALLEY: All right, come on. I don't need the mask.

(Laughter.)

July 24, 2013

COMPTROLLER FRANCHOT: I had a question on Item 10 before we get off the Transportation.

GOVERNOR O'MALLEY: Sure. Item 10?

MR. HICKEY: Item 10?

COMPTROLLER FRANCHOT: Is Mr. Wiedefeld or -
-

MR. HICKEY: Mr. Wiedefeld is here.

COMPTROLLER FRANCHOT: Could I just get your sense of where we're going with the international terminal? I mean, I'm a huge fan of the Airport under your leadership. But it strikes me that that terminal may be suffering from deficiencies, as well built as it is, that we're going to find very difficult to overcome. I mean, no matter how good our marketing is, we brought in Aer Lingus, they dropped down by the wayside. We brought in Ghana Airlines, I don't even think that exists anymore. I think they sold the airline for scrap. We --

GOVERNOR O'MALLEY: Your concern is the tenancy of international airlines at the --

July 24, 2013

98

COMPTROLLER FRANCHOT: No. My question, Governor, is whether we have a product that is going to be competitive in the market. Dulles, obviously, when you look at their international flights, it's two yards long, the list. Ours is basically British Air we pay a subsidy to, and then we have this gaggle of other, Condor Air, etcetera that is in there. Are we at such a disadvantage that we are not going to be able to turn that into a bustling international terminal regardless of the marketing or improvement?

MR. WIEDEFELD: If I could just put it in context for you. And I'll talk a little bit about what's been happening recently and what we see in the future. In terms of context, there's roughly just over 500 commercial airports in this country. And of those ten of those airports move 90 percent of the international traffic. So that's the context. And of those ten, they are driven by a hub operation. Meaning, you know, that, you know, like Dulles, where

July 24, 2013

United is coming in and bringing aircraft from all over the country into that and the same with Philadelphia. So one of the big obstacles that we've had with BWI is the hub operation.

That is where Southwest comes in. Southwest approached us with AirTran a few years ago, it was moving into the international market. Southwest is 70 percent of our business. When they move into the international market we will in effect have a hub operation at BWI. And that's what positions us for growth in the international market. As well as we continue to go after other airlines.

Over the last fiscal year, we're up 23.5 percent in terms of international traffic. We currently are at capacity at certain times of the day on our gates today, that's why we're proposing the D-E connector project. So I really feel that, you know, this is the time that we are going to see, and I'm totally frank, it's because of the lack of the hub operation. That's what's held us back. And the

July 24, 2013

100

numbers, you know, the numbers are what they are.

We're roughly 22nd in the country in terms of international because it's so difficult to break into that market unless you have that large feed. And as Southwest moves in that direction I really feel that we'll be able to grow the business.

COMPTROLLER FRANCHOT: Great answer. And the time frame of Southwest?

COMPTROLLER FRANCHOT: They are moving there now. I mean just so you know AirTran moves international today. They do Aruba five times a week. They do Punta Cana daily. They do Cancun twice daily. They do Montego Bay twice daily. They do Nassau daily. And they do Bermuda daily. So they are moving in that direction already under the AirTran umbrella. And as Southwest, again, moves even further into this we, again, we will have much more impact.

COMPTROLLER FRANCHOT: Okay, thank you.

GOVERNOR O'MALLEY: Okay. Sure.

July 24, 2013

TREASURER KOPP: The destinations you mentioned are relatively close. But does that mean that we will not have the issue of building for the new humongous planes even on the international --

MR. WIEDEFELD: No. The, right now the Southwest, their fleet can go so far. And so as they examine their business model I'm sure they will be looking at that. As, again, as we go after other airlines they have the capability of going much further. Their fleet can go to, for instance, northern South America --

TREASURER KOPP: Mm-hmm.

MR. WIEDEFELD: -- the northern part of South America. And that is a growth market. I mean, that's where a lot of the service is going to. Latin America, the Caribbean, South America. And we tend to always jump to overseas as the market, it's a very saturated market. The growth markets tend to be in South America, particularly in the area where we are.

July 24, 2013

102

TREASURER KOPP: So we are not concerned about, as I understand a number of airports are, about changing their pier, arranging --

MR. WIEDEFELD: No, we can handle any aircraft except for the largest aircraft out there which requires a double exit and double boarding. There's only a few in the world that are going to handle that aircraft. But basically any other aircraft our runways are long enough, our gates are long enough, we have a very good facility, as far as boarding, it's very good.

COMPTROLLER FRANCHOT: Thank you.

GOVERNOR O'MALLEY: Okay. The Comptroller moves approval of the Transportation Agenda items, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: And the ayes have it.
We move on now to the Department of Information

July 24, 2013

Technology. And Sheila, I called you by the wrong person. My apologies.

SECRETARY MCDONALD: That's okay.

GOVERNOR O'MALLEY: I don't know what I was thinking.

MR. SCHLANGER: Good afternoon, Governor, Madam Treasurer, Mr. Comptroller. For the record, Elliot Schlander, Department of Information Technology. This afternoon we have six items on our Agenda. I'll be happy to answer any questions at this time.

GOVERNOR O'MALLEY: Any questions? Hearing none, the Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye." All opposed?

(No response.)

GOVERNOR O'MALLEY: The ayes have it.
University System of Maryland?

July 24, 2013

104

MR. EVANS: Joe Evans, University System of Maryland. We have eight items on the Agenda today. We're here to answer any questions.

GOVERNOR O'MALLEY: Okay, any questions? The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye." The ayes have it. We move on now to the Department of Natural Resources Real Property.

MS. WILSON: Good afternoon, Governor, Mr. Comptroller, Madam Treasurer. Emily Wilson with the Department of Natural Resources. We have 14 items on our Agenda today. We'll be happy to answer any questions.

GOVERNOR O'MALLEY: What's the total amount of Open Space we are preserving on the Agenda today?

MS. WILSON: Well we have, I haven't added up all of the individual acreages. But we've got a 98-acre parcel in Allegany County; 51 in Harford; 24 in Charles; and 22 in Baltimore.

July 24, 2013

GOVERNOR O'MALLEY: Ninety-eight, 51, what?

MS. WILSON: Twenty-four and 22.

GOVERNOR O'MALLEY: Twenty-four and 22?

Okay. By my math that comes to 195 acres of Open Space. Okay, any questions? The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.

MS. WILSON: Thank you.

GOVERNOR O'MALLEY: Thank you. We have now cleared the Agenda with the exception of two little items. Okay. All right. Let's hear the Frederick item. That was a DGS item?

MR. COLLINS: DGS, sir. On Item 35, Governor.

GOVERNOR O'MALLEY: Item 35.

July 24, 2013

106

MR. COLLINS: It involves the sale of property which involves the State. The government of Frederick County is recommending and we approve of their recommendation to sell this property. However the current users of the property and the community foundations, objects to the sale, and they both want to be heard --

GOVERNOR O'MALLEY: Okay, who wants to be heard? Who is in favor of this? Come on up. Come up as a group if you would like to. Anybody who is in favor, come on up. Tell us what this is and why it should go forward.

MR. MATHIAS: John Mathias, Frederick County Attorney. With me are Lori Depies, who is the County Manager, and County Commissioner Blaine Young is somewhere in the hallway. Hopefully he will work his way in here. And Marta Harting here from Venable is with us, too.

July 24, 2013

What's involved here is a \$200,000 bond grant to the County Commissioners, or eventually to the County Commissioners, for the construction of a nursing home and an assisted living facility. It cost the county about \$38 million to build. Following, the county is looking to sell that property and we've had a competitive process. And now the Board has approved the sale of the property to the high bidder of the sale for \$30 million. We are going to pay off the loan that was used to finance that, which was about \$35 million, leaving us a shortfall of about \$5 million after that that we'll have to make up through other county funds.

So we are supportive of the recommendation from the Department of General Services that it be approved as recommended by the staff there. I'd be happy to answer any questions. I know there was a letter received last night which we received late last night, at least the letter, I haven't even seen the attachments yet. We, I don't see where that involves

July 24, 2013

108

the State or the State bond financing. I mean, we anticipated there would be litigation over the sale and were very careful to follow all of the appropriate procedures and are confident that the sale will be upheld should there be any litigation. We have not been served with any litigation yet.

We also should point out that there are some existing residents at the assisted living facility. The county has made arrangements for their care for the rest of their life, I mean we have, or as long as they need assisted living, and has paid \$10.7 million over the next four years to arrange for that care. So that care hasn't been resolved. So we simply ask for your approval.

MR. COLLINS: Okay. Was the --

GOVERNOR O'MALLEY: Anybody else want to be heard on this?

SECRETARY MCDONALD: Let me just see --

GOVERNOR O'MALLEY: Okay.

July 24, 2013

MR. COLLINS: There was one other group,
Governor --

GOVERNOR O'MALLEY: Okay. Who wants to be,
I'm sorry?

MR. COLLINS: There was one other group --

GOVERNOR O'MALLEY: -- folks are standing
up, want to be heard, or want to oppose this? Come on
down, sir. And then --

TREASURER KOPP: Can I say I think until now
it's been a rather antiseptic discussion of the
property and the project without actually hearing
anything about what the property and the project are.
So I assume that we will?

MR. COLLINS: Yes.

MR. LINTON: My name is Donald Linton. I'm
a CPA practicing in Frederick, Maryland. I was one of
the first trustees of the nursing home when it was
established 35 years ago. I still volunteer at the
nursing home and a number of Friends of Montevue. Two
properties here involved, one is the Citizens Nursing

July 24, 2013

110

Home that was built 35 years ago. But the other one is the Montevue Home for the Indigent, created 185 years ago through a deed from the Brunner Family. And in that deed it says it shall be used for the care of the indigent and for no other purpose. Well the county honored that obligation for 185 years. Now all of a sudden we looked at the new nursing home finished last year, it opened last year. And like 60 days in the process, 18 months to get our act together and get financially solvent. They gave us 18 months, they gave us 60 days, and then put out RFPs to sell it.

This is extremely complicated. This whole issue is extremely complicated, it goes back a long time. And all we are doing is asking you to delay this decision. Because we have, they tried to subdivide the property. We filed an appeal on that. We filed a petition yesterday with the Circuit Court of Frederick County to oppose the sale for these issues. And we are asking you to please delay this

July 24, 2013

decision until the courts and the legal department have had an opportunity to resolve all the details. It's a problem with subdivisions. It's a problem with price. And it's a problem with the deed restrictions. But no businessperson, executive, would build a new facility after years of study, open it up, and then turn it around and want to sell it for half price. It doesn't make sense.

So it's not a good deal for the taxpayers of Frederick County. It's not a good deal for the residents of Montevue Home. And these are for the indigent. Montevue Home was established for the indigent people of Frederick County only and for no other purpose. It was, I don't want to say it's a crazy idea to sell it but it certainly make any sense to me as a businessperson. And we're asking you to please defer your decision to approve this sale until such time as all the legal issues have been resolved.

And with me was the President of the Citizens Nursing Home, and also in the audience is a

July 24, 2013

112

Friend of the Community Foundation of Frederick
County.

GOVERNOR O'MALLEY: Do you want to be heard?

DR. SPERLICH: Sure.

GOVERNOR O'MALLEY: Say your name.

DR. SPERLICH: My name is Dr. Sonya Sperlich
and as Don says I was Chair of the Board during the
time when this proposal came forward to sell the home.
The one item that hasn't been mentioned which is so
critical is this is Frederick County's way of taking
care of the senior citizens who need assisted living.
If this goes away, there is only four years provided
for the current residents that are within Montevue.
Selling it to a for profit operation means that the
concept of subsidized services for the needy elderly
will completely disappear. And the county has no plan
for these people. Several of our board members have
gone out on their own and done a quick study. Not
only do we need to provide for the current 60

July 24, 2013

partially subsidized residents but there are hundreds more in Frederick County and there is nothing else for these people. Thank you.

GOVERNOR O'MALLEY: Thank you. Who else would like to be heard?

MR. COLLINS: Governor, may I have Cathy Ensor from my staff just to say a brief, put this in context in terms of what the motion is, sir. And if there has been any legal proceedings filed we have not yet received any confirmation of that.

GOVERNOR O'MALLEY: Mm-hmm.

MS. ENSOR: Cathy Ensor, DGS. This grant was given to the foundation. The county was made a beneficiary to the grant as the owner of the property. So they are the ones who are coming forward now to request the sale of the property. The funds, the \$200,000, were given for the renovation of a building to create this home, this facility. The \$200,000, if you feel that it would need to be paid back, it would come from the county then as the ones who actually put

July 24, 2013

114

the funding into it. The legal issue that has been raised really has to do with, from what I'm understanding, more what the deed would allow for the use of the property and the other issues that are being raised really have nothing to do with the actual grant that was given. It was given for the construction of the facility. So from the grant perspective the county has the rights to sell the property. And the Board has the right to request the grant funding in return depending on how you feel the use of the proceeds are --

TREASURER KOPP: Could I --

GOVERNOR O'MALLEY: Madam Treasurer?

MS. ENSOR: -- so that's where we are.

TREASURER KOPP: I gather, I mean, I'm a little troubled by the fact that apparently there are some legal proceedings that we didn't know about. The question is how, if at all it is related to the item before us. Would there be harm in deferring it and

July 24, 2013

letting the attorneys look at it and come back? I mean, we want to act appropriately to our role.

MR. COLLINS: I'm okay with that --

MR. LINTON: The proceedings were filed yesterday in Circuit Court in Frederick County, yes, sir, yes, ma'am.

GOVERNOR O'MALLEY: Filed in Circuit Court yesterday? And what is it? A, Some sort of injunctive --

MR. LINTON: Yes. Summary injunction so as to get all the facts together and have plenty of time to go before the court in Frederick County to resolve all the issues. And this complicates things, if you approve it before all the pieces are resolved.

GOVERNOR O'MALLEY: Okay. Mr. Commissioner, do you want to be heard in opposition? Or no, support?

MR. YOUNG: Governor, Treasurer, Comptroller, but those proceedings have absolutely nothing to do with this grant. This is a delicate

July 24, 2013

116

situation. We have lost, our county, over \$52 million since the year 2000. We stand to lose \$6 million this year. We found a potential purchaser that we went through a public hearing and it is a very delicate situation. The purchase price was based on a lot of criteria that we put in place. A, the purchaser had to retain all of the employees, had to retain them at the comparable healthcare benefits that we offer at the county, had to retain them at their current wages. That they had to take care of everyone in Montevue, that they could not transfer them. And we also put a memorandum, well we have a contract in place that the county can continue to disburse money to this buyer to take care of the indigent in the future. I know that, you know, Delegate Claggett has had concerns and I spoke to him this morning. His concerns have been met. And you can recess and give him a call. You can call my father, Senator Young. I mean we have, the purchase price was depressed because we put all this

July 24, 2013

criteria in place to make sure that the residents were taken care of, that the level of care was there, that the employees were retained, retained at their current wages, comparable healthcare benefits. You know, again this is a \$200,000 grant. We have no problem making sure that it is completely repaid. You know, it's all about timing right now. I mean, we stand to lose, you know, half a million a month being involved in this venture that we're trying to segue to a buyer that has taken care of all the concerns of the community. And I'm just here to ask any questions, answer any questions that you may have. Without question, it is a very delicate situation. Because you are dealing with seniors, you are dealing with people who are being taken care of in Montevue and Citizens. But the way we structured the RFP was to make sure that all those concerns were addressed.

GOVERNOR O'MALLEY: Okay. Thank you.

Questions? Anyone? Did you have member of your --

July 24, 2013

118

MS. DEPIES: Hi, I'm Lori Depies. I'm the County Manager and I headed the project team that issued the RFP and did the evaluation. And we think that the buyer we brought to this facility is a great buyer. They met all of the criteria we needed for our employees. Our broker estimated that we probably could have gotten \$42 million for this facility had we not put restrictions on them for employee wages and benefits, that they had to be comparable. Also the continued care agreement for our, the residents of Montevue. You know, that's a \$10.7 million agreement that we will pay over four years to make sure that those residents are taken care of. And we also have in that agreement that those residents cannot be transferred out of there. They have a lifetime residency there. And that's in place. So that's the reason for the \$30 million purchase price.

Now we do, we do have a cash shortfall. It's \$5.8 million short in cash that the general fund

July 24, 2013

will have to put into the escrow accounts to pay off the bonds as they come due or they call. So we think it's a financially viable deal. We think it's a great deal for the employees. We have employees who are actually very excited right now to be working for Aurora potentially. And also our residents are much more, less anxiety now that they know the facts that they are not going to be tossed out. Thank you.

MR. YOUNG: The purchase does manage one other facility in the State of Maryland in Princess Anne. The purchaser, Aurora, does manage one another facility in the State of Maryland, in Princess Anne. And you know, we visited that facility. The employees, the patients, I mean, there was a lot of due diligence. Again, this is a very delicate issue. We all recognize this. And Aurora, the management agreement has been put in place and they will actually be managing the facility effective August 1st. We still have to go through the process of the sale. So it's all about timing. But again, the legal matters

July 24, 2013

120

have nothing to do with this grant in any way, shape, or form.

TREASURER KOPP: But let me tell you my concern, since I raised the question. It sounds to me as though you have done a tremendous job of trying to anticipate all the problems for the people and for the county. And I'm impressed by what you say. I also know there are a couple of other items before us that got us involved in legal matters that maybe if we had dealt with appropriately in the beginning would have been much shorter in duration. And I am sure that the company, Aurora, and its attorney, would want to make sure also that every I is dotted and every T is crossed. I hear what you are saying, Blaine, and I appreciate it. I would love to hear that from our own attorney. And that's my only concern. I mean, I said in the beginning I am not at all sure if the issues that are being raised quite candidly have to do with this, with our role in this item. But I would like to

July 24, 2013

hear that from our attorney, personally from our attorneys after they review the papers. But that's my only --

MR. YOUNG: I understand that. I guess our only frustration, and I know that you all are decision makers, is that, you know, we would have been glad --

TREASURER KOPP: You've done everything --

MR. YOUNG: -- to address all of that. And then of course at the eleventh hour, you know --

TREASURER KOPP: Yeah.

MR. YOUNG: -- and here we are. So we were not opposed in any way, shape, or form, but it was almost, felt like more of a tactic than it was to act in true transparency.

GOVERNOR O'MALLEY: What's that? The filing of the suit?

MR. YOUNG: Yeah, in terms of the, some of the documentation, they had to do all of that yesterday and things of that nature. I mean, we didn't have time --

July 24, 2013

122

TREASURER KOPP: The eleventh hour is a problem.

MR. YOUNG: -- to respond. We --

MR. COLLINS: I haven't seen them either.

GOVERNOR O'MALLEY: Do you want to, is your motion to defer this for two weeks?

TREASURER KOPP: Yeah, I mean I know some people would like to put it off as --

SECRETARY MCDONALD: Four weeks.

GOVERNOR O'MALLEY: Four weeks.

TREASURER KOPP: It's four weeks?

SECRETARY MCDONALD: August 21st. Let me point out that Item 35 on page 65 of the DGS Agenda has two parts to it. Asking you to approve the sale of the property, and then asking you to forgive that they don't have to pay back the \$200,000 grant. I'm just saying that an option would be perhaps to permit them to sell the property, because I believe a Circuit Court case, they could issue a stay if there was a

July 24, 2013

problem, or if the Circuit Court judge felt that these deeds, handwritten deeds, had problems with the sale the Circuit Court judge could issue a stay on that. But you would give them the State's permission from the grant agreement. But you could hold back the decision on the \$200,000 grant and maybe listen more to the equities of the case on that part. I'm just pointing out that there's two things --

TREASURER KOPP: -- the equities of the case

--

SECRETARY MCDONALD: Well what I'm talking about the \$200,000 grant. Because that's the second part, where they are asking you this grant that the State gave them two years ago. They are asking that they not have to pay it back. And that could be --

MR. YOUNG: No, no, no. I'll --

SECRETARY MCDONALD: But I'm just telling you what the item in front of the Board says currently.

July 24, 2013

124

GOVERNOR O'MALLEY: He said he's cut an extra \$100,000 on it.

(Laughter.)

MR. YOUNG: You have my word, Governor. I'll give you \$300,000. We'll repay every dime.

SECRETARY MCDONALD: But our next meeting is in four weeks.

TREASURER KOPP: -- I mean, as I understand it, and we heard about, that we were briefed on that. And the point is the county is still paying more money. I mean, it's somewhat like the University item that was before us.

MR. YOUNG: Except that the difference is they are asking for forgiveness. We want to do it the right way. But, you know, the \$200,000, we have no problem --

TREASURER KOPP: But that's not the --

MR. YOUNG: -- paying that back is not the -

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July 24, 2013

TREASURER KOPP: That isn't, I'm not the attorney. I just don't want us to start down a road where something happens and it turns out we signed off on something that --

MR. COLLINS: Subject to --

SECRETARY MCDONALD: I mean --

MR. YOUNG: I mean if you want to make it contingent that would be wonderful in terms of a motion with some type of caveat.

TREASURER KOPP: Yeah.

SECRETARY MCDONALD: But I don't know what it would be contingent on for that four weeks. I mean I think what you are wanting to hear anything about it in four weeks. You feel like you haven't heard any information at all since you got this last night. So yes, you could make a contingent motion but I don't know what it would be contingent on.

TREASURER KOPP: We have not received advice from our, from our attorney --

July 24, 2013

126

SECRETARY MCDONALD: We just got it last night at 4:30 exactly.

TREASURER KOPP: But my colleagues are attorneys and --

MR. LINTON: We are simply asking you to defer your decision for another month to give time to get this resolved legally. Because they cannot sell the property and issue a deed until there is a subdivision approved. This is part of a 80-acre site and they want to take seven acres off and sell that. Well until that's resolved it can't be legal.

MR. YOUNG: And see that's a municipal issue with the City of Frederick. Which we got approval from the City of Frederick, which they filed an appeal, which is their right to do so under municipal law. But we were granted by the Planning Commission of the City of Frederick to do that subdivision that they filed, which is again has nothing at all to do with the grant. At all. But I mean if there is

July 24, 2013

anything, and I, Governor, I, you know me. I've never asked you for much.

(Laughter.)

MR. YOUNG: But if I get out of here with a contingent motion, and if you want to put some contingency on us, I would appreciate it. But you know, I understand your concerns. But it is a delicate issue.

GOVERNOR O'MALLEY: Am I hearing a motion by the Treasurer to defer this for one meeting? Or no?

TREASURER KOPP: Yeah, I mean, I would like to hear from our attorneys. Everything they are saying sounds to me, and everything that Sheila said, who is not our attorney, that in fact the Circuit Court will review that and put a stay. But --

MR. YOUNG: Well Madam Treasurer, is there any way we can get a motion that it is contingent as long as it is approved by your attorneys? If your attorneys say no, then we can bring it back. If your attorneys say it's fine, I mean, we do it all the

July 24, 2013

128

time. I've done it in municipal government when I served there and county government.

GOVERNOR O'MALLEY: No, I think, I mean the Treasurer made a motion, the Comptroller seconds it. And so all in favor signal by saying, "Aye."

THE BOARD: Aye.

TREASURER KOPP: I didn't realize it was four weeks till the next meeting.

MR. YOUNG: See for us that's another \$500,000 loss. That's what we're, that's the amount of money we're losing right now per month in this facility.

MR. LINTON: The last two months have shown a profit.

MR. YOUNG: And forget about the debt ceiling. Thank you.

GOVERNOR O'MALLEY: I'm glad to reschedule a special meeting sooner.

July 24, 2013

TREASURER KOPP: If we hear from the attorneys and --

MR. YOUNG: Sure.

GOVERNOR O'MALLEY: Blaine, I was with you. But the Comptroller said if she didn't make the motion he was going to anyway.

TREASURER KOPP: He didn't say that.

(Laughter.)

GOVERNOR O'MALLEY: No, I would have helped. All right. So that motion carries, two to one. And we will defer --

SECRETARY MCDONALD: Two to one, item is deferred.

GOVERNOR O'MALLEY: Yeah, the item is deferred.

SECRETARY MCDONALD: And we can confer with your offices if you can have a special meeting --

GOVERNOR O'MALLEY: And if we can get some word, some green lights from attorneys --

July 24, 2013

130

TREASURER KOPP: I have no problem meeting -

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GOVERNOR O'MALLEY: -- earlier we can come back in here lickety split and schedule a meeting, right Ms. McDonald?

SECRETARY MCDONALD: Yes, we can, absolutely.

GOVERNOR O'MALLEY: Sure, and act on just this item.

SECRETARY MCDONALD: Yes, we can.

GOVERNOR O'MALLEY: Okay? So if the Circuit Court acts and you're good to go, Mr. Commissioner, give us a holler back and we'll schedule it quick.

MR. YOUNG: Thank you, Governor.

GOVERNOR O'MALLEY: Thank you, sir.

DR. SPERLICH: Thank you so much.

MR. LINTON: Thank you.

GOVERNOR O'MALLEY: Okay, thank you. All right. We are now on to --

July 24, 2013

SECRETARY MCDONALD: Okay, Governor, I'm sorry. This has been a rather confusing Agenda. Before we go to the last item on the Agenda, which is Secretary 34, I do want to make the announcement that on the Secretary's Agenda, Item 31, was withdrawn. And on the DGS Agenda Item 29 was withdrawn.

MR. COLLINS: That's what I thought --

SECRETARY MCDONALD: And those two things might not have been said clearly. But your vote was on all the other items. But Item 31 of the Secretary's was withdrawn, and Item 29 of the DGS was withdrawn.

MR. COLLINS: DGS. I apologize --

GOVERNOR O'MALLEY: DGS Item 29 was not before us when we did the motion to, I thought I heard you say that as well, Al. You usually --

SECRETARY MCDONALD: We weren't sure. We heard different things from different, so we just wanted to --

July 24, 2013

132

GOVERNOR O'MALLEY: So we will clarify for the record that 29 was withdrawn.

SECRETARY MCDONALD: All right. And now we have only one item left, which is Secretary's Item 34, an application for a wetlands permit. Would you like to hear that or --

GOVERNOR O'MALLEY: Okay, here we go. Folks --

MR. MOORE: We just need to get the people in here.

SECRETARY MCDONALD: I know, we do. But I mean, so I don't know if you wanted to --

GOVERNOR O'MALLEY: Yes. Come on in, anybody that's going to, this is what I would propose. We have to take a break at 1:00 in order to just walk down the hall for --

SECRETARY MCDONALD: Okay. So maybe the wetlands administrator can get his recommendation out --

July 24, 2013

GOVERNOR O'MALLEY: And so, so what we will hear from, I would like first to hear from the attorney to the Board of Public Works because -- let's get everybody, are people coming in? Are we letting them know?

MR. MOORE: Let me make sure we've got the department lawyer --

GOVERNOR O'MALLEY: We could, sure. Yeah, we're going to take a five-minute break. Okay? Anybody who is here, if you are here from other departments or agencies and you have got other places to go and you are not involved in this, you know, the most well considered wetlands permit in the history of the State of Maryland, you are free to, you are dismissed. You can go back to your offices, go back to your service to the people of Maryland. You don't have to stay here. You can vacate. So we're going to take a five-minute break. We're going to resume here with the wetlands administrator.

(Recess.)

July 24, 2013

134

GOVERNOR O'MALLEY: Ladies and gentlemen, we are now on Item --

SECRETARY MCDONALD: Thirty-four.

GOVERNOR O'MALLEY: -- 34 of the Secretary's Agenda. Thirteen years ago a wetlands permit was applied for regarding these properties, this parcel of property on Kent Island. Some six?

SECRETARY MCDONALD: Six years ago.

GOVERNOR O'MALLEY: Six years ago this Board of Public Works on a two to one vote --

SECRETARY MCDONALD: Denied the application.

GOVERNOR O'MALLEY: -- denied the application for wetlands permit based on the criteria as we understood it. That record was then appealed to the highest court in the State of Maryland, the Court of Appeals, which then unanimously has remanded this matter, sent this matter back to us as the Board of Public Works with instructions. And as all of you know, the Court of Appeals is the highest court in the

July 24, 2013

land and so I would like to ask who is going to give us sort of the burden proof here and the instructions from the Court of Appeals? Mr. Howard, come on down?

MR. HOWARD: Yes. I'm going to pass to Adam Snyder who handled the case in the Court of Appeals.

GOVERNOR O'MALLEY: Okay. And Mr. Howard, just say who you are for the record, please.

MR. HOWARD: I'm the Deputy Attorney General.

GOVERNOR O'MALLEY: For the State of Maryland, Mr. J.B. Howard. Sir, your name?

MR. SNYDER: Adam Snyder, and now the Chief of Opinions at the Attorney General's Office, but I handled this litigation before the Court of Appeals. And as I read the Court's remand it's that it doesn't foreclose any particular procedure before the Board, or dictate any particular type of procedure, or said anything about the burden of proof before the Board of Public Works. It remands the decision, and I can quote from the decision, for further proceedings

designed to correct the error of law that the Court described in its decision. So the Court doesn't foreclose, doesn't tell you what procedure you have to follow on the remand. I think you will hear from some other folks that they interpret the Court's remand as saying you have to start from square one. You've got to go back and put things out on public notice, or get MBEs, formal report and recommendation. I don't think the Court's opinion dictates that result. It's something the Board would have discretion under its regulations perhaps to do, but it's not dictated by the Court.

GOVERNOR O'MALLEY: Tell us what error they unanimously found.

MR. SNYDER: They found that the Board doesn't, essentially doesn't have the authority to second guess the decisions made by the Critical Area Commission and other bodies that have their own unique regulatory jurisdiction. They saw the Board as taking

July 24, 2013

the position that when a project before the Board involving the wetland impacts, that the Board has the jurisdiction to consider the entire project whether it's the aspects that are involved with wetlands, or other aspects involving hurricane evacuation, growth density, critical area, or what have you. And the Court said that you can't consider that, Board. You have to focus on the impacts to the wetlands themselves. If those impacts are serious enough that they give you pause, then you can look at the benefits provided by the project, perhaps not in wetlands, to see whether it makes sense, whether it's in the best public interest to issue that license to facilitate that project. But they were very clear that given that the Critical Area Commission had already approved the project, and that other agencies had approved. Aspects of the project within their specific jurisdiction that the Board couldn't deny the project, deny the license, on the basis of essentially disagreeing with those coordinate agencies' decisions.

July 24, 2013

138

GOVERNOR O'MALLEY: They, sure, Mr. Comptroller?

COMPTROLLER FRANCHOT: Well, that's interesting. I wasn't going to get involved this early. But I read the opinion and I didn't take that same message from the Court of Appeals, which I respect a lot. I mean, the fact that they remanded this back to us I think indicates pretty strongly that, I mean, they could have just granted the license themselves, I take it.

MR. SNYDER: Well no, I don't think they would be able to. They would have to remand. This is what they always do when they disagree with an agency's decision.

COMPTROLLER FRANCHOT: But they would have to remand it with specific instructions which, at least as far as I saw in the reading, was -- well, anyway. And I thought your comments were interesting. Let me just ask you whether in the Environmental

July 24, 2013

Article of the State of Maryland there is the following language. "The Board," us, "shall decide if the issuance of the license is in the best interest of the State." And then it goes into take into account various ecological, economic, developmental, recreational, aesthetic values.

MR. SNYDER: That's correct.

COMPTROLLER FRANCHOT: That's pretty explicit. In the best interests of the State mentioned first in the statute. And I take it the regulations follow that, where they say the Board shall approve or deny, shall determine to be reasonable in accordance with the best interests of the State. I mean, that's pretty plain English. And --

MR. SNYDER: It's a fairly broad standard, too.

COMPTROLLER FRANCHOT: I love my colleagues across the way. But I assume that that language is pretty clear that there is a public interest standard

in our deliberations. I would just like to eliminate any public confusion about what I think the role of the Board is and what we are able to do. And in fact don't the applicants themselves in this proposal, re-proposal, I guess, new proposal, recognize that this Board has independent judgment in considering applications for wetlands permits? I take it K.

Hovnanian could have just put the same project back in front of us. Or frankly, it could have been a more dense project and said, "Thank you very much. The Court of Appeals has restricted you guys to figuring out how many square feet of shade there is on a given bunch of grass out there and that's it, lock, stock, and barrel."

I don't know, I mean, they have, obviously Hovnanian should be congratulated for making this a better project from a green perspective. It's hard to believe that they don't think we have a public interest standard to uphold. And I guess my question

July 24, 2013

for you if you are our legal counsel is what is your response to the argument that the changes Hovnanian made in response to the public interest standard that we have, that those changes are sufficient enough to make this a whole new project which should therefore go through all of the local planning approvals, most notably that of the Queen Anne's County Planning Commission, that are required of new projects? I take it this hasn't been look at since 2002.

MR. SNYDER: What aspect hasn't been looked at since 2002 --

COMPTROLLER FRANCHOT: That was when the 2002 developer's rights and responsibilities agreement was signed. We saw a different project six years ago. Now we have a different project even from that. How can that not be something that should be looked at again by the Planning Commission, given the changed nature of it?

MR. SNYDER: Well I need to kind of clarify my role here. Because I'm, you know, not counsel to

the Board. I'm here and I represent my capacity as the person who handled the litigation before the Court of Appeals. So I am not really prepared to speak a lot about the DRA, whether it should be revisited or not. I am here to talk about the scope of the remand. There may be other folks in here who are equipped to answer those questions.

GOVERNOR O'MALLEY: Well, and we'll be glad to pull them up, Mr. Comptroller.

COMPTROLLER FRANCHOT: Let me ask --

MR. SNYDER: But I do want to state --

COMPTROLLER FRANCHOT: Yeah, please.

MR. SNYDER: -- to your public interest. I apologize if I said anything in my remarks directed at your question, Governor, that contradicted that. Because I do believe it is a public interest standard. But what the Court of Appeal said that when weighing the public interest you have to keep focused on the wetlands involved rather than the larger project.

July 24, 2013

GOVERNOR O'MALLEY: You keep, this is the second time you've used the word focus.

MR. SNYDER: Yes.

GOVERNOR O'MALLEY: Focus or restrict?

MR. SNYDER: Well -- I mean we argued...

GOVERNOR O'MALLEY: Is there a threshold issue that we have to find some impact, greater impact on the wetlands before we're able to consider those other things? Or we're not even able to consider those other things?

MR. SNYDER: There is certainly no numerical threshold, no. And we argued before, I argued before the Court of Appeals that the approach taken, argued by Hovnanian was kind of requiring the Board to put blinders on and ignore the other aspects of the project that everyone may well have concerns about. But, you know, the Court in the 7-0 decision didn't buy that argument. And whether you want to call it blinders or focus, I think --

GOVERNOR O'MALLEY: Or restriction?

MR. SNYDER: -- or restriction, the clear import of the Court's decision is that the Board has to base its decision on the impacts to the wetlands and whether they are in the public interest and not whether the larger project is in the public interest.

COMPTROLLER FRANCHOT: Well I think you should have won, but --

MR. SNYDER: Yeah, I do too.

(Laughter.)

COMPTROLLER FRANCHOT: -- but the fact of the matter is that they remanded it with the conditions that we should take into account what the Governor has countered, and that's fine by me. I'll try to be more careful in my statements because I understand the transcript is looked at with a microscope over there as to what exactly I or the Governor the Treasurer have going on inside our head, which I think is unfortunate. But I guess I would like to ask isn't this the type of issue that should

July 24, 2013

be looked at again, even if legally, and maybe I'll ask the Deputy Attorney General here, not to put you in the middle of this. But shouldn't, doesn't this cry out, given the 3-2 vote of the Commissioners, and all the dissent, all the people that are coming down here to speak against it, doesn't it cry out for some kind of new review just to give the public a chance to, you know, act and articulate whatever it is their concerns are? I mean, I'm kind of stunned that we are taking this with all the changes, assuming it's all for the good, and just moving forward in the face of all the citizens saying, hey, we don't, I don't know what their objections are, we haven't even heard it. But doesn't it cry out for a second, another public hearing?

MR. HOWARD: While I might well agree with you as a citizen, from the standpoint of what the law seems to require and what the Board of Appeals I think very clearly set forth as the boundaries, the legal boundaries of the Board's consideration, absent a

change in the law I think we are where we are with the constraints. And we have now the Department of the Environment could, has the discretion to, and I don't want them to get angry at me because of this, but they certainly may step back and begin a more comprehensive practice with their process. But they are not required to, as we read the law and as we vetted this the other day, Greg, Adam and myself. That may be a source of frustration to some of us as citizens. But strictly from a legal standpoint I think, you know, we are where we are. The Board I think has a lot of discretion. But in, within the bounds of, within those fairly narrow bounds --

GOVERNOR O'MALLEY: Of wetlands.

MR. HOWARD: -- of wetlands.

GOVERNOR O'MALLEY: And only impact on wetlands.

MR. HOWARD: And only impact on wetlands.

July 24, 2013

COMPTROLLER FRANCHOT: Thank you. And I have great respect for your leadership on all these legal issues. But if I could just say for the record?

GOVERNOR O'MALLEY: Sure.

COMPTROLLER FRANCHOT: For whatever law clerk over there is looking at the transcript next time that last time I did vote in the best interests of the State, and I did apply it to the varying ecological, economic, developmental, recreational, and aesthetic values of the permit that was before us. The other comments I had about has anybody read recently about sea level rising, and what is the point of putting this kind of developing in a low lying ecologically sensitive area? Those were just ruminations on top of what motivated my vote. And you know, I'm sorry that the Court has chosen to put everybody in this position.

MR. HOWARD: Well and I'll just say that that was the Attorney General's Office's understanding of the legal standard as well. I mean, I certainly

spoke with the Governor's counsel, and with some Board liaisons around the time of the meeting. And it certainly appeared to me exactly the language you are reading gave the Board the authority to look at this from a 30,000-foot level from the standpoint of, you know, what is in the best interests of the State writ large. And that is still the statutory standard, as Adam said. But it's confined to the application of the wetlands impacts. So, I mean, you have in a narrow scope a very broad public interest as a State standard.

GOVERNOR O'MALLEY: Did he cite any aspect of the statute that said that this is restricted to the impact of the wetlands?

MR. HOWARD: Let me, Adam will correct me if I get this wrong, but my understanding of the case is the Board relied on, seemed to rely on other authority within the Board of Public Works enabling statutes relating to disposition of State property, which does

July 24, 2013

give a much broader authority to look at lots of different things. And that the, it's the wetlands, that that authority is not a sort of overarching authority that will apply with respect to wetlands licenses. So when you do land dispositions, different standards apply. But, and very broad ones. But that in Judge Wilner's view, and the members of the Court who joined, that authority could not be imported from the land acquisition provisions into wetlands decisions. No one was happy when this came out, Governor. We were disappointed. And, you know, I will, I'll just say I was at the Board meeting when all the Board members --

GOVERNOR O'MALLEY: Well that was several meetings.

MR. HOWARD: Several meetings it was. And, you know, I thought the comments of all the Board members were very eloquent, well considered, and within the boundaries of what the Board's authority was as we all understood it at the time. But we

respect the Court of Appeals, and it said what it said, and it's something that the General Assembly would have to take up if the General Assembly wants to give the Board with respect to wetlands decisions the broader authority to look at. Adam, what did I get wrong?

MR. SNYDER: No, nothing. I would just add, though, that in response to your specific question about what aspect of the statute did the Court cite, they cited to the provision stating the public policy behind the statute, which was to protect wetlands and avoid their defoliation and destruction and what not. So the whole thrust of this statute is based on protecting those wetlands, not protecting non-wetland property that may otherwise be affected by development.

COMPTROLLER FRANCHOT: But as I understand it, Governor if I could, if we vote today, or whenever we get to this matter, to a vote, if we vote based on

July 24, 2013

those criteria, or vis a vis this wetlands permit, that would satisfy the criteria? That would satisfy the Court of Appeals?

MR. HOWARD: As long as there is evidence in the record to support it, substantial evidence to support the agency's decision. That's the typical standard. And so you would be looking to see what the agencies recommend, what testimony was there before the Board, what are the remarks, statements by the Board members, to see whether that is supportable by the record. And if there is, if there is substantial evidence to support it, I, you know, there is the possibility that that decision could be upheld.

GOVERNOR O'MALLEY: So the number, so if we have -- okay.

TREASURER KOPP: Could I ask, I mean, since you are here, and I too was prepared to hear everything, just following the legal questions, since the first round there have been changes both in the stormwater law and the buffer requirements for

July 24, 2013

152

critical areas. And one of the questions raised sort of is whether this is a new case or an ongoing case. Understand, I'm a layman. These are all layman's terms. I'm not an attorney. Could you give us your insight into whether the changes involved would somehow make this a new case, which requires a whole new process? You refer to it a little more --

MR. HOWARD: Yes.

TREASURER KOPP: -- on the impact of the 2007, 2008 law?

MR. HOWARD: Adam, I'll let you speak to that. I know you explained it to me but --

MR. SNYDER: Mm-hmm. There are two changes in the statutory changes that happened in the interim. There's changes to the critical area buffer requirements and then changes to the stormwater regulations. It's my understanding, and there may be people from here who can confirm that, that the Critical Area Commission has determined that the

July 24, 2013

critical area buffer requirements don't apply to this project because it would constitute kind of retroactive application of the new critical area requirements. And there is a Court of Appeals decision, I know, from other stuff I've done involving the little island that someone built a house on with the plastic palm trees that concluded in that case that these same buffer regulations, I believe they were the same ones, could not be applied retroactively to that situation when the house had been built, and then three and a half years later.

TREASURER KOPP: Couldn't?

MR. SNYDER: Couldn't be applied. And critical area folks may certainly know a lot more about the new buffer regulations than I do and may be able to shed some light on how it interprets how those requirements apply in this situation. I can tell you from a broader kind of wetlands standpoint because prior to my current role I used to be at the Department of the Environment and represented the

wetlands program there. And I do know that, you know, oftentimes you will get a project that maybe has 20,000, let's say 20,000 square feet of impact. And it goes through the whole process. And as a result of that process it gets narrowed down to say 10,000 square feet. Typically that type of project will not then be renoticed and start over as long as it's kind of within the same footprint, a subset of the footprint that was previously proposed. So applying that kind of logic here, it's not something that would be compelled by regulation saying you have to start by square one to give everyone an opportunity to provide input on a changed project because the project has really been shrunk, as I understand it, rather than changed.

With respect to the stormwater requirements, again, my understanding is that, I've been told that Hovnanian received some type of a waiver based on a grandfathering provision that the new stormwater

July 24, 2013

management regulations don't apply to them as a matter of law. But I've also heard that they are intending to implement them anyway as a matter of kind of good stewardship of the land --

TREASURER KOPP: That would be lovely. But regardless --

MR. SNYDER: -- but that's, other people have to talk about that.

TREASURER KOPP: Yeah, I'm not, I'm simply asking about the legal impact of these changes, not what they --

MR. SNYDER: Yeah. You know, my view is that the changes don't compel you to go back to square one, because it is a subset of the same project that you previously looked at.

GOVERNOR O'MALLEY: You meant changes in the design or changes in these laws?

TREASURER KOPP: I meant the changes in the law.

July 24, 2013

156

MR. SNYDER: Changes in the law, that's what I mean.

MR. HOWARD: Oh, I thought you were just talking about changes in the project.

TREASURER KOPP: You segued into changes in the --

MR. SNYDER: Well, and, well --

TREASURER KOPP: Are you saying --

MR. HOWARD: I mean, with respect to the changes in the law it's our office's view that they cannot be applied retroactively. And so the changes in the law would not impact this Board's consideration. That's what we discussed and --

GOVERNOR O'MALLEY: And then to the second question? Because this was within, the second distinct question was what requires the triggering of going back and reviewing this as a brand new project? And your assertion would be that this would not

July 24, 2013

because it's within the same footprint and it's actually been reduced?

MR. SNYDER: Yeah. I mean, if they had said we're going to reduce the impacts but we're going to put them in a different area or --

GOVERNOR O'MALLEY: Right.

MR. SNYDER: -- we're going to expand them in some respects, and contract them in other respects --

GOVERNOR O'MALLEY: Got you. We've got to take a little short, five-minute break to walk down for Ms. Tanton, Linda Tanton as we named the Technology Center after her. We're going to be back in five minutes. You all can come with us and pat her family on the back, or you can sit tight. We're going to be back in five minutes.

(Recess.)

GOVERNOR O'MALLEY: Resuming our consideration of Item 34 --

SECRETARY MCDONALD: Thirty-four.

July 24, 2013

158

GOVERNOR O'MALLEY: -- on the Secretary's Agenda. I note, and I don't know if I need to incorporate this Court of Appeals decision into our record?

SECRETARY MCDONALD: It's in our record.

GOVERNOR O'MALLEY: It already is in our record?

SECRETARY MCDONALD: Yes.

GOVERNOR O'MALLEY: Then I will read from our record just every so briefly. This is reading from page 40 of the opinion, unanimous opinion of the Court of Appeals. "While we do not question whether the environmental concerns expressed by the Governor were genuine," that's page 40. And then further down, "the point clearly explained by the two secretaries, however, is that in deciding whether to issue a wetlands license the Board is not authorized to act as a super land use authority." Reading further down to page 42, "the requirement that the Board consider the

July 24, 2013

ecological, economic, developmental, recreational, aesthetic values presented in the application in determining whether issuance of the license is in the State's interest has reference to the impact of the proposed dredging or filling on the affected wetlands, the same limitation to the Board's reliance on COMAR 23.02.04.01(b) as the basis for considering the environmental impact of the entire project."

So having now reviewed the Court of Appeals remand and their guidance to us, so let's hear from our wetlands administrator.

TREASURER KOPP: Can I just ask one more question, or have they gone? The attorneys?

GOVERNOR O'MALLEY: They are still here.

TREASURER KOPP: Because, and that -- yeah, things were out of order, I agree. You told us about the impact of the laws, the changes in the laws. Do the MDE regs and our regs on wetlands still stand and apply as they were?

MR. HOWARD: I don't want to venture an opinion on that. I hadn't studied that question --

TREASURER KOPP: Because we don't want to --

MR. HOWARD: But I don't --

TREASURER KOPP: We don't want to endanger what we have already.

MR. HOWARD: Yeah, I don't, yeah, I don't want to pretend that I could answer that. Adam, if you have, you or Greg, if you've thought about that? I --

TREASURER KOPP: The wetlands, the DNR regs, the wetlands regs?

MR. SNYDER: You mean the MDE wetland regs or the Board's regs?

TREASURER KOPP: Both.

MR. SNYDER: Both? The Court's decision doesn't invalidate any aspect of MDE's regs or the Board's regs. It doesn't say they are unconstitutional or inconsistent with the statute.

July 24, 2013

They just interpret them, they disagree with the way -

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TREASURER KOPP: All right. All right.

MR. SNYDER: -- the Board interpreted them.

TREASURER KOPP: And, okay, and anything that we would delegate under the law to DNR or MDE to look at is not thrown into question by the Court's ruling?

MR. SNYDER: There is nothing in the Court's decision that says that the Board can't do that. Would there be a litigation risk from the developer? From K. Hovnanian? I don't know. I can't speak to that. But there is nothing in the Court's opinion that says that you wouldn't be able to say to MDE, "We want your input on these substantive things."

TREASURER KOPP: Even if they went beyond the capacity of the Board?

MR. SNYDER: Well that's going to get a little bit dicier. If you are talking about, you know, a further delay in the project to explore things

that have not been, the Court has said are not part of your jurisdiction, that's problematic. But there is, you know, in circumstances where something like different stormwater requirements, or different critical area requirements might end up changing the scope of the regulated activities, you know, so that we want to know what's going to go on in stormwater because it might affect what's going to be before us for our approval, you know, I think you would have a better basis for that. I'm just not sure factually whether that's the case.

TREASURER KOPP: If we were saying we want to examine this because we want to make recommendations to the Legislature regarding wetlands laws, does that make any difference?

MR. SNYDER: I'm not sure if that would make any difference within the contours of the defensability of this particular case. That of course

July 24, 2013

may well be something you wish to do as a larger public policy.

TREASURER KOPP: Yeah.

GOVERNOR O'MALLEY: That's okay. Mr. Administrator? Refresh our recollection about this project. What wetlands are affected and to what degree are they affected more by the revisions in the project?

MR. MOORE: Good afternoon, Governor, Comptroller, Madam Treasurer. For the record, I'm Doldon Moore, Wetlands Administrator for the Board. Before you today is the wetlands license application of K. Hovnanian Four Seasons at Kent Island, and it's 00-WL-0706. The applicant requests that the Board reconsider the application that the Board turned down in May of 2007. Since then the Maryland Court of Appeals ordered that the Board review the application again.

The applicant has reduced its proposed scope of work from four elements to two. The two elements

July 24, 2013

164

which the applicant seeks to license is a sewer line, specifically 179 feet long by 14 inches in diameter laying beneath Cox Creek; and a ten-slip pier, 470 feet long by eight feet wide in the Chester River. The pier will have a 75-foot long eight-foot wide T head with attached wave screen, four finger piers, six mooring piles, and three cluster dolphins extending no more than 503 feet channelward at the mean high water.

At a public informational meeting on June 28, 2013 in this room I conveyed the standard of review that the Court of Appeals set out in its remand to the Board, explained that the applicant was renewing the license request only for the sewer line and pier, and advised that the Board would hear this case on July 24th, which is today.

The two elements for which the applicant renewed its request are two of the same elements that the Maryland Department of the Environment and I recommended for approval in 2007. Both MDE and I

July 24, 2013

reaffirm for you our 2007 recommendations. The sewer line and pier will not result in negative impacts to the tidal resources of Cox Creek or the Chester River. As your wetlands administrator I recommend you grant the license.

We have people both for and against this license who have asked to address the Board on the matter. Present also are representatives from various State agencies: the Critical Areas Commission, Department of the Environment, and as you have heard the Attorney General's Office. Thank you.

GOVERNOR O'MALLEY: Will the development itself in your opinion impact adversely the wetlands of Cox Creek or the environment?

MR. MOORE: No. Because --

TREASURER KOPP: No?

MR. MOORE: No.

GOVERNOR O'MALLEY: And upon what do you base that conclusion?

MR. MOORE: I think basically the impact that we had before was, you know, with stormwater. And the systems there that we had that were in the wetlands and their direct discharges. Now those systems are pulled back. The developers propose that they will meet the 2007 criteria. On the prior thing we had the bridge, which had the shadowing impact, that was the majority of the impacts.

GOVERNOR O'MALLEY: And now they are no longer asking for the bridge?

MR. MOORE: There is no bridge. They have not requested stormwater due to it being pulled back out. We have two elements that have no impact whatsoever to wetlands. The sewer line will be a minimum of 20 feet underneath of Cox Creek. The entry and exit holes will be outside the critical areas buffer. And the open pile structures are not considered to have impacts. We do not, living resources, we do not have any impacts on submerged

July 24, 2013

aquatic vegetation and we do not have any impacts on natural oyster bars.

GOVERNOR O'MALLEY: There appears to have been a swapping out of development on one piece of this land?

MR. MOORE: I understand the Tanner property, which was being accessed via the bridge, has been potentially proposed as a park for the county. And I can have the applicant, you know, address that matter better than I can. That's also where the reduction in residential units came from.

GOVERNOR O'MALLEY: How many, what's the reduction in residential units?

MR. MOORE: I think it was 271.

GOVERNOR O'MALLEY: A reduction of 271? So the total left is what?

MR. MOORE: 1,079.

GOVERNOR O'MALLEY: And the park, will that hve a detrimental impact on the wetlands around it?

July 24, 2013

168

MR. MOORE: No. Because on Cox Creek they have currently a 300-foot critical areas buffer --

GOVERNOR O'MALLEY: Mm-hmm.

MR. MOORE: -- on both sides of the Creek. So that is the extent, that would remain the buffer even under, from what I've been in conversations with Critical Areas, under 2010 critical areas changes.

GOVERNOR O'MALLEY: An ecological park, is that the Tanner property?

MR. MOORE: Yes, sir. Yes, sir.

GOVERNOR O'MALLEY: Will that have a positive, or could that have a positive impact on the wetlands?

MR. MOORE: I don't know what their plans will be, if it's passive use, trails, or whatever.

GOVERNOR O'MALLEY: Mm-hmm.

MR. MOORE: It's going to stay status quo. You know, in the vicinity of the crossing the applicant over the last six, seven years has been

July 24, 2013

doing Phragmites eradication, which is an invasive species, so that we would get in that area a healthier marsh over time on it. But without knowing what is being proposed on the park I don't think I can honestly or truthfully answer that question, sir.

GOVERNOR O'MALLEY: Are there any wetlands affected by this, or eliminated by this?

MR. MOORE: No, sir. There is no nontidal wetlands impact, and there is no tidal wetlands impact. What we do have, the applicant is still going to keep a 39,000 square foot enhancement or creation area for nontidal wetlands and that's at their own choosing. In the prior '07 that was required as mitigation for impacts. Now because in the 500-plus acres of property and there is no tidal or nontidal wetland impacts. That's kind of incredible to say.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: So following up on your incredible statement, I guess it's your view as the Wetlands Administrator that putting a 1,000-unit

development on the edge of the Chesapeake Bay in an ecologically sensitive area, with all the talk of global warming and sea level rise and environmental problems down the road, that that is, has no impact whatsoever, in fact I take it your testimony is that's an improvement of the environment?

MR. MOORE: There is no impact to the regulated wetlands resources.

TREASURER KOPP: -- and the wetlands --

MR. MOORE: Yes. And that's, sir, that's kind of been my focus. In the beginning you heard that blinders and so forth. After the Court of Appeals ruling it's kind of, I kind of tell people I'm at the bottom of the funnel now in the review, it has been very limiting. And it is, you know, as it always has been, it's been what are the impacts of the elements to the regulated resource? And here there are no impacts.

July 24, 2013

COMPTROLLER FRANCHOT: Well once again I don't want to give a stroke to some poor law clerk who is trying to figure out what I'm thinking.

MR. MOORE: Right.

COMPTROLLER FRANCHOT: But that is a pretty incredible situation, given all of the recent comments about, you know, we read about all the time that that is the situation that we are facing.

MR. MOORE: This has been a hard project.

COMPTROLLER FRANCHOT: It's not particularly hard. It seems perfectly easy if you just, you know, go around the margin, blah, blah, blah, and X this out, and we're not going to put the bridge in, and we're ready to go. And by the way, it's good for the environment. I mean, I feel like I'm upside down. But hey, that's just me. I'm going to go back to my statement that regardless of your expertise and I appreciate it, and also the Department of the Environment, you know, this is the opposite, the absolutely opposite of smart growth and environmental

July 24, 2013

172

protection. And to the extent you are locked in to your position, and MDE is locked in to their position, it's a gosh darn shame as far as the environment, the Chesapeake Bay, and what we're dealing with. I'm sorry to have gotten off on that because I know it will ignite all sorts of ruffled feathers across the street. But I don't work for the judges. I work for the people of the State of Maryland. And this is really concerning to me now that everything is all systems go because, hey, we forgot to tell you, this is good for the environment, good for the Chesapeake Bay. I mean --

TREASURER KOPP: Mr. Comptroller, just to be fair Mr. Moore as the wetlands administrator is talking specifically about the impact on the wetland of this particular thing. He did not say that this was good for the environment, or good for the Chesapeake Bay.

July 24, 2013

SECRETARY MCDONALD: I think Mr. Moore can explain what wetlands, what he looks at, what wetlands are.

MR. MOORE: We're, again, we're bound by the 1970 Tidal Wetlands Boundary Maps, which and they are part of the law. And those are the legal tidal wetlands, both State tidal wetlands that are inundated by mean high water on a daily basis and then what the Department of the Environment regulates, the private tidal wetlands which we do have some here on it. And they issue a permit for the private on there.

SECRETARY MCDONALD: So Mr. Moore is looking at what's on the maps when he does wetlands, when he decides what a wetlands is. He's looking, he is bound by the 1970 maps that the law incorporated.

MR. MOORE: And in this case those maps were very accurate because we were way up at the head of Cox Creek and --

July 24, 2013

174

TREASURER KOPP: I'm just saying, so you could hypothetically have something that does not adversely impact the wetlands --

SECRETARY MCDONALD: Right.

TREASURER KOPP: -- but is an environmental catastrophe.

GOVERNOR O'MALLEY: Let's go to Mr. --

SECRETARY MCDONALD: Right, no correct.

GOVERNOR O'MALLEY: Let's go to Dr. Summers, who testified on this matter when he was Deputy Secretary Summers in charge of water, right?

DR. SUMMERS: I was Deputy Secretary of the Environment. I was Water Management Administration Director prior to that.

GOVERNOR O'MALLEY: Doctor, you testified the last time that this matter was before us, as I recall, and apparently as Judge Wilner recalls, you were asked what is the sort of broader water quality impact of having a development of this size on this

July 24, 2013

site when compared to the current agricultural use on that site. And so I'd like if you would to focus your testimony here today on that sort of broader question. We've heard about the geography of the wetlands itself. I'd like for you to talk to us and give us your opinion, given your background and education, on what the stormwater runoff impact is of this, of this development on the water quality?

DR. SUMMERS: Okay. Stormwater has a number of issues, the water. And too much water causes erosion and can damage wetlands or whatever. That's what we have the stormwater management regulations for, to make sure that stormwater is properly treated on the upland areas. And at the time we reviewed that. We came to the conclusion that that stormwater from this proposed development was being properly treated.

As to the question of the existing use, agriculture, versus the current, or the proposed use, development, when we look at the data it's a very site

specific question. In looking at this site with the current agricultural operations, if they put in all of the best possible agricultural best management practices, the stormwater would be also appropriately treated. And to say that stormwater would be worse under the development versus what's there now, or better, is a very difficult question scientifically. And at the time I believe I testified that if you took the best possible practices and put them in place on these sites, they would be comparable, whether it was agricultural or urban. Where agriculture, and that's stormwater, and the nitrogen, phosphorous, sediment issues that we're worried about in the Chesapeake Bay.

In the urban side, though, you have some additional contamination due to the paved surfaces. And I testified at that time that unless the stormwater is properly treated you could have impacts due to that sort of contamination, oil, and grease, and metals, and things that fall off of automobiles, I

July 24, 2013

believe I testified at that time, could be washed. On the other hand in agriculture you've got to put extra nutrients. If you are going to grow a corn crop, or you have a pest issue, there would be pesticides. So the bottom line conclusion that I came to back in 2007 was that this development, were it done properly, could be done in a manner that did not worsen the situation on this particular site.

That said, that's with the existing agricultural use. When we toured the site we saw the fields. If this whole site were to revert to forest, or just the agricultural fields left to be fallow, that would certainly be a better environmental outcome. But that's not the choice we are looking at here. It's existing use versus the development. And so I do not believe that if this development is done properly that it would make the situation worse. And I believe that it can be done in a way that is protective of the environment and water quality.

July 24, 2013

178

GOVERNOR O'MALLEY: How about the runoff itself as it affects the wetlands?

DR. SUMMERS: The runoff itself, if it, our new stormwater management regulations, we call environmental site design, take the runoff and disconnect it from the impervious surface. So instead of an old style development going right into a pipe and right into an outfall that could cause erosion where it comes out in the wetland, we promote infiltration, which is soaking in of the runoff into the ground. We promote evapotranspiration by having plantings and buffers and so called rain gardens to encourage infiltration, then evapotranspiration to control the runoff to what we refer to as woods in good condition. So we control the runoff to that level using these types of practices under the new stormwater standards. Sorry about that.

GOVERNOR O'MALLEY: That's okay. Questions?
Mr. Comptroller?

July 24, 2013

COMPTROLLER FRANCHOT: So taking obviously something that is a facetious extreme, Hovnanian type projects like this would be no damage to the Bay if they were put in agricultural areas since the agricultural areas are, as far as the wetlands, they are, this is a neutral to desirable goal?

DR. SUMMERS: We have under the critical areas law basically divided up our critical area into different land use categories. I think there are folks here from Critical Areas who can talk about that. But there is a limited amount of the critical area that can be developed in this way. I would never advocate that this be done in the entire critical area. Because there are impacts due to development that go beyond the runoff strictly that I am talking about. You've got more roadways. You've got more development of shopping centers and things like that that go along with it. So this has all got to be done in the context of a proper land use plan. And the

amount of development in our critical area definitely needs to be limited to protect the Chesapeake Bay.

There are those who argue, and I believe the developer argued back in 2007, looking just at some of the data from the Environmental Protection Agency on nitrogen and phosphorous loading that development is actually better than agriculture when it comes to nitrogen and phosphorous loading. And that can be the case. Although I would submit with best management practices on either you can get them both down into the same range of impact.

But development brings with it automobiles, more traffic, more energy use, more emissions. It also brings with it sewage. And in this case the sewage is being treated at state of the art treatment levels at the Kent Narrows Plant, enhanced nutrient removal. But even taking that into account if you add up the runoff piece and the sewage piece, we do need to limit development. We cannot allow this to occur

July 24, 2013

all over. And that's got to be done in the context of this critical areas land use management plan.

GOVERNOR O'MALLEY: Is this in a PF, in a PFA?

DR. SUMMERS: It is in the priority funding area.

GOVERNOR O'MALLEY: Describe for us what the priority funding areas are.

DR. SUMMERS: Every county has to under the Priority Funding Area law designate areas where they want to focus growth and development. And Queen Anne's County has gone through, I think the county is here, they could comment more specifically on the details, but in general every county puts a priority funding area together. That's where development is supposed to go. That's where we can provide grants for water and sewer and things like that, which there is water and sewer in these areas.

July 24, 2013

182

GOVERNOR O'MALLEY: How many units are there right now, do you know? How many other units are on that strip?

DR. SUMMERS: On the peninsula? There is development around it but I don't know the number. There probably are folks here who do.

GOVERNOR O'MALLEY: Okay.

DR. SUMMERS: But this development would add, as we've heard, 1,079. Just looking at the map there are probably at least that many there already.

GOVERNOR O'MALLEY: Mm-hmm. Mr. Comptroller?

COMPTROLLER FRANCHOT: So you are the Secretary of the Environment?

DR. SUMMERS: Yes.

COMPTROLLER FRANCHOT: And you are okay with this project?

DR. SUMMERS: This project meets all of the regulatory requirements. Personally I think that, as

July 24, 2013

I've said, we need to limit our development in the critical area. But in this case the decisions have been made and the land use parameters have been laid out by the county. And I would certainly strongly advocate that we stick to that and that there are limits on development in the area. But this specific project, I think it meets all of the requirements. So provided they do the stormwater properly, and get all the other permits they need, this can be done safely.

COMPTROLLER FRANCHOT: Okay. But keeping your hat on as Secretary of the Environment, don't you find, don't you find that in issues like this, where there are strong emotion disagreement on both sides of this particular development, that the better course of action for State and local officials is to make sure that there are opportunities for those concerns to be raised? And the fact that this thing is so old, as the Governor has said, it's I guess in its 13th year. And now that we have reached the witching hour, and don't you think from a public standpoint this should

July 24, 2013

184

go back for some kind of review and hearing based on just for transparency's sake if nothing else?

DR. SUMMERS: Yeah, this project went through a full public review previously. You know, we had heard all the comments. We came to the conclusion that it met the requirements and we recommended to you in 2007 it would proceed. They have come back with a project that actually eliminated the wetlands impacts, the tidal wetlands impacts as Mr. Moore has just indicated. At the Department of the Environment obviously we are very, very supportive of the public process. We try to do it properly. But, you know, there is also due process. So, you know, we take that, we take that very seriously. And this is a decision, obviously, that the Board can make, needs to make. And we will run it through full review if you ask us to do that. But at this point we are recommending that it can proceed, that it actually reduces the damages or the impacts that we had said

July 24, 2013

previously had been properly mitigated and could be controlled.

COMPTROLLER FRANCHOT: How long would a total review take?

DR. SUMMERS: Well --

COMPTROLLER FRANCHOT: -- accelerated basis --

DR. SUMMERS: Yeah, I think it would take us several months to go through this project. It would depend on a lot of cooperation from the county and the developer. And obviously we would have a public process here. So there are, I don't have them on the top of my head, there are specific time frames. But it would not be a short time. I could see it running probably up to six months or so.

COMPTROLLER FRANCHOT: Thank you.

TREASURER KOPP: What, let me just make clear in my own mind, you said it met all the criteria in 2007 and you recommended approval.

DR. SUMMERS: In terms of protection of the wetlands, correct.

TREASURER KOPP: In terms of protection of the wetlands. And, which is what's before us.

DR. SUMMERS: Right.

TREASURER KOPP: And would be before us again.

DR. SUMMERS: Correct.

TREASURER KOPP: And then there were some changes in the law, and the Stormwater Management Act --

DR. SUMMERS: Yes.

TREASURER KOPP: -- after that, and the Critical Areas Act after that.

DR. SUMMERS: Yes.

TREASURER KOPP: Does that have an impact on your conclusion? Would that change things?

DR. SUMMERS: Well --

July 24, 2013

TREASURER KOPP: From your perspective? We heard from the Attorney General --

DR. SUMMERS: Sure. I'm not the person to comment on the critical areas, I believe the Critical Areas Commission is here.

TREASURER KOPP: Right.

DR. SUMMERS: But with respect to stormwater, it's my understanding that the current plan for stormwater will need to go through final review at the county. And that review will not be subject to the current, Stormwater Management Act of 2007 requirements. But the developer has indicated that they intend to use environmental site design on that. It's also my understanding that that's just phase one, which is I think about, I don't remember the number, but it's only 200 or so out of the full, excuse me? 105 single family homes, phase one, that are grandfathered if you will. Phases two through four would need to go through the full stormwater review as far as I know. And so that would be subject

to the environmental site design requirements. Of course phase five will not happen under the current proposal. And in order for phase five to go forward, or for any of the stormwater on phases two through four to impact the wetlands at all, they'd have to come back before the Board for a reconsideration.

TREASURER KOPP: So what you are saying is, I gather what I hear you saying is that the 2007 law somehow grandfathered in things that were already --

DR. SUMMERS: If they had their preliminary site plan approval through the county, they can move forward with that. But at the time that was based on our 2000 stormwater design manual, which is pretty much, certainly at that time state of the art. It's also something that is very protective of stormwater.

TREASURER KOPP: And at that time, as I recall, 2007, and I may be completely wrong about this, something like 30 percent of the project was going to be impervious? Is that --

July 24, 2013

DR. SUMMERS: I don't recall that number.

TREASURER KOPP: That doesn't impact? And I assume now there's a reduction if they turn the parcel five into a park?

DR. SUMMERS: Yeah, the stormwater has to be properly handled off the impervious surface to prevent it being discharged into the wetlands with the erosive forces that would cause damage to the wetland. And our assessment at the time was that that was, that would be taken care of. But that still has to go through final county approval under the county stormwater program.

GOVERNOR O'MALLEY: I was just saying let's, I think why don't we, why don't we hear from the developer, or his legal --

SECRETARY MCDONALD: Yes, we have the applicant --

GOVERNOR O'MALLEY: Their legal team, the applicant's, and --

SECRETARY MCDONALD: Mr. Schaller?

July 24, 2013

190

GOVERNOR O'MALLEY: We don't have any easels or something so that people can see the maps, huh, K. Large? DNR is not, I don't, does DNR have any role in this?

DR. SUMMERS: They, in the original review they would look at rare, threatened, and endangered species. And it was an issue, I believe, with an eagle nest on site at the time. And the most recent information is that that's no longer there.

GOVERNOR O'MALLEY: The eagle moved?

DR. SUMMERS: Apparently. We're not sure about that.

TREASURER KOPP: One last thing about, we have a letter from you --

GOVERNOR O'MALLEY: The eagle better not have been evicted.

DR. SUMMERS: Yes?

July 24, 2013

TREASURER KOPP: You would say that was after a sufficient review of the latest project in light of the changes in law and regulation --

DR. SUMMERS: The letter that you are referring to there was our comments on the administrator's report. That is not based on the full review by the Department of the Environment. Gary Setzer, our wetlands program manager, is here and can talk specifically about the details of what we reviewed and didn't review. But he was on site with the folks not too long ago over reviewing this.

TREASURER KOPP: At the moment I just want to be clear of what this letter is.

DR. SUMMERS: It is not a complete review.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: Okay. Let's hear from the applicants.

SECRETARY MCDONALD: We are bringing the easel up.

GOVERNOR O'MALLEY: Okay. Thank you.

MR. SCHALLER: Good afternoon, Board members. My name is Charles Schaller. I'm an attorney with Linowes & Blocher. I'm here on behalf of K. Hovnanian. You've heard a lot of information today. I certainly don't want to rehash it. I'm here to answer any questions that the Board has for me. Certainly much of this ground has been covered already and we've all been here for a long time.

Certainly I would like to say we all know we are here based on the Court of Appeals remand in April of 2012. The standard has been laid out, and Governor you hit the nail on the head with the two pages, page 40 and page 42 that set forth the standard that this Board is to utilize when looking at a wetland license application in relation to the areas in the application. So I won't walk through the standard any further than that.

I think it's important for this Board to understand that there was an original application in

July 24, 2013

2007 for 1,350 units. And after the Court of Appeals decision came down the applicants heard the concerns voiced by many and tried to create a win-win situation. Unfortunately you can never satisfy everybody all the time out there, and there are always some people having different ideas. I want the Board to understand K. Hovnanian is committed to creating an environmentally sustainable project here. It certainly understands the sensitivity of the area. And what the Board should realize in this application before the Board, the bridge was removed. Everybody recalls the bridge was, created 9,939 square feet of shading. That was the impact. That was the large impact besides the pier. That has been removed. The bridge was the conduit to the Tanner parcel, which is the 131-acre parcel. I'd like to pull out a couple of boards just so everybody can take a --

SECRETARY MCDONALD: Up here so the Board and the audience --

July 24, 2013

194

MR. SCHALLER: Just to refresh everybody's recollection, this was the proposal in 2007. And as we can see on this plan it does identify the, from an aerial viewpoint, of the project. In 2007, too, I believe it was the Comptroller's question how many units are around this area? As you can see, you have Bayside Condominiums, you have Castle Marina, you have Queens Landing, you have Gibson's Grant. Plus or minus, there's about at least 2,000 units around this project today.

GOVERNOR O'MALLEY: 2,000? Where are the 2,000 units around this project in the preferred development area today?

MR. SCHALLER: You have Cloverfield right here, Governor, 1,100 units. You have Bayside Condominiums with a little arrow, right over here, 278 units. You have Castle Marina here, 81 units. You have Queens Landing, 265 units. You have Gibson's Grant here, 281 units. The project in 2007 was this

July 24, 2013

project here, which at the time, outlined in red, was 1,350. Today the property is still outlined in red except for, as you can see, the Tanner parcel, 131 acres, is no longer slated for development. By removing the density and no longer developing this project the density is 1,079 units. The density from this parcel has not been moved over to phases one through four. So everybody is clear, it's a reduction in density. There is no transfer of density whatsoever.

And as you can see the development still exists. The county owns what is commonly referred to as the Davidson parcel here. This is the 131-acre ecopark, which will transition nicely for the county. I'll bring up a third board, which is an artist's sketch rendition. The potential for the county and this piece of property, ballfields, hiking trails. Again, there is no bridge. The units are here. This piece, one through four, has not changed substantively. The road alignments, the lots,

everything that the Planning Commission saw in 2004, and they gave preliminary subdivision approval for, remains the same. In 2005 the Planning Commission gave final approval for phase one of the project. Again, that stays the same.

GOVERNOR O'MALLEY: What is the percentage reduction of the footprint, then? I mean, if you are no longer developing on that parcel which is referred to as the ecological park, what is that percentage?

MR. SCHALLER: The total site is 562 acres, take 131 on top of 562. I don't know the percentage off the top of my head. Thirty percent? A little less than 30? So there has been a substantial reduction. The other thing to realize there is 336 acres of open space out here with, even though it appears to be a large development there is still 336 acres of open space out there.

As you heard from others, the applicant has removed some of the stormwater drainage features that

July 24, 2013

were of concern before. The applicant is committed to achieving ESD to the MEP on phase --

GOVERNOR O'MALLEY: What is that, what is that --

(Laughter.)

MR. SCHALLER: Environmental site design to the maximum extent practicable. That is what came out of the Stormwater Management Act of 2007 and that the local jurisdictions, in this case Queen Anne's County, is the implementing agency. It has delegated authority from the Department of the Environment. And Dr. Summers and Mr. Snyder and your agencies have all accurately stated how the process would work.

TREASURER KOPP: I just want to make sure I understand. As I understand it there was some sort of exemption or grandfathering or whatever in the 2007 law itself. Is that right? Or --

MR. SCHALLER: The applicant actually has a waiver for stormwater and does not have to comply with the Stormwater Management Act of 2007. However, the

July 24, 2013

198

applicant is voluntarily willing to comply with the act. Because it does believe in environmentally sensitive, sustainable community. And it is going to implement --

TREASURER KOPP: Sorry, and there is a way to monitor that to see if in fact has happened?

MR. SCHALLER: Correct. Because what will happen, Madam Treasurer, is plans will be submitted to the Queen Anne's County Department of Public Works to ensure that it has environmental site design techniques, rain gardens, infiltration trenches, bioswales, there is a whole list that the engineering community has come up with working with Department of Natural Resources and the Maryland Department of the Environment on this. And so that is where the assurance will come through. So when it goes to the Department of Public Works at Queen Anne's County they will be the ones that will review it to make sure that it does comply ESD to the MEP. The other --

July 24, 2013

COMPTROLLER FRANCHOT: Can I interrupt just one second?

MR. SCHALLER: Absolutely, Mr. Comptroller.

COMPTROLLER FRANCHOT: What happens if they don't?

MR. SCHALLER: If the department --

COMPTROLLER FRANCHOT: -- you just made. What happens if when you go to the local planning agency and they say, either you say we don't want to do everything because it's just too expensive, we want to do 50 percent of it, or 80 percent of it, even though, and we have a whole waiver for 100 percent of it if push comes to shove. And they say, okay, you don't have to do that?

MR. SCHALLER: Mr. Comptroller, the best way to answer that is the department will not issue the authorization. Based on what I've stated here on the record the applicant is absolutely committed to do that. And I suspect somebody would be knocking on my door asking a very serious question, if not filing

some legal action, because K. Hovnanian put on the record that they were doing ESD to the MEP.

COMPTROLLER FRANCHOT: But going back to the Treasurer's comment, where is the guarantee, I guess, that this and other promises will be done? I notice that you are only going to have senior citizens so I take it there is no impact on schools?

MR. SCHALLER: Correct, this is an age restricted community. We want to keep people, frankly, from leaving the State. Our seniors are looking for opportunities here in the State and this community provides that opportunity.

TREASURER KOPP: Is it, oh it's still 55 years old, is it? For a senior citizen?

MR. SCHALLER: Right. Maybe I shouldn't have used, I'm close to that. That's a little scary. But yes. An active adult community.

COMPTROLLER FRANCHOT: I appreciate the company, and I think your, the new proposal obviously

July 24, 2013

is a better proposal than the one that was before us six years ago. My question goes to what the Treasurer alluded to, which is where is the accountability here? If you and the county jurisdiction say, gee, we really wanted it to be age specific but we've got to change it now because it's just not economically viable, then we've got to bring a bunch of families in with kids, and then we have all of the quality, you know, all of the infrastructure requirements that I take it you are not going through right now as far as schools, etcetera, because of your promise. But what happens if the promise gets changed?

MR. SCHALLER: Well Mr. Comptroller, with all due respect I know that the Court has limited our review as to what this Board is there for. And there is a DRRA in place with the county, a developer's rights and responsibility, as to how this community is to move forward. And it can't, as you point out, if they wanted to change the active adult component to it

it would be back before the county commissioners addressing that issue. And if it weren't --

COMPTROLLER FRANCHOT: And that was done in what year?

MR. SCHALLER: I want to say 2002.

COMPTROLLER FRANCHOT: Okay.

MR. SCHALLER: So there are many checks and balances in place here to assure, and plus my integrity and reputation standing here before you, and having made these comments on the record, I think that should satisfy, as well as the applicant removing, voluntarily removing the bridge from the application. K. Hovnanian has tried to move forward in good faith and tried to create a win-win situation for everybody in this project and in this process. And by voluntarily removing the bridge, by agreeing to perform ESD to the MEP, allows everybody to move forward within the law as it exists today. Because

July 24, 2013

the county is the local jurisdiction that has identified this as a priority funding area.

It's in a master plan growth development district. It went through back in 2001 and received growth allocation approval from the Critical Area Commission. In 2004 it received approval for its buffer management plan. One of the things that was raised here is buffers. Phase one has a 300-foot buffer on it, all around on Macum Creek. That is what the standard is today out there. This was a negotiated review between the Critical Area Commission, the applicant, and the county out there. And I'm sure the Commission --

GOVERNOR O'MALLEY: And is that 300-foot buffer going to be maintained?

MR. SCHALLER: Correct, Governor, yes. And you have it all along Macum Creek and Cox Creek. The Chester River, which people probably forgot about, is the home for some of the old Bay Bridge. There's a fair amount of concrete and rebar and rubble out

there. And what is employed out there is a 200-foot buffer. So when the Critical Area Commission and the county and the applicant looked at it, what was appropriate? Let's put as much protection as we can in the more sensitive areas and let's make sure we are doing something more than what the minimum was for along the Chester River.

GOVERNOR O'MALLEY: May I ask also is the, I mean, there will come a time when none of us is here. What guarantees have we that should another developer take over this project, and perhaps they might choose to get another law firm --

MR. SCHALLER: It's possible.

GOVERNOR O'MALLEY: -- and there are a different set of players here, what guarantees do we have that the now 131-acre ecopark will continue in perpetuity and not be subject to the desires, the whims, the changing, you know, intentions of a new owner, or a new Board of County Commissioners? Or, in

July 24, 2013

other words we don't want to, I mean, looking at this and factoring in the removal, and we appreciate the downsizing of this and the 30-some percent now going to an ecopark. But what guarantees do we have that's actually going to happen and there's not going to be some bait and switch when a couple of years down the road there is a different set of owners and functionaries sitting at this Board?

MR. SCHALLER: I understand your concern, Governor. And it's aptly stated. I believe the county is here and they will confirm these statements. This project has languished too long. Everybody wants to see it move forward. At the end of the day there is a net positive revenue of \$97.5 million over 20 years. The county and the applicant have engaged in active discussions for the past several months to put this proposal forward as a win-win. As I mentioned before, we anticipate making this happen as soon as possible. You asked for a guarantee. What I think the county and what the applicant has put on the

July 24, 2013

206

record here today before you is we are absolutely committed to make this happen. We are actively working here --

GOVERNOR O'MALLEY: I, no I appreciate that. But I mean, is it going to be part of Open Space in perpetuity? Is there an easement on it? What legal guarantees do we have?

MR. SCHALLER: The legal guarantee, as I understand it --

GOVERNOR O'MALLEY: Like enforceable title sort of thing.

MR. SCHALLER: I certainly understand that. In our discussions with the county, it's going to be county property and as such they will decide what takes place on it. And it's envisioned to be some passive and some active as we understand from our discussion --

TREASURER KOPP: You are talking about the

131 --

July 24, 2013

MR. SCHALLER: Correct, Madam Treasurer.

That's what we are referring to. That is adjacent to the Tanner, I mean, to the Davidson parcel. At that point, there is no restrictive covenant in place today, Governor. There is good faith and I think the good faith is the removal of the bridge. Because we can't develop, somebody else can't develop that parcel without the bridge. And the bridge is the keystone here. And if somebody wants to develop that parcel they are going to need a bridge. And that means they are going to need a wetland license. And this Board will pull this transcript back up and say wait a second, the single and complete project did not include that. And that would be a basis, in my opinion, for the Board to deny it.

GOVERNOR O'MALLEY: Well, but none of us can predict who this Board will be.

MR. SCHALLER: That is fair. The future is the future.

COMPTROLLER FRANCHOT: Or if I could add, based on your interpretation of the Court of Appeals we would still have grant it. And you know, God bless those wonderful people across the way. But you know, I don't think they realize exactly what their message is to us. And I, you know, I'm further concerned to hear that it's kind of a good faith effort, or it's all dependent on the county and the county could change, you know, the county could get three commissioners that say by the way, we like the idea of developing that. So we want to go ahead and do it. And I, I don't know what the legal documents are that the Governor would take as a guarantee. But I sure would appreciate something more than just a scout's honor. Much as we --

MR. SCHALLER: Well being a former Boy Scout, I think it does stand for something, Mr. Comptroller.

(Laughter.)

July 24, 2013

MR. SCHALLER: You know things that, this applicant has gone above and beyond what most applicants do to secure a wetland license for a utility crossing that involves 822 square feet, such as whether it be AT&T, or Maryland Broadband, or Queen Anne's County when they put the water main in not too long ago. The Court of Appeals has handcuffed all of us now with this new opinion as to how we review these items out there. And I think when you look at this project with the elements as they exist by the Court of Appeals in 16.202, now subsection G, aesthetic, developmental, recreational, economics, what this Board should find is for those impacts we satisfy that criteria. And then above and beyond you look at what K. Hovnanian has proposed. It is restoring an eight-acre tidal pond. It is committed to enhancing and creating 39,000 square feet of wetlands. It has removed density from the Tanner parcel. It is working with the county. It has removed the bridge. It is doing all the right things that this Board should

endorse, especially when the county has designated the area as a priority funding area and it's concentrating its growth in this area so we don't have sprawl down the road. And if there are legislative issues that need to be addressed down the road, that may be for another day. But for this application this is the right things for the Board to approve and we believe it has met and satisfied the criteria.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: Could I just ask, I mean, what we're looking for, I guess what the Comptroller and the Governor are looking for, is some sort of firm guarantee. And maybe there are no guarantees in life.

MR. SCHALLER: I know two, but --

TREASURER KOPP: Guarantee that this parcel will remain basically Open Space, and not be developed by you or by the county subsequently. Yeah?

GOVERNOR O'MALLEY: And people had that guarantee, and people had that guarantee on the acres

July 24, 2013

that were on this Agenda just a few hours ago. Sorry to interject that.

TREASURER KOPP: Right, the --

GOVERNOR O'MALLEY: Whenever we purchase it, whenever we protect Open Space --

TREASURER KOPP: Is there a way the county can, the county can --

SECRETARY MCDONALD: Could we --

MR. SCHALLER: Mr. Todd may be better to speak to this that you are looking for, rather than coming from myself.

GOVERNOR O'MALLEY: Because Mr. Schaller, if another property owner should decide and get the concurrence of the county commissioners to turn the 131-acre ecopark into a giant blacktop, that would have an impact on the wetlands.

MR. SCHALLER: I fully understand what the Governor is conveying. Mr. Todd may want to address this issue on the guarantee.

July 24, 2013

212

GOVERNOR O'MALLEY: I guess if you have anything, I mean, we have a whole lot of people who want to talk. So --

MR. SCHALLER: Right. I'm here to field any questions --

GOVERNOR O'MALLEY: Okay. Let's hear now from the county commissioners and then we will hear from some of the opponents.

MR. SCHALLER: Thank you. And if you have any follow up questions, I'm here.

GOVERNOR O'MALLEY: Okay. Thank you.

MR. TODD: Good afternoon, Governor, Madam Treasurer, Comptroller, Gregg Todd, County Administrator for Queen Anne's County. And I think the simple answer on the dedication of the 131-acre part, we could deed restrict it. That would be my recommendation to the commissioners. And to even further deed restrict it we could talk to Chip Price and have him give us a couple of hundred thousand

July 24, 2013

dollars to do a course of improvements, which would place POS restriction, and that keeps it locked in stronger than, I guess about the strongest lock you could put on it. But we have had similar parkland dedications in the county where we deed restricted them so that we couldn't have development on them. We also have other ones that have been dedicated to us that we put easements on that we have a few MET easements, Maryland Environmental Trust. So there are mechanisms. And the commissioners that signed the letter in support of moving forward did so under the express guise that the proposed changes that K. Hov has put forward they would do, the ecopark, the green infrastructure, you know, those changes are what really kind of spurred them to support the project.

Yes, sir?

COMPTROLLER FRANCHOT: If I could just ask, what happens if K. Hov changes their mind? Or as the Governor mentioned, there is a new owner? But let's truncate it even further and just say, you know, they

decide for economic reasons that they have to make this general occupancy and no longer restrict it to people over 55?

MR. TODD: Well if they do that they are in violation of the DRRRA, the Developer's Rights. So there are binding obligations that they have, and that being one of them. And to go back to the point I made earlier about more public process, right now phase, as Secretary Summers said, phase one is the only phase that has final approval. Phase one is 106 single family homes and 56 multifamily homes. So, multifamily units, excuse me. So as you look at that map it is basically as you come on the south end, it's everything to the right going over to Macum Creek.

All the other phases, phases two through four, have to back to the Planning Commission for final approval. And that is where even though they are grandfathered on stormwater management per our DRRRA, that is where we have a stick, for lack of a

July 24, 2013

better term, to make sure that they do what we are asking them to do. We have put improvements in the county that they were responsible for through the DRRA, simply because we had to get them in. Due to the litigation process we could not wait on water line improvements and other things. So we went ahead and did them. So in fact, K. Hov owes us for what we have done per the contract we have with them, the DRRA. So I think we feel confident that we have enough mechanisms to make sure that they do what they say they are going to do.

COMPTROLLER FRANCHOT: And obviously I take everybody at face value. I have no question about people's integrity here. My concern is what happens if there are changes? Where people of good faith say hey, we agreed to that but, you know, we're going to have to change things. And for example, don't you think members of the public should be able to look at this plan in its totality rather than just 163 units that are apparently going to move forward piecemeal?

MR. TODD: We did ask the developer to come back and present their updated plan to the commissioners before the commissioners would even contemplate sending a letter forward to the Board of Public Works in support or not in support of it. So their, that public process has gone through.

The way that the county is set up, though, the final approval on phase one is set. So there is no legal mechanism to go back and review that since it was approved. And it was approved contingent on the wetlands permit. So it's kind of a cart and horse situation right now. We, in order to get the full review on the rest of the site, we need to get them back to the Planning Commission. And to get them back to the Planning Commission we need the wetland permit for the sewer line so that phase one can get built and move on to the other phases. And that's, unfortunately that's where we are.

July 24, 2013

COMPTROLLER FRANCHOT: And the alternative without the wetlands permit you can go back and have a full review of all five phases and get, you know, even if people still are opposed to it we should satisfy that transparency and then come back and move forward. Thank you, Governor.

MR. TODD: Any other questions?

GOVERNOR O'MALLEY: Do you not, do you or do you not share our concern that there be, that that 131-acre parcel be protected in perpetuity?

MR. TODD: I have every intention as the County Administrator to insist that it's preserved. I came from the Parks District. I worked closely in the development of multiple projects, whether it be Bloomfield Farm, which was a 320-acre park that we preserved. And like I said, the easy way to do it is to allocate some POS money to it, get, to put on it so that it's preserved through POS. But I absolutely share that. But I feel that we have the mechanisms to do that.

July 24, 2013

218

GOVERNOR O'MALLEY: I don't, I don't want to prejudge the POS review. But I think most of us are pretty well on record that we don't think any more houses should be going on Kent Island, given the evacuations that take place. But that's not what we're here talking about.

(Applause.)

TREASURER KOPP: I don't know if it's you, Mr. Todd or whomever. But understand again the constraints under which we are working because of the Court. How can we guarantee, can we guarantee here in this approval, if there's going to be an approval, that that parcel will remain undeveloped either by K. Hovnanian or anyone else, including the county?

MR. TODD: I'm not sure you have that mechanism sitting as this Board to do that. All I can tell you is that it is the county's intention, and take that for what it's worth but I take it for a lot having a history with the county. Plus you don't have

July 24, 2013

access to it. The only access to that property would be through a county park. So there is no, there is no access with the bridge out. So there's just no --

TREASURER KOPP: But there is no access from --

MR. TODD: There is a trail.

TREASURER KOPP: -- south or west?

MR. TODD: The Kent Island South Trail, the pedestrian trail that was funded through --

GOVERNOR O'MALLEY: Program Open Space?

MR. TODD: No, not that. Through transportation funds, the 221 funds. That's the only access is pedestrian access. And that's the only way to access that site now short of going through park land.

TREASURER KOPP: And the Davidson Park, is that somehow not developable by the county?

MR. TODD: It was POS funded.

GOVERNOR O'MALLEY: Well what is that --

July 24, 2013

220

TREASURER KOPP: So you have to come back to this Board going from the east. You can't go through the north. And you are saying you can't go through the west --

MR. TODD: Yes, I am saying it is landlocked, short of coming through a county park.

TREASURER KOPP: Not that I don't trust you --

GOVERNOR O'MALLEY: Well people change.

MR. TODD: I, I, I understand --

GOVERNOR O'MALLEY: You are not there forever. The commissioners are not there forever. We're not here forever. We all change.

MR. TODD: But I guess my point is I don't know how, I don't know how the Board of Public Works, I'm not sure what the mechanism would be to put the --

GOVERNOR O'MALLEY: Well how quickly could you conclude --

MR. TODD: Very quickly.

July 24, 2013

GOVERNOR O'MALLEY: -- a deal with terms that would assure us that that would never be turned into a blacktop, or potentially even more damaging, you know, a heavily fertilized, closely manicured, you know, I mean I don't know. You know what I mean? If you were to take all the fields and shove them closer to the water and then fertilize the hell out of them that could have an impact on the wetlands. In other words, that 30 percent or 35 percent of this parcel --

MR. TODD: Right.

GOVERNOR O'MALLEY: -- while admirable and I think better than it was, if it is true, to preserve this as an ecopark, isn't an ecopark if it later becomes developed, later becomes blacktopped, or later becomes heavily, heavily fertilized ball fields, or putting greens, or what have you.

MR. TODD: There are CRP easements we can put on it to get our WIP credits, which we are in dire need of WIP credits. So through warm season grass plantings and tying them up due to the conservation

July 24, 2013

222

reserve program, the CRP, that's one way to do it.

CRP is in perpetuity now. You can buy into the program, where it used to be just a series of years, you can buy into it for perpetuity. So there are those --

GOVERNOR O'MALLEY: I think the Obama administration changed that, right?

MR. TODD: Yes, they did. There are those mechanisms.

GOVERNOR O'MALLEY: So how quickly do you think you could conclude an agreement like that?

MR. TODD: I would think it would simply, 30 days? I'm guessing. I see where this is going and I have a hard time putting a date on it. But that is my opinion. I think we could, I think we could work something out.

GOVERNOR O'MALLEY: Okay. Mr. Commissioner, do you want to be heard?

MR. ARENTZ: Yeah --

July 24, 2013

GOVERNOR O'MALLEY: Come on up.

MR. ARENTZ: -- I might be able to speak, if this is --

Good afternoon.

My name is Steve Arentz. I'm the President of the Queen Anne's County Commissioners. Governor, thank you for having us. Treasurer Kopp, thank you. Comptroller Franchot, thank you.

I guess to answer your question, I think I'm coming in here in support of this project, in support of the wetlands permit, and I know there's some consternation about this piece of property, and I can tell you right now it's not the intent of any Commissioner to utilize that piece for something else.

If there's something we can do, as far as the set of Commissioners to satisfy you, to sit down and maybe even strike an agreement with the Commissioners and say that -- even on a sidenote -- that this piece will be forever held as that piece and some legislation we can enact on that to keep that and

isolate that. I don't think that's ever been our intent, and I don't know if I have the ability to do that at this time, you know, other than I can call three or four Commissioners and get that consensus for you.

GOVERNOR O'MALLEY: Uh-huh.

MR. ARENTZ: The biggest reason I'm here today is I look at this process as a County Commissioner, not just as somebody who lives, works, and makes his living and raises his family over there. I look at it as something -- a bigger responsibility I have as a County Commissioner. I have to look at all aspects of the County. I have to look at the financial impact. I have to look at the water and sewer plants and talk about growth and what have you with Secretary Summers.

We're very aware of his feelings on growth on Kent Island. We look at this and it meets our criteria, as far as what, I think even in your

July 24, 2013

initiative, Governor, is keep things on water and sewer as best we can, and that's important to us, okay. We see that. We're working with some areas on a due date and we understand that we do have sewer allocation available for us and I believe that we even borrowed money from the State to upgrade our sewer to accommodate this project from some other areas.

From that standpoint, we look at, we like it, they followed all the rules, as far as I'm concerned as a County official. I talked to our planning department and they've assured us that everything that's happened up to this point -- K. Hovnanian has followed the rules with regard to what we've asked them to do.

The DRRRA and some of those other aspects, I think, and I've listened to some testimony today about how do we hold them accountable? I think this process alone, what we're going through today, Comptroller, is pretty indicative of what our County really stands for. There are some people and there are some other

July 24, 2013

226

folks who believe in certain things and don't believe in others.

Our County has tried to move forward on some things that we felt were moving forward, and you know the people did speak and the people came out in force on that. I believe there are a number of people that have some heartburn on this project, but there are also a great number of people who believe that this process, or this project is going to be good for us.

The economic times that we're all in, this is a very, very positive piece of property being developed for us. Governor, you know what's happened with the Counties and the dollars and cents that have been pushed down to us and how we have to handle them. And our only recourse is to either raise taxes on the people -- for property tax or raise their income tax.

In Queen Anne's County, in all honesty, I guess three years ago in 2010 when we were elected, we went through those payments. It's no joke that we're

July 24, 2013

five Republicans, but we did make the hard choices to do that and this is just the vehicle -- if growth is going to be limited, this is the type of growth I think our County needs.

GOVERNOR O'MALLEY: And I do -- I don't know if you pointed this out -- I guess we did it in the last record on this thing. I believe all of us toured the site by foot and the maps evident to everyone here shows that this parcel surrounded on all sides by a couple thousand more units and that's where you've allocated your growth, right?

And I do appreciate this not being on septic.

TREASURER KOPP: Can I ask -- when we did go there, there were concerns about Cloverfields, about water and sewer flooding, et cetera, into the Cloverfields area. Now -- and my recollection was -- and I may be wrong -- does this have any impact, either positive or negative?

MR. ARENTZ: I don't know that I can answer that.

TREASURER KOPP: So it's still a problem?

SECRETARY MCDONALD: Greg, I think -- you do need to be at the microphone for the court reporter. I'm sorry.

MR. TODD: Okay. I apologize.

MR. ARENTZ: Can we share?

MR. TODD: The problem that you're indicating, we had -- there was a storm water management -- or actually, there was a pipe that was coming out of Cloverfields that drained into a swell that was this size, if I recall, or crushed. I think that has been fixed. I can e-mail or text my -- and get back to you, but it wasn't really part of that issue, so --

COMPTROLLER FRANCHOT: If I could, I just indicated that I have a very working relationship with the Commissioners. I'm over there a lot. It's a

July 24, 2013

great County. You know, don't take my comments the wrong way. I'm just -- we appreciate all you do.

MR. ARENTZ: I guess my last statement on this is we are firmly committed that once K. Hovnanian came back to us with the exchanges -- and I've had numerous conversations with the State on this -- they came back, at least in our opinion in good faith on addressing the areas of concern.

I think the Tanner property was a big area. The bridge was a big area and also the size and the number of units was a big thing for us as Commissioners. And I think our support comes from that area alone. If this thing were not put in this position with what they've been able to do for us, I don't think that you would find the support of the Commissioners.

COMPTROLLER FRANCHOT: And if I could ask how hard it is to change the 2002 agreement? Were you able -- did you have the folks and the developer wants something like general occupancy other than over 55?

Can they just come to you and say, okay, let's have a change.

MR. TODD: It's a binding contract.

MR. ARENTZ: Greg's right. It's a binding contract.

It's a contract as it is now. I would believe that if we could do that, I think we'd have to go out to public hearings, and I think we would encounter just what we're encountering over the last several years on this project. And we have several areas in our County where we're facing issues with these types of growth. We have a big issue going down -- sewer down and the types of problems that we're finding with that.

And these are all good issues. These are the things that are according to our statistics, we have to address them. We're worried about how do we actually approach those things, and believe me when I tell you that it's not a simple process for three,

July 24, 2013

four or five of us. All five of us agree that we need to address that problem; however, we can't address the problem because of some things that are out there, as far as the law, so --

COMPTROLLER FRANCHOT: All right.

TREASURER KOPP: Can I just --

COMPTROLLER FRANCHOT: Sure.

TREASURER KOPP: I understand -- I recognize the constraints we're under and I recognize that you all have a very difficult job and I appreciate it in that you're going through and the criminal areas that's been done and plan the County the way you think it should be planned.

I find that, personally, incredible that you would increase density on Kent Island and if only because of the limitations on the Bay Bridge and with sea level rise, storm surges, everything else, people want to get off of Kent Island going west. I don't think that prudent. Do you look at that sort of thing?

July 24, 2013

232

MR. ARENTZ: All that's considered when you go through a comprehensive plan --

TREASURER KOPP: Right.

MR. ARENTZ: -- and I think that our last comprehensive plan called for at least 3,000 more homes in that area.

July 24, 2013

TREASURER KOPP: And I understand that. I understand that, I just don't understand that.

(Laughter.)

MR. ARENTZ: Well, I guess, even from a personal standpoint, because I live on -- in one of these limited accesses, it's not really high on my list as far how I get off of Kent Island because I've weathered some storms over there, personally, and I've been able to do what I need to do.

And I guess the access, I would have to say that for the whole Eastern Shore or any place that's isolated like that.

TREASURER KOPP: But the Shore could go north.

MR. ARENTZ: Sure, but there are choices that we do have to make in life and, you know, I think people do make those choices in spite of the circumstance in the situation.

It's just my feeling. As a Commissioner --

July 24, 2013

234

TREASURER KOPP: I'm hearing you, but I just can't agree with it.

MR. ARENTZ: Well, come over. We'll show you how nice it is. It's worth the risk.

(Laughter.)

TREASURER KOPP: Oh, Kent Island is great. I think when you go off of this area, it's a beautiful area. I think the project is a beautiful project.

I just -- personally, I wouldn't put it there.

GOVERNOR O'MALLEY: I wouldn't put it there either, but that's not what's before us.

Mr. President, thank you.

Let's hear from some of the opponents who have been patiently waiting here. Who wants to lead off?

And I'd ask is if you all have been listening to this, I would hope that you will all -- we had extensive testimony on this before. We had

July 24, 2013

some inspiring and beautiful quotes, you know, as of Leopold and other great people and conservation and all of those heartfelt things, which are all very, very important to our ethic as a State.

But given the testimony you've already heard, I encourage people when you testify to direct your remarks to the impact that this would have on the wetlands and the water quality affecting the wetlands.

MR. FALSTAD: Thank you, Governor.

Thank you, Madam Treasurer.

Comptroller, a pleasure to see you again.

My name is Jay Falstad. I'm the Executive Director of Queen Anne's Conservation Association celebrating our 43rd year as the oldest conservation organization on the Eastern Shore.

We believe that the potential issuance of this license would be unlawful for reasons that our lawyers have set out. We have three lawyers here today focusing on different aspects and they can speak for themselves.

We believe the project would be bad for the environment and we fail to see how the largest subdivision in the Maryland critical area history can be in the best interests of the State. I won't repeat those arguments.

But as I said, we don't believe you can lawfully proceed in issuing this license and, therefore, we request that you deny the K. Hovanian request. Thank you.

GOVERNOR O'MALLEY: Thank you, Jay.

Dan Saunders, Esquire, Saunders Law Firm.

MR. SAUNDERS: Thank you.

I have some -- a written submittal. I have extra copies and I know that you'll all be dying to read it. It's actually only about eight pages. There are some attachments, so you know that I'm not making up the stuff that I say in here.

And I would like, when I'm concluded, if you could ask me some of the same questions you've asked

July 24, 2013

your counsel. And I say that because I don't just represent Queen Anne's Conservation Association. I had a -- for over a decade, have represented the neighbors who are litigating against this project, and I sat side by side with them and I stand by in the Court of Appeals and argue the case and was astounded as he was by the decision.

It is what it is, but I believe that the path forward is dictated not by the Court of Appeals decision, but by your own regulations. It went all the way to the Court of Appeals to make you comply with each and every minute part of the regulation and that's fair game.

But what's good for the goose is good for the gander. I'm reciting now in memorandum -- I've got a COMAR citation in your regulations, but it says that whenever possible, an applicant should obtain all approvals, should obtain approvals according to the following order. Obtain County approvals up to the building permit stage.

And the reason I'm reading this to you is if you simply say to K. Hov, do this. You follow our regulations like you want us to follow our regulations. If this do this, you won't have to ask all of these questions that you had to ask today. Questions as to whether or not the critical area laws are grandfathered, whether or not the new regulations are applicable. By the way, they are. And I don't know how the question was asked of the Critical Area Commission, but the Critical Area Commission certainly didn't ask my opinion. There was no forum for them to ask that question.

What do I think about whether or not this project is vested in old regulations concerning proper management. It's not. And I'm giving you the law that supports that proposition.

In Queen Anne's County, there are four levels of approval for site plans and zoning. There is sketch plan, which is number one; there is

July 24, 2013

preliminary, which is number two; there is conditional final, which is number three; and there is final signature plan, which is level four.

This project has never received level-four approval on any segment, including phase one. I believe that you were given the impression at the last hearing that it had. Because I'm giving you some excerpts from the testimony and it's quite clear that you were being told that all of the level of approvals had been obtained and that simply has never been the case.

But it is level-four approval, that is the level that enables the developer to pull permits, building permits. That's the level that satisfies your regulations, and it is in that process -- it is in the local site plan and subdivision review process that the kind of questions you're asking get answered.

The Critical Area Commission has to sign off. They don't just make a phone call and express an opinion to somebody that is outside the context of the

public forum. They have to sign off on a particular plan and they have to say why, and we have rights of appeal if we disagree with what they say.

Storm water management isn't just a concept. It's not what you've been told about. Well, we've agreed that we're going to be bound by that, but we're really not going to bound by it often, one, but we don't have to, but we will, but maybe we won't. There's a plan. It's submitted. It's signed off on and it's part of the approved plan. It's part of that process.

And if we disagree with the State signing off on that or if we disagree with the County Department of Public Works signing off on it, we have recourse to that. But until that happens, there is no plan; there's just conversation. There's just promises. And in the context of the local approval process, there's a way to enforce those promises because they become part of what has been approved,

July 24, 2013

and that's why your regulation is written the way it's written.

GOVERNOR O'MALLEY: What regulation is that?

MR. SAUNDERS: COMAR 2302.

GOVERNOR O'MALLEY: Do you have a copy --
can you read it out loud here?

TREASURER KOPP: It's on the front.

GOVERNOR O'MALLEY: It's where?

TREASURER KOPP: It's on the first page.

GOVERNOR O'MALLEY: Oh, I'm sorry.

Whenever possible, an applicant should
obtain approval in support of the following order.
Obtain County and municipal approval up to the
building permit stage.

MR. SAUNDERS: That's level four, final
approval. Not preliminary approval --

GOVERNOR O'MALLEY: And your contention is
they don't have everything up until building permit?

MR. SAUNDERS: They don't. It's my
contention they don't. They said that.

July 24, 2013

242

GOVERNOR O'MALLEY: Even the Court of Appeals missed that.

MR. SAUNDERS: Absolutely. They missed it one hundred percent.

TREASURER KOPP: Is this kind of the distinction between phase one, two, three, and four? They're at this point, for stage one.

MR. SAUNDERS: It's my opinion that they're back to square one and I'll tell you why. Because phase one is predicated upon preliminary for the entire plan, okay. You get preliminary -- they have preliminary for the entire property and then they went and got the final for phase one.

Well, now they're changing preliminary. They're changing the plan upon which preliminary was based, and let me explain -- this is important -- explain --

TREASURER KOPP: Let me just say my concern is the change -- it's the parcel five and the

July 24, 2013

reduction of the (indiscernible) and the impact, therefore, on the wetlands, right. Just so we understand -- agree -- on what's --

MR. SAUNDERS: There are several reasons why they don't have preliminary approval. The first is that -- and I will explain this in greater detail -- but this proposal, this new proposal, violates the 2003 settlement agreement with the County to provide a vital connector road across that site.

Second, it violates the 2002 developer rights agreement which now needs to be amended.

Third, critical area buffer has changed for storm water management.

On the connector road, I'm going to quote to you from the transcript of the last hearing when the Kent Island Defense League did a fly over and that is as follows.

This is counsel for Hovnanian explaining to you the critical importance of building that bridge.

July 24, 2013

244

GOVERNOR O'MALLEY: Different counsel than the counsel before us today?

MR. SAUNDERS: Yes, not in this case, Your Honor.

The bridge itself is going to become known as a public connector road so that they can connect North Kent Island to Southeast Kent Island, the Chester area, so that people don't have to drive all the way down Route 8 and either drove on Route 18 in Stevensville or go on to Route 50 in order to go east. This is a connector between those two areas.

Now, we've given you the agreement in which they agreed to provide the connector. We've given you more importance from that testimony, but that was a wonderful gift at the time to the County, because there's this concern about people having to go out on the main highways and not being able to travel in town and avoid the traffic jams that occur even on the major highways.

July 24, 2013

So, the County and the developer entered into an agreement that they would provide a connector road, at their expense, bring it up to County specifications and dedicate it to town use. The rest of these roads will be private, but that road was going to be public.

Now, the bridge is disappeared; therefore, the connector road has disappeared. Therefore, what happened to the promise? What happened to the settlement agreement?

As far as I know, it's still in existence, although it was entered into in secret, so maybe it's been revised in secret. But as far as I know, it's still a binding agreement.

So, to build this project this way, then the threshold issue violates that promise to the County, which gets us back to the (indiscernible) and final site review.

Planning Commission, as far as I know, has never seen this plan, has never seen the plan to

July 24, 2013

246

abandon that critical connector road and maybe they would approve it, maybe they won't. Of course the elimination of houses doesn't mean you have to eliminate a road.

We all know that road is going to be very expensive to build, but that needs to be worked out. That needs to be worked out at the local planning level.

Are they going to get that plan, that site plan approved on a preliminary basis and then get phase one, phase two, or any other phase, predicated upon that preliminary approval? You can't go in and get preliminary approval, get a final -- which, by the way is not final because it's appealed and it's stayed pending the appeal -- and then change the fundamental rules of engagement.

GOVERNOR O'MALLEY: Okay. Anything else, Mr. Saunders?

July 24, 2013

MR. SAUNDERS: No. If you have any questions about -- concerning investing and whether or not these will all be out the door, I'd be glad to address them.

GOVERNOR O'MALLEY: Thank you.

COMPTROLLER FRANCHOT: Thank you.

GOVERNOR O'MALLEY: Thanks. For being in a commuter line.

(Laughter.)

COMPTROLLER FRANCHOT: So, on phase one, they do have building permits?

MR. SAUNDERS: No. They have level three, which is conditional final approval on phase one.

COMPTROLLER FRANCHOT: But they don't have the final?

MR. SAUNDERS: They do not have the final. They have the conditional final, which is level three.

COMPTROLLER FRANCHOT: So, in order to apply for the building permit -- well --

MR. SAUNDERS: To apply for a building permit, you need final, final, signature plan, recorded.

COMPTROLLER FRANCHOT: Which is what our regulations say?

MR. SAUNDERS: Yes.

COMPTROLLER FRANCHOT: Now there's something else here that says the Board's wetlands regulation states that whenever possible, an applicant should obtain approval supporting the final order.

MR. SAUNDERS: Yes.

COMPTROLLER FRANCHOT: So it's not mandatory?

MR. SAUNDERS: Why would it not be possible?

COMPTROLLER FRANCHOT: This is a billion-dollar project. They've got a cadre of lawyers. They're certainly using them in this case.

COMPTROLLER FRANCHOT: And they haven't included a perpetuity agreement for the 131 acres.

July 24, 2013

MR. SAUNDERS: Which presumably would be a condition of precedent to an agreement to eliminate the connector road.

GOVERNOR O'MALLEY: Right. Gotcha.

Okay. Let's hear from Macy Nelson, Esquire, Nelson Law Firm.

MR. NELSON: Thank you.

Macy Nelson, on behalf of the Queen Anne's Conservation Association. Thank you for your time.

My argument is technical in nature. It's based on the order or conclusion of the Court of Appeals opinion, which in my opinion requires -- orders this body to have a full hearing on all the issues in this case. It doesn't select out from the case, the issue that my colleagues have been talking about, about the effect on the wetlands. We say it requires a full hearing.

GOVERNOR O'MALLEY: Where do you see that, Mr. Nelson, in the opinion?

MR. NELSON: It says judgment vacated.

GOVERNOR O'MALLEY: Okay. But --

MR. NELSON: Oh, I'm sorry.

If you go to the very end of the opinion, it's in bold type in caps.

GOVERNOR O'MALLEY: Yes, sir.

MR. NELSON: It vacates the opinion, so it undoes the disapproval. It sends it back to the lower court. It sent it back to this body for further proceedings in accordance with this opinion.

In my judgment, that undoes everything that happened. It says go back and do it again and follow the rule that we educated you on, on how to analyze the effect on the wetlands.

It doesn't say ignore all the other issues. It doesn't say there should be no full review by MDE. And I shared with Mr. Bedward, your counsel, examples from other cases where the Court of Appeals articulated where they wanted the lower court to

July 24, 2013

review less than all of the case, and Mr. Bedward has those cases in his file.

So, I assert, emphatically, that the Court of Appeals says you must reconsider the entire case.

Now, since you're hearing about this process today, as I argue for a full hearing on all of the issues, my friends at the Maryland Department of Environment, the Assistant Attorney Generals say you have discretion to have a full hearing. They don't say no full hearing. They don't say no full review. They don't say no public hearing by the agency. They just say you have the discretion. Do that if you want to do it.

We assert the law requires it. And it's especially important in this case, we believe, because we know that since this body first heard this case in 2007, we have new critical area upper rules. We have new storm water rules.

And my colleague from the Attorney General's Office, Mr. Snyder argues, well, you know, the buffer

July 24, 2013

252

rules, maybe they don't apply. There's been no public discourse on that issue. There's been no public discussion about the new stormwater rules. I mean, no public discussion where people can weigh in on that in a meaningful way.

I'm looking at the MDE's comment letter of July 19th. It says they reviewed the stormwater plans. It doesn't describe what they are. It doesn't say they approved them. It just said they've look at them.

What we want is a full hearing, which the law requires. The law requires a public hearing and opportunity to present evidence; that's Environmental Article Section 16-202. My clients are entitled to that.

Because right now, there's been no discussion of critical area buffers. There's been no public hearing. There's been no discussion of stormwater. And I note that the wetlands

July 24, 2013

administrator in his supplement to his report, the supplement dated July 11, 2013, predicted in advance, predicted in advance that the MDE would reaffirm its previous recommendation. At that point, his report was dated July 11th. There's no report from MDE. Their report's not promulgated for another -- until July 19th.

I believe had there been a public hearing, as required by the law (indiscernible). For these reasons we urge this Board to do what I say the law requires and to do what Mr. Snyder says you have the discretion to do, which is to have a full hearing, a full hearing. Give my clients an opportunity to go to a public hearing administered by MDE.

So, for all those reasons, I urge you to disapprove the application, it's premature. Let us go through the process, which I believe Dr. Summers said would take in the range of six months. That's our request.

Thank you so much.

July 24, 2013

254

GOVERNOR O'MALLEY: Thank you, Mr. Nelson.

Rosemary Green, Esquire, Meyer, Glitzenstein
and Crystal.

MS. GREEN: Good afternoon.

I also have a written statement for Ms.
(Indiscernible), if I could enunciate.

GOVERNOR O'MALLEY: They hired a lot of
lawyers here today.

VOICE: We needed them.

MS. GREEN: My name is Rosemary Green. I'm
an attorney with Meyer, Glitzenstein and Crystal in
Washington D.C. and I'm here on behalf of the Queen
Anne's Conservation Association. We're here to
discuss the (indiscernible) requests that we filed on
their behalf. That was months ago.

You've asked that we focus on the impact on
what ends in water to the greatest extent possible.
And from listening to people speak today, it sounds to
me like any contention that this project would not

affect wetlands and water is predicated on proper handling of stormwater discharge at these -- in large part.

And in our investigation, we found a few things. We know that Hovnanian has a longstanding wide-spread history of stormwater discharge violations. In 2010, the EPA in several states, including Maryland, sued Hovnanian and they alleged and found that there were violations at over 500 Hovnanian sites, 161 of which were in the Chesapeake Bay watershed area. It was improper handling of discharge of solid waste, industrial waste, et cetera, and it was getting into the surrounding waters.

So right now we know that Hovnanian doesn't follow State or Federal Clean Water Act and related regulations to some extent. As a result of that 2010 lawsuit, Hovnanian entered into a consent decree where the Plaintiff states, as well as the United States EPA, and apart from that decree, they paid a civil penalty of a million dollars and they also gave their good faith commitment to implement proper stormwater management practices.

Earlier today I heard something about a good faith commitment to implement an ESD to the MEP or something and all I can tell you is that in 2011, just one year after the consent decree was entered into, the EPA, again, found Hovnanian to be violating regulations regarding stormwater discharge practices. This time it was at two construction sites in Maryland.

As a result of that, they, again, entered into an agreement that said they promised to improve their practices. They paid another civil penalty, this time of \$130,000, but we don't know how the rest of their practices have been, which is why we filed an FOIA request.

We've only received a partial response. We're still awaiting email communications from the EPA that they said they've been gathering and will continue to gather. They estimate it will take another month or so to get them together, and we feel that those will have valuable information that needs to be considered by anyone who's even thinking of

granting a permit to the company who has already shown that they're not only going to ignore Federal and State regulations, regarding stormwater discharges, but they're also willing to ignore their good faith agreement to stop violating these laws.

So, in short, at this point, we would like to say that we feel there's enough information right now to deny the permit. But at the very least, if you're not going to deny it now, we would ask that you please wait for the rest of the response to our FOIA request to see what other information is out there. You know, the 2011 violations only came to light with a consent agreement that was entered into in February of this year. So who knows how many more are out there that are just, you know, being negotiated now.

So that would be my recommendation. Thank you.

If you have any questions, please feel free.

GOVERNOR O'MALLEY: Thank you.

MS. GREEN: You're welcome.

GOVERNOR O'MALLEY: Okay.

David Foster, Riverkeeper Chester River Association.

Okay. And if you all, again, could direct your comments to how this proposed development would effect the wetlands.

MR. FOSTER: Absolutely.

Thank you, Governor.

Good afternoon. My name is David Foster. I'm an environmental economist and riverkeeper for the Chester River Association.

Prior to that position, I was an environmental analyst for the Environmental Protection Agency and I also spent about 20 years overseas with the Agency for International Development as a senior environmental advisor.

I've come here today not to speak against the Four Seasons project, but to speak out against the process. It seems to somehow preclude me, my association, and other citizens from being able to provide meaningful input to this process. We have no

evaluation by MDE that takes into account the new proposal, the current laws, the current regulations.

There's nothing that I can address and respond to. We do not have final plans. We do not have final permits. There's no opportunity for public input on those issues, and I think this is not just a matter of law, it's a matter of good science. To withhold that opportunity from the public is also a critical measure of the public trust.

I need to tell you, there are few things that have so distorted, so destroyed trust as that DRRRA agreement. People refer to it as a gag rule. People feel that they have been excluded.

They have not had the opportunity to -- but you have within your power, under the remand, you have the opportunity to correct this. A six-month investment here, to able to go back and do that review, to have public hearings, to allow public comment and bring about a major change in this.

Thank you.

GOVERNOR O'MALLEY: Thank you.

Robert Foley?

And if you could direct any comments you might have and any evidence you might offer with regard to the impact of this development on the wetlands, that would be appreciated.

MR. FOLEY: Thank you, Governor.

Governor O'Malley, Madam Treasurer, Comptroller Franchot, I just want to make a brief statement regarding the accuracy of some economists we've heard.

This event called Four Seasons originally started in July of 1997 in Queen Anne's County before the planning and zoning, and Mr. Joe Stevens, who was the former director of planning has become an expensive attorney for K. Hovnanian, presented a letter to Barry Ruben, community planner, regarding Domain Builders which is also K. Hovnanian. K. Hovnanian goes by a myriad of names. I just refer to them as the Jersey boys.

A document in 2002, this is a Four Seasons piece of literature, and it says if you're not 55, you wish you were. Opening early 2003, the community will

be located on Kent Island in Stevensville, Chester area of Queen Anne's County. It will encompass 562 acres along the scenic waters of Cox Creek, Chester River, McKim Creek, which flow into the Chesapeake Bay. That's why this project should not go ahead. There are many, many projects on Kent Island, way too many for this map to show you. I can give you all these documents, if you wish.

Another Jersey boy, Governor Corzine, signed into Jersey law, allowing developers to challenge age-restricted housing designations. This means if you're in their project, you're not selling enough of them, you can turn them into standard housing. New Jersey builder amplifies this and it goes into detail and tells the builders how to do it to get around the legislation so they don't have to support the schools and the roads.

I'm a contiguous landowner. I don't like 55-foot houses being developed in my backyard. They're going to de-water it and many of us were on wells in Castle Marina. We are not on public water.

I urge you guys, you gentlemen and ladies, not to approve this project. Thank you.

GOVERNOR O'MALLEY: Thank you.

Calling Mark Nitkoski?

MR. NITKOSKI: I would just like to amplify what the attorney said. Basically, 81,706,940 pounds of sediment were dumped into the Chesapeake Bay as a result for violations for which they paid \$1,130,000.

That is equal to 2,880 dump trucks full of sediment, which if you would put them end to end, would stretch for 16 miles. I think it's inappropriate to consider to allow them to drill under Cox Creek. It's a rich corporation, they can take a more direct route down an area that does not go under that creek. If there's a break in that creek, we will not know it. It will flood under that creek. It will pollute the head waters of Cox Creek. It may, in fact, pollute that whole area in Eastern Bay.

We need to be considerate of the fishermen, the wildlife, the recreational boaters. We basically -- you basically, have the opportunity to

direct them that you do not want anything under Cox Creek. It's well within your purview to say make a straight line out to the road and join up to the sewer there and we're not giving you a shortcut.

This is what they've asked, I want a shortcut to the plant so I don't have to pay as much money. In fact, if I put it underground and it should break, you would not be able to see it.

I urge you to consider their history. We don't give a convicted robber the keys to our house. Past performance is the greatest predictor of future performance and the past performance of this company is poor. So I just request that you not allow them any shortcuts, not allow them access under the creek, and tell them to run that line where we can see it and just live up to the agreements that you've made so far. Thank you.

GOVERNOR O'MALLEY: Thank you.

Mary Kerr?

Followed by Hal Fischer.

TREASURER KOPP: Could I just -- at some point I would like to hear some response from our

advisors to whether an item is before us for the pipe to go any particular place and the wetlands administrator looks at that and comes up with a conclusion.

Do we have the purview to essentially hold a hearing and tell them where else they should look?

Not now, I'm just saying --

MS. KERR: My name is Mary --

GOVERNOR O'MALLEY: Feel free to pull that mic right down, ma'am.

MS. KERR: Is that okay?

GOVERNOR O'MALLEY: Yes, ma'am.

MS. KERR: Okay.

My name is Mary Kerr. I live on Kent Island on Southshore Bay. I spent five years on Queen Anne's County Planning Commission and I am presently co-chair of the Kent Island Defense League.

The last time we spoke to you in 2007, we did have the Blue Angels helping us out and we don't have that today, I'm sorry to say.

GOVERNOR O'MALLEY: You should request it.

(Laughter.)

MS. KERR: I'm going to address the area of what's good for the State and take it one step further, what's in the State's best interests, as you outlined, and take it a step further and look at the health, safety, and welfare of the citizens that we are going to ask to live in this development.

You are going to have 2,000 senior citizens with extremely limited egress, should there be an emergency. Two weeks ago my road was closed because of the rains. Earlier in the year, the road was closed because of a fire down Route 8. When you have one-way roads in and out, the people that need the help cannot get out, the people that need to help them cannot get in.

I think the primary responsibility of the government is the health, safety, and welfare of its citizens and I hope that you can find a clever way to stop this development.

The Comp Plan says no intense development on Kent Island until traffic issues and sea level issues are solved.

Thank you.

COMPTROLLER FRANCHOT: Mary Kerr, please?

MS. KERR: Yes?

COMPTROLLER FRANCHOT: So is your last name
K-E-R-R?

MS. KERR: It's Scottish and it's because --
it's pronounced Kerr, but it's a losing battle.

GOVERNOR O'MALLEY: Yeah, I know.

MS. KERR: I give up.

COMPTROLLER FRANCHOT: God bless you.
That's a great pronunciation. Thank you for helping
me with that.

MR. FISCHER: Good afternoon.

As you know, my name is Hal Fischer. I live
in the Bayside Community in Chester, Maryland. My
wife and I decided on moving to Chester, Maryland
because no open spaces could be viewed from our
property. You knew that one day the land behind our
property would be developed. The plans that we were
able to review are clearly different from what was
originally proposed.

It was my understanding the multi-story buildings, I don't know if you realize, but they're five-story buildings, 30 of them, they're planning to build were only to be like two or three-story buildings and they were less from the first building units set on the plan.

Now, the environmental impact, as I see it, will add more stress to our wetlands, Chester River and our Chesapeake Bay.

I would think the Bay does not need the additional runoff from such a development. There was a 2008 Climate Action Plan that I think you were involved with?

GOVERNOR O'MALLEY: I sure was.

MR. FISCHER: Does the K. Hovnanian/Four Seasons development fit the 2008 Climate Action Plan?

GOVERNOR O'MALLEY: I don't know if it does.

MR. FISCHER: I think we should be in agreement that global warming does exist and that sea levels are rising.

What about safety issues related to sea levels rising for the eastern shore? More tidal play at high tide is going to occur.

Maryland Route 18, which is adjacent to the Four Seasons development, becomes currently blocked when we have hurricanes, strong rains, events like nor'easter storms, Cox Creek floods. However, that means the only way out is on Castlereagh Road to Route 50, that's it.

And then if there are really high winds, they close the Narrows Bridge and of course they close the Bay Bridge, so you're screwed, basically, if you don't get out in time.

My other issue, you know they're building, say 1,000 homes, you're going to have at least 1,500 more cars, close to the existing people that live there. I mean, if you try the back ways (indiscernible). Not very easily, I think.

And I don't know what the current capacity of the Queen Anne's County sewer system is. I mean, can they really handle the additional plan load or are

they going to start dumping untreated sewage into the Bay? Who's going to monitor that?

The other issue is drinking water. It's my understanding that the public water comes from several wells deep into several aquifers. Can they handle the additional water being drawn for them or is that going to create sink holes in the land like what happens in Florida? I mean, I don't know what -- we can have lines going underneath?

GOVERNOR O'MALLEY: Rob, is there anybody that hasn't knocked your microphone off?

VOICE: No, I have to (indiscernible) the record.

(Laughter.)

MR. FISCHER: So, I have believe this development is just too big and being filled at the wrong location. I mean, common sense should apply. I mean, a critical area, what does that mean? Are you going to build 1,000 homes in a critical area? It just doesn't make sense to me.

And the other question is what type of legacy do you want your governorship to have? One

that protected their own greatest resources, the Bay and its tributaries, or one that squandered the opportunity to do so? So, I hope you make the right decision.

GOVERNOR O'MALLEY: Listen, thank you.

Good seeing you again.

MR. FISCHER: Yeah.

GOVERNOR O'MALLEY: Sandra Herbert?

MS. HERBERT: Hello, I'm Sandra Herbert.

Since 1993 my family and I have had a home on the banks of the Chester River, very close to the proposed development. Professionally, I'm an historian of science who's taught at UMBC for some 30 years.

I'm here to speak against the development, as it now stands to propose a solution.

Government's make mistakes. The big mistake regarding Kent Island came with the master plan of the '90s which called for high density development on Kent Island. This is inappropriate for an island. We are surrounded by water and we can easily get closed off.

For example, in Hurricane Isabella, the Bay Bridge closed. The Kent Narrows Bridge closed. If you hadn't evacuated by then, you were -- you went to the high school parking lot, I guess.

So what is appropriate for Kent Island? Low density development and agriculture. Now agriculture has taken a few knocks today, so I want to defend it. In Queen Anne's County, we have -- we are the largest producers of corn, wheat, and soybeans in the State. In 2007, there was a profit of \$50 million dollars -- this is USDA's statistic -- so Queen Anne's County is still the heaviest agriculture County in the State. So we treasure our farms and we do still have many farms on Kent Island.

Now, as regard for Four Seasons, the problem has almost been one of scale -- 1,300 developments, proposed units now down to 1,000. It's on the way down, but it needs to go further down.

The second problem is the critical areas. There is -- as many people have said not too much point in building on critical areas if your purpose is to save the wetlands and save the environment.

And in regard to an earlier speaker, on the banks of the Chester River, we've already seen damage to the wetlands. Why? Well, we used to have a parade of turtles every spring which would come across our yard and they were going to nest and to lay their eggs, but now we don't see them.

Why? Because in stabilizing the shores, huge boulders of granite are put down. Well, that takes away the breeding grounds for the turtles. So every time you stabilize a shore, you take away from the wetlands.

Now, solution, and the people who can -- and we need a political deal here. The people who do this are in this room -- our County Commissioners and our Governor and developer. I would suggest that the developer be allowed to build no more than 350 units. That's what Queen's Landing is. It was not 265, by the way, it was 349. Bayside has about that.

And to not build on the critical areas. This may require some buyback from the County or the State. I believe that the developer paid about \$10

million dollars for the property. And fortunately, we have a surplus in Queen Anne's right now. What about just buying back the critical area or let the State do that? We need an arrangement which will allow many, or another developer if they choose not to develop this, to develop some property, but that's about 350 more units. We could absorb that on Castle Marina Road. We really can't absorb many without lining the road.

And we need to save the critical areas.

Now the supply and demand cost. The issue of climate change has been raised and we faced this, for example, in Queen's Landing after the last storm, our umbrella insurance policy for the development raised its limits. We now have to have a very high deductible of about \$6,000 per unit for any storm.

So the insurance companies are factoring this in, and we've already gotten the FEMA notices. They're not going to cover us anymore. So, it would not be wise to let anyone really build in a critical area. Economically, I would not recommend anyone buying in that area now.

So, I think what we need is a political deal. Thank you.

GOVERNOR O'MALLEY: Thank you.

Ann Williams followed by Will Baker.

Margaret McHale?

Margaret, would you come up a second?

Ms. Williams, I'm sorry. Let me interject with Ms. McHale.

Ms. McHale, I just said come on up if you would, please.

Ms. McHale, your position is?

MS. MCHALE: I'm Chair of the Critical Care Commission, Governor.

GOVERNOR O'MALLEY: And you've reviewed this proposed development, is any of it proposed to be built on critical area -- on the buffer?

MS. MCHALE: Well, there was a growth allocation granted actually going back into the late '80s. A partial growth allocation, and that was folded in to the growth allocation granted in December of 2000. And at that time, the part of the parcel was

upgraded to IDA, which is intensively developed areas, one of the three land use classifications that have been discussed earlier, and at that time there were negotiations entered into that involved a developer, the Commission, and the County and the process of granting that growth allocation that provided for the buffers that are on the maps that we have provided.

In some locations, as you know, those buffers are as much as 300 feet. A couple of other places, they're less than that. That's the process that we use when we are doing a growth allocation. And I know there has been some testimony before you today about the applicability of the regulations that related to the buffer that were adopted in 2010 and then modified in 2012.

Unfortunately, it is our lawyers' advice that those regulations would not be applicable in this situation, and that is because after your legislation passed, Governor, in 2008, we, the Critical Area Commission sued Mr. Wagner. I think you heard about that case earlier. I prefer to think of the case as the McHale case instead of the Wagner case, except

that it was not -- I was the Plaintiff. It was -- the result was not to my liking.

The Court of Appeals who decided the case that has dealt with your case, the Court of Appeals also said to the Critical Area Commission, no, the 2008 legislation is not applicable on a retroactive basis and our attorneys' advice is that the regulations that were adopted in 2010 modify the 2012 because they spring out of your legislation are equally not applicable.

The good news, as least from our point of view is that we don't need those regulations in order to preserve the buffers that are already in the plan that were negotiated in 2000.

From our point of view, given what the requirements are when growth allocation is awarded and specifically the conditions of this growth allocation, we feel like that was a very good plan and we don't believe that even if our regulations were retroactively applicable, there would be any

significant change. We wouldn't advocate for changes in the buffers that you see on the maps before you.

GOVERNOR O'MALLEY: Thank you.

Anything else?

COMPTROLLER FRANCHOT: Obviously, you wouldn't lose any sleep if they went back and had a full Departmental review?

MS. MCHALE: Personally?

COMPTROLLER FRANCHOT: Yeah, please.

MS. MCHALE: No, personally, of course I wouldn't have.

Like I said, I was the Plaintiff in the case and I have to follow the law of the land in terms of our buffer regulations and in terms of transparent processes. Our processes, however, Mr. Comptroller, do not call for any additional hearings at this point.

And I just would add one other thing, from our point of view, our involvement ended in 2000 when growth allocation was granted, and would begin again if this body were to issue the licenses that are requested and then there would have to -- because we understand there have been some changes and you heard

plenty of testimony about that in terms of the stormwater plan, presuming there was changes to the stormwater plans, we would review those plans again in order to be sure that they were consistent with the growth allocation conditions in 2000 that were agreed on and negotiated at that time.

So we would have a role in the future if and when there were some, as I said, some movement here.

And no, Mr. Comptroller, I wouldn't lose any sleep if there were hearings or honestly if there weren't. From my point of view, as the Chair, the Commission enforces the appropriate law.

TREASURER KOPP: So you're saying that the 300-foot buffer that is here for the first part and along Cox Creek meets -- even though it doesn't have to -- meets the most updated law?

MS. MCHALE: Yes, it does.

And actually, Madam Treasurer, people often believe there are buffer regulations and 2010 required a 300-foot buffer and that is not actually the case.

As I've said before, buffers that go beyond the minimum are part of the negotiations in the growth allocation of (indiscernible) process. We're happy with those and we don't believe that more would be needed even if those regs were applicable.

TREASURER KOPP: And that includes on the Chester River, the 100 feet?

MS. MCHALE: Yes. The way that a growth allocation process works is usually a negotiation and the buffers depend on -- are very site specific and there's usually tradeoffs and there are other water quality benefits if the buffer is less than 350 feet or whatever it is that the Commission is allocating, there usually are other water quality or habitat benefits that are pawned with the tradeoff and negotiation.

GOVERNOR O'MALLEY: Were those negotiations the one that led to the -- isn't there a restoration under the tidal pond here and living shoreline?

MS. MCHALE: I don't know.

GOVERNOR O'MALLEY: Was that part of this or was that part of the revision?

MS. MCHALE: My staff is telling me no.

GOVERNOR O'MALLEY: Okay. That wasn't part of these investigations.

MS. MCHALE: I'm sorry --

GOVERNOR O'MALLEY: Am I imagining that or didn't I hear somebody talk about that?

MS. MCHALE: -- I was not here at that time.

DR. SUMMERS: Our wetlands staff can correct me if I'm wrong, but there was mitigation that wetlands constructed per original requirements. That was not needed.

GOVERNOR O'MALLEY: Yeah, that was more in the center of the --

DR. SUMMERS: And I think it's up along the Chester River shoreline there where you see the trees, the bulge in the trees.

GOVERNOR O'MALLEY: That's not what I recall.

DR. SUMMERS: Well, somebody can correct me on that.

TREASURER KOPP: Yeah, the (indiscernible)
is the one on the --

MR. MOORE: Governor, there is a round pond
there on the Chester River. That was the restoration.
It's on-going, where, again, they spread quite a bit
of phragmites to bring in better species. It's really
good --

GOVERNOR O'MALLEY: That's along here?

MR. MOORE: The pond, yes.

GOVERNOR O'MALLEY: And is that living
shoreline?

MR. MOORE: They are, down the road,
proposing attempts of a living shoreline in the area
where the old Bay Bridge decking has been, but that
shoreline was stabilized by that decking, but it's
very, very unsafe to walk with rebar sticking up.

Because I told Mike at that June 28th
hearing, if he walked that pier and he fell, he
wouldn't be at the hospital, he would probably be in
the --

GOVERNOR O'MALLEY: That might be another
one to add to your perpetuity list.

MR. MOORE: It need -- it needs to be done.

It's a safety issue for the --

GOVERNOR O'MALLEY: All right. Thank you.

MS. MCHALE: Governor, if I might?

GOVERNOR O'MALLEY: Sure.

MS. MCHALE: LeeAnne Chandler, who's our national resources advisor, is here with me today and she worked on this project back in 2000 and she has some information that would be helpful to you.

MS. CHANDLER: Good afternoon.

The restoration along the tidal pond along the Chester River was one of the conditions. There were ten conditions of growth allocation approval and restoring that pond and eradicating phragmites in that pond was one of the ten.

GOVERNOR O'MALLEY: Oh, good.

See, so it worked. Good for putting it up there.

MS. MCHALE: Yes, sir.

GOVERNOR O'MALLEY: What year was that?

MS. CHANDLER: The plan to do it was done in 2004 and it subsequently has been sprayed quite often since then to work on that.

GOVERNOR O'MALLEY: Okay. Thank you.

How about Ann Williams?

MS. WILLIAMS: Thank you for the opportunity.

I appreciate it.

GOVERNOR O'MALLEY: Thank you. I heard your agency being called out so I thought you should --

MS. WILLIAMS: Thank you.

I've been sort of chomping at the bit, so I appreciate your sensing that.

GOVERNOR O'MALLEY: I sensed your chomping

July 24, 2013

284

MS. WILLIAMS: Hello, Governor, Treasurer, and
Comptroller.

My name is Ann Williams and I sent in my
written comments as my personal one, which you've
already received.

I am a State employee and I'm not speaking
on Environmental Services stuff.

Today I'm speaking as the newly elected
Chairman of the Kent Island Defense League. We are 14
years old and we were created because of the group
called Four Seasons. Kent Island is an unincorporated
town and as such, we don't get a voice in how we're
managed. We feel very strongly that we would love for
you to send this back to the drawing board and let
public opinion be there.

Unfortunately, in that phasing process, you
are only talking about phase one. We would love for
the plan to be the full thing so that way everybody
could see the full impact. The pipe, the sewer pipe

July 24, 2013

that they want to drive under the wetlands, and thus potentially destroy wetlands as it might break and cause all sorts of problems, is a 12-inch storm drainpipe that will hold us hostage forever because they'll say we already got the pipe, we can put in the houses, and so, therefore, the whole plan needs to be reviewed so that we can see whether or not that needs to be done or maybe a step system with a water pipe that goes through the marsh or even better, as has already been suggested, that the sewer pipe goes around and not through the marsh.

We, the citizens of Kent Island, would like that voice. We hope very much that you could find it to, if not totally deny the project as it stands, but at least send it back and let it have the public view and the people's voice in Queen Anne's County to speak about it.

The changes you're talking about have not been seen by the residents of Queen Anne's County. It was at one County Commissioner's meeting, but there's

July 24, 2013

286

been no public meetings. There's been no meeting on Kent Island about this. We haven't seen any of the changes and we most certainly would like to be involved in what happens at the park, but that's not been our option, so we ask that you take the step.

One last point that I would like to make that Queen Anne's County in all of its wonderful workings with you currently doesn't have an active sewer plan. Their sewer plan has been not approved in the past couple of years. So that pipe going through is working off of, I think, their 2006 sewer plan. Their nine and their ten whom all have been denied for many reasons, probably most of which are wetlands destruction and overgrowth.

So, we would like for you to act and say we're not going to move until such time as Queen Anne's County's Comp Plan is understood and is followed. This plan would not be accepted under the

July 24, 2013

current Comp Plan, and then the sewer plan be approved.

And again, thanks for the time.

GOVERNOR O'MALLEY: Thank you.

Mr. Summers, what about that sewer plant stuff, does that come through you?

DR. SUMMERS: Yes, sir.

The Department of the Environment has to review and approve water and sewer plans. I am not currently up to speed on exactly where the approval stands in Queen Anne's County, but I do know that we regularly review plans all over the State. I don't know if our County folks have information on that.

GOVERNOR O'MALLEY: Well, I see Mr. Sakai moving around in the back of the room.

DR. SUMMERS: Jay you have their permission

GOVERNOR O'MALLEY: Come on up.

DR. SUMMERS: Jay is our Director of the Water Management Administration.

July 24, 2013

288

GOVERNOR O'MALLEY: I wasn't sure if he was trying to hide or get better sound --

MR. SAKAI: Thank you, Governor.

Jay Sakai, with the Maryland Department of the Environment.

I can tell you that the County does, in fact, have an approved water and sewer plan. The way the process works is that over a period of time, amendments are submitted that make changes to that plan. In some cases, those amendments are approved by the Department and other cases, we send them back to the County for additional work.

You are all familiar, for instance, with the on-going discussions about sewer down in (indiscernible). That is a good example of water sewer plan amendments that has been in discussion for many years. But the fact of the matter is that the County does have an approved water and sewer plan.

GOVERNOR O'MALLEY: Okay. Thank you.

July 24, 2013

All right. How about Will Baker followed by Gene Ransom, followed by Suzanne Hogan and Mike Roberts.

MR. BAKER: Good morning -- I mean, good afternoon.

Thank you, Members of the Board.

My name is Will Baker. I'm joined by Vice Chairman of our Board of Trustees, Alan Griffith, and by Alison Prost, our Maryland Executive Director.

Now, as I think all of you know, I am not a lawyer, but I do understand that your decision is focused on the wetlands permit. But because we heard repeatedly today that this decision is integrally tied to the understanding we have for the entire project, I think it's fair to talk about how much, if any, we as a group, you as a Board, understand the entire project.

I was worried when I came here about transparency. After listening to the last several hours, I am stunned by the lack of transparency. You

July 24, 2013

290

all talked about a guarantee for a specific parcel in this project and whether there was or was not a guarantee. But there are no guarantees for anything we've heard describing the entire project, and this would not be so important were it not for the scale and importance of the decision.

Just as the Chesapeake Bay is starting to get better, we're talking about putting a development of over 1,000 units into the critical area. It's called the critical area for a reason. It is in an area that is most likely going to be flooded and probably more likely to be flooded as we go forward.

We work in six states at the Chesapeake Bay Foundation. Maryland has always been a leader. You all, as a Board, have been fabulous leaders. I don't know of any other state that has a project of this scope and importance and potential damage to the Bay or its tributary rivers than this one.

July 24, 2013

The DRRA, the Development Rights and Responsibilities Agreement, has been referenced several times. Here's the quote -- one of the quotes, "The DRRA is a binding contract." We've heard that the current proposal is going to do something. We have heard that plans will be submitted by the attorney for the developer. We have heard that the current plan for stormwater will need to go through review by the County. There is no certainty as to what this project is going to be.

The DRRA, I learned today, was approved in 2002, that binding contract. It is still in play. It still describes 1,300 units. It does not describe any of what you heard today in terms of improvements which were admittedly impressive. So we have no certainty what this project is going to look like and, yet, you are being asked to make a decision based on an understanding of the project.

How can you balance your decision against the project when you don't understand, nor is there

July 24, 2013

292

any guarantee or binding legal agreement as to what the project will be? So, for that reason, I urge that you deny the permit, as it currently is before you, or at the very least, you defer until there is some certainty as to what this massive project planned for the critical area in an area that will be prone to flooding goes forward.

Thank you very much.

GOVERNOR O'MALLEY: Thank you, Mr. Baker.

Gene Ransom?

MR. RANSOM: It's kind of cool I get to talk at this hearing. The last one I wasn't able to.

Good afternoon.

Thank you for having me.

First of all, I'm not speaking for any of the groups that I'm involved in and I didn't run for election in '10, so I'm just a citizen and a lifelong resident of Queen Anne's County. And I opposed this project, actually, before I ran for Commissioner in

July 24, 2013

2002 and I opposed it the whole time I was in there and I still oppose it. It's a really bad project. It's a bad idea for Maryland. It's a bad idea for Queen Anne's County. But, unfortunately, the lawyers and the Court of Appeals -- and I carefully read the opinion -- kind of limit what you guys can consider, so I'm going to focus on that, because I think that's what really matters.

There are four things that Mr. Schaller outlined as improvements to the application that he's claiming says that you guys should approve it. If you're going to follow this -- in all of his letters, I didn't really understand this enhanced stormwater management. We're going to create a park. We're going to reduce the number of units and we're going to remove the bridge.

There's a problem. All four of those things are not allowed under the Development Rights and Responsibilities Agreement that was entered into and is a legal document. It's ordained by the State of

July 24, 2013

294

Maryland and County Code by the Commissioned Board of (indiscernible), the Board that sat from '98 to 2002.

So they are telling us that they are going to do things that are not consistent with what's already been approved, and in fairness to your staff, this is a very complex area, and I don't think they fully comprehend it. And Mr. Doldon was talking about how the removal of the bridge was a major impact and I think that was something he considered when he told you you should approve this.

And I heard Mr. Summers talk about how it made him feel -- I think he used the term "more comfortable" -- that they were doing this enhanced stormwater management. So they're making recommendations to you based on the belief of these four promises that Mr. Schaller said his Boy Scout oath would allow them to keep.

The problem is the law doesn't allow him to keep his promises currently, and it would seem to me -

July 24, 2013

- and my preference would be that you send this thing packing into history, given its checkered past and everything that's going on -- but I don't think that's going to be as easy as it was last time for you to do. But I do think that if you think that these four things that the developer has provided has made it good enough where it meets the law and you got to vote for it, make them amend the DRRRA. Don't give them the permit. Make the permit conditional.

And going back to the County, and you heard Commissioner Arentz and three of the five current Commissioners on a 3-2 vote apparently support it, and you heard Mr. Schaller and developers saying they were willing to do these four things.

Well, if all parties are willing to do it, Mr. Todd said, hey, we can put it in perpetuity. Why not say you can have your permit, but it's conditional on going back to having the DRRRA amended by the parties, which will require a public hearing and

zoning actions and solve a lot of problems here in the integral process.

And if Hovnanian is serious, is serious about these promises they made today, they should support what I said, but I suspect they're not serious based on what we heard from the lawyers that Queen Anne's Conservation has provided and they will oppose what I've said. And I don't know -- because I'm doing something that you should never do as a lawyer, which is take things and read only the answer to the question.

GOVERNOR O'MALLEY: But, Mr. Ransom, why do you put the bridge -- I mean, I can see why you would want to see greater assurances, you know, on the stormwater, on the EcoPark and on the scale of the development, when those things aren't --

MR. RANSOM: I don't really care about the bridge to be honest with you. The bridge comes from the settlement agreement that was signed and I refused

July 24, 2013

to sign that agreement. Three of the commissioners in my first term did. I was not. The only reason I brought the bridge up is because I was carefully listening to the testimony and Mr. Doldon said specifically that one of the reasons that this applicant was better was that it removed a major impediment when the bridge was removed.

And I'm trying to focus my comments on the permit at hand, so you have the ability to actually -- if you really want to make this better and you believe these things are important conditions, based on your comments, particularly, yours, Mr. Governor, where you were talking about guaranteeing and making sure that we really do this. And that appears logical to me that these guarantees should be more than just the Scout's pledge which I strongly support. I was a Boy Scout -- but -- and, again, to make another statement from the Democratic board of Ronald Reagan, "trust but verify," it seems to me that the developer should be willing to put their money where their mouth is and

say, you know what, Mr. Governor, you can issue the permit contingent on me amending the DRRRA, and if I'm serious about doing these things, then I'll go back and I'll amend the DRRRA.

And you've heard the County Commissioners. You heard the President here earlier stating he was willing to do these things. So it sounds to me like you have got two willing parties and you can resolve it if we're all serious.

The concern I have -- and I've been skeptical about the project the whole time is -- is these -- I don't believe this company is a good environmental steward. I don't think this is a good idea for Queen Anne's County. I don't think it's a good idea for Maryland. This is all about money. That's what this is all about, and they have no interest in really doing these things.

And I think later on down the road, when all of us are gone doing other things, making a living,

July 24, 2013

running for other offices, doing other things, you're going to say, you know what, guys, sorry, the DRRRA doesn't let us do it. Sorry, we can't do that. We meant to.

And I also note the original DRRRA does have language in it that allows the developer a reasonable out on 55 or older. There is an opt-out clause in that language. If you ever read all the original documents on this, and, again, without me getting into the checkered past and unrelated items, this is not the prettiest picture.

Whenever three Commissioners who are thrown out of office for this very project -- and then the day after the primary, the meeting after the primary, go and sign a DRRRA that forever seals the fate of Queen Anne's County, it says there's something not right here. It's troubling. The whole thing is troubling, but obviously, I know you're not going to consider that today.

Let's focus on what the developer has presented to you, and they present four solutions to your problem and your staff specifically said they like those four solutions. So how do we make those four solutions a reality?

It seems to me the way we do that is by amending the DRRA and going through that process, and Mr. Schaller should be jumping up right now and saying that's a great idea, but I suspect he isn't. Thank you.

GOVERNOR O'MALLEY: Thank you.

COMPTROLLER FRANCHOT: Gene?

MR. RANSOM: Yes?

COMPTROLLER FRANCHOT: Why do we need to improve anything? Why, don't we just say, look, come back to us with the permits at the end of the year for, you know, this, plus amend the thing and then we'll take this up when it's right.

July 24, 2013

MR. RANSOM: My preference in order would be that you turn this down because it's not right. My second preference would be that you set it for a full review. My third preference would be if you are going to approve it, then let's make sure the promises that are being made that are making your staff feel more comfortable -- and we heard those terms from your staff that are making your recommendations -- let's make sure we keep those promises by making them do something real.

But I do think that you're right, Comptroller, you should turn them down. I think that's the right answer and that's what I would do if I was in your seat.

But I understand -- I can hear in your voice, Governor, the concern about how we do that legally. I can tell when you're reading the documents --

GOVERNOR O'MALLEY: Yeah, Mr. Ransom tell me this, the wetlands impact which the Court unanimously

has said we must focus our consideration on, do you have any -- I mean are your -- what, if anything, can you offer about the wetlands?

MR. RANSOM: My point on that is that Secretary Summers and Mr. Doldon are telling you that a stormwater management plan, the reduction of --

(Phone ringing.)

GOVERNOR O'MALLEY: That's "Where the Streets Have No Name." U2.

MR. RANSOM: Yes, U2 -- Joshua Tree, good album.

All right. But back to the wetlands problem. There are four things that your staff and the developer, both, have said show this as no problem.

My argument to you would be that they have to be able to do them, and if the DRRRA doesn't allow you to do it, how can you approve it until they're

July 24, 2013

done? And my point to you would be that if they can't equal stormwater management --

MR. RANSOM: Mr. Schaller said -

GOVERNOR O'MALLEY: They're not going to affect the wetlands.

MR. RANSOM: But that clearly affects the wetlands.

And they're telling you --

GOVERNOR O'MALLEY: And they're saying come to the EcoPark or instead, the park becomes a blacktop.

MR. RANSOM: Right. Particularly, and if those promises can't be done on other legal documents, that affects the wetlands. So, you have four things that your staff and the developer are telling you, specifically, mitigate the problem with the wetland permit. They told you that. Hovnanian has told you that.

So the question is, I think, sitting here you have to say, do you really believe that? Do you

July 24, 2013

304

really think they can do these four things? And the question is how can they do them if it's not consistent with the DRRA?

GOVERNOR O'MALLEY: And whether each of us individually believe the other individuals on the other side is not -- and it really needs to go beyond that because there could be other individuals, right?

MR. RANSOM: If you don't have guarantees, how you vote for it?

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: I just want to correct the record.

I'm not advocating voting no on the permit. My suggestion is this be postponed for a consideration until there is either an amendment of the 2002 document which requires a public hearing, as you said or through some other process to get them to the point where they can get a building permit. They in fact, have had some public input between now and the end of

July 24, 2013

the year when they can get back up here. That's all I'm suggesting.

In the interim, the Board can, I think, arguably defend a position of this is not necessary to do right now. That's, I think the best way out of this because I don't want to get into a battle with all of my wonderful friends who wear red robes down the street.

And it's a bit of a murky area, but if we simply said if we're going to postpone this until the company gets more clarity on its permits and that development agreement, I think that would help.

MR. RANSOM: All four of these things were clearly relied on by your staff, based on their testimony today, and all four of these things were clearly promised by the developer. Mr. Schaller went through them.

And I think this Board and the State of Maryland needs more than Scout's honor -- Scout's pledge -- Scout's pledge to take that, and I think the

July 24, 2013

306

avenue to do it is to amend the DRRRA and require a process and -- or require it and order it as a condition of the permit being issued.

So, this is just something that is such a bad idea. I understand that you can't necessarily consider all of the things related to the bad idea, but you certainly can consider the four things that are being promised to you and relied on by your staff and making sure they really happen.

Because the worst thing that could happen is ten years from now, we're all sitting around looking at a bunch of houses and a mess down there because nothing got done because everyone said the DRRRA didn't allow us to do it and you shouldn't rely on the words. And it's no one's fault. It's one of those things that happened.

GOVERNOR O'MALLEY: And all of those things do affect the permit. I mean, it would affect the

July 24, 2013

wetlands. The stormwater, in a way, affects the wetlands.

MR. RANSOM: Thank you for your time.

GOVERNOR O'MALLEY: Thank you.

The park -- the scale.

TREASURER KOPP: Governor, can I ask, is the Attorney General's Office still here?

GOVERNOR O'MALLEY: Attorney General's Office, J.B. Howard? He is.

TREASURER KOPP: Just on Gene -- on Mr. Ransom's --

GOVERNOR O'MALLEY: Somebody stole his jacket.

TREASURER KOPP: Would adopting the permit items with an amendment that -- with a condition that the DRRRA be amended to fully reflect the assumptions in it, would that fall under the best that we could do?

MR. HOWARD: Can I pause on that? I will get you an answer. Let me go back and -- can I come back to the podium shortly, or --

GOVERNOR O'MALLEY: Sure. We have a couple more --

MR. HOWARD: Yeah, I know you do. Unless Madam Treasurer, if it's something you -- it's relevant to the very next thing you can do.

TREASURER KOPP: Unless the next thing we could do is voting.

(Laughter.)

I would like to hear the Attorney General.

And let me just ask one other very naive question. The item before us is a permit that is predicated on those assumptions, right?

GOVERNOR O'MALLEY On the stormwater, you mean? And the EcoPark and the reduced scale?

TREASURER KOPP: Well, not the -- well, I guess, yes, because the way the stormwater pipe is

July 24, 2013

going and that's all that's before us. There's no bridge before us, there's no anything else?

GOVERNOR O'MALLEY: There's a sewer which we haven't talked about it much.

TREASURER KOPP: Yeah.

MR. HOWARD: I mean, I do know -- and this may be in the Comptroller's suggestion. Going back to your question, it certainly would be permissible for the Board to defer until the amendment is made, and that may be in fact the same thing. It may take the same amount of time as the contingent approved.

TREASURER KOPP: I mean, I got everyone that says it's going to be in Court for awhile, so --

MR. HOWARD: I think that's right, but I also think it's important that we reduce the litigation risk as much as possible at this point and we're all here trying to help with that. But let me look into your first question and I'll be prepared to come back.

GOVERNOR O'MALLEY: Okay. Thank you.

July 24, 2013

310

Can we hear from Suzanne Hogan followed finally by Mike Roberts?

MS. HOGAN: Good afternoon. Suzanne Hogan.

Kent Island, Chair of the (Indiscernible) Committee that's essentially fought to keep Rose Point's infrastructure (indiscernible) after the things, the three Commissioners who sent you a letter in favor of the Four Seasons wetlands license. It made significant changes to the way our adequate facilities was implemented. We were successful in a campaign to maintain the strengths of our ADFO. We received a 60 percent of the citizens' vote on that. I say that because I want you to have a framework for the way the citizens view our -- in opposition to the way the majority of our current commissioners feel, and I will add that through that balloting process, I came to the conclusion that I kind of would be (indiscernible) if I chose to run for Commissioner myself as a Democrat.

July 24, 2013

So, I want to thank you all for your commitment on this issue for a number of years, and much of my comments we've prepared have to do with sea level rise and evacuation of seniors. It's the issues that we already have in terms of getting out of the area and the whole sinking nightmare that would happen in the event that we had a --

GOVERNOR O'MALLEY: Were you here at the last meeting?

MS. HOGAN: Yes.

GOVERNOR O'MALLEY: We all agree with you on that.

MS. HOGAN: Yes, and so, I will only say that I think that our County (indiscernible) I found his ramifications to the Board to be and I hope that you were all able to follow its recommendations.

And I'm going to end with that, thank you.

GOVERNOR O'MALLEY: Thank you very much.

Mike Roberts?

July 24, 2013

312

Mr. Roberts, am I pronouncing your name correctly?

MR. ROBERTS: Yes.

GOVERNOR O'MALLEY: Okay. Because he's only here (indiscernible) at DCS.

Oh, same Roberts?

MR. ROBERTS: Yes. It's spelled an unusual way.

GOVERNOR O'MALLEY: Okay.

MR. ROBERTS: Thank you very much. I'm Mike Roberts. I'm a citizen of Kent Island. I've lived there for 30 years.

Governor, you said let's talk about the wetlands and that's what I want to talk about. Kent Island once had lots and lots of very viable wetlands. They have been degraded very badly over the years by development. Development after development on Kent Island has had a serious impact. Our wetlands today are very fragile.

July 24, 2013

GOVERNOR O'MALLEY: My guess is that probably agriculture degraded them even before the development, yeah?

There's a lot of filth there and a lot of draining of marshes?

MR. ROBERTS: Yes.

GOVERNOR O'MALLEY: Am I correct?

MR. ROBERTS: It was part agriculture - although I think by far the most serious part of it came from the development since 1952. There's a proposal here to put a sewer pipe under Cox Creek. I wish we had a map of Kent Island so you could see how Cox Creek divides the whole island in two. We've had several sewer pipe breaks and leaks on Kent Island. A break under Cox Creek could produce a tremendous amount of sewage flowing clear down this creek. It has lots and lots of wetlands. I'm sure your staff can give you a map showing you how much wetland there is in Cox Creek is why.

This mini marina, I'm not sure why they need that on a wetland. There's a marina right there in the middle of this development, the Castle Marina.

I have heard a lot of testimony here today. The developer failed to give you, Governor, a straight answer and you kept asking will you make the commitment. You never got a straight answer, Governor. I would think the lawyer would have come armed with the ability to pull out of his pocket a slip of paper saying, absolutely, we will put an easement wherever you want to call it -- end the issue. But you didn't get that and we've never gotten anything solid on these commitments.

We heard a lot of testimony from State officials. I was very impressed with these officials. They knew what they were talking about, but each of them was talking about their own agency, just what their regulations say. They can try to get some of them to give you a bigger picture and they say, well, we really can't do that, we know our agency.

And I'm sitting there thinking what we need is somebody above that who can put all of this together and then I look up here and see, we've got it. We've got this Board. You're the people who can put it altogether and you can look at the big picture.

As with limitations that the court imposed and you got the authority to deny this application, or at least to postpone it, so we can get more facts and more information and I ask you to do that. Thank you very much.

GOVERNOR O'MALLEY: Thank you, Mr. Roberts.

TREASURER KOPP: Mr. Roberts, let me just say this Board is not the State Zoning -- Planning and Zoning Board.

MR. ROBERTS: Oh, I know that.

TREASURER KOPP: I assure you that if it were, you would have some (indiscernible).

MR. ROBERTS: No, I realize the limitations, but even within those, I think you can --

GOVERNOR O'MALLEY: So, is that the Scottish spelling of Roberts?

SECRETARY MCDONALD: It's just my handwriting. The request came in late and I just wrote it down.

GOVERNOR O'MALLEY: Thank you.

SECRETARY MCDONALD: I abbreviated William, I abbreviated Roberts.

MR. ROBERTS: Thank you.

GOVERNOR O'MALLEY: Thank you.

TREASURER KOPP: Can I ask a question of something while we're here?

One of the earlier witnesses mentioned something about a collector road and the change in the plan because of the collector road.

GOVERNOR O'MALLEY: Connector road.

TREASURER KOPP: Oh, connector road?

GOVERNOR O'MALLEY: She wants to talk about the connector road.

SECRETARY MCDONALD: Mr. Todd, you work for the County, I think she wants to know about the --

TREASURER KOPP: What is that?

MR. TODD: Yes, Madam Treasurer.

That was the road. If you look at the map, it's the road that connects where the proposed bridge would go then it goes up to Cloverfields and out on through.

TREASURER KOPP: So, the fact that it's --

MR. TODD: So, the fact that there's not a bridge means there can't be a connector.

TREASURER KOPP: And the disappearance of those (indiscernible).

MR. TODD: Correct.

TREASURER KOPP: Can I ask -- I asked earlier Mr. Moore and our attorney about this question of the locations of the sewer lines which would in fact --

SECRETARY McDONALD: Oh, whether you can move the the sewer line.

MR. MOORE: In terms of relocation of the sewer line, I have not been involved in a title case where we've done that. Typically, you know, we count on the local water and sewer authority to where the infrastructure needs to start and stop. But what we do do is we tell the applicant how they are going to

cross tidal wetlands. In this case, you know, it's a directional drill.

If they came back and said we want to open trench and cut --

TREASURER KOPP: The manner in which the construction would be.

MR. MOORE: Right. The manner of construction.

TREASURER KOPP: But not --

MR. MOORE: Not on the tidal side.

Again, we have multiple utility crossings under tidal waters, both the water, sewer, electrical, and Internet.

TREASURER KOPP: I guess the question also is of MDE. When you look at -- understand I come from Montgomery County, from the Bethesda-Chevy Chase area where we seem to be having a lot of broken water mains recently. What about that concern? Did you all look at that?

DR. SUMMERS: I would have to call Jay Sakai or Gary Setzer up here to see if we looked at that

specifically on this project, but we certainly do consider the root for sewer lines in our approval process. But as Mr. Moore indicated, there are a lot of these that, out of necessity, cross streams and I assume --

TREASURER KOPP: Out of necessity, and I just want to know --

DR. SUMMERS: Right, and I don't know the answer to whether at this point.

SECRETARY MCDONALD: Gary, introduce yourself, please.

MR. SETZER: Gary Setzer, Program Administrator for Wetlands and Waterways Program.

I agree with Mr. Moore. Generally, we rely on the alignment that's being proposed by the local government and we review it for the wetlands crossing and then we look at the manner of the crossing as to whether or not it affects the tidal wetlands.

GOVERNOR O'MALLEY: We're on her sewer thing.

TREASURER KOPP: And I was just asking about the location of the sewer plant and that we were

having problems in some parts of the other older parts of the State -- Montgomery, Prince George's County -

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GOVERNOR O'MALLEY: Baltimore City.

TREASURER KOPP: Now, this is new now, but it won't always be new.

MR. SAKAI: Well, having come from the City, I can tell you that this is something that we're quite aware of, something that I'm quite aware of about this notion of failing infrastructure.

I think I'm balanced -- the decision to -- I think the administrator had mentioned that the decision to place a sewer is really dictated by what you have to serve and where you have to get the sewage to. The alignment was dictated, I think, by the location that exists in the infrastructure.

The decision to directionally drill is really a method that is employed to minimize the impact --

TREASURER KOPP: I understand that. It seems to be an improvement.

MR. SAKAI: But, you know, Madam Treasurer, I think this notion of failing infrastructure -- the developer and I think the County would not reasonably expect a sewer to fail. We have many, many, many sewer crossings, one line, whatever, that go under water. That go under rivers. Cox Creek, itself, has a number of infrastructure crossings because that's just, you know, where it's got to go. So what we try to do --

TREASURER KOPP: Well, I personally think in Maryland and every other state in the Union that I know of, one of the real problems is an insufficient inventory of existing underground infrastructure and understanding what the -- I mean, we didn't know that River Road was going cave in, right?

We didn't know Prince George's County was nearly shut down.

So, there are a lot of lines. There are a lot of crossings and a lot of things can happen, I understand that. But the question has been raised whether we could avoid it by taking another route altogether. And my only question was whether that

question fell under the purview of Mr. Moore or you all and is that a relevant question about that issue?

MR. SAKAI: Yeah, I can tell you that it was not part of our evaluation either, you know, back in 2007 or now. We looked at the impacts to wetlands and it's pretty much stuff that -- the notion of a realignment to avoid this impact was not considered.

COMPTROLLER FRANCHOT: So, if I could just recommend, I appreciate everyone's patience and the good faith that everybody's shown, but I would really suggest that the Board not vote yes or no on this, just divert it to the end of the year. Allow the permitting process to move forward and be more finalized. If the developer's agreement can be amended, I think that would be very helpful also, based on testimony.

And we, most importantly, can respect the Court of Appeals, even though I happen to think that they're very mistaken in having pulled out the public interest aspect of that decision, but I don't particularly want to get into a wrestling contest with

them. I think the best thing is to just defer this. Have it come back with more certainty. Perhaps have a public hearing.

I'm not sure whether Mr. Howard has gotten through to the powers to be, but he indicated -- and I don't want to put words into his mouth -- but that might be a way that the Board can move.

TREASURER KOPP: A public hearing?

COMPTROLLER FRANCHOT: Well, I assume the County --

VOICE: Yes.

COMPTROLLER FRANCHOT: I assume that the testimony of Mr. Ransom is correct that when the developer's agreement is -- has the guarantees that the government and others have mentioned put in, I think you have to have a public hearing then. That's all I feel.

GOVERNOR O'MALLEY: Uh-huh. The County?

TREASURER KOPP: I think we should hear from the County and the company.

GOVERNOR O'MALLEY: Sure, the County and then we'll hear from Mr. Schaller.

J.B., did you look into it?

MR. HOWARD: Very quickly.

The Board has very broad discretion to impose conditions that there's a general principal of administrative law though that the conditions that would be imposed be within the scope of the Board's legal authority. So, to the extent that the conditions that we're talking about would relate to the wetlands and perhaps and I would think prospectively, this issue of looking at perpetual easement to ensure against -- guard against future developments that would impact wetlands. I would think that that would be fine.

And Mr. Moore is helpful to confer with him in the hall because he's present for a condition of this type.

I hope that answers your questions.

TREASURER KOPP: Yes, it does.

GOVERNOR O'MALLEY: And the County Commissioners indicated they could get the perpetual easement piece of this done in the next few weeks.

MR. MOORE: And we do have a history of green conditions on stormwater management. I don't really like to mention the project, but Swan Point down in Charles County went that way, that we put a special condition on the stormwater outfalls under the wetlands license, that if there was any new outfalls, the applicant would have to return back to the Department with a new application.

GOVERNOR O'MALLEY: How much was that one?

MR. MOORE: It's sad to say it's coming back. It's been over six years.

COMPTROLLER FRANCHOT: It's coming back?

GOVERNOR O'MALLEY: Okay. Let's hear from Mr. Schaller. Do you want to have some rebuttal time here?

MR. SCHALLER: Board, thank you.

I'm certainly not here to invoke rebuttal time, obviously, this is an open forum, but just to set a few things straight. The DRRRA does not need amending.

Mr. Ransom is incorrect. I can't be any plainer than that. This obviously isn't a court of law to decide that.

The applicant here believes it's satisfied the criteria required under the code consistent with the Court of Appeals opinion. You have heard from your State agencies and commissions that -- we followed the procedure. We've done everything that was asked of us. We shouldn't be penalized for certain people asking for delay.

What they are attempting to do -- they have challenged this at every avenue. If we were to go back and even consider amending the DRRRA, I could almost bet money that there would be an appeal lodged by the opponents. It has happened at every turn. The Court of Appeals even mentioned it in its opinion as to how many times it's been up and down Rowe Boulevard there.

This applicant is committed to doing what it says that it will do. You heard from the County out there. We are happy to work with the Board and the

County to effectuate the conveyance of the Tanner parcel which seems to be really what the issue is. The DRRA is not the issue.

The opponents want to go back to square one. This State process has afforded them more than ample public comment and opportunity. We have gone lesser in scope. So what the applicant would foresee being the appropriate mechanism is allow the County and the applicant to effectuate the transfer of the Tanner parcel. The DRRA has nothing to do with it, plus I believe it would run contrary to what the Court of Appeals has said as to what we are supposed to be looking at.

And I really just try to keep it short and simple out there because you've heard a lot. You've digested a lot. Some of it is acceptable. Some of it may not be acceptable, but it really is a matter of this Board looking at 16-202(G), the criteria and the application before you for 822 square feet of the impact going underneath State waters, ending in a slip here.

As I said, we're willing to work with the Board and the County to figure out how to assure, I believe, and guarantee, that will be with words, that that property is conveyed to the County.

The DRRA is a red herring. I don't believe that you can touch it. I believe that J.B. Howard was correct on that, as well.

GOVERNOR O'MALLEY: Can I ask on the -- this might be an engineering question, and I appreciate all of that, Mr. Schaller.

Are the conditions -- who regulates, Dr. Summers, the pipe that is to be -- the sewage pipe that is to be drilled underneath the Cox Creek?

DR. SUMMERS: We -- we regulate that at the Department of the Environment. It would have to be built according to standards approved by our engineers with a construction permit.

GOVERNOR O'MALLEY: And those standards are standards that are -- I mean, y'all will be mindful? And who issues the construction permit?

DR. SUMMERS: That permit comes from the Department of the Environment.

GOVERNOR O'MALLEY: Okay. So you can assess that it be whatever the engineering standards are --

DR. SUMMERS: Correct.

GOVERNOR O'MALLEY: -- a thickness or double reenforcement or all of those other great engineering terms that you guys have?

DR. SUMMERS: Yes, and you know, there are many more requirements in place today than there were when Baltimore City's system was put in place, for example.

TREASURER KOPP: Even Montgomery.

DR. SUMMERS: And we are constantly increasing those requirements, as you may recall from some consent orders.

GOVERNOR O'MALLEY: Actually, that Prince George's thing was a reflection of the fact that there was an awareness of what was about to happen --

TREASURER KOPP: Yeah, it was.

GOVERNOR O'MALLEY: -- rather than waiting for a river to run through it.

MR. SCHALLER: The other piece, Governor, is there already is a sewer line running underneath Cox Creek around Route 50 there. Certainly Mr. Summers -- Dr. Summers has that in his statements out there and this would actually be owned by the County at some subsequent date, the sewer line.

In an effort to -- let me try to address the assurance/guarantee. The applicant is willing to accept a condition, if this Court deems it appropriate to transfer that Tanner parcel with the County. That's where we're headed, and, you know, I don't know. So, I just -- we're here to try to create a win-win for everybody within the legal framework that we're allowed to.

GOVERNOR O'MALLEY: Okay. So here's a -- I mean, it would seem to me -- and I'm just speaking, as one Member of this Board. I'm certainly not speaking as the Court of Appeals though, I have met several of them.

(Laughter.)

GOVERNOR O'MALLEY: We're focused -- I'm sorry, we haven't heard from Mr. -- Greg, do you want to -- does he -- members -- the Treasurer had come to you before and then he was shown legal diplomacy. We didn't come back to you.

MR. BEDWARD: Yeah, Governor.

GOVERNOR O'MALLEY: Do you have any questions out there for --

MR. BEDWARD: Sure, Greg Bedward, counsel to the Board.

Just a couple of questions in response to the earlier comments made by the attorneys. First of all, I agree with the AG's Office that this remand order does not require a true review, a complete do-over of this -- of the wetlands -- of this application. I think the order is clear on that.

Mr. -- I forget his name, but he mentioned that -- I think it's Macy Nelson mentioned that the wetlands administrators report sort of predicted MDE's response to his letter, but we actually had a convert. An internal -- a conversation with any -- in connection with the supplemental report, so in no way

does his report predict any response to his supplemental report.

And just to explain a little bit how we --

COMPTROLLER FRANCHOT: I have no idea what you just said.

MR. BEDWARD: I'm sorry, am I talking too fast? Sorry about that.

GOVERNOR O'MALLEY: I think we're all just getting a little punchy.

MR. BEDWARD: No, earlier on --

GOVERNOR O'MALLEY: (Indiscernible.)

MR. BEDWARD: Yeah, I'll talk a little bit slower.

One of the attorneys mentioned that the wetlands administrators report predicted that MDE would reaffirm its earlier approval of the project because that statement was made -- that administrators report came out before MDE's comments to the administrators report. So the assertion being that it was stuck in there without any consultation with MDE, but that is not the case. They did have the

consultation with MDE and MDE is aware that we would put that language into the administrators report, like I said in the beginning.

My earlier comment, Mr. Comptroller -- if I talk too fast (indiscernible) -- is that I agree with the AG's Office that the remand order does not require a full review of this license; in other words, have it returned back to MDE.

GOVERNOR O'MALLEY: Greg, thank you.

Mr. Bedward, thank you very, very much.

As I listen to the testimony here and everybody's been very, very patient in this long day at the Board of Public Works. It is a long day, not unlike the other two or three long days that we've had on this issue back in 2007 and a lot of other long days in between.

Focusing in on the wetlands impact and our responsibility with the guidance of the Court of Appeals to make a decision on the wetlands impact here, I think the point that was made by one of the attorneys -- I believe it was Mr. Saunders who testified that there's a guidance and Mr. Bedward

reviewed that COMAR thing too. It's guidance. It's not mandatory, but it seems to be common sense guidance that the other permit process is fully completed. We don't always do that. Sometimes we have done conditional things, but there's some wisdom in that guidance that the County permit process and those things be concluded so that we can make a proper evaluation as a Board as to what the wetlands, in fact, will be.

And I think that that requires some greater assurance than promise, even if it's on the record by reputable people who have testified heretofore. And so it would seem to me that the one that everybody is absolutely in agreement on is that we should -- there should be some greater assurance, like the perpetual easement concluded between the County and the developer, so that, in fact, as this project -- the footprint is reduced and the 131-acre ecological park is created, that that's in perpetuity and doesn't end up -- despite good intentions, now, perhaps -- being a bait and switch, the different functionaries.

You know, engage in and then down the road (indiscernible) on second thought, we would like to get houses here instead, or that it wouldn't become a blacktopped playground or that it wouldn't become something that would otherwise damage the wetlands around it. So, I do think that we need some greater assurance of that -- of that EcoPark being something that's safeguarded in perpetuity so that you can make an intelligent decision about that impact on the wetlands.

TREASURER KOPP: Can I just say on that that it's not simply a question of conveying it to the County.

GOVERNOR O'MALLEY: That it's a question of conveying it in perpetuity.

TREASURER KOPP: And that it be kept, as you described, in perpetuity, by everyone including the future County --

GOVERNOR O'MALLEY: And related to that, there have been promises made about stormwater and how stormwater design will go into this. I would think that could be something that can be concluded by the

County and should be concluded by the County before we have to -- before we can properly make a decision on this.

And I suppose, third, and related to all of that, is the scale of this development. I appreciate what's been offered here about the density and the scale, not being shifted from one side to the other side of this footprint. But there should be some way of getting us some greater assurance that that wouldn't happen subsequent to the issuance of this wetlands permit, given the fact that shifting all of that density on the other side could very well impact the health of the wetlands.

So that's -- I mean, those are the issues as I see it, and I'm sure that the other Board members want to be heard. I'm not sure exactly where all of this will put us. I think that perhaps deferring this or continuing this to the next meeting which comes up on the -- four weeks from now, we give some ample time for the County and the developer and the lawyers to figure out better assurances for this Board.

Madam Treasurer, Mr. Comptroller, thoughts?

COMPTROLLER FRANCHOT: I think it's a very appropriate move and it keeps us out of conflict with my favorite Court down the road, and I think it's the right way to go.

I want to particularly thank everyone that's testified on both sides today. I thought Mr. Baker really hit all of the nails on the head and I would also ask whether or not the developer's act is relevant or not, could there be some guarantees that tighten that up, if, in fact, anything Mr. Ransom said is applicable.

And I also think there should be a public hearing planned. There's nothing wrong with having a spirited hearing where a bunch of people come out and say, you know, I really don't like this. Because what happens is it's not just the Ecopark, but there are other weaknesses that get identified, it can be firmed up, and so when this moves forward, it has more protections in it and I would feel comfortable there -
- I'm actually very pleased that the Governor chose this route because we don't have to be thumbs up or

thumbs down. We can wait and see what the process brings us and I think that's an appropriate strategy.

Thank you, Governor.

GOVERNOR O'MALLEY: Thank you.

Madam Treasurer?

TREASURER KOPP: No, I think it's a reasonable way to go. I don't know about amending the DRRA.

What I think is most important is to get assurances, long-term assurances that outlive all the folks in this room, that this development will go as well as the assumptions have been here regarding things the Governor had mentioned and some of the green building that has been proposed.

I just want to say what I said to the applicants. I think this seems like a very good proposal. I think it's a very attractive proposal. I think it's absolutely in the wrong place, but that's a question for the local plan. I would not have supported that plan, but that's not the role of the Board of Public Works.

And I do appreciate the fact, by the way, that it hasn't been mentioned because it's not relevant to this item except it's been referred to often enough, that there were steps taken that maybe you could tie down also that are to adapt or mitigate the impact of the sea level rise and storm surge such as the two-foot pre-boarding and the hardening of some aspects of the plan. I don't think they go as far as not building it at all would, but really recognition of the changes that we understand about sea level rise and storm surge and the impact on Maryland and climate change that we didn't fully comprehend even six years ago when this license was started.

GOVERNOR O'MALLEY: And that could also be an item for General Assembly.

TREASURER KOPP: Governor, I really think this whole episode, to me, personally, points for the need of the General Assembly and the Governor to get together and look again, even though I know no one's dying to, but look at some of these questions of land use planning, zoning, development. There are State infrastructure issues, such as the capacity of the Bay

Bridge that impact all of the local decisions and there's got to be a new way to address them and to protect the health and safety of our citizens and our State.

COMPTROLLER FRANCHOT: Can I just ask a question, though, Governor?

My head really hurts now with all of the reams and reams of testimony and information. I'm not an expert on all of the particulars. So I'm just wondering if there isn't some way to suggest to everybody as they get together that if they don't want to come back in a month, come back in two months, or three months, with something that is set that we can, you know, have leverage against, and either vote yes or no.

And I'd hate to think a month from now that we're going to be back groping for a way forward. I would much rather say give them more than a month. Give them several months to figure it out, come back, and say, this is what we want you to vote for, including all of the wetlands, and we can vote.

GOVERNOR O'MALLEY: Absolutely.

Do you need more time to conclude those guarantees?

We'd like to give you more time.

COMPTROLLER FRANCHOT: Because here's my problem. I don't know that we have all of the issues that have been raised because I'm not an expert on this. Some have come up today with EcoPark, the developer's agreement which may or may not be. All I'm saying is flush it out and figure out every possible angle and then put something in front of us that we can vote yes or no on, please.

GOVERNOR O'MALLEY: Okay. So this matter is continued until the next meeting in four weeks.

SECRETARY MCDONALD: Oh, we do have the Queen's Landing Marina returning on August 21st. We had that last meeting, July 3rd and you asked for that to be thoroughly vetted and notified and all, and so that's coming back on August 21st, Queen's Landing Marina. I just wanted to point that out.

If you want this one back as well or --

GOVERNOR O'MALLEY: And the General Assembly needs to amend the reference stuff in relation to the public safety aspects.

SECRETARY MCDONALD: We will mark this as deferred and we will get back with you --

GOVERNOR O'MALLEY: Okay. Thank you, all.

This concludes our meeting.

(Whereupon, at 4:38 p.m., the meeting was concluded.)