
STATE OF MARYLAND
BOARD OF PUBLIC WORKS
GOVERNOR'S RECEPTION ROOM, SECOND FLOOR, STATE HOUSE
ANNAPOLIS, MARYLAND

November 12, 2014
10:18 a.m.

PRESENT

HONORABLE MARTIN O'MALLEY

Governor

HONORABLE NANCY KOPP

Treasurer

HONORABLE PETER FRANCHOT

Comptroller

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Secretary, Board of Public Works

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PROCEEDINGS

GOVERNOR O'MALLEY: Good morning, ladies and gentlemen, and welcome to the Board of Public Works.

AUDIENCE: Good morning.

GOVERNOR O'MALLEY: Today is -- what day is today? November 12th, 2014. The healthcare shopping website is up and 18,000 people have anonymously browsed without any problem whatsoever. Rest assured, therefore, you will never see a story about it.

(Laughter.)

GOVERNOR O'MALLEY: We have also some very encouraging news in the, in the paper today about the accord that the, the United States and China have reached to reduce climate change and to combat greenhouse gases. Very, very encouraging, and Maryland at the, the forefront with an energy policy in place today that moves us to a cleaner, greener, more secure energy future.

So any opening comments from the Comptroller? From the Treasurer?

COMPTROLLER FRANCHOT: I'm happy, Governor, to second you on the, on the climate change solution antidote that was talked about. And Treasurer Kopp, it's a pleasure to be here. I'd just like to comment on the Statewide elections that we had last week. I'd like to take a moment and

congratulate all those who won their election, including Governor-elect Larry Hogan, Lieutenant Governor-elect Boyd Rutherford, Attorney General-elect Brian Frosh, and the many senators, delegates, county executives, and county council members who look forward, frankly, to a challenging and productive four years, and won their office.

But I think it's also important to just take a moment to recognize those who ran and came up short. Because taking part in the democratic process requires courage and dedication, whether you are a first time candidate or someone who has served the State for many years. And they should be thanked for their service and their interest in making Maryland a better place.

Just as importantly, I would be remiss if I didn't take this opportunity to not only recognize those who serve our State, but those who served our country as well. Yesterday Veterans Day commemorated the countless generations of men and women who dedicate their lives to protecting and defending our country and our freedom. Growing up, hearing my Dad speak about his time in World War II, frankly as a U.S. Army veteran myself, I am constantly reminded of the importance of keeping our attention toward those who are currently serving, both at home and overseas. And we must also remember those who have already completed their service, whether it was four days ago or four decades ago. The way in which we treat our veterans speaks to the kind of

nation that we strive to be. We must always ensure that we continue to serve those who sacrifice their life in order to protect ours, making sure we provide them with the protection and the equipment they need when they fight abroad, and the care and the resources they need when they return. On Veterans Day and everyday we must always remember to keep those who serve our nation in the forefront of our minds and as we go about our daily lives, take a moment, stop looking at your cell phones, thank those brave men and women in uniform.

So thank you to our armed forces, past and present. God bless Maryland, and the United States of America. Governor?

GOVERNOR O'MALLEY: Thank you, Mr. Comptroller. Well stated. And I was at Crownsville yesterday, a beautiful ceremony there honoring our veterans. And like you I was lucky to have a Dad who fought --

COMPTROLLER FRANCHOT: Yes.

GOVERNOR O'MALLEY: -- in the Second World War, and raised us with an appreciation of all of those men and women around us who have done so much for our country. Madam Treasurer?

TREASURER KOPP: Just on that one subject, as the Comptroller knows, I think, I was looking at a picture. My, my folks, my mother and father are both buried at Arlington.

GOVERNOR O'MALLEY: Hm.

TREASURER KOPP: And we do go over, not often enough, to visit them, and to honor all the people who are there and places like that around the world. I think those pictures in London of the poppies were just over, overwhelming. And, and I must say, I've always thought the idea of Remembrance Day instead of just Armistice, which comes and goes, or even Veterans, where Remembrance brings us all together in honor of those who did and do and will serve our people.

Yes, the people have spoken. I, I didn't agree with every decision that was made. Comptroller, I did agree with one.

COMPTROLLER FRANCHOT: Thank you.

TREASURER KOPP: I'm very pleased to, to see the reelection of my friend, the Comptroller. But our job now is twofold: to learn from the election and to go forward and to continue to strive for the goals which I think the overwhelming number of Marylanders seek. Strong education system, elementary, secondary, and higher education, not to, not to fall back. A strong, clean environment. I, too, was very surprised and very impressed, though, though I haven't read the particulars of the agreement between China and, and the United States, a recognition at the highest level that of what we in Maryland have recognized for some time, and that is the impact of climate change on us, on our shorelines, on our infrastructure, on our people, on our future. To recognize

something that actually is there and will be whether you recognize it or not shouldn't be a stroke of genius, but, but, but I think it's a, a very good, very good thing. And with that, to quote one of my favorite television shows, *The Simpsons*, forward not backward, upward not down, and twirling, twirling ever towards victory. So with that note --

(Laughter.)

GOVERNOR O'MALLEY: There you go. Not every Board of Public Works will you get to hear from *The Simpsons*.

(Laughter.)

GOVERNOR O'MALLEY: Okay. Secretary's Agenda?

SECRETARY MCDONALD: Good morning, Governor, Madam Treasurer, Mr. Comptroller. We have 16 items on the Secretary's Agenda this morning. There are two reports of emergency procurements. We're prepared to answer your questions if you have any.

GOVERNOR O'MALLEY: Questions?

COMPTROLLER FRANCHOT: None for me. Move approval.

GOVERNOR O'MALLEY: No questions?

COMPTROLLER FRANCHOT: No, move approval.

GOVERNOR O'MALLEY: Okay. The Comptroller moves approval of the Secretary's Agenda, followed 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: Thank you.

GOVERNOR O'MALLEY: We move on now to Department of Natural Resources Real Property.

MS. WILSON: Good morning, Governor, Mr. Comptroller, Madam Treasurer. Emily Wilson with the Maryland Department of Natural Resources. We have six items on our Agenda today. We do need to modify Item 6A, I believe, as we are, when we do get to the DGS Agenda we will be withdrawing the associated lease item. So there is a provision in our Item 6A, the "upon acquisition," paragraph that will no longer pertain since we are withdrawing that lease item today. Is that --

GOVERNOR O'MALLEY: Which one is that?

SECRETARY MCDONALD: I, this is news to me. So thank you.

GOVERNOR O'MALLEY: Where are we?

MS. WILSON: Item 6A on our Agenda.

GOVERNOR O'MALLEY: Is this the one that --

SECRETARY MCDONALD: This is the acquisition of the Wick Farm, 255 acres.

GOVERNOR O'MALLEY: Ah, the Wick Farm.

SECRETARY MCDONALD: And I believe Ms. Wilson is telling us that we're supposed to strike the entire second paragraph in Item 6A?

MS. WILSON: Correct.

GOVERNOR O'MALLEY: Yeah.

SECRETARY MCDONALD: Which is from "upon acquisition," to "underserved communities."

MS. WILSON: Correct.

SECRETARY MCDONALD: And then everything else would be the same.

MS. WILSON: That's right.

GOVERNOR O'MALLEY: So yes, this one came up two weeks ago. There was some controversy about the, the lease and whether or not it, this was appropriate, and whether or not there should be an RFP. Mr. Dresser did a lengthy article today on it, and in fact it's the most lengthy article ever produced in my eight years here on Open Space generally, about the Wick Farm. So it

seems there's two, kind of two issues, right? I mean, one is whether or not it's appropriate to lease this farm for the public good of a Food Hub consistent with our buy local efforts. The other question is whether we, you know, what this scores standing alone as an Open Space purchase for its ecological value. And, and so -- so anyway. There are many instances where this Board has approved leases for, for a dollar, whether it's the curators who live on the property in exchange for keeping them up, or whether it's Rosaryville State Park with the Rosaryville Conservancy, or the Eastern Shore Land Conservancy to provide outdoor education programming at Sassafras Natural Resource Management, or North Bay that provides a summer camp sort of thing up there at -- what's the name of that property? Is it --

MS. WILSON: Elk Neck State Park.

GOVERNOR O'MALLEY: Elk Neck? The National Sailing Hall of Fame, I think they got a lease for a dollar for the public good of providing a, a sailing museum. And then K. Large?

MR. LARGE: Gaudenzia.

GOVERNOR O'MALLEY: Gaudenzia, providing the drug treatment facility at Crownsville on a lease for a dollar. But so why don't we set this one aside for a second.

SECRETARY MCDONALD: Okay.

GOVERNOR O'MALLEY: And see, and so that everybody can speak their piece on this one.

MS. WILSON: Okay.

GOVERNOR O'MALLEY: And in the meantime let's look at -- so this one is what? 6A?

MS. WILSON: Correct.

GOVERNOR O'MALLEY: Let's hold 6A for the time being. And any questions on the rest of the Open Space Agenda? Where by the way now, unlike seven years ago, we have an objective ranking of each one of these purchases based on its ecological value. And you can go online to GreenPrint and confirm its contiguity and its habitat corridor or its value for preserving the water for, or other ecological purposes. Anything on the other items?

MS. WILSON: I would like to highlight, if you don't mind, Item 4A, screams partnership. It's a wonderful acquisition. We've done this in partnership with the Conservation Fund. There is a lot of leveraging going on here. This is a local project for St. Mary's County. There's POS local money, POS State side, and federal money in terms of the Navy writing us an Environmental Protection Integration Program funding in terms of buffering Pax River and that area.

GOVERNOR O'MALLEY: And where is this exactly?

MS. WILSON: This is just south of Lexington Park right on the Chesapeake Bay. So it provides a tremendous amount of shoreline for public water access, which of course, is one of the goals towards which we're striving in terms of the Chesapeake Bay Agreement.

GOVERNOR O'MALLEY: This is, this isn't the Dowell Community Center, this is something else?

MS. WILSON: No, this is what we're calling Shannon Farms.

GOVERNOR O'MALLEY: 4A? Did you say 4A?

MS. WILSON: Yes, on the DNR Agenda.

GOVERNOR O'MALLEY: I'm seeing St. Mary's County, 4A. Okay, I'm with you now. Thank you.

MS. WILSON: Mm-hmm. That's it. Mm-hmm.

GOVERNOR O'MALLEY: Shannon, Shannon Farm Property Acquisition.

MS. WILSON: Right. And if you, you look at the map, you can see, again, it's just south of, Pax River is right there, up where that juts out. And this property is just south of them and it is right on the Chesapeake Bay.

GOVERNOR O'MALLEY: You know what, I don't think I have that map in my, I have the 4A but I don't have the map that backs it up.

MS. WILSON: Oh, it should be behind --

GOVERNOR O'MALLEY: Do you all have the map?

MS. WILSON: It should be behind that image map there.

GOVERNOR O'MALLEY: That thing?

MS. WILSON: Yeah --

GOVERNOR O'MALLEY: That's not it.

MS. WILSON: -- just keep, keep flipping. Oh, no?

GOVERNOR O'MALLEY: No.

MS. WILSON: Oh, that's it.

GOVERNOR O'MALLEY: This is it?

MS. WILSON: Mm-hmm. That's what was showing before.

GOVERNOR O'MALLEY: That's not that. That's not that.

MS. WILSON: Well then you flipped back earlier on -- no, no, the
other way.

GOVERNOR O'MALLEY: No, I don't have it. Anybody else
have it?

TREASURER KOPP: No, we really don't.

GOVERNOR O'MALLEY: Oh, okay.

MS. WILSON: Right there. Right there.

GOVERNOR O'MALLEY: I'm sorry, it's not it.

MS. WILSON: Oh.

MR. LARGE: I don't think it was included at all.

GOVERNOR O'MALLEY: You didn't include it in mine. Did they give you one, Mr. Franchot? Do you have one?

(Laughter.)

TREASURER KOPP: What number?

GOVERNOR O'MALLEY: None of us have this in any of ours.

MS. WILSON: Okay. I'm not sure what happened there, I apologize.

GOVERNOR O'MALLEY: Can you pass that up --

MS. WILSON: Absolutely.

GOVERNOR O'MALLEY: -- your copy up to us with the map and the --

TREASURER KOPP: Yeah, it's Calvert County.

GOVERNOR O'MALLEY: -- the ecological ranking?

TREASURER KOPP: Our 4A is Calvert County, Dowell Community Center.

SECRETARY MCDONALD: But we did not have any in our, from St. Mary's actually.

GOVERNOR O'MALLEY: Now this one is right on the Chesapeake Bay.

MS. WILSON: Mm-hmm.

GOVERNOR O'MALLEY: And what did it score in the ranking?

MS. WILSON: Well this didn't go through the ranking. This is a POS local project.

GOVERNOR O'MALLEY: Oh, I see.

MS. WILSON: Mm-hmm.

GOVERNOR O'MALLEY: Well so what, what's the local government, are they trying to create water access or something?

MS. WILSON: Right. This is going to be intended for a passive recreation use.

GOVERNOR O'MALLEY: Uh-huh. And that they do with their portion, or --

MS. WILSON: Right. They have supplied \$200,000 of their POS local money towards this. This is a great partnership and terrific leveraging.

GOVERNOR O'MALLEY: No, it looks --

TREASURER KOPP: So the, the Navy is contributing about half?

MS. WILSON: The Navy is contributing 65 percent --

TREASURER KOPP: Sixty-five percent?

MS. WILSON: -- of the acquisition cost in, in exchange for an easement again to, you know, the purpose of that is to help buffer the area around Patuxent River.

TREASURER KOPP: That's great.

GOVERNOR O'MALLEY: Okay. So how do we, Madam Secretary of the Board, how do we reconcile the fact that we don't have the paperwork in here? How's that work?

SECRETARY MCDONALD: Well I'm going to go right back to my office and, and work with Ms. Wilson and find out where that is.

GOVERNOR O'MALLEY: But regardless of our briefing materials, is there briefing materials that are online or something? I mean, I don't --

SECRETARY MCDONALD: The backup if this --

GOVERNOR O'MALLEY: I can't approve something not before us.

SECRETARY MCDONALD: No, the item is before you. This is supplemental material. So if you want the --

GOVERNOR O'MALLEY: Okay.

SECRETARY MCDONALD: -- supplemental material, I mean, this will be put in the record now because it's here right now and we have this and

we can always put that in. But no, we don't have access to these kinds of materials online.

GOVERNOR O'MALLEY: But is it, so is this Item 4A or is it not Item 4A?

SECRETARY MCDONALD: This is, I, the, what the item is is what's in your Agenda book. These --

GOVERNOR O'MALLEY: Uh-huh.

SECRETARY MCDONALD: -- maps that she's showing you that don't, they actually are not a formal part of the Board's minutes.

GOVERNOR O'MALLEY: I see.

SECRETARY MCDONALD: The minutes of this Item 4A is correct.

GOVERNOR O'MALLEY: So 4A was Calvert County, and four, is that possible?

TREASURER KOPP: No --

SECRETARY MCDONALD: I think that there's not anything from Calvert --

TREASURER KOPP: I bet Calvert County was 4A some other date maybe.

SECRETARY MCDONALD: I think that, yeah, I do think that's what happened. It looks to me like it came in from maybe last meeting's, the maps, and it, I --

GOVERNOR O'MALLEY: Okay.

SECRETARY MCDONALD: -- don't know exactly how those maps from last time got in here. But what is important was in front of you is the minutes --

GOVERNOR O'MALLEY: All right. So it's incorrect briefing material. But in terms of what's on the minutes and what's on the published Agenda --

TREASURER KOPP: And what's before us right now.

SECRETARY MCDONALD: And what is before you.

GOVERNOR O'MALLEY: -- and what's before us, it is this item, which does appear in my book, the St. Mary's County --

SECRETARY MCDONALD: And that's what's online, and the public has looked at with all of the actual factual details just not a picture of the map.

GOVERNOR O'MALLEY: And now I'm striking my old 4A maps and putting in my new 4A maps. Okay. Anything else on the other items, sans what was that one? What was the Food Hub one?

SECRETARY MCDONALD: 6A, 6A was the Wick Farm.

GOVERNOR O'MALLEY: 6A? Okay. Any other questions on the -- okay. The Comptroller moves approval of the Open Space Agenda, of the other Open Space Agenda items, 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. All right. Now we're on six. Mr. Gill, do you want to step forward? This we, this we dealt with and deferred last week. The Legislature, consistent with the policy drive of buy local and raise local, approved a couple of bonds for Food Hubs, one of which we approved last week for an urban Food Hub in Baltimore. The other one, this one, also involved the unsolicited proposal to establish the Food Hub on some of the some 12,000 acres of farmland which the State of Maryland owns and leases.

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: And the Comptroller and Treasurer and I had questions about that --

MR. GILL: Correct.

GOVERNOR O'MALLEY: -- and you're going, and now it sounds, Mr. Gill, like what the department is doing is pulling the lease portion of this --

MR. GILL: Correct.

GOVERNOR O'MALLEY: -- and asking us to go forward on the Open Space purchase?

MR. GILL: On the acquisition, yes, Governor.

GOVERNOR O'MALLEY: Okay. What is the, what are the parts of 6A that we want -- do I have to move to strike that? Or did you already move to strike the stuff with regard to the lease?

SECRETARY MCDONALD: This is a recommendation from the Department of Natural Resources and when Ms. Wilson presented it she said that the recommendation from Natural Resources was being revised here at the meeting by striking that. So now without that paragraph I believe is what the Secretary of Natural Resources is recommending to --

MR. GILL: Right.

SECRETARY MCDONALD: -- the Board.

GOVERNOR O'MALLEY: So we strike the one "upon acquisition?" That passage?

SECRETARY MCDONALD: Right, because that references what was going to have happened if Mr. Collins' Agenda still carried Item 14-LL. But that will not --

GOVERNOR O'MALLEY: All right.

SECRETARY MCDONALD: -- apparently take place. So --

GOVERNOR O'MALLEY: So Mr. Gill, update us, will you? Tell us where we are on this, especially in terms of, I know because I call you all the time about what appear to be State lands leased for agricultural purposes --

MR. GILL: Yes, you do.

GOVERNOR O'MALLEY: -- that don't have healthy buffers on them.

MR. GILL: Yes.

GOVERNOR O'MALLEY: How much, how much agricultural land, how much Open Space do we own that we rent for agricultural purposes?

MR. GILL: We have 13,000 acres of farmland that we rent for agricultural purposes. And most of those farms came with us as part of acquisitions that we have done over the years of the 400,000 acres that are landed estate. We have kept all those farms in farmland because of the farmers that are there and because it benefits the local economy and whatnot.

GOVERNOR O'MALLEY: But they ideally, they have buffers on them?

MR. GILL: Ideally.

GOVERNOR O'MALLEY: Since we own them. And you have incorporated that into the leases?

MR. GILL: I, and, yes we have. And this acquisition itself has forest. Part of the value of this acquisition is that there are forested buffers along streams that protect the Chester River, and will also protect the Chesapeake Bay. So this is a very attractive purchase for us in terms of the farmland itself.

GOVERNOR O'MALLEY: Uh-huh. So tell us, why don't you tell us -- I don't know how we do this. Why don't you tell us about the, the property itself and what it scored on the ecological ranking?

MR. GILL: Right. Yeah, let me just sort kind of erase the board.

GOVERNOR O'MALLEY: Okay.

MR. GILL: Okay, we're in front of the Board of Public Works, Madam Treasurer, Mr. Governor, Mr. Comptroller. We've got a property here that's 255 acres that scored a 98 on our ecological ranking system, which is very high. In, in the review of the property that was done by the DLS staff for the General Assembly they noted that this scoring of this, of this ecological value is consistent with the properties that we have purchased in the past. Among other

things I mentioned the forested buffers, the adjacency to the Big Millpond, which will provide public access. We have a planned trail development there with viewing areas at several locations along the way. There are wetlands --

GOVERNOR O'MALLEY: Do those ponds flow into the Chester?

MR. GILL: The streams flow into the Chester.

GOVERNOR O'MALLEY: The streams flow into the Chester?

MR. GILL: They do. So it, this is a, the ranking itself is a solid 98. The, 68 of the acres will be developed, will be developed with trails for natural resource and hiking access. The other part, acquiring it as of today, would remain farmland with the intention that we will go out, based upon discussions that have taken place recently, and move forward with the Food Hub, except that we have proposed we, we would do an RFP to address some of the issues that have been raised.

GOVERNOR O'MALLEY: Of competitive bid and --

MR. GILL: Correct.

GOVERNOR O'MALLEY: How long have we been, do we always do competitive bid with, I mean, did we do competitive bid with Gaudenzia, or Sailing Hall of Fame, or do we do it all the time with ag?

MR. GILL: We do not. We do not. And let, the nature of, the nature of what we receive sometimes at the department is an unsolicited proposal. Someone comes in and says I have a great idea, I've worked on it for a long time, I think it can add value to the State, and I'm willing to put up time and money to make this happen. And there is a whole evaluation that's done on the procurement side in terms of unsolicited proposals and we go through the same kind of thing. Does it make sense for us to move forward with this? In the case of the item that's now withdrawn, we believe that it did so I will not address that. But since issues have been raised about whether or not the Food Hub is something that could be bid, we are absolutely willing to do that. That's fine with us.

GOVERNOR O'MALLEY: Mm-hmm. I think that was the --

TREASURER KOPP: That was the issue.

GOVERNOR O'MALLEY: -- that was the sense of --

TREASURER KOPP: Could I ask you a question, Mr. Gill, that has just been raised with us? Which is, do we have a persuasive legal opinion justifying the use of Open Space money to purchase a farm if it were not available for recreation and public use as outlined in the statute?

MR. GILL: I don't know about the opinions. But I know that farmland constitutes Open Space and that we spend public money all the time through the Maryland Agricultural Land Preservation Foundation, and I think we

supplement that with some of our Program Open Space money on a transaction by transaction basis --

TREASURER KOPP: That was my recollection.

MR. GILL: -- for the purpose. Yes.

TREASURER KOPP: But could you provide us with the legal basis for doing that?

MR. GILL: Certainly.

TREASURER KOPP: Thank you.

COMPTROLLER FRANCHOT: Well I'll recognize myself, how's that?

(Laughter.)

COMPTROLLER FRANCHOT: Because I thought that the project as presented last week was highly irregular and I think this is even more irregular because essentially three legs of a stool were presented to us last Board meeting. One of the legs of the stool at that Board meeting was withdrawn, which is the Food Hub. I'm not exactly sure why. There was some problem with the \$500,000 match and so that, that leg of the stool disappeared. Now a second leg has been removed, which is the 25-year lease for a dollar a year, as I understand it, to an individual that received quite a bit of publicity in this morning's paper. And now we're being told that, no, that initiative I take it -- well, I don't really, I

can't really with any credibility, see that the intent of the State is not at some point to move forward with the original initiative. So I'd like to at least find out from you, Mr. Secretary, you know, let me ask some questions about acquiring this under the ecological criteria, which the Governor rightly takes credit for.

MR. GILL: Mm-hmm.

COMPTROLLER FRANCHOT: I mean, he implemented those criteria for Program Open Space provisions. And I supported him in that. But I thought that the point of Program Open Space was to protect ecologically sensitive areas that were at risk of development. And having traveled quite a bit around the State, I've been over in the area of the Wick Farm and I can't think of a more rural area or a more sparsely populated area of the State than where this particular farm is. And apparently the map that you showed us last time indicated that there was a railroad that runs right through the property. So we have a, obviously a space that scores high on ecological significance. But what in God's name is the risk of development in a remote part of the State that has a railroad right of way running through the middle of it? What building developer would in their right mind ever develop that site?

MR. GILL: So there are zoning, and access to public water and sewer facilities that would permit in excess of 1,000 residential units in, on this property, 1,000 residential units. It's in close --

GOVERNOR O'MALLEY: This is, my map, do I have the right map here? This shows it's adjacent to Millington.

MR. GILL: It is.

GOVERNOR O'MALLEY: The town of.

MR. GILL: It is. Were you, is that the map you have?

COMPTROLLER FRANCHOT: Yeah, one of the more rural, remotely populated areas of the State with a railroad right of way through the land. And --

GOVERNOR O'MALLEY: Running adjacent to --

COMPTROLLER FRANCHOT: -- boy, it strikes me --

GOVERNOR O'MALLEY: And it runs adjacent to 301.

COMPTROLLER FRANCHOT: Yeah, it strikes me that this is just a, well maybe you would have gone and picked this out otherwise. But I, I can't imagine that it's not still wrapped up in this initiative that you originally presented to us.

MR. GILL: So, so Mr. Comptroller, what I want to do is I want to address this in two parts. Your first question was is this property, can it be developed? And, and sir, yes, it is zoned for development of 1,000 residential units and it is within a half an hour drive of Dover and Middletown. So this would be an area that, that is under threat of development.

The second part of your question is, is this an area that is worth preserving? And the answer is absolutely yes. It scored 98 on our TEA ratings, the presence of rare species, forested buffers, streams, all the things I just talked about. It is consistent with our acquisitions in the past. We think this stands on its own. As a matter of fact, when I appeared before the Board two weeks ago the way I had been thinking about this project, and still do, is I said there are, this is a twofer. We get the chance to basically preserve valuable land and also do something with the Food Hub. The fact that we're not going to move forward today and do a lease but instead do something in the future doesn't take away from the ecological value of land that's under threat of development. We still think it's a good project.

COMPTROLLER FRANCHOT: That is just a bunch of nonsense, if I could say, with all due respect.

MR. GILL: Why?

COMPTROLLER FRANCHOT: I mean honestly, if you're saying to us that we're going to go ahead and purchase this property for \$2.8 million, taxpayers' money, and then we're going to consider some, the rest, the other two legs of the stool, I think that was what you just commented on, as far as using the land for a production facility for a distribution facility which has, we're going to approve at some future Board meeting, I mean I, with all due respect, I, I think

even supporters of this proposal would concede that if it's going to be part of a broader initiative, which you clearly have indicated you would prefer but you're not able to do at this point, we should look at the whole initiative, the whole package. So I would hope that we could defer this until the initiative as originally articulated is brought before us and not try to approve this piecemeal.

MR. GILL: As I said, this acquisition stands on its own in terms of the value it will provide to Maryland's public estate. We think it's a good acquisition. The, the issues that were raised had to do with, with the bidding of, of the Hub farm work. We're willing to do that. We're willing to move that forward. But that, whatever happens with that doesn't take away from the fact that this is a good acquisition, Mr. Comptroller.

GOVERNOR O'MALLEY: Can I ask a couple of questions? One, for how long have we been doing RFPs for the leasing of, I know, I mean, on the surface of it it sometimes sounds counterintuitive that we use Open Space dollars to protect agricultural land. But that is, we do in fact, and always have. How long have we been leasing or doing RFPs for those agricultural lands?

MR. GILL: I think it's about ten years. I think we've been doing RFPs in the counties for about ten years now.

GOVERNOR O'MALLEY: And, and then there are also those, and then there are the local ones, the local Open Space?

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: And that's their dollars. They don't do so much the ecological criteria.

MS. WILSON: Right.

GOVERNOR O'MALLEY: Theirs is mostly focused on the recreational?

MS. WILSON: More so, yes.

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: And they do whatever they do --

MS. WILSON: Ball fields and --

GOVERNOR O'MALLEY: -- for their leases, or ball fields --

MS. WILSON: -- yes, mm-hmm.

GOVERNOR O'MALLEY: -- or to nonprofits, or what have you?

MS. WILSON: Right.

GOVERNOR O'MALLEY: And, and occasionally you will get unsolicited proposals?

MR. GILL: Correct.

GOVERNOR O'MALLEY: Did Gaudenzia come to you?

MR. GILL: I, I don't --

GOVERNOR O'MALLEY: Or Sailing Hall of Fame? The one we did two weeks ago?

MR. GILL: Yes.

GOVERNOR O'MALLEY: Was that a DNR thing?

MR. GILL: Yes, that was an amendment to a DNR lease. Yes, that came to us.

GOVERNOR O'MALLEY: Okay. All right. That wasn't land. That was more of a building, though.

MR. GILL: Right. But it was on land that we owned.

GOVERNOR O'MALLEY: On land that you owned?

MR. GILL: Right.

GOVERNOR O'MALLEY: Okay. So could you do, could you complete what you started to do?

MR. GILL: Sure.

GOVERNOR O'MALLEY: Which was to walk through the single issue, setting aside the Legislature's approval of Food Hubs. Setting aside the long held public policy goal of buying more local and producing more locally consumed food. Holding off those two --

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: -- things and the proposal for the Food Hub itself on the Eastern Shore, walk through --

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: -- why or why not. I mean, just walk through the merits of --

MR. GILL: Sure. So first --

GOVERNOR O'MALLEY: -- this Open Space parcel.

MR. GILL: So the first question you asked is is it in a targeted ecological area under our GreenPrint system? The answer is yes. Then you asked so in the scoring that was done by our biologists and other specialists, where did it end up?

GOVERNOR O'MALLEY: And that GreenPrint is something that all 5.7 million pairs of eyeballs in the State can see --

MR. GILL: Exactly.

GOVERNOR O'MALLEY: -- by going online. You can punch in GreenPrint.com and you will see -- or is it .gov?

MS. WILSON: .Gov.

GOVERNOR O'MALLEY: Pardon?

MS. WILSON: .Gov.

GOVERNOR O'MALLEY: .Gov, GreenPrint.gov. And Maryland is the only state that puts out this, that has done this ranking so that you can see the dark green, which we have already preserved.

MR. GILL: Right.

GOVERNOR O'MALLEY: The light green, that which we hope to preserve by either sensible land use policies, Open Space, rural land preservation, or the like. So this one fell within --

MR. GILL: Yes.

GOVERNOR O'MALLEY: -- that green zone of that.

MR. GILL: Yes.

GOVERNOR O'MALLEY: As I would imagine off the top of my head it must certainly since it's adjacent to the Chester River.

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: Right? And its, and its upper tributaries?

MR. GILL: Yes, right. Streams that flow into the Chester.

GOVERNOR O'MALLEY: Right. And --

MR. GILL: That's correct.

GOVERNOR O'MALLEY: -- at the head of the Chester, right?

MR. GILL: Mm-hmm, yes.

GOVERNOR O'MALLEY: Okay. So it was within the GreenPrint. Keep going.

MR. GILL: So it also meets, so the score, as I mentioned, was 98, which is an upper most range of the scores that we have for the provision of, under the scoring system there is an example up there on the screen that you'll not be able to read. But it's, it scored well for rare species; for aquatic life, tidal or nontidal; for the forested buffers that I meant, that I mentioned before. In addition, as part of our acquisition framework, we look at things that can help us with managing adjacent public lands. That's under Appendix A of our targeting strategy. This particular parcel is adjacent to the, the fishing pond, the FMA Big Millpond, which we acquired back in 1993 for \$10,000 off the purchase price of \$45,000 from the Nature Conservancy. So we have held this for many years. There --

GOVERNOR O'MALLEY: The pond itself?

MR. GILL: Yes, the pond itself and ten, 12 acres. I think the pond is 20 acres and 12 acres is upland, something like that.

GOVERNOR O'MALLEY: Hm.

MR. GILL: But we've had no access to it. It was a great acquisition, we haven't had access to it. And now this provides that access, which

increases its score as well. The forested buffers along the streams provide for protection of the Chester and the Chesapeake Bay.

So those are the, those are the elements that, that go into the, the targeting that get us to where we are. Then you ask yourself the question, so what will you, you know, what are, what features are on the property that will, would want you to acquire it for public access? Well there's this whole area along Big Millpond that we have identified for establishment of trails, for hiking, for nature viewing areas. This fits that perfectly as well.

So I, I think that's really the, the gist of it, Governor. Is that this squarely fits with what, what we do.

GOVERNOR O'MALLEY: In your criteria were there any points awarded because of the Food Hub proposal? Or does this, do you reach this ecological ranking independent of whether or not the Food Hub ever lands on the agricultural tracks of this acquisition?

MR. GILL: It's, it's completely independent.

GOVERNOR O'MALLEY: Okay. Madam Treasurer, you have questions?

COMPTROLLER FRANCHOT: I have a few more.

GOVERNOR O'MALLEY: We'll come back to you. Madam Treasurer, any questions?

TREASURER KOPP: Just, just, just one question. Understanding that, if the, and understanding the legislative agreement with the policy of the Food Hub and trying to address the concerns of a food desert we approved, the Board approved it in Baltimore City. We're now looking --

MR. GILL: Mm-hmm.

TREASURER KOPP: -- looking at the Eastern Shore.

MR. GILL: Mm-hmm.

TREASURER KOPP: I should never ask a question for which I don't know the answer, but I don't know the answer to this. In the discussions of the policy of a Food Hub and of State support for it and of answering the concerns of food desert, was there discussion of acquiring in any way and putting out for farming in any way a, a piece of property? Or was it simply distribution?

MR. GILL: Well there, well there is two, there is two elements in terms of the, the Food Hub proposal that we have in front of you. One is the actual, the proposal that was withdrawn would have been a spoke of a hub of a grant that was, is going to, would go to Easton when it comes back. So the Eastern sort of distribution center.

TREASURER KOPP: Right.

MR. GILL: But this Hub is going, was going to be used as proposed with a substantial investment for basically to grow locally grown food, to provide an educational center, to provide cooking classes --

TREASURER KOPP: Right, the whole thing you described before.

MR. GILL: -- and basically to engage the whole community.

TREASURER KOPP: But my question is when this was discussed in the Legislature in the framework of the, I assume a policy addressing food desert and --

MR. GILL: Mm-hmm.

TREASURER KOPP: -- development of agriculture in Maryland, was that aspect of it, the Hub?

MR. GILL: Yeah, I do not know, Madam Treasurer. I can find out but I do not know the answer to that question.

TREASURER KOPP: And were you all the folks who brought it to the Legislature?

MR. GILL: The --

TREASURER KOPP: Or was it DHCD?

MR. GILL: -- there was, DHCD, I think, is who brought the Food Hub portions to the Legislature.

TREASURER KOPP: The Food Hub portion?

MR. GILL: Yes.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes, I have some further questions on the appropriateness of acquiring this from a Program Open Space initiative. You suggest in your notes that conservation of this land will provide citizens with enhanced recreation facilities, opportunities, as currently there is no easily traversed access to the unique resources of the Big Millpond. So in order to provide the general public, I take it, with quote, access, end quote, to Big Millpond I would think that we would acquire access roads, parking space, directional signage, and perhaps even a boat ramp. It would also require an agreement from the, I guess you, I guess we no longer are going to have a tenant, apparently, until next Board meeting. It would also require an agreement from the tenant, in this case the Eastern Shore Food Hub if they reemerge before us, to allow public access to the property. Are you planning to negotiate with the Eastern Shore Food Hub or someone permission to put an access, boat ramp, etcetera, in there?

MR. GILL: Is there -- I'll answer the question, Mr. Comptroller. Is there a slide that, that shows the natural interpretative and recreational area?

That's it. It shows the map of the trails on the property itself. Since we will own the property we would not have to provide access to it.

GOVERNOR O'MALLEY: That would be page, like, four of your handout, I think.

MR. GILL: So since we own it we wouldn't need to provide access to it. What the plan that you show, that you have in front of you shows the parking and development of the trail along with bird watching, nature overlook, wetland interpretation, and whatnot. So we'd be prepared to move forward to execute this plan upon acquisition.

COMPTROLLER FRANCHOT: To build a trail?

MR. GILL: Yes.

GOVERNOR O'MALLEY: So it looks like there is, what would be envisioned is a green corridor running through this property that buffers that stream that flows into the Chester, yes?

MR. GILL: Yes. Actually the neat thing about it, because you can see the streams --

GOVERNOR O'MALLEY: Right.

MR. GILL: -- you can see the, see the pond, you can see the forest, and you can see the trail. It's a, a great place to --

GOVERNOR O'MALLEY: And the contiguity of that with hooking up with what we already own next to it?

MR. GILL: Yes.

GOVERNOR O'MALLEY: At the Big Millpond thing?

MR. GILL: Mm-hmm, correct.

GOVERNOR O'MALLEY: So what would be subject to a, a later lease and an RFP like other RFPs, I guess, that farmers respond to in order to farm cash crops --

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: -- on the other 13,000 acres that we have would be for those areas not covered by the green on your map, huh?

MR. GILL: Correct.

GOVERNOR O'MALLEY: How many acres is that?

MR. GILL: Hundred and seventy.

GOVERNOR O'MALLEY: Hundred and seventy?

MR. GILL: Yes.

GOVERNOR O'MALLEY: Okay.

COMPTROLLER FRANCHOT: Okay. So what is the price tag for the parking lot and the trail and all the bells and whistles you are planning?

MR. GILL: Oh, I don't have that, Mr. Comptroller. I can get that for you. But this is not, this kind of low impact development is something that we routinely do.

COMPTROLLER FRANCHOT: Okay. So take --

GOVERNOR O'MALLEY: We're not talking blacktop.

MR. GILL: No.

COMPTROLLER FRANCHOT: -- let me just ask the, if I could, to follow up on the, you mentioned DHCD and the Treasurer mentioned the legislation that allows, I guess the Eastern Shore Food Hub. I assume we are going to be seeing them at either the next or one of the last remaining Board sessions here in the new, in this calendar year. So help me again with this Eastern Shore Food Hub --

TREASURER KOPP: It depends on when they get the match, I assume. Is it, could I just, is it we will see it presumably when they get the match? So it depends on what the --

SECRETARY MCDONALD: Yes, because there has to be a matching fund and --

COMPTROLLER FRANCHOT: Anyway, it's an initiative that includes the Eastern Shore Food Hub, as far as I can tell. And there's nothing that testifies today other than that we're going to turn this one-legged stool ultimately

into a three-legged stool, which is okay. That was your initiative. I just have some questions about it because doing it piecemeal I think is, well I just don't think it serves transparency particularly well.

First of all, what is the Eastern Shore Food Hub that you are going to ultimately be partnering with for this property that we're voting to acquire today? My understanding is there are three phases to it. First is the production, processing, and sale of organic fruits and vegetables. Second is the processing, packaging, and distribution of meat. And third is the development of a commercial kitchen for producers and members of the community to prepare organic foods, conduct classes, and hold events. I obviously have no objection to those noble purposes. But what experience does the one individual I see who is a principal member identified in the press, Ms. Cleo Braver, what experience does she have in the large scale production, sale, and distribution of organic foods and in the operation of a commercial kitchen that will be available for public use? Has she headed a food distribution company in the past?

MR. GILL: Well let me, let me approach it this way. Those three elements that you identified that would be part of what would occur on this property would become elements that would go into an RFP for acquisition of a lease to achieve those objectives. So we are no longer talking about a single

individual. As I mentioned at the beginning, we are talking about going out and putting out an RFP to basically procure those characteristics with a future vendor.

COMPTROLLER FRANCHOT: And that RFP will take what time frame?

MR. GILL: I don't know, three to six months, sir? I, I --

COMPTROLLER FRANCHOT: Okay. And I understand from this that what you're saying is that the new food distribution facility, which was going to be located on a property known on as Mistletoe Farm, I believe the Easton Town Council is scheduled to vote on that next week, that, that is, that's not going to happen now, do you think?

MR. GILL: So I'm not --

COMPTROLLER FRANCHOT: That's completely different from you?

MR. GILL: Yeah, I'm not familiar with that.

COMPTROLLER FRANCHOT: Oh.

MR. GILL: We're focused on this land here, sir.

COMPTROLLER FRANCHOT: I guess I'm putting myself in the shoes of a lot of other family farmers that reside and live on the Shore, some of whom may be watching this by, over the internet. How can, how do they get in on a deal like this where the State acquires a very ecologically significant piece of

property and then apparently is planning to lease it for a nominal rate, I take it? I mean, here we have farmers on the Shore who have worked the family land for generations, been in business literally their entire lives, how do they, how do they react to this process? Where first we selected someone to essentially buy the farm for her? Now we're changing and saying, oh no, we're going to have an RFP process not only for the distribution but also for their production? Is that what you're saying?

MR. GILL: So I, two things in terms of the, your question in terms of how Eastern farm, you know, Eastern Shore farmers get to participate. As I mentioned we're moving in another direction with an RFP that will allow farmers the opportunity to, to bid on that. So that, that --

GOVERNOR O'MALLEY: And the likelihood is, sadly, the next administration won't be much in favor of Open Space or the buy local initiative, which makes farming more profitable.

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: So I mean that's, that's the practical reality here, and the march of mortality around this room.

COMPTROLLER FRANCHOT: Well my concern is that we end up with a business model, as you described previously, in which we may very well end up where there's a lot of State largesse involved, a lot of taxpayers'

money, and people out there who are struggling on their own farms are going to ask how can we possibly compete in the face of this process which began with essentially a 25-year lease at a dollar a year?

MR. GILL: So I think one thing I will say to that is --

COMPTROLLER FRANCHOT: Yes, please.

MR. GILL: -- is that the nature of this proposal was for a nonprofit organization to step forward to fulfill a need to provide locally grown food.

COMPTROLLER FRANCHOT: Right.

MR. GILL: A nonprofit organization is not the same as a, as a for profit organization. There are different margins of, of income and whatnot. So it was a different proposal. And there was one reference in the article that talked about the \$10,000 an acre and what that, what that value would have gone for. That in fact is not correct. I mean, the Eastern Shore acreage rental value is around \$168 per acre.

GOVERNOR O'MALLEY: Say that again, because I think some of the press are here and they were kind of all whipped up around that. Say that one more time slowly, Joe. Because I know no one's --

MR. GILL: Sure.

GOVERNOR O'MALLEY: -- in the years I have known you, has ever impugned your integrity.

MR. GILL: So the Eastern region average per acre value is \$162. We have, also have regional values for the other parts of the State as well. So if we were to have leased 170 acres times \$162 and had that be a lease payment, that payment would have been \$27,000 a year. The proposal that we were entertaining and bringing to the Board that is now off the table was a proposal to invest \$5 million in private and grant money to establish this Food Hub to address the local food issue. So it was in our view apples to oranges. But as I have said, we are now moving in a different direction where we are going to move forward with an RFP with this --

GOVERNOR O'MALLEY: Actually you are hoping to move in the same direction but with an RFP --

MR. GILL: Correct.

GOVERNOR O'MALLEY: -- process in between. But the, our direction is limited until January 21st.

MR. GILL: Yes.

GOVERNOR O'MALLEY: And, and if I could pipe in because I've been, I mean, assuming the Comptroller's questions are, are sincere as I must assume they are, part of the challenge with these Food Hubs and the buy local

thing that we've been pushing, I mean, ten years ago you rarely found a grocery store, any of the big chains, with an aisle that said buy local or locally grown. And so there is a consciousness out there among consumers that when their food is locally grown that it's not only better for you, healthier, but also you don't add to the climate footprint by forcing a poor tomato to jump into a truck and drive from Sacramento, California. And, but what we've lost over the years in this, and there is a great book called *The Dilemma of the Omnivores* that our guy Russ Brinsfield gave to me, the Mayor of --

MS. WILSON: Vienna.

GOVERNOR O'MALLEY: Where?

MS. WILSON: Vienna. Vienna.

GOVERNOR O'MALLEY: How could I forget? The Mayor of Vienna. What we've lost over the years in the swinging of the pendulum towards agribusiness and, and the massive raising of cover, I mean not cover crops, of cash crops, heavily fertilized cash crops, is that ability to process and to have an aggregator so that even if farmers wanted to do something that would extend I suppose the reach of their distribution --

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: -- in this very densely populated region of the country, there is not the means of, you know, there's not the, the

distribution facilities. There's not the local processing facilities there once were. One farmer told me about growing up on the Shore that at one time there were, and he talked about a hundred different kind of canneries or something for tomatoes. And now none of those sorts of processing facilities exist. So in looking at this and the reality and the challenges that we face, and whether it's trying to eradicate childhood hunger or getting better and more nutritious food in our schools, is that we don't have that process and capacity in the places where we could use it --

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: -- the most --

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: -- and the best. I mean, one of the reasons when you talk to local school boards about why it is that they purchase still so many packaged and prepared foods is they can't get enough of the local food here. And increasing that capacity is something that requires some, some seeding and some, some effort. So with some nonprofits and a little bit of help from the State it appears that the one in East Baltimore is moving ahead. And this one would be of a, a different sort. In other words, further away from the mouths but closer to the lands and the means of, of production.

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: But all of this is new. It's not something, I mean, it's new in the sense that we did away with these capacities over the course of the last 80 years. And that will be a policy discussion. I mean, some may think that free markets work best. And if we eliminated, if free markets eliminated this with a move for total cash crops then, you know, there are some who will say that we must respect the free markets. There will be others who say that we, we make markets and we, and that the making of new industries and how we, what we feed our children and ourselves is something that is the product of intention and, and choices. So, and so I don't know if that helps at all in the background of whether you do a Food Hub or don't do a Food Hub. But there are many other instances where we have leased land for a dollar for purposes that have nothing, you know, have, you know, that have, you know, for public purposes, like whether it's public education or the Sailing Museum or, or things of that nature. And so, anyway.

COMPTROLLER FRANCHOT: Yeah, well, I think a lot of people watching this and looking at it and reading about it are going to say one thing we don't like, we might like Food Hubs, but we don't like wasting taxpayers' money on half-baked initiatives that are presented to us in XYZ form and all of a sudden show up in Z form with a whole different rationale and justification. And how can you with a straight face, really, speak to farmers on

the Eastern Shore who are wondering how they can compete fairly with someone that has no real estate overhead costs in their original proposal, and probably won't in whatever gets brought before us, they don't have any real, any real estate overhead costs because the State of Maryland went out and bought the farm to produce the food. And then the State goes out and buys a facility from which to distribute the food. So the State is subsidizing two of the three links in the supply chain with their taxpayers' money and they don't get to, other than if they ever could figure out what the RFP process is, even begin to be involved. They have to pay for their real estate. They have to pay for their mortgages. They operate in what the Governor mentioned is the marketplace. And here we are setting up something that directly competes with them, is obviously directed towards certain individuals, and you have the ability to stand up and say, oh no, no, no, this is just a normal run of the mill Program Open Space acquisition. You've got it all wrong, Mr. Comptroller. I mean, really. This thing is just tied up in all sorts of ugly knots. And I wish the entire thing would be pulled. I hope the Town of Easton pulls it off its calendar. You know, in all my years here I don't see anything quite as sleazy, and the Governor mentioned integrity, something that challenges the integrity of the process like this project.

GOVERNOR O'MALLEY: Hm. Madam Treasurer?

TREASURER KOPP: Yeah, I guess, well, elections have results. I don't think this has been sleazy. I do think there is a need to address food deserts. I do think there is a movement across the nation, which I support, of bringing food locally to the people who, who need it. I think there is a way of doing it while supporting the local farmers. I think perhaps the oligopic part of, of farming does need to be challenged. We're not, we're not, we're not doing this but in a small way here but I think that's part of, of what it is. I think that the newspaper articles address some good questions that had been raised. I thought they had been raised more and I hear perhaps they have not about how in doing this we make sure that we have the widest competition possible. I understand someone came in with a proposal that sounds to me like a very good proposal. That happens any number of times in any number of areas. Still, once it's there we should put it out to the light of day and see if other people can do even a better one to address the need that I believe can and should be addressed.

And for that reason I, I don't quite understand the rhetoric, and I don't get into that sort of rhetoric, but it seems to me that we're talking about putting together several things. One is obtaining space that is quite legitimate and highly ranked under Program Open Space. The next one is, is creating, if there is the private match and we can do it, a distribution Hub so that the, the local farmers can get produce to the people who need it and people who need it perhaps

on a large, with large orders in order to further support the, the farmers can get it. And then the question of what role we take in supporting actually moving that from the farm to the, to the Hub. I'm glad, as you say, that it's going to go out for people to look at it. Maybe there are other ways of doing it. Maybe you can incorporate farmers on, on a property that is publicly aided and farmers who are not, let them, let them compete. I mean, there are a number of things you can do. But to destroy the idea of addressing the food deserts I think would be really unfortunate. And I'm glad that you are amending it. I think it's a, I think it's a, it's a good move. And I'm happy to support it.

GOVERNOR O'MALLEY: Okay. And, and Mr. Gill, I appreciate your, your openness and your willing to answer, your willingness to answer all of these questions and also your, your willingness to help open up more profitable ways for farming. Because ultimately unless we make farming more profitable it's going to be difficult to maintain the health of the Chesapeake Bay and, and you understand, and you understand that those thoughts are not exclusive.

MR. GILL: Yes.

GOVERNOR O'MALLEY: And so I appreciate that.

MR. GILL: Thank you, Governor.

GOVERNOR O'MALLEY: And all right, the matter that's before us is 6A and it's with the RFP to be deferred to, or the, as far as the agricultural use to this will go into an RFP.

MR. GILL: Yes.

GOVERNOR O'MALLEY: And hope for the future. In the meantime what's before us is the purchase -- put that slide back up, if you would K. Large, of the, yeah that one. Which shows clearly the contiguity of this, its adjacency to the headwaters of the Chester River, as well as it putting together with the pond --

MR. GILL: Mm-hmm.

GOVERNOR O'MALLEY: -- and the habitat corridor, the green space, and all of the other things that, that were the very reason for creating Program Open Space and preserving, preserving purchases like this all these years. So the Treasurer moves approval of this item, seconded by the Governor --

TREASURER KOPP: Yeah, can I just --

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: My counsel here asked me again the question I thought was answered. The use of Program Open Space to purchase the farm for Open Space, is there a legal --

MR. GILL: I, you had asked me if I could get you an opinion on this and I will. But I was counsel for Open Space for a long time at DNR and we purchased land --

TREASURER KOPP: Often.

MR. GILL: -- farmland often. It's Open Space, provided by Open Space. In fact a provision of the Open Space law a number of years ago was moved to Rural Legacy for the, for the exact purpose of, of preserving these landscapes.

TREASURER KOPP: I, I know that it has been done --

MR. GILL: Yes.

TREASURER KOPP: -- any number of times before. It has never been raised whether it has been done in contravention of the law.

MR. GILL: No.

TREASURER KOPP: This question has been raised now. And I'd like to get an answer. And my support for this is of course contingent on the fact that it's legal.

GOVERNOR O'MALLEY: Is anybody here from the AG's Office? Why don't we -- although we've done -- do you want to hold this matter for a second, and we go, get done with the rest of the --

TREASURER KOPP: For a second? I guess the question is --

MS. WILSON: I think, I mean, not having the --

TREASURER KOPP: -- Open Space as opposed to MALPF or --

MS. WILSON: Right. I mean, not having the Natural Resource Article right in front of me, it's in, it's in Subtitle 5 of the Natural Resource Article, where it talks about acquiring land for Open Space and recreation generally speaking. Yes.

GOVERNOR O'MALLEY: And we often have, I remember the items when we come in with the, I remember the items when we come in with the Rural Legacy Areas --

TREASURER KOPP: Yes.

GOVERNOR O'MALLEY: -- and all of the people here. I mean, it's, were it not for Open Space there wouldn't be the ability to create the Rural Legacy Areas. Right? Why don't you just go pull the Code? We've got some lawyers here, and some recovering lawyers.

(Laughter.)

GOVERNOR O'MALLEY: Liz, can you go just get chapter and verse for the Treasurer?

TREASURER KOPP: Well, can we get that and get it on the record?

GOVERNOR O'MALLEY: She'd like to have that on the record here.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: And, and maybe in the meantime you can do a search of all of the various farms we have purchased with Program Open Space.

MS. WILSON: Right. And we, we have done easements on agricultural property with Program Open Space dollars.

GOVERNOR O'MALLEY: Mm-hmm.

MS. WILSON: Mostly those are properties that are adjacent to our lands to --

GOVERNOR O'MALLEY: I remember early on the Blackwater. Remember Blackwater, when they were going to sell it for development at the head, at the headwaters of the Blackwater?

TREASURER KOPP: Yes, I do.

GOVERNOR O'MALLEY: That was all farmland.

TREASURER KOPP: I do. But since the question has been raised --

GOVERNOR O'MALLEY: We preserved that and used it for buffering.

MS. WILSON: We, and we brought an easement here a few months ago in Baltimore County that was immediate, immediately adjacent to Gunpowder Falls State Park where we purchased a farm with Program Open Space money. We put it, we didn't purchase the farm, we put an easement on it. And a provision of that easement was providing public access through that property to connect Gunpowder, existing trails in Gunpowder. So, you know, again this would be purchasing an agricultural property but also providing that public access that we've been discussing today.

GOVERNOR O'MALLEY: Mm-hmm. I don't, I'm not sure, I'm not sure what other type of land it was, would be if we weren't purchasing from time to time farmland for Program Open Space. But we'll get the citation.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: So let's put this aside so we can put the citation for anybody at home that wants to look up the Article. And we move on now to -- we'll come back to this one. We move on now -- thank you, Secretary Gill.

MR. GILL: Thank you.

GOVERNOR O'MALLEY: We move on now to the Department of Budget and Management.

MS. FOSTER: Governor, Madam Treasurer, Mr. Comptroller, good morning. There are eight items on the Department of Budget and Management's Agenda for today. I'll be happy to answer your questions.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Item 3, please.

MS. FOSTER: Okay. Item 3 is, Item 3 basically extends the MTA union healthcare benefits contract by one year and it's being extended to basically allow a new procurement to be completed and the awards to be made. We have Robert Smith, who is the Administrator for MTA here.

COMPTROLLER FRANCHOT: Great.

MR. ROBERT SMITH: Good morning, Governor.

GOVERNOR O'MALLEY: Good morning, Mr. Smith.

MR. ROBERT SMITH: Yes, Madam Treasurer --

TREASURER KOPP: Good morning.

MR. ROBERT SMITH: -- Mr. Comptroller. My name is Robert Smith. I am the MTA Administrator for the Maryland Transit Administration and we're here today to ask your approval to extend the current healthcare benefits contract for our nearly 4,400 union active and retired employees for one year so that we have the opportunity to reprocur these services. MTA did solicit for these services earlier this year but at the end of the process we became aware after

careful review and consultation with the DBM that the solicitation was flawed. Specifically the financial proposals did not consider a major component which would have provided the basis to determine the most advantageous offer to the State. It was determined that this fatal flaw and MTA -- that it was a fatal flaw and MTA rejected all proposals and canceled this procurement. This should not have happened and the MTA should have known sooner that the solicitation did not give us the ability to properly compare the proposals that were received. I can assure you that we intend to do this right going forward with a new solicitation, that we will get it done correctly. I also want to thank DBM for their help and assistance in this process and look forward to going out with a new procurement that will be completed by September of 2015. And just for questions I have our Assistant Attorney General here with us today if you have questions, and also our Procurement Officer.

COMPTROLLER FRANCHOT: Thank you very much, Mr. Smith. I do have a couple of questions. So we're being asked to award a one-year extension of MTA's contract with CareFirst BlueCross BlueShield which administers your agency's self-insured healthcare benefits program. According to my notes this extension is needed because the MTA, as you commented, and I quote, quote, discovered errors in the solicitation for a new contract and determined that it was in the State's best interest to reject all proposals. So I have

a few questions because the first and most obvious question, I listened closely to what you said as to what the error was but I had no idea at the end of your discussion there what exactly is it that demanded, I guess, that you essentially call a halt to the entire procurement process? I believe you sent a letter of acceptance to the winning bidder and then called the whole process off. What kind of error was that?

MR. ROBERT SMITH: That's correct. We are still in an open solicitation, so I would like to have our Assistant Attorney General answer that question for you.

COMPTROLLER FRANCHOT: Terrific.

MR. BYRON SMITH: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Byron Smith, Assistant Attorney General, Counsel to the MTA. The reason that the MTA had to go back out, as they stated in their address, was there was a major financial component that was lacking. We would be happy to give you a, a private briefing as to what that major component is because since this is an open solicitation if we disclose that information here today there could be potential other bidders who are not listening who would get a head start on any solicitation that would, that would go back out. But that component caused the MTA not to be able to evaluate all the proposals on an equal footing. It was cost related and there was no way that they could have come

up with, have done the evaluation that they did without that information being provided. And unfortunately MTA did not in the form, financial proposal form, they did not provide a space for that information to be submitted, therefore it was not captured, it was not evaluated, and that's what caused the, the issue with the procurement. So in that vein it was difficult for them to determine whether it was in the State's best interest to accept that proposal without that cost component.

COMPTROLLER FRANCHOT: Okay. So the modification that we're looking at is for \$63 million. So obviously it's kind of mysterious, I guess, as to what exactly the financial component is that you're talking about was missing so that the entire procurement was thrown out. But when was the mystery component error discovered?

MR. BYRON SMITH: We have the Procurement Director here, Director of Procurement, who can answer that question.

COMPTROLLER FRANCHOT: Or I guess, I mean, I guess the thrust of the question is people put a lot of money and time and effort into responding to the RFP. I assume staff put a lot of resources into assembling the bids. When, I mean, couldn't we have spotted this before everybody had expended all this time, effort, and money?

MS. LANSAW: It was an unintentional mistake.

SECRETARY MCDONALD: Anna, could you introduce yourself for the record, please?

MS. LANSAW: Sorry.

TREASURER KOPP: Well of course it was unintentional.

MS. LANSAW: I'm Anna Lansaw, Director of Procurement for the MTA. Madam Treasurer, Governor, Mr. Comptroller, it was an unintentional mistake that was an oversight on the MTA's procurement process at the time. It was not found until we went to a pre-board meeting on the intent to award to Cigna, at the time.

COMPTROLLER FRANCHOT: A pre-board meeting?

MS. LANSAW: Yes, sir.

COMPTROLLER FRANCHOT: And how many bids did MTA receive for this contract before --

MS. LANSAW: There were three RFPs that were solicited. Four were received on the medical, vision part.

COMPTROLLER FRANCHOT: Okay. And how long has CareFirst served as MTA's benefits provider?

MS. LANSAW: Since 2009, sir.

COMPTROLLER FRANCHOT: Okay. And the original contract with CareFirst, as I understand it, was for \$149.2 million over a grand total of

38½ months. That amounts to roughly \$3.9 million per month. Okay. I think, I then think we gave them a two-year renewal. That option is for \$127 million over 24 months, which amounts to about \$5.3 million per month. So we've gone up from 3.9 to 5.3 without any competition. That's an increase of 36 percent over the base contract. And here we are tacking on another year at that much higher rate. So we automatically pick up the option, even though it came with a 36 percent markup, and then throw on another year extension because of mistakes that were made. We've just given CareFirst, great company, I agree, but they are an incumbent vendor. We have given them a three-year ride, in effect, at a rate that is more than a third higher than the price they quoted in their original competitive bid. Is this for like pharmaceutical products?

MS. LANSAW: It includes everything, sir. Dental and vision and pharmaceutical.

COMPTROLLER FRANCHOT: So I know there's, every, the price of everything is going up. And there might be a darn good reason in the mystery financial component that the Assistant AG mentioned. I'm happy to meet with him privately and hear about that. But boy, the question of whether we're getting the best deal in this instance by just tacking on bad money after bad money, I mean, I don't know. But my wife just found out that you can, I think Care, I think BlueCross BlueShield is her insurer. And she went to our local CVS

to get a prescription. It cost, I don't know, it was some fancy drug, I think it cost like \$700 for a three-month supply. And she mentioned that to her doctor and her doctor said why don't you fax in the prescription to BlueCross BlueShield mail order, CVS, same pharmacy. She did that, \$750 prescription became \$8. They mailed it to her.

TREASURER KOPP: That's what I do.

COMPTROLLER FRANCHOT: So there's a lot going on in this field that, where people can save money and provide good healthcare. This is --

GOVERNOR O'MALLEY: Can I ask --

COMPTROLLER FRANCHOT: You see why it's kind of irritating that we're sitting here with this situation?

GOVERNOR O'MALLEY: Yes, how long have you been in charge of procurement with the MTA?

MS. LANSAW: Six months.

GOVERNOR O'MALLEY: Yeah. And when did this procurement start?

MS. LANSAW: I believe beginning of last year, in December.

GOVERNOR O'MALLEY: Mm-hmm. And tell me your name again?

MS. LANSAW: Anna Lansaw.

GOVERNOR O'MALLEY: And Anna, where did you come from before this?

MS. LANSAW: I came from Motor Vehicle Administration.

GOVERNOR O'MALLEY: Uh-huh. Did you do procurement there?

MS. LANSAW: I did, sir.

GOVERNOR O'MALLEY: Uh-huh. And Madam Secretary, these healthcare things are notoriously complex.

MS. FOSTER: Yes, they are.

GOVERNOR O'MALLEY: Why was your office not involved in, in this one?

MS. FOSTER: Well this actually is a separate contract just for the MTA individuals. They do not participate in the Statewide health program.

GOVERNOR O'MALLEY: Uh, why not? What's the policy reason for that one?

MS. FOSTER: It's my understanding this has always been a union negotiated contract.

GOVERNOR O'MALLEY: Ah. Always been a union negotiated

--

SECRETARY MCDONALD: Well it's from the Baltimore City Transit days.

GOVERNOR O'MALLEY: From Baltimore City Transit days?

SECRETARY MCDONALD: And when it changed, switched over to Maryland Transit some things stayed.

GOVERNOR O'MALLEY: Those precede my days.

SECRETARY MCDONALD: But some of those things remain.

TREASURER KOPP: Precedes anyone's days.

SECRETARY MCDONALD: There are some artifacts.

GOVERNOR O'MALLEY: Uh-huh, all of our days. So are the days of our lives. Boy, it would seem to me that they should join the 21st Century and become part of the Statewide procurement. Wouldn't, wouldn't you think?

MR. BYRON SMITH: I think that would make a lot of sense, Governor. Unfortunately where the MTA is right now there is this collective bargaining agreement that has its roots in 1953.

GOVERNOR O'MALLEY: Mm-hmm.

MR. BYRON SMITH: And I think it probably needs to come into modern times. But that's a provision that's in that collective bargaining agreement and therefore they would have to negotiate it out with the union. And I don't know how successful they would be on that.

GOVERNOR O'MALLEY: Mm-hmm.

MR. BYRON SMITH: But that's where they find themselves, is --

GOVERNOR O'MALLEY: Mr. Smith, you were nodding your head as the man responsible for this mote. What do you want to tell us about this?

MR. ROBERT SMITH: We recognize as each of you have pointed out and the Comptroller that these costs are something that we need to be in line with. One of the things that we know we'll do going forward is working very closely with the Department of Budget and Management because they're much better at doing this than we are. The other thing that we need to do I think long term is to see how we could bring our employees at the MTA more in fold, into the fold of what is happening with the State. So I think this is a lesson learned as something that, as Ms. Lansaw said, we are new, have a lot of folks new, a lot of folks that's gone out of our agency where we had the flaws. And going forward we don't see that being a problem at all.

GOVERNOR O'MALLEY: Are we going to join the --

TREASURER KOPP: So right now the issue though is the contract before us?

MR. ROBERT SMITH: It is.

TREASURER KOPP: Which you say has to be extended because of egregious errors which you can allude to but you can't mention?

MR. ROBERT SMITH: Yes. We are, we are at a point where this, we need health insurance for our employees on 1 January. And we are at the point where we need a one-year extension to reprocur this because of the process that we're in right now.

TREASURER KOPP: But we, it's a trust me.

MR. ROBERT SMITH: It's, it's a, yes. But it's also that we're working very closely, we learned where we made the error before. We learned to work more closely with DBM going forward to get this right. And it's something that we have people in place that can assure that we do it right going forward.

TREASURER KOPP: Is there a way you could explain to the Comptroller and the Treasurer exactly what the problems were if it were not in a public setting where it could be, interfere with present contractual procurement process?

MR. BYRON SMITH: Yes, we could, we can give, can provide you with a private briefing as to, as to that.

TREASURER KOPP: Because employees need health benefits, I mean, we have to do something. I, I would be willing, I don't know if the Comptroller and, and Governor are, to just take ten minutes right now and find out what it was.

GOVERNOR O'MALLEY: I'm always game for taking ten minutes. Especially at 11:37.

(Laughter.)

TREASURER KOPP: I mean, you can't leave people without healthcare.

GOVERNOR O'MALLEY: All right. Well, that's moved by the Treasurer, seconded by the Governor. All in favor signal by saying, "Aye." We'll take a ten-minute recess. You all can use the office in the back.

SECRETARY MCDONALD: -- closed session? I mean, this is a motion to go into closed session?

TREASURER KOPP: A motion to go into closed session, hear information which you cannot hear in public session according to procurement law.

GOVERNOR O'MALLEY: And the purpose for the debriefing is for the Comptroller and the Treasurer to be briefed in closed session.

TREASURER KOPP: To find out exactly what --

GOVERNOR O'MALLEY: Right.

TREASURER KOPP: -- these errors are --

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: -- that rise to this level.

(Whereupon, the Board went into closed session from 11:40 a.m. to 12:05 p.m.)

GOVERNOR O'MALLEY: We are, what do you call it when, we are reconvening this meeting of the Board of Public Works, having listened to the, the briefing with regard to the bid before us, which is still open and so now we're, we're reconvened here. So where were we? Any other questions from the Board of Public Works before we hear from the folks from Rifkin, Weiner, Livingston, Levitan & Silver?

TREASURER KOPP: Oh.

GOVERNOR O'MALLEY: Anything more, Mr. Comptroller?

COMPTROLLER FRANCHOT: No.

GOVERNOR O'MALLEY: No? Madam Treasurer, no?

TREASURER KOPP: No. I appreciate the time you took to explain the errors, which do sound to me like serious errors.

GOVERNOR O'MALLEY: Okay. All righty. Mr. Livingston, I presume?

(Laughter.)

GOVERNOR O'MALLEY: And my condolences to you and your colleagues on the passing of Edgar Silver. He was a, a great man and a, and will

be very much missed in the, in the halls of, of justice and the halls of, of law and in the hearts of his countrymen and women.

TREASURER KOPP: And the halls of Annapolis.

MR. LIVINGSTON: It will be a little note, footnote to history, but Edgar Silver introduced me to you when you were running for the first time for Mayor of Baltimore City.

COMPTROLLER FRANCHOT: Oh.

MR. LIVINGSTON: You didn't have any gray hair then.

GOVERNOR O'MALLEY: No, I didn't have much support, either.

(Laughter.)

GOVERNOR O'MALLEY: As I recall. I started out what is it, seven --

MR. LIVINGSTON: Good morning, or good afternoon. My name is Scott Livingston. I'm here on behalf of Cigna. Cigna Health Insurance submitted a proposal in response to the RFP. We were determined to be the most advantageous proposer by MTA, so much so that MTA after it informed us it intended to award the contract to us sent us the contract documents and we signed our parts and we returned it. Meanwhile, CareFirst filed a bid protest on August 29th and on September 3rd the bid protest was denied on its merits by MTA. So I

infer from that that CareFirst's bid protest on the merits is not very meritorious, at least judging by what, how the MTA responded.

The next thing that happened is that the MTA notified us that they were going to, well we learned that they were going to try to award the contract in the face of the bid, bid protests. That didn't happen because eventually a few weeks later it, MTA, rejected all proposals. Which puts MTA and the Board of Public Works in a thorny situation. You're faced with the prospect of extending a contract which under the Board of Public Works advisories is illegal. So that's not good.

But look, you have a sticky situation and I have a proposal. See your, right now you're poised to spend, per the Comptroller's remarks, millions and millions of dollars more for the antiquated CareFirst legacy system. There is a better alternative. Look, the MTA employees really need health insurance. You can't stop that. That's got to be uninterrupted. And my client Cigna is currently ready, willing, and able to start on January 1st and take over the work. We can do that because we've taken over lots of other healthcare, health insurance programs, or employers along the way. But you know there might be some iffiness that you all might worry about. I don't want any MTA, I used to represent the MTA, I don't want any employee at the MTA to feel nervous. So here's an alternative. You rescind, MTA can rescind their rejection of all proposals. Award the

contract to Cigna and Cigna will agree to postpone or have a suspension of its contract till January 1st, 2016. Then MTA -- I'm sorry. Then CareFirst, if it wishes to pursue its bid protest, it can be revived.

But the point is what you want to do is not get stuck with another one of these situations. Because Mr. Comptroller, can you guarantee me that next fall there won't be another request for another extension by CareFirst? They can't either. They've had these contracts with providing, you know, information -- well, anyway you can't guarantee that but I can because we will have Cigna already on board. Under my suggestion Cigna will get awarded the contract. It will be suspended for a year and start January, 2016.

But to do that today the best thing is to postpone this matter until December 3rd and that will give the parties an opportunity to see if we can resolve this in a manner that's suitable. So I request that this, that this Agenda item be postponed until the December 3rd meeting.

GOVERNOR O'MALLEY: Okay. Anything else?

COMPTROLLER FRANCHOT: Yes --

MR. LIVINGSTON: I wanted to give my colleague from Cigna --

COMPTROLLER FRANCHOT: Sure.

MR. LIVINGSTON: -- an opportunity to be heard.

MS. TRUFFER: Good afternoon. I'm Beth Truffer. I'm the Regional Vice President of the Government and Education Segment at Cigna. And I just wanted to say that the State of Maryland is a priority market of ours. We're very interested. We are participating on the State exchange in 2015. We put our best foot forward on this bid and we're perplexed as to, you know, what has happened since then. So we appreciate your consideration today. And you're right, it takes a lot of work for these.

COMPTROLLER FRANCHOT: It, okay, what --

MS. TRUFFER: It takes a lot of work on our part to respond to one of these.

COMPTROLLER FRANCHOT: Sure.

MS. TRUFFER: Thank you.

MR. LIVINGSTON: With that we request that this Agenda item be postponed until December 3rd.

COMPTROLLER FRANCHOT: I have a question for Mr. Smith. Is he still here? So in the closed session a question that I asked was did CareFirst bring the mystery financial component to your attention when they protested the award to Cigna? And you said, well I asked who, who protested, and you said it was CareFirst. And then, but nobody then said, by the way, MTA overrode the protest and sent, declared that it wasn't valid, and then sent a letter to Cigna?

That, that was left out back there. Did your agency actually look at the protest and overrule it?

MR. BYRON SMITH: Okay.

COMPTROLLER FRANCHOT: And shouldn't you have at least mentioned it?

MR. BYRON SMITH: The protest came in, it was denied. But they did not raise the issue, the issues that we were talking about. It wasn't brought to MTA's attention by CareFirst.

COMPTROLLER FRANCHOT: Oh, really? Who --

MR. BYRON SMITH: No, that issue that we talked about was not brought to MTA's attention by Care, in CareFirst's protest.

COMPTROLLER FRANCHOT: It just descended from the sky?

MR. BYRON SMITH: No. The issue that we're talking about was discovered after the fact.

COMPTROLLER FRANCHOT: Well, yeah, but the question is who brought the issue up? Did whoever it was that was communicating with you --

MR. BYRON SMITH: No the --

COMPTROLLER FRANCHOT: -- come up with it? Or did, or was it --

MR. BYRON SMITH: The issue, I think what was stated, the issue came up during the discussions with DBM that this major component was left out of the RFP. That's how it was discovered, not by MTA. It was discovered by DBM in those discussions with DBM. And that's how it came to our attention. This was after the CareFirst protest had been denied because that wasn't even a part of their protest.

COMPTROLLER FRANCHOT: I take it CareFirst went to DBM?

MR. BYRON SMITH: I have no knowledge of that whatsoever.

MS. FOSTER: No.

TREASURER KOPP: No, MTA --

COMPTROLLER FRANCHOT: No?

TREASURER KOPP: -- as a matter of course goes to DBM for review.

MS. FOSTER: This was an item that was brought to DBM in terms of going forward and putting it on the Agenda, and in the review and approval process to bring things to the Board the staff determined that there were problems with the procurement and we pointed it out.

COMPTROLLER FRANCHOT: And nobody on your staff communicated with CareFirst, I take it?

MS. FOSTER: No.

COMPTROLLER FRANCHOT: Well that doesn't sound particularly plausible, but maybe.

MR. BYRON SMITH: But the only thing I could say it was not in the documents, the protest documents that they submitted that was reviewed and rejected.

TREASURER KOPP: I think it sounds quite candidly amazingly plausible that what it means is that there were screw ups all along, and we have seen this unfortunately often. Plausible that it wasn't until you got to the control review agency that the entire process was looked at and it was recognized that as it was described to us, in closed session because of the procurement law, that the agency really made very significant errors, that was not the language I used before, in this, in this. And the problem now is as I understand it, I too would like to see it change. But the problem as I understand it is this, this is subject to public bargaining on the one hand and subject to federal constraints on the other. One of the federal constraints being that it has to be done on a calendar year, starting in January. And in order to start it in January something has to be done now. I would hope if we go forward with the DBM proposal that, that all the interested parties would keep their bids in, that it would bid for a, a contract. It looks as though the costs, the administrative costs to the employer will not change significantly, the cost per client will not change significantly over the coming

year. We don't know how many employees will, will sign up and how many will get sick so you obviously don't know the bottom line costs. And that this can be a, a, one more in a long string of lessons learned. I mean it, I don't know, I mean if there's a better solution then I haven't heard it.

COMPTROLLER FRANCHOT: Well I listened to Mr. Livingston, and I have great respect for him.

TREASURER KOPP: Oh, yes.

COMPTROLLER FRANCHOT: And my apologies to Cigna for being in this position. I'm going to vote no on this one-year extension because I think it's, I just think it's completely unacceptable for the agency to put the, their own employees and the taxpayers in this position. I happen to be a little more jaded in my view about who is responsible for what here. But in any event I'm going to, I'm going to vote no. And hopefully long term we end this crazy relationship and get the healthcare for the MTA employees put into --

TREASURER KOPP: Yes.

COMPTROLLER FRANCHOT: -- the collectively bargained State healthcare plan.

GOVERNOR O'MALLEY: That would be the better option.

TREASURER KOPP: Much better.

COMPTROLLER FRANCHOT: And but one of the problems with our procurement process is that it's filled with mysterious happenings. And so the private sector, I don't know Cigna particularly well, but I can imagine that the frustration level is pretty high. And I, I just feel, well it's a bad reflection on the State. And I'll vote no. I'd be happy to vote for a deferral but I'm not exactly sure where that would lead given the, given the, given the ins and outs of this.

MR. LIVINGSTON: But here's what could happen in a, in a deferral.

COMPTROLLER FRANCHOT: I'll put it this way. I'm happy to vote for a deferral if there's a second vote. But I don't believe there, based on my understanding --

GOVERNOR O'MALLEY: The Comptroller moves for a deferral. Is there a second?

(No response.)

GOVERNOR O'MALLEY: The motion fails for lack of a second.

MR. LIVINGSTON: All right. So the, the alternative is that the State could issue a limited BAFO, best and final offer request, and ask all of the proposers to please adjust, revise their technical and price proposals in light of this new financial form that is so important. That way you preserve the 90 percent of what went into the proposal which isn't affected by this and the

Procurement Officer has discretion to issue such a limited BAFO. So he first has to rescind the rejection of all proposals, rescind the, rescind that. Then have a limited BAFO. This was done in the Penn Parking case about 15 years ago and it, this method of a limited BAFO was approved. You know Penn Parking?

GOVERNOR O'MALLEY: I do.

COMPTROLLER FRANCHOT: Yeah, so I'm happy to move that. I think it's, Mr. Klasmeier says it's perfectly doable.

TREASURER KOPP: Can we, can our Procurement --

SECRETARY MCDONALD: We need to, the Procurement Advisor can, yeah, answer that about approving his, approving his recommendation.

MS. CHILDS: I, I think at this point, I, I don't know that a, that a, a, we can reopen the procurement. It's, it's been canceled. I don't know that this is, is a legal solution to the problem. I, I think, and given what we've just heard about the significant and material errors in the procurement I think from a, an integrity perspective I think the, the, the cleanest, clearest way is to reprocur, is to resolicit. Correct the, the RFP and, and do it right way, do it the right way this time.

MR. LIVINGSTON: May I respond to that?

COMPTROLLER FRANCHOT: Sure.

GOVERNOR O'MALLEY: Sure.

MR. LIVINGSTON: Just as the MTA had the discretion to reject all proposals and to seek an award today, so it has the discretion to withdraw or rescind that rejection of all proposals and reinstate the RFP. For those of you who remember Hal Kassoff at SHA, he did this for one of my clients about 25 years ago. There was a screw up. And they said, oh, let's reject all bids. I went and in and I said, well, that isn't fair to my low bidder client. He said, oh, when he heard my side of the story, he said, all right, then I'm going to reinstate it and fix it. That's much better than throwing out, I don't know that baby and the bath water metaphor very well. That's, that's much better than starting afresh. Because if you start afresh you don't know what will happen next summer. Another screw up? So what I urge you to do is to postpone the vote on this and in the meantime give MTA an opportunity to reinstate the RFP and then send out what I keep calling a limited best and final offer request and ask the proposers to adjust, to revise their proposals, if they wish, in light of that. And then it, the MTA can reevaluate and possibly move forward.

TREASURER KOPP: But if the RFP was flawed would you put out the flawed --

MR. LIVINGSTON: No. What you do is, you take, you send out a request for best and final offers and you revise pages 49 to --

TREASURER KOPP: That's basically a new RFP.

MR. LIVINGSTON: It's not basically a new RFP because 90 percent of what the healthcare proposal is is likely not to be affected by this.

TREASURER KOPP: Right.

MR. LIVINGSTON: Okay? And with respect to the price, this major component is a component. At least I'm speculating because I don't know what it is. I'm speculating it's the, to use the same system that the State officials used for the State procurement in order to calculate what is the low price. And if that's all it is, tell us in a best and final offer here is the new --

TREASURER KOPP: I don't know.

MR. LIVINGSTON: -- financial procedure, financial form, and here are the new criteria for selection. Revise your price and technical form like that, and we come back.

COMPTROLLER FRANCHOT: How long did this process take? How long have you been involved with your client in this procurement and preparation?

MR. LIVINGSTON: Since August, I guess.

COMPTROLLER FRANCHOT: Yeah but --

MR. LIVINGSTON: So this, this idea about this limited BAFO would work because these folks know exactly what's in their proposal and if they

see there's a change with a major component of the, of the dollar values, they can react to that fairly soon. But let me have the person who is going to be doing the reacting explain that.

COMPTROLLER FRANCHOT: Oh.

MR. LIVINGSTON: If there was a limited BAFO --

TREASURER KOPP: Well I'm, I don't think that's the question. The question is what we legally are constrained to do, with all due respect. I mean --

MR. LIVINGSTON: That, that's fine. But I --

TREASURER KOPP: And, and with great respect to you, Scott, you're not our attorney.

MR. LIVINGSTON: Well --

SECRETARY MCDONALD: So Mr. Bedward --

COMPTROLLER FRANCHOT: Well let me ask how long it would take to do a BAFO request like the, your counsel suggested? Realistically how long would it take for the State to get the current bidders to amend their final offer to include --

MS. TRUFFER: Oh once --

COMPTROLLER FRANCHOT: -- whatever it is that's missing?

MS. TRUFFER: Because I don't know what it is --

COMPTROLLER FRANCHOT: Yeah --

MS. TRUFFER: -- I will caveat my response. But certainly if we receive a, a new BAFO we typically respond within a week.

TREASURER KOPP: Right. But that's a BAFO under the present RFP and if the RFP is flawed you, I mean, I appreciate what, what you're saying. The question is whether we have made enough of a mess about it to --

MR. LIVINGSTON: Yeah, and see that's the point. You fix the flaws that you just caught. And, and you fix the flaws so if there were --

TREASURER KOPP: I don't --

MR. LIVINGSTON: -- it's a different method of calculating --

TREASURER KOPP: All right. Can we hear from an attorney who works for us?

SECRETARY MCDONALD: So would you like Mr. Smith from MTA to tell you whether MTA can do this with the procurement? Or do you want Mr. Bedward to tell you what the Board of Public Works' role is?

TREASURER KOPP: Well both, I guess.

SECRETARY MCDONALD: Okay. Mr. Smith, why don't you come up? And Mr. Bedward can be there, too. Mr. Byron Smith. The Board can, has in front of it a recommendation from MTA. And what the Board can do is approve it, or disapprove it, or defer it. Now if you approved it or disapproved

it or defer it, you can also give advice to the agency what you would like to see. But really the, the Board's role is on this recommendation in front of you. But Mr. Smith could perhaps explain some of these questions about what you could or couldn't do with canceling procurements, revising procurements.

MR. BYRON SMITH: Well let me start by this. If the whole objective is to move this along and, and get a contract awarded, what I see if, if you talk about rescinding and reopening a procurement that has been canceled, I certainly think what that's going to do just as Cigna has done is filed a protest. And we're going to be right back where we are today dealing with another bid protest from another vendor and we're never going to get to the end of this because we still have to deal with another bid protest --

COMPTROLLER FRANCHOT: Let me just interrupt for a minute. We're about to award this over, in the face of a protest. So why, why is that a problem?

MR. BYRON SMITH: Well I'm just saying in terms of --

COMPTROLLER FRANCHOT: So what if there's another protest?

MR. BYRON SMITH: -- procedure and process wise, the point, the point that I'm making is if we are trying to move this along then all that does is then yes, we end up with a, another protest and then we're still dealing with

another visit here to deal with an award in the face of a bid protest. So in terms of what, what I see is the, when the procurement was canceled, that ended that procurement. And whether the MTA has authority on its own to reopen that solicitation, I don't find that in COMAR, I don't find it in statute. So I'm not sure how that legally could take place. If the --

TREASURER KOPP: Well are you telling us, is the Attorney General saying it can't be done?

MR. BYRON SMITH: Well I'm not sure I, I can offer you a formal opinion of the Attorney General's Office. But what I'm saying is the procurement has closed. Because it was canceled. And there is no mechanism in the statute or I understand in COMAR to reopen that procurement that has been canceled. That's what I'm saying, and I'll stand behind that.

TREASURER KOPP: Then you're saying the answer is no.

GOVERNOR O'MALLEY: Okay. Ready to call this question? Any, any other items on the Board of Public Works Agenda items?

TREASURER KOPP: On the Board, on the DBM?

GOVERNOR O'MALLEY: Yeah, what's, what item is this again?

MS. FOSTER: This is Item 3, Governor, on the --

GOVERNOR O'MALLEY: 3-S-MOD.MDOT. Any further questions on this? All right. The Governor moves approval, seconded by the Treasurer. All those in favor signal by saying, "Aye." Aye. All opposed? The Comptroller votes no. And the, and the matter passes. Any other, the remaining items on the Agenda for -- are we still in Department of Budget and Management?

MS. FOSTER: We're still in the Department of Budget and Management. I have --

GOVERNOR O'MALLEY: I'm a great believer that all Board of Public Works Agendas should end on the same day they start.

TREASURER KOPP: I -- yeah.

(Laughter.)

TREASURER KOPP: How foolish. I do, I'd just like to make a note for the record on Item 7-GM. It deals with the, the Treasurer's Office.

MS. FOSTER: Yes.

TREASURER KOPP: And PINs to oversee an IWIF contract which we have agreed to do with the auditor and that the Secretary supports. Because she doesn't want to have that function.

MS. FOSTER: I certainly don't.

TREASURER KOPP: No one else does, either. Just to make it clear that it is understood by all the parties that we don't have at the moment in the State Treasurer's budget the excess funds to cover these positions. We have been told there will be a deficiency submitted and the deficiency, we will be waiting for the deficiency to be approved prior to filling any positions. But to acknowledge the, the agreement with, with the State Auditor and with the Secretary, with legislative leadership, we will be seeking these positions when the funds are made available.

MS. FOSTER: Understood.

TREASURER KOPP: Thank you. Posterity recorded.

GOVERNOR O'MALLEY: Okay. We now go on to the department, the balance of the --

MS. FOSTER: You didn't approve, you didn't approve the other -

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GOVERNOR O'MALLEY: I know, we're going back to the balance of the --

MS. FOSTER: Oh.

GOVERNOR O'MALLEY: -- Department of Budget and Management Agenda items. Any other 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: The ayes have it. We now move on to the University System of Maryland.

MR. STIRLING: Good afternoon, Madam Treasurer, Governor, Mr. Comptroller. Jim Stirling from the University System. We have three items on today's Agenda. I'd be happy to address any questions.

GOVERNOR O'MALLEY: Any questions, University System of Maryland? Hearing none, the Treasurer moves approval, 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. We move on now to --

MR. STIRLING: Thank you.

GOVERNOR O'MALLEY: -- The Department of Information Technology. Tell me about that healthcare website. I know that the media is all here to cover the fact that it's going well.

MR. URBAN: It's going well. The proof --

GOVERNOR O'MALLEY: That's great.

MR. URBAN: -- the proof will be Monday when --

GOVERNOR O'MALLEY: Mm-hmm.

MR. URBAN: -- constituents start using it for the open enrollment period.

GOVERNOR O'MALLEY: But already anonymous browsing is happening. 18,000-some people, no, no glitches, knock on wood.

MR. URBAN: I'm not aware of any.

GOVERNOR O'MALLEY: Yeah. Good.

MR. URBAN: I'm Greg Urban with the Department of Information Technology. Governor, Madam Treasurer, Mr. Comptroller, I have four items for you today. I'm happy to answer any questions that you might have.

GOVERNOR O'MALLEY: 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: The ayes have it. Aye, aye, no, no, yeah, the ayes had it. Right? Okay. Hey, we, what was the item on the much

tortured Wick Farm? I think Mr. Gill is ready to put the citation on the record that the, and the Attorney General's advice --

TREASURER KOPP: Oh.

GOVERNOR O'MALLEY: -- that the Treasurer had asked for as we were calling that vote.

MR. GILL: Yes.

GOVERNOR O'MALLEY: Please read me the item so I can call it again?

SECRETARY MCDONALD: Six on DNR, 6A.

GOVERNOR O'MALLEY: 6A?

SECRETARY MCDONALD: Mm-hmm.

GOVERNOR O'MALLEY: We are now going back to that item that was held for a second, several seconds, the DNR Real Property Agenda Item 6A, namely the Wick Farm in the headwaters of the Chester River. Mr. Gill, as we were about to vote the Treasurer asked for the citation and legal authority by which we have over the years used Open Space for some 13,000 acres of --

MR. GILL: Correct.

GOVERNOR O'MALLEY: -- farmland.

MR. GILL: Correct. So this, this is an email that I received from Senior Counsel and Assistant Attorney General Roger Medoff, which states,

quote, Natural Resources Article Section 5-902 provides for the acquisition of land, quote, for outdoor public recreation and open space use, close quote. DNR has always interpreted that statute, and in particular the term, quote, open space, to include farmland. The Blackwater and Jesuits properties are examples of such acquisitions. The OAG signed off on those acquisitions as well as on the current Wick Farm acquisition. Signed, Roger Medoff.

GOVERNOR O'MALLEY: And the citation, you got that statute or whatever?

MR. GILL: 5-902 of the Natural Resources Article.

GOVERNOR O'MALLEY: Thank you.

MR. GILL: You're welcome.

TREASURER KOPP: Thank you very much.

GOVERNOR O'MALLEY: Okay. The Treasurer moves approval, seconded by the Governor. All in favor signal by saying, "Aye." Aye. All opposed? The Comptroller votes no. We move on now to the Department of Transportation.

MR. JAMES SMITH: Good afternoon, Governor, Madam Treasurer, Mr. Comptroller. Jim Smith for the Department of Transportation. We're presenting 20 items as Item 4-AE is being withdrawn. We'll be happy to answer any questions.

GOVERNOR O'MALLEY: The Treasurer moves approval, 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. We move on now to the Department of General Services.

MR. COLLINS: Good afternoon, Governor, Madam Treasurer, Mr. Comptroller. For the record, Al Collins, Secretary of the Department of General Services. DGS has 14 items on our Agenda today, including one supplemental. We are withdrawing the one supplemental, Governor, which is the counterpart to the Eastern Shore issue, the lease that is on my Agenda.

GOVERNOR O'MALLEY: Okay, the lease part. What item was that?

MR. COLLINS: The supplemental. The last one on DGS', it's 14-LL and we're --

GOVERNOR O'MALLEY: So has that been, so has that been pulled? Fourteen?

SECRETARY MCDONALD: Yes, he just did --

MR. COLLINS: I'm pulling it right now, subject to your approval.

GOVERNOR O'MALLEY: All right. So we consider then the rest of the DGS Agenda items -- excuse me, sans that aforementioned Item 14. 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: The ayes have it and that concludes our meeting of the Board of Public Works. Thank you for tuning in.

(Whereupon, at 12:33 p.m., the meeting was concluded.)

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