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

**November 18, 2015**  
**10:00 a.m.**

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**PRESENT**

**HONORABLE BOYD K. RUTHERFORD**

Lieutenant Governor

**HONORABLE NANCY KOPP**

Treasurer

**HONORABLE PETER FRANCHOT**

Comptroller

**SHEILA C. MCDONALD**

Secretary, Board of Public Works

**GAIL BASSETTE**

Secretary, Department of General Services

**DAVID BRINKLEY**

Secretary, Department of Budget and Management

**PETE RAHN**

Secretary, Department of Transportation

**EMILY WILSON**

Director, Land Acquisition & Planning, Department of Natural Resources

**DAVID GARCIA**

Secretary, Department of Information Technology

**JIMMY RHEE**

Special Secretary, Governor's Office of Minority Affairs

**MISSY HODGES**

Recording Secretary, Board of Public Works

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# PROCEEDINGS

LIEUTENANT GOVERNOR RUTHERFORD: Good morning.

AUDIENCE: Good morning.

LIEUTENANT GOVERNOR RUTHERFORD: I thank everyone for being here today. I'm back, as you can tell. The Governor had some very good news this week and we were very pleased to hear that. So he is moving forward. He still has work to do. But you'll probably see less of me, which will probably be nice.

I just have a few comments. I had an opportunity yesterday to go to an elementary school in Baltimore, Lockerman Bundy Elementary. It was their Donuts for Dads day, the third year in a row that they have done this. I had been there earlier this year, in August actually, late August, where the administration, we donated books for their library and the principal invited me back. Before the program started, or just as it was starting, the principal asked for a moment of silence. And I thought it had to do with the tragic attack in Paris. But what she said was that five dads from that school had been killed in Baltimore since August. And it just was, you know, shocking for me, and everyone that was there. And you know, we hear of the, what's going on in the City. But when you think of one elementary school, a small elementary school, that five of the dads, and three of which had been to the previous two Donuts for Dads days, are no longer there. And so it brings to home the trauma that takes effect in these kids'

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lives in the City. And it just puts a lot of things in perspective. So sorry to start off with a down note, but I thought it was something that was very important for people to hear. Madam Treasurer?

TREASURER KOPP: Well that certainly is sobering and it puts a human face on numbers. You mentioned the catastrophe in Paris. I think it's on all of our minds, and the minds I must say of our families and children, the uncertainty that it breeds. And I think it's bringing a lot of people together but in recognition of a problem and a shared concern. But I think we all live in that shadow.

I want to say this not just politically, Governor, but I hope America will continue to keep open arms and open minds. And the thought of keeping people out because of origin, race, religion, is such an anathema, such a direction that we just I hope will not be going in. And I just feel that we must speak out and say that. We have to protect our people. We have to protect our nation. We have to protect all the children and the families of the world, including those who are subject everyday to destructive catastrophe. So it brings everything home. There isn't any out there out there anymore.

LIEUTENANT GOVERNOR RUTHERFORD: No. No.

TREASURER KOPP: Everything is here. But I hope that we will very soon be able to see our way to welcoming people of all origins, all races, all religions back in this land, this State of great diversity and pride.

LIEUTENANT GOVERNOR RUTHERFORD: Well I don't think any of the concerns that people have have to do with race or origin. But we are, you know, working with our federal partners to get assurances and, you know, quite frankly I don't think the federal partners have done a good job telling the American public what processes they have in place. And we are starting in that direction.

TREASURER KOPP: Well --

LIEUTENANT GOVERNOR RUTHERFORD: There was some information that was provided yesterday that is very helpful in that process. And I think we'll be able to work through this.

TREASURER KOPP: I look forward to that time and I hope it's soon.

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm. Mr. Comptroller?

COMPTROLLER FRANCHOT: Thank you, Lieutenant Governor Rutherford. And I happen to share the sentiments of both of my colleagues. But if I could return to the comment that the Lieutenant Governor made about our Governor, Governor Hogan. Yesterday we were celebrating the good news that Governor Hogan announced in this very reception room. And admit the tragic events that have transpired in our world recently, and appreciate the Lieutenant Governor talking about the situation in Baltimore. I personally am thrilled that

my friend and our Governor is 100 percent cancer free. I mean, God bless America. Thank you.

(Applause.)

COMPTROLLER FRANCHOT: His recovery provides a shot in the arm to a State that has pulling for him over the last five months at a time when Marylanders could really use a boost, especially following as the Treasurer noted the horrific events in France. The courage, optimism, and resolve that he displayed during his battle inspired all of us, especially the thousands of Marylanders, tens of thousands of Marylanders, who are also fighting this disease or have family members.

I want to compliment and thank Lieutenant Governor Rutherford for stepping in so ably on the Governor's behalf.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you.

COMPTROLLER FRANCHOT: And I'll note that last night he was courtside for the Terps game and that's the only reason the Terps won.

LIEUTENANT GOVERNOR RUTHERFORD: I was very concerned.

(Laughter.)

COMPTROLLER FRANCHOT: And I'd also like to give a shout out to the Governor's superb staff for working so diligently to ensure that State

government operations remain fluid and efficient. Give them a round of applause

--

(Applause.)

COMPTROLLER FRANCHOT: And I'd be remiss if I didn't mention our terrific First Lady Yumi Hogan and the entire Hogan family. Their grace and perseverance during these challenging months gave us hope and comfort that in the end Governor Hogan would win this fight.

The timing of this great news is fitting as we head into the holiday season and serves as a reminder to all of us just how lucky we are to be surrounded by our loved ones. And I noticed the Governor said Thanksgiving is his favorite, one of his favorites, maybe, I thought I said it's his favorite, it's my favorite holiday.

LIEUTENANT GOVERNOR RUTHERFORD: Mine too.

COMPTROLLER FRANCHOT: We don't have a whole bunch of gifts and stuff. We're just able to get together with family and once again I see my dad over here. He's going to come up and have Thanksgiving dinner with his granddaughter, who has just told us that she's pregnant with our first grandchild. So God bless America.

LIEUTENANT GOVERNOR RUTHERFORD: Ah, congratulations.

(Applause.)

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COMPTROLLER FRANCHOT: So I appreciate the First Family of the State of Maryland for giving hope to those of us that have been stricken with this terrible disease, and continues to inspire us on how they rose to the occasion, they beat the odds as a family.

Annie and I will continue to wish Governor Hogan and the First Family the very best as he continues to recover back to full health. I'd like to wish each of you a memorable and joyous Thanksgiving. And I see Senator Eckardt out here, who is such a wonderful advocate for the Shore, and I'm delighted you're with us today, Addie. Thank you, Governor.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you. Congratulations.

COMPTROLLER FRANCHOT: Thank you.

TREASURER KOPP: Yes, that's very exciting.

COMPTROLLER FRANCHOT: Yes, well half the world knows it because Annie has been announcing it. So I said --

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: Well, that's very good. I'd like to change the order just a little bit this morning and call the, ask that the DGS Agenda be called first. In the old days --

SECRETARY MCDONALD: I was going to say, you're the last one who changed the order --

LIEUTENANT GOVERNOR RUTHERFORD: -- when DGS, when I was Secretary of DGS, that was always the first item.

SECRETARY MCDONALD: Absolutely.

LIEUTENANT GOVERNOR RUTHERFORD: And I had the benefit of Comptroller Schaefer and his --

SECRETARY MCDONALD: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: -- when he had full spirit, to go first and go through probably every item on the Agenda, particularly the capital grants and loans that he loved to go through.

SECRETARY MCDONALD: Absolutely. And Mr. Giorgio still -  
-

LIEUTENANT GOVERNOR RUTHERFORD: Yes. He still, yeah, shivers whenever he sees the painting back there. So Madam Secretary?

MS. BASSETTE: Good morning. Good morning, Lieutenant Governor, Madam Treasurer, and Mr. Comptroller. I am Gail Bassette, Secretary of General Services. The department has 25 items on the Agenda and we'd be glad to answer any questions you may have.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. I'd like to turn to Item 14 on the DGS Agenda. It's a capital grant and loan. And I know Senator Eckardt is here to talk about that. Senator, would you like to come up?

SENATOR ECKARDT: Yes sir, I would. And Lieutenant Governor, it's good to be here. I don't usually come to the Board of Public Works meetings because there is so much activity out in the district. But Treasurer Kopp, Comptroller Franchot, and distinguished members of the Governor's cabinet, I am delighted to be here. There are two projects that are in our district that I am here on today and the first one is the Chesapeake Grove Intergenerational Center in Dorchester County. We do not have assisted living and we do not have a kind of community for intergenerational and for seniors as well to mix with younger folks that's in a safe and has the opportunity for aging in place. And that's what this project is. All of our surrounding districts have such a center. And so this, the bond money that will go for this, and we're going to have to come back for additional money as well, will launch this center around which there will be assisted living and various different levels of housing. So it's a public-private partnership, if you will, when it's completed. And I'm here to advocate for that. And thank you so much for your continued focus and help in this endeavor.

LIEUTENANT GOVERNOR RUTHERFORD: Well, thank you.

SENATOR ECKARDT: The next one on our Agenda, or somewhere on the Agenda, is the Phillips Wharf Environmental Educational Center. They too received bond money and it is number --

LIEUTENANT GOVERNOR RUTHERFORD: Seventeen, Item 17.

SENATOR ECKARDT: Seventeen. Excuse me for jumping the order.

LIEUTENANT GOVERNOR RUTHERFORD: Yes that's, well, that's okay.

SENATOR ECKARDT: But indeed this is going to be a premier program. Not only do they take their little van around with critters in it, you know, the turtles and the crabs and the fish and things like that. But now they are there over the Tilghman Island Bridge.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SENATOR ECKARDT: They have an old crab and oyster house that has now been restored into not only an educational center, I mean, an environmental center but educational opportunities as well and they are partnering with the oyster aquaculture to be able to be to infuse that into our school system. So there's lots of opportunity there, both economic, educational, and environmental. So we applaud both of these projects.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SENATOR ECKARDT: And thank you for your ongoing support.

COMPTROLLER FRANCHOT: I have a comment, if I could?

LIEUTENANT GOVERNOR RUTHERFORD: Yes.

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COMPTROLLER FRANCHOT: Welcome.

SENATOR ECKARDT: Yes sir, thank you.

COMPTROLLER FRANCHOT: I happened to be down, I believe with you but definitely with Santo Grande, at the Delmarva Community Services at the end of September. Is he here, by any chance?

SENATOR ECKARDT: Yes, Santo is.

COMPTROLLER FRANCHOT: Can he come up here for a second? Is that okay, Governor?

LIEUTENANT GOVERNOR RUTHERFORD: Oh, absolutely.

SENATOR ECKARDT: Yes, come on. Can we bring them both up?

COMPTROLLER FRANCHOT: I mean, yeah, bring both up. But

--

SENATOR ECKARDT: Bring Mary and --

COMPTROLLER FRANCHOT: -- this gentleman right here walking to the podium is a Maryland hero. I mean, seriously folks. This is a very, you know, part of the State that desperately needs services to our citizens. And Santo Grande has just picked up piece by piece the unmet needs of the citizens of Dorchester County, and frankly four or five other counties. And he has through his own personal persistence and creativity put together an empire of not for profit community services. It ranges from --

SENATOR ECKARDT: Forty years.

COMPTROLLER FRANCHOT: How many?

SENATOR ECKARDT: Forty.

COMPTROLLER FRANCHOT: Forty?

MR. GRANDE: Yes.

COMPTROLLER FRANCHOT: Okay. Well, Santo maybe you could just explain what you do. Because if we had more people like this gentleman, believe me, government would be able to focus on its priorities and allow the not for profit sector to deliver some of the things we're not good at. So Santo, tell us what you do. How big is your organization?

MR. GRANDE: Our organization right now has a budget of about \$16 million. When I started we had \$65,000 40 years ago.

LIEUTENANT GOVERNOR RUTHERFORD: Wow.

SENATOR ECKARDT: In the basement of a church.

MR. GRANDE: Three employees, and today we're at 350 employees. And with Chesapeake Grove we'll have a workforce of over 400.

LIEUTENANT GOVERNOR RUTHERFORD: Wow.

MR. GRANDE: And we provide developmental disabilities services; 30 group homes in two states; public transportation in four counties, Kent, Talbot, Dorchester, Caroline, where the Community Action program --

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm.

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MR. GRANDE: -- where we met, Lieutenant Governor --

LIEUTENANT GOVERNOR RUTHERFORD: Yes.

MR. GRANDE: -- at the conference that day, you were our guest speaker?

LIEUTENANT GOVERNOR RUTHERFORD: Right.

MR. GRANDE: And we also provide the aging services in Dorchester County, including housing rehabilitation services and all the various poverty programs in the region. So we'd like to thank you very much. Thank you, Comptroller, that was very nice of you to say. And I really appreciate --

COMPTROLLER FRANCHOT: Can we add, can we add some money to this?

(Laughter.)

COMPTROLLER FRANCHOT: Seriously. I mean, talk about a little bit going a long way.

MR. GRANDE: Thank you. Thank you. And this, our intergenerational center, this has been, it took us 11 years to get a non-tidal wetlands permit, 11 years. We applied in '99 and got it in 2010. We're doing this as a private, public-private partnership. It will have a 50,000-square-foot intergenerational center. It is being called the Harry and Jeanette Weinberg Intergenerational Center. They graciously have given us over \$1 million in grants. And it will have a childcare center, senior center, and disability program

all under one roof, and a fitness and wellness center also. So it's got an intergenerational center. There are 90 senior apartments surrounding that property and two assisted living units all together. And that's our goal and that's what we're working on. And we appreciate all the help you've given us, and any help in the future also.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you.

MR. GRANDE: And we appreciate Senator Eckardt bringing us --

COMPTROLLER FRANCHOT: I repeat myself. This is a Maryland hero. And if we had more people, and we do, we have a lot. But you have a particular genius --

MR. GRANDE: Thank you.

COMPTROLLER FRANCHOT: -- for this. And thank you for your work.

MR. GRANDE: Thank you very much. I really appreciate everything you have done for us. Thank you so much. And the Legislature has been good to us, also. Over the last six years we have gotten about \$750,000. We've tapped a lot of different State services so we have been very lucky to have such a nice network out there.

COMPTROLLER FRANCHOT: Stick around because there's about \$10 million or more on this calendar that we could nicely save for the State.

(Laughter.)

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SENATOR ECKARDT: We only need two. We only need two.

LIEUTENANT GOVERNOR RUTHERFORD: They only need two. Okay.

MR. GRANDE: Thank you very much. Thank you so much for allowing me to come.

TREASURER KOPP: Let me add my voice, and particular thanks for bringing all these people together. I mean, this is really just an amazing group of people and diversity of services creating a community.

MR. GRANDE: It has been a challenge in Dorchester County for 40 years, but we have managed to put together a good network of support services. We are a lifeline for a lot of people in Dorchester County.

TREASURER KOPP: Yeah.

LIEUTENANT GOVERNOR RUTHERFORD: Oh, yeah.

MR. GRANDE: So, and our public transportation, we provide almost 400,000 trips a year for the public. So.

SENATOR ECKARDT: I must say too that they have been pioneers against all odds and have persisted. And I think that has paid off, that kind of focus.

TREASURER KOPP: And obviously a great team with your legislators.

COMPTROLLER FRANCHOT: I'm sorry --

MR. GRANDE: And this is Mary Hanley, she's our, my mobility specialist and senior specialist.

COMPTROLLER FRANCHOT: Give me that number of trips again?

MR. GRANDE: 400,000 total.

COMPTROLLER FRANCHOT: Yeah, well stick around. Because there's a \$65 million item later on for some transit services, which maybe we should --

TREASURER KOPP: Have we got a deal for you.

COMPTROLLER FRANCHOT: -- you know you might want to broaden your territory.

(Laughter.)

MR. GRANDE: Thank you very much.

SENATOR ECKARDT: Thank you very much.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you.

(Applause.)

LIEUTENANT GOVERNOR RUTHERFORD: Madam Secretary, I have a question on Item 21, capital grant and loan. It's Baltimore Downtown Partnership.

MS. BASSETTE: Yes, sir.

LIEUTENANT GOVERNOR RUTHERFORD: Is there anyone here to answer some questions?

MS. BASSETTE: Cathy?

MS. ENSOR: Good morning.

LIEUTENANT GOVERNOR RUTHERFORD: Good morning.

MS. ENSOR: Cathy Ensor, Department of General Services. There was to be Davon Barbour here to answer questions on this project in particular, this grant in particular.

LIEUTENANT GOVERNOR RUTHERFORD: Is Mr. Barbour here?

MS. ENSOR: I have not seen --

LIEUTENANT GOVERNOR RUTHERFORD: Ah, there we are.

MS. ENSOR: Okay. Very good. And this is a grant to assist in funding for the design, construction, and equipping of the demolition of existing McKeldin Fountain and Plaza. And it is a matching grant for \$1 million.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MS. ENSOR: And I will let him have --

LIEUTENANT GOVERNOR RUTHERFORD: I guess my question is more for what is the plan for the center, the square?

MR. BARBOUR: Good morning, honorable Board.

LIEUTENANT GOVERNOR RUTHERFORD: The plaza?

MR. BARBOUR: Davon Barbour, Vice President of Economic Development for the Downtown Partnership of Baltimore. The proposed project is a reconstruction and design of the McKeldin Plaza. This will be a public square that really celebrates the accomplishments of Governor Theodore McKeldin. We're very grateful for the State's support thus far, the \$1 million appropriation. We are currently in the design phase of the project. I'm working with our urban design panel. We've also been very successful in garnering financial support from a number of corporations and nonprofit organizations throughout the community. So we're looking forward to bringing this public plaza to fruition that celebrates the accomplishments of Governor McKeldin.

LIEUTENANT GOVERNOR RUTHERFORD: He used to be right back here, but he's not here. He's in another room. Is it public yet in terms of the design and the plans?

MR. BARBOUR: Sure, yes. There have been a number of, there has been a public --

LIEUTENANT GOVERNOR RUTHERFORD: I guess I should have asked for that earlier, if you could bring that in for us to see. It would have been nice.

MR. BARBOUR: Sure, absolutely. I apologize. There has been a public process. In fact during, throughout the City's urban design review process, that is a public process. We are preparing for another public process as well in

December, I believe December 17th again, for feedback from our citizen appointed board. We are planning to move forward on the demolition of some of these structures, of some of the staircases that connect to the plaza, to begin the public process for that. So we are looking forward to bringing this process to conclusion. Thus far the design process has been fluid. We have received great feedback from our planning department and looking forward to receiving additional feedback from our urban design panel.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Thank you. Now when was the plaza, the current structure, put in place? When was it developed?

MR. BARBOUR: The existing structure has been in place for several years, dating back to the eighties.

LIEUTENANT GOVERNOR RUTHERFORD: I would think so.

MR. BARBOUR: The plaza itself has been, in terms of, it really doesn't celebrate the accomplishments of Governor McKeldin. So that's why this really was an opportunity to reconnect and really celebrate the accomplishments of Governor McKeldin. The plaza itself is located within the heart of Downtown Baltimore adjacent to the Inner Harbor. In terms of the importance again of this structure, and its contributions to Downtown Baltimore, Downtown Baltimore is the ninth largest residential population in the country, 12th largest employment

center within a one-mile radius. And so we're really proud of this and we believe that this plaza will continue to add to our economic growth.

In terms of some of the funders that have contributed to this project, T. Rowe Price, the Chesapeake Bay Trust, the Joseph Meyerhoff Family Center, the Law Firm of Miles and Stockbridge just to name a few. So this really is an important project for our community.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MR. BARBOUR: And for the State.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you. Any questions?

TREASURER KOPP: What's the timing of --

MR. BARBOUR: The, at this point we're working through the design, of finalizing the design. We're preparing to move forward with the demolition process immediately. In fact, we're in the process of securing bids for demolition of some of the structures. We think it's important, again, to show momentum on the project. So demolition would essentially commence this spring and as we finalize the design process we're looking forward to bringing that to closure.

TREASURER KOPP: Thank you.

COMPTROLLER FRANCHOT: That's terrific.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you very much. I just wanted to hear a little more about the project. Thank you.

MR. BARBOUR: Thank you. Thank you.

COMPTROLLER FRANCHOT: Governor, if I could just highlight Item 22, which is a \$3 million grant to Stevenson University for the School of Science. It's a great project. It's a great university. Good investment for the State.

LIEUTENANT GOVERNOR RUTHERFORD: Any other questions on the DGS Agenda?

COMPTROLLER FRANCHOT: Move approval.

TREASURER KOPP: Second.

LIEUTENANT GOVERNOR RUTHERFORD: All in favor?

COMPTROLLER FRANCHOT: Aye.

LIEUTENANT GOVERNOR RUTHERFORD: Aye. Thank you, Madam Secretary. We're going to the Secretary's Agenda.

SECRETARY MCDONALD: Okay. Good. Thank you. Good morning. We have nine items on the Secretary's Agenda, three reports of emergency procurements. We are withdrawing Item 7 on behalf of the Stadium Authority and understand that that item will come to a later meeting.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: We are prepared for your questions.

LIEUTENANT GOVERNOR RUTHERFORD: All right.

TREASURER KOPP: Do you want to do number nine? Or --

LIEUTENANT GOVERNOR RUTHERFORD: Yeah, we might as well. I believe we have people to speak on number nine on the Agenda?

SECRETARY MCDONALD: Okay. Item 9 is, as it says on the heading right there, an extraordinary case. It is an extraordinary case technically because a public informational hearing was held. But it is a case, an application that was filed at the Board of Public Works, or at the Department of the Environment, in 1999. And it has been considered by this Board twice in formal meetings, once in 2007 and once in 2013. After each of those meetings the matter, the license went up to the Court of Appeals and the Court of Appeals has now sent it back to the Board again. So this is an application by K. Hovnanian, a developer, for a wetlands license.

We have prepared the Executive Secretary's report which has advice to the Board from both the Secretary of the Environment and from the Board's Wetlands Administrator. They are both here ready to go and talk to you about the project. Perhaps (indiscernible) recommendation to grant the license.

In addition we have the developer, the applicant for the license. In addition we have opponents who have signed up and asked to speak against the license.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Now there was Court of Appeals determinations with regard to this matter. Are you able to just provide a brief direction that the Court of Appeals had with regard to the Board and our authority?

SECRETARY MCDONALD: I will. The Board -- yes. The Court of Appeals said this last time that the Board has a significant, the Board exercises broad discretion over a Board of Public Works license. So they returned the matter to the Board and said with your broad discretion as to how to process it, but here is the framework, the legal framework from the first case. And the Court of Appeals said that the Board's focus is to preserve the wetlands and prevent their despoliation and destruction, not to determine whether a project as a whole is environmentally sound at its particular location.

The Court said that the requirement that the Board consider the ecological, economic, developmental, recreational, and aesthetic values presented in the application is with reference only to the impact of the proposed filling in the wetlands. The wetlands law, the Court said, makes abundantly clear that these considerations are tied to the desire to preserve the wetlands, not to control development near the Chesapeake Bay.

And finally the Court said in that 2007 case that the Board may not consider the environmental impacts specific to the entire project but rather just the effect of the project elements on the square feet of wetlands directly impacted by those elements.

So we, again this has been laid out for you. You have your, the statute that says a person may not fill State wetlands without a license. If they want to fill State wetlands, get that license, they have to go to the Department of the Environment and then go to the Board of Public Works. And in this case we have an applicant that the administrator and the Department of the Environment say have properly, should be granted this license for a stormwater management system, a pier, and a sewer line directionally drilled under the wetlands.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Then I think we should call up the first, those regulators --

SECRETARY MCDONALD: Okay. Comptroller, is that who you want --

COMPTROLLER FRANCHOT: Yeah, that's who I want --

SECRETARY MCDONALD: Okay. Deputy Secretary Mary Tung is here and Bill Morgante, the Wetlands Administrator. Maybe they both come up, and you all see who you want to ask questions to.

MR. MORGANTE: Good morning, Lieutenant Governor, Madam Treasurer, Mr. Comptroller. I'm Bill Morgante, Wetlands Administrator for the Board.

I'd like to provide some background information for Four Seasons and I have a few slides that are going to help with this process.

So Four Seasons is a 562-acre proposed development in Queen Anne's County on the Chester River. As you can see from the diagram here actually the north is to the right, it's a little confusing, but to the north it's bordered by the Cloverfields development that already is existing. To the south you see Route 50. We see part of Cox Creek. And we also see the hiker biker trail kind of goes in the up and down direction on there. To the east the project is bordered by the Chester River, Macum Creek, and the Bayside Condominiums. And to the west we actually see it's a county park that's part of the parcel.

On the property as well, I just want to point out, there's a tidal pond that's kind of to the center of the photograph here. It's a large existing tidal pond with tidal wetlands within it. As well, Cox Creek with a variety or abundance of tidal wetlands flows through the property.

So the elements up before the Board for approval today include directionally drilling a 179-foot sewer line underneath Cox Creek; the construction of a 470-foot long pier with ten boat slips that would be on the Chester River; the discharging of fill from the Four Seasons stormwater

management system that would be subject to the approval of Queen Anne's County; and lastly just providing a ten-year license.

So after careful review of the project myself and collaborating with MDE and actually gaining input from a variety of stormwater experts and fellow wetlands scientists, and after conducting a site visit, and really considering the principles that the Board really is most concerned about, the aesthetic qualities, the economic qualities, the ecological qualities, developmental qualities, and recreational qualities, I'm really recommending approval of this license with applicable special conditions.

So my support related to the stormwater management system is based on my conclusion that the fill that contributes to the system that will be regulated by the county is really, is less harmful than the existing agricultural use of the property. My support is due in large part to recognizing the developer's incorporation of environmental site design that I'll describe a little bit later, environmental site design practices for the project.

So currently almost half of the 562-acre Four Seasons project is in agriculture. As we all know, agriculture related nitrogen phosphorous sediment is a significant problem in the Chesapeake Bay area and there are a variety of statistics I can quote if you want, you know, in terms of the difference between phosphorous and nitrogen in sediment in terms of the comparison of agriculture

versus stormwater. You know phosphorous -- but at any rate the bottom line for all of them is that the agriculture contributes significantly more than stormwater.

The next slide please? So what I want to point out here, and I feel like this has been my learning curve in my job in the last year and a half, is kind of recognizing that the Eastern Shore, you know, this diagram of this slide is really showing all the light colored areas are our areas in agriculture. And it was definitely eye opening for me in terms of working on the Eastern Shore in this position to kind of recognize the large percentage of the Eastern Shore that is in agriculture that this slide really illustrates. So and in spite of, like I know the great efforts by farmers to really institute best management practices, yet we still know that the Shore really has, really contributes significantly, unfortunately, to our phosphorous nitrogen sediment pollution.

So my recommendation toward the license really takes into account that the Four Seasons project is not itself a pristine forested area, but it's currently half in agriculture.

I just want to mention that the developers incorporate environmental site design practices into the project, and these really include disconnecting all the roof drain down spouts and really putting them into rain barrels to really, so that that stormwater actually bypasses the stormwater system. It's harvested. You know as well they are really incorporating bioswales, they are incorporating grass swales. And they are, and nine out of the 16 stormwater

management ponds on the site actually incorporate a shallow area that will have emergent vegetation. And emergent vegetation has been proven to be very effective in terms of pollutant removal.

So again, I'm recommending a license to the site that is now almost half in, that is now half in agriculture. And the proposed stormwater management system will not, without stormwater impacts, you know, because it is incorporating environmental site design, will likely have limited water quality impacts.

The proposed license would have special conditions which will require final approval of the stormwater system by Queen Anne's County. So it's my opinion that the stormwater management system is not sufficiently averse to really deny the license.

LIEUTENANT GOVERNOR RUTHERFORD: If you have --

COMPTROLLER FRANCHOT: Go ahead.

LIEUTENANT GOVERNOR RUTHERFORD: No I don't have a question.

COMPTROLLER FRANCHOT: Good.

MR. MORGANTE: Do you want to hear from the Maryland Department of the Environment, or --

COMPTROLLER FRANCHOT: Well, thank you for that. That's an interesting presentation. I find it frankly very fitting that this Agenda item is characterized, as the Secretary mentioned, as an extraordinary case.

This has indeed been a most extraordinary project, I guess you'd call it. One that for this Board of Public Works has spanned more than eight years, and two Governors. And here we are again.

I have zero interest, frankly, in turning this into another marathon meeting similar to the one that occurred back in 2013. But I do have a couple of questions. First, can you summarize for this Board the differences between the current stormwater management system that is being proposed and the original plan that was brought before this Board back in 2007?

MR. MORGANTE: I'll do my best with that. My understanding of the former stormwater management system is that the outfall pipes primarily, the outfall pipes from the 16 ponds had actually been rather than being pulled back from the wetlands themselves, which they now are, I think the closest one is 81 feet and they actually extend back further, originally those pipes were actually into the edge of the wetlands. So there was direct wetland impact there which was quantified before and removed those impacts.

As well my understanding is that the ponds, that nine of the 16 present ponds incorporating this vegetated shelf, originally they were all deep

ponds not incorporating this shelf which are less effective in removing pollutants from the stormwater.

There may be other differences perhaps the client would comment on. But those are the major differences I understand.

COMPTROLLER FRANCHOT: Good. And I'd like to see that, you know, this is all testimony that we're receiving which is going to be obviously very important. So I'd like to have, if you have staff that has other information, feel free to provide it. But these questions I hope are, you are answering as precisely and accurately as possible.

On that note that I just brought up, can you confirm for us that this proposal as put before us today is the same one we received when this matter was last before us in July of 2013? Once again, for the record.

MR. MORGANTE: As not having been the Wetlands Administrator at that time, I cannot answer that conclusively.

COMPTROLLER FRANCHOT: Well I'd suggest that we maybe take a recess and somebody go back and find that answer. That's number one. But let me just ask the question. Has the revised stormwater management system that you just described, and I emphasize the word revised, been through the public input process that is set forth in Maryland statute?

MR. MORGANTE: I think I would defer to MDE to answer that question.

LIEUTENANT GOVERNOR RUTHERFORD: Yeah, I think Deputy Secretary Tung could probably answer both of those questions.

COMPTROLLER FRANCHOT: Well let me -- okay, great. He can come up.

LIEUTENANT GOVERNOR RUTHERFORD: She.

COMPTROLLER FRANCHOT: But stick around. I have some more questions, Mr. Wetlands Administrator.

MS. TUNG: Your first question, first of all --

LIEUTENANT GOVERNOR RUTHERFORD: Introduce yourself, please.

MS. TUNG: I'm sorry. I'm Mary Beth Tung. I'm the Deputy Secretary for the Department of the Environment. Your first question -- well, let me go to your second question, are the plans that are before you the same as in 2013? The answer to that is yes. I believe there is a, one or two typos that were corrected but they are the same plans. And could you repeat your first question just to make sure I --

COMPTROLLER FRANCHOT: You are saying there have been no revisions then to the stormwater management from July of --

MS. TUNG: Other than some typos --

COMPTROLLER FRANCHOT: Okay.

MS. TUNG: -- it's the same plans.

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COMPTROLLER FRANCHOT: Is this, is the current stormwater management system that is being proposed, I guess that was also in July of 2013, is that in the original plan that was brought before this Board in 2007? Are those the same, set the same stormwater management system?

MS. TUNG: The plans that were before this Board in 2006, as the Wetlands Administrator had mentioned, included outfalls that dumped directly into the wetlands. And as he pointed out, all the outfalls are now upland. They are not dumping directly into the wetlands area. There have been swales added, which are grassy areas that anything coming out of the outfalls would go into the swales. There are spreaders that would slow down the velocity of the water. And those are probably the major changes between the 2007 and the 2013 plans. The 2013 plans, in the opinion of MDE, are considerably narrower and less impact on the wetlands than the 2007, than was presented at the 2007 meeting.

COMPTROLLER FRANCHOT: Okay. Well, here's the question.

MS. TUNG: Okay.

COMPTROLLER FRANCHOT: Has this revised, and I emphasize the word revised, stormwater management system been through the public input process --

MS. TUNG: Okay.

COMPTROLLER FRANCHOT: -- that is set forth in Maryland statute? And if so can someone provide this Board with the dates in which public

notices were issued and public hearings were held? If not, I guess the question is how can this item be brought before the Board of Public Works in the absence of this statutorily mandated step in the process? Public hearings.

MS. TUNG: Okay. When the, when the department looked at the original plans that was submitted to it and then issued the 2006 report and recommendation, there were public meetings held before the report and recommendation was issued. As the -- the process that normally occurs at MDE is an application is a two-page, you know, fill in the blank. We use it to enter into our database and assign a number. And then the process begins. The developer will present plans, MDE will look at it, they will make comments, they will suggest changes, and it's this back and forth. So there's a lot of revisions in the plans that occur in the process.

When the R&R, the report and recommendation, was issued in 2006, that public process had occurred through the Critical Areas Commission, had occurred locally through the county, and MDE, and the U.S. Army Corps as I understand it held a joint meeting. And I believe that was in 2003. And --

COMPTROLLER FRANCHOT: Two thousand --

MS. TUNG: 2003.

COMPTROLLER FRANCHOT: How many years ago? Let me think. Twelve years ago, right?

MS. TUNG: Twelve, 13, yeah.

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COMPTROLLER FRANCHOT: And you consider that a public hearing on this project?

MS. TUNG: That was a public hearing on the R&R that was issued. You know, the report and recommendation was issued based on that public hearing and the review of the plans.

At that point there is no additional public hearing needed because we did not reissue an R&R. The plans, the revised plans that were submitted to MDE considerably narrowed the original plans that were submitted, deleted an entire piece of property on the western which is called the Tanner property, completely deleted all the development there, took out a bridge that was going across Cox Creek. And so those were two of the other big changes between the 2013 and the 2006 plans. And because of that there was less of an impact on the wetlands and it did not impact any of the neighbors because the changes were within the property, Hovnanian's property itself.

MDE will not ask for additional public hearings if there is a narrower scope and there is no impact on the neighbors. Because what happens, the public policy reason behind that is we want to encourage folks to narrow the plans and to lessen the impact on the wetlands. And if there's going to be continuous process that every time they narrow their plans we are going to take it out to public comment, then nobody is going to want to narrow their plans.

LIEUTENANT GOVERNOR RUTHERFORD: Madam Deputy Secretary?

MS. TUNG: Yes?

LIEUTENANT GOVERNOR RUTHERFORD: I understand that some of this is based on an interpretation that your Assistant Attorney General provided?

MS. TUNG: Yes. Yes sir, it was.

LIEUTENANT GOVERNOR RUTHERFORD: Can you talk to that?

MS. TUNG: Yes. Our Assistant Attorney General, who was not able to be with us here today, I asked this exact question because I wanted to make sure that we had it right. Excuse me for just a second.

She stated there is no statutory or regulatory requirement for MDE to conduct a second public participation process. There are a number of factors that may have gone into that decision on whether to put the project back out on notice. For example, whether there are additional wetland impacts that were not put on out public notice for the first time, or whether there are any new property owners impacted by the revised project that were not notified the first time. In this project the changes, the only part of the project that has been altered since the initial public notice period are the changes to the stormwater management system and those changes have resulted in a reduction, not an addition, to the wetland

impacts. And there are no new impacted property owners, as I discussed, because all the changes were within the Hovnanian property itself.

The system itself, the stormwater system itself, is exactly the same, ponds, outfalls, discharges to tidal wetlands. The difference is a reconfiguration of the outfalls, adding the level spreaders, pulling it away from the wetlands, and so forth. The stormwater management system changes alone would not trigger a second public participation process. And this is the public policy part. Part of the policy reasons behind this have to do with the sequential nature of the process. Once an applicant has minimized impacts to a regulated resource it does not make sense to penalize them by requiring them to put a reduced project back out on public notice. An applicant may never minimize impacts if they are required to go back out on public notice again and again and there would be no end to the process.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you.

COMPTROLLER FRANCHOT: Okay. Well, I mean, that makes sense. That's your job. But I have 1,100 emails sitting in my office this morning from citizens saying that they are incredibly upset with this project. And don't you think after 12 years, or whatever your negotiations have taken, that they deserve a public hearing? Eleven hundred individuals. I don't know how many people live on Kent Island. But, yeah, I understand your policy statement. I'm not, you're doing your job. But seriously. We're building 1,000 residential units

on the edge of the Chesapeake Bay in one of the most beautiful areas you have ever seen. Based on the argument that, well, people don't need to comment on it because why would people in the area have an interest in commenting on it because they had a chance 12 years ago? Or, oh by the way, this is better for the Bay in an odd way, I guess, than what's going on right now. I mean, I don't mind waterfront property, I guess. To build 1,000 units right on the edge of the Bay? I mean, I guess people will be fishing from their living rooms. My question is, where are the fish? After we get through with this kind of sprawl development that is just stunning, that in the year 2015 we are permitting something like this to be put in that ecologically sensitive area that's going to turn the traffic situation into a nightmare. I mean, beyond comprehension as far as congestion. That will have an impact on the schools, and I know this is for senior housing, but trust me, people are going to gravitate to this who have kids. It's going to congest the schools. And --

LIEUTENANT GOVERNOR RUTHERFORD: I don't think you can put any kids in the facility. But Mr. Comptroller, you are going way off track on this --

COMPTROLLER FRANCHOT: And let me just finish, if I could, Lieutenant, let me just finish. Because I think it's appropriate, Lieutenant Governor. Since we had --

LIEUTENANT GOVERNOR RUTHERFORD: (Indiscernible).

COMPTROLLER FRANCHOT: Since we had the Supreme Court of the State of Maryland indicate to this Board of Public Works that we are confined to a very narrow focus, which frankly I believe that narrow focus requires us to turn down this permit. But I'd like to just say to the Supreme Court of Maryland with all due respect that they are wrong. We, and frankly they should read the Constitution of the State of Maryland which empowers this Board to act in the public interest. And so, you know, I have some other questions that I'd like, if I could get the Wetlands Administrator back up. But, boy, do we need a public hearing on this? You bet.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you, Madam Deputy Secretary.

COMPTROLLER FRANCHOT: Okay. Mr. Morgante, thank you for being back up. I did take note of the fact that even though you ultimately recommend the issuance of a State Tidal Wetlands License, you do raise some troubling issues associated with the stormwater discharge system. And I'm going to quote here your own words for accuracy. Quote, undesirable stormwater elements, pathogens, excess nutrients, metals, pesticides, fertilizers, oil, grease will be transported through the stormwater system. Much of it will convey to State tidal wetlands. The grading designs for the stormwater management ponds at Four Seasons designed in 2002 do not incorporate emergent pond vegetation linked to effective removal of the undesirable stormwater elements. This is, these

are your words. I continue, quote, since the 21 ponds at Four Seasons are deep ponds where emergent vegetation will not grow, the emergent vegetation cleansing of the above listed undesirable stormwater elements will not occur. Many of the contaminants will not be removed from the ponds. It goes on in your own words, but I think we get the point, Mr. Morgante, that these are your own words and they strike me frankly as meaningful. How do you reconcile your own assessment of the environmental consequences associated with the issuance of this license with your ultimate recommendation that it be issued? And please, do not say it's because agriculture is bad. That's a completely different responsibility we have. I mean, seriously. These are your comments.

MR. MORGANTE: So first off I would just say that my information in the report about the, all the ponds being deep ponds was incorrect. At that time that I had done the report, I had the wrong information. So what I found out is correct is that nine of the 16, and actually I also, part of the information too about the 21 ponds actually it really is just 16 ponds. So I will admit that the report was faulty in that. However, so now we do know that nine of the 16 do incorporate the shelf and do have actually emergent vegetation which is effective in removing pollutants. So in response to the general question of defending my own words, based on my own research and collaboration with a number of other people who are expert in stormwater management, who are wetlands scientist colleagues of mine, that I came to my own conclusion that

given the current situation on Four Seasons, again, it's not a pristine forest. It is half in agriculture. And given the pollutants that come from agriculture I believe that when I look at it as a comparison between those two things, it's my recommendation that given the environmental site design that's being incorporated into this project that there will be less impact on the wetlands from the proposed project than is currently, than is currently in the site right now.

TREASURER KOPP: Peter, could I just jump in for a second?

COMPTROLLER FRANCHOT: Sure. No, absolutely.

TREASURER KOPP: I mean, to me this is the question after the Court of Appeals has constrained us so as the question of the impact on the wetlands. And your conclusion as our scientific advisor that this is a better impact than agriculture use would be based on your findings from the impact of agriculture and the amount of agriculture on the Shore? I mean, is that?

MR. MORGANTE: Well, or and even we need to really extract, okay, what is, what are the agricultural practices that are actually happening on Four Seasons?

TREASURER KOPP: Well, that was my question.

MR. MORGANTE: Okay.

TREASURER KOPP: Are you saying that if you use best management practices, they are using, they are proposing very good environmental practices, as you describe them, for their project, proposed project.

You can also use very good environmental practices for agriculture. So you would assume that they would want to do that, I would think. So that's, I'm asking what you are comparing. Not just generic questions of the impact of agriculture, but the agriculture here that could be instead, are you still saying that the change in use is warranted?

MR. MORGANTE: So what I've found out actually about specifics about the agricultural practices that are being, that are happening now from the tenant farmer, there is one tenant farmer on the Four Seasons property. So they are out of the best management practices that are recommended for farmers, whether it's vegetative buffers, whether it's having a management plan for the nutrients, whether, they are, they have incorporated some best management practices. There is one best management practice that I believe they don't do, which has to do with GPS allocation of freer machinery to really be directing your fertilizer and your pesticides that's not being incorporated to the best of my knowledge. So my discussion previously was in a general sense, yes the Chesapeake Bay in terms of agriculture. But then looking specifically at what's happening on the site, too, there are some additional practices that could be incorporated into that tenant farmer who is there. But I think regardless of whether they are incorporating them or not, my discussions over actually the last few days with agricultural experts from the University of Maryland have really confirmed that most farmers, actually, their belief is, there's no statistics on it, but

the majority, over 50 percent of farmers are actually incorporating currently on the Eastern Shore best management practices. Yet we still have the challenges we do because we have so much agriculture.

TREASURER KOPP: And you say that my support is based on the conclusion that the stormwater management system as appropriately regulated by the county may be less harmful than the present agricultural use and that the developer has incorporated environmental site design. So you are saying the present use with best management practices --

MR. MORGANTE: With some.

TREASURER KOPP: -- is resulting in greater harm to the wetland than this stormwater, proposed stormwater management system may? May, to me I infer may not. Isn't that fair? So what are you saying exactly?

MR. MORGANTE: I'm saying that, I mean what I've come up here is that I believe that based on collaboration with many people that this proposed system would be less impact on the wetlands. You know, it's, can I conclusively say that? I mean, there are no statistics to back that up. There has been no measurement of the current state on, you know, on the Four Seasons property. Nobody has been measuring kind of pollutant discharge that then I could compare it to. So I mean, no, I guess what I'm saying is, you know, based on professional judgment this is what it appears to me.

LIEUTENANT GOVERNOR RUTHERFORD: I have a question. You mentioned you've been the Wetlands Director, Advisor, for what period of time?

MR. MORGANTE: Since last July, so almost a year and a half.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. So July of '13?

SECRETARY MCDONALD: 2014.

MR. MORGANTE: 2014.

LIEUTENANT GOVERNOR RUTHERFORD: Oh, '14. Okay. July of '14. What's your background? I think that would be helpful.

MR. MORGANTE: Sure. I have a bachelor's degree in landscape architecture. I worked for 12 years as a landscape architect, during which time I really developed a passion for wetlands. Then I pursued an advanced degree. I have a master's in plant and soil science. I've worked the last 17 years as a wetlands scientist in the private sector, previous to this job. I also sit on the board of directors for the International Society of Wetlands Scientists, where I also serve as chair for the Education Outreach Committee.

SECRETARY MCDONALD: And he does have his Professional Wetlands Scientist, PWS certification.

MR. MORGANTE: Thank you. And in 2003 I became certified as a Professional Wetlands Scientist.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Thank you.

COMPTROLLER FRANCHOT: Yeah, well this is the oddest testimony I've ever heard in 30 years. Basically you are logically leading to a statement that we should convert a whole bunch of farms on the Eastern Shore into housing subdivisions. It would be an improvement as far as the wetlands.

MR. MORGANTE: That's not what I'm suggesting.

COMPTROLLER FRANCHOT: Well what is the logical conclusion? What you are testifying to today is pretty clear in response to the Treasurer that even with a lot of the best practices, this sprawl development of 1,000 units on the edge, we're not talking 100 yards away, we're talking about, I don't know whether they are building it on stilts or what. But it's going to be on the edge of the Chester River. And your testimony is that that has less harm to the environment than agricultural use. So correct me, I guess.

MR. MORGANTE: I think there are many factors that are involved I think in making this unique. In this particular situation there actually is a, or will be implemented, I mean, a significant buffer. You know, I feel like I'm not here --

LIEUTENANT GOVERNOR RUTHERFORD: You're not. You're not here to be subject to being browbeaten, quite frankly. You did not say some of the things that the Comptroller just said. Your job is, as I understand it,

to make an assessment based on your professional experience and to make a determination and a recommendation to this Board with regard to an application that's in front of you. I think we have, you know, it's inappropriate for us to just sit there and harangue you for doing your professional duty. Thank you. I think we have others --

COMPTROLLER FRANCHOT: Well I just, I have another, I have another question since, thank you, Lieutenant Governor.

LIEUTENANT GOVERNOR RUTHERFORD: Please, yeah, please make it --

COMPTROLLER FRANCHOT: So how can we act decisively on the basis of a report from our science advisor, Mr. Morgante, this is for you, that's based upon your own admission has significant inaccuracies?

MR. MORGANTE: I didn't say it had significant inaccuracies. I said that the stormwater management ponds, the only part of that that was, needed to be corrected was the stormwater ponds that I was identifying as all deep ponds, that actually nine out of the 16 of them actually have emergent vegetation. Which, actually I think lends more credence to the fact that the project will be doing more to benefit the water quality and the discharge into the wetlands.

COMPTROLLER FRANCHOT: Okay. Well all of the testimony that I read and that your, your quotes that I relied upon for my briefing and that the citizens rely upon for their briefing, I guess, are inaccurate based on your

statement right now that you made a mistake and didn't realize that the changes had been made. Now I come back to my question. Number one, your inaccuracies obviously are in there. Number two, how can you, how can we say without a public hearing where all of this stuff can be looked at accurately how you, from our science advisor and others, that we shouldn't have a public hearing to allow everybody to vet the information if you yourself made a mistake? And I'm not browbeating him, Lieutenant Governor. He's our staff person. I appreciate him doing his job. But this is a serious issue. And, you know, respectfully I'm going to take absolutely all the time that I need to ask questions because as I said I have 1,100 emails in my inbox this morning and they are not happy. And I think we have an obligation to stick up for our citizens. And I would actually with all due respect, Lieutenant Governor, you know, I need to ensure that we're getting this right and get this on the record. Because otherwise it just gets steamrolled. And I appreciate what you are saying. But this project has a long history. We're now in the ninth or tenth year of it. 2003 was the last public hearings, I guess. It's, it is incredibly important symbolically to the State of Maryland how we handle this project. So thank you. I do have a couple more questions.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you. Let's go to another, there are other people here.

SECRETARY MCDONALD: Yes. Lieutenant Governor, let me just clarify for one minute the inaccuracy in the memos so the record knows. This is on Mr. Morgante's memorandum, October 19th. It is in the Executive Secretary's report and it is available online, on the Board's site, the entire thing. Mr. Morgante's memo is Exhibit No. 2 and page five of that five-page memo he says since the 21 ponds at Four Seasons were not designed with this vegetative shelf. And it should say since, it's nine of 16 were designed. That is the one thing that he is now pointing out and we were going to correct the record with that. That is the only thing that he is asking to change.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: Yes, we do have a speakers list. You have the developer here, the applicant. You also have people from groups.

COMPTROLLER FRANCHOT: Yeah, I'd like to hear form the citizens, frankly. I mean, I've heard from the developer. I've heard from them a lot.

LIEUTENANT GOVERNOR RUTHERFORD: Well we will hear from the developer. But we'll take a couple of the citizens first. I have a listing. Possibly Jay Falstad? Is that the name?

SECRETARY MCDONALD: The Queen Anne's Conservation Association.

LIEUTENANT GOVERNOR RUTHERFORD: Sir?

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MR. FALSTAD: Mr. Governor, Mr. Comptroller, Treasurer Kopp, thank you for the opportunity to speak. My name is Jay Falstad. I am the Executive Director of Queen Anne's Conservation Association. We are the oldest land use conservation association on the Eastern Shore, celebrating our 45th year. And we have been mired in the Four Seasons saga literally since the very beginning.

My message today to you today about Four Seasons can be truthfully summarized in a single sentence. Today the Board can lawfully deny the wetlands license for Four Seasons but you cannot lawfully grant the license for it. And let me explain.

The application as it stands today is incomplete. In 2012 the Maryland Court of Appeals narrowed the previous understanding of your statutory authority and held that the ecological and other values which the Board is to consider in granting or denying the application for a wetlands license have, quote, reference only to the impact of the proposed dredging or filling on the affected wetlands, end quote, and not to the environmental cost of the ultimate project on the ecology of the entire region. The new administrator's report makes clear really for the very first time, because this is the first time that we've gotten a look at it since the controversy with the previous wetlands administrator, that the Four Seasons project will fill State wetlands with pollutants issuing from its 21 outmoded stormwater ponds. It is precisely this filling, not the ultimate project,

that is identified by the administrator as adversely impacting wetlands. It is therefore entirely appropriate and lawful under the Court's 2012 ruling for you to consider these pollution impacts and to conclude that they are plainly not in the interest of the State of Maryland in carrying out its policy of protecting State wetlands and advancing the nationally important effort to restore the Chesapeake Bay.

Mr. Governor, I promise this won't take long. It's brief, fairly brief. The Court in 2012 allowed you to consider the benefits of the ultimate project as possibly offsetting the damage resulting from the filling of the wetlands with pollutants. Any such benefits that may be mined out of the record before you are completely speculative, not based on current analysis offset by cost like increased traffic congestion, and is strictly linked to the claimed benefits, and in any case realizable by other projects not located in the critical area. The Board should not chase after such benefits as a justification for the added burden of pollution that the stormwater runoff from this huge, densely packed project will impose on the Bay and the Chester River.

My second and final point is why you cannot lawfully grant a wetlands license for Four Seasons today. You act today under statute, Section 16.202 of the Environmental Article, whose requirements as things stand today have not been satisfied. That statute says that once a wetlands application is complete MDE shall issue a public notice of opportunity to submit written

comments or to request a hearing. That's in Subsection E. The statute further says that MDE's report to you shall be submitted after consultation with any interested parties, federal, State, and local, and after issuing public notice, holding the requested hearing, and taking any evidence that the Secretary thinks advisable, and that's in Subsection F.

My point is that none of this has been done with respect to the application that is before you today. In the years since the original joint application was submitted to MDE and the Army Corps of Engineers on or about October 26th, 1999 there have been major changes in the project, changes in State laws and regulations, new developments reflecting an applicant's suitability to carry out the project. And as such, the applicant was required to and did submit a joint application reflecting more accurately the scope of the project as it is today. Along with that new application are new procedural requirements, which must be adhered to in accordance with both State and federal law. The public and other interested government agencies must be provided with an opportunity to weigh in on the new Four Seasons proposal.

Just a moment ago you heard a discrepancy between the Wetlands Administrator's first recommendation and now the second, which the people have not had an opportunity to review or have a third party look at. You further know from the July 22nd, 2015 report in your file from Queen Anne's County Department of Public Works that major changes in the stormwater management

system were at the time still need to be negotiated between DPW and K. Hovnanian and perhaps they are still in that process. In any case no finalized design of the stormwater management system has been arrived at and placed before the public for comment or hearing. The procedural requirements governing new applications for a wetlands license demand that the public have an opportunity to comment meaningfully on environmental impacts such as this along with other potentially significant impacts of the new Four Seasons project. Failure to allow for this necessary and statutorily mandated public participation in the permitting process would be an action that we believe cannot stand judicial scrutiny. Yet if you vote to grant the license today this is exactly the action that you will be taking. You will be bypassing without authority the independent public scrutiny of the new Four Seasons project that Section 16.202 requires.

So in closing what I'd like to say is all along this process has been tainted at different levels, really going all the way back to the Queen Anne's County Commissioners. And no, that's not what's before you today. But there were problems with the previous administrator. We can't rely on scout's honor promises that were presented during the last hearing. And we in Queen Anne's County simply ask that you uphold the integrity of the process dictated by 16.202, which as we maintain is incomplete.

And lastly, let's look at who we're talking about here, if I may? K. Hovnanian, a company that has an EPA, a long list of Clean Water Act violations

in 18 states at 161 of their construction sites just in the Chesapeake Bay watershed, 161. This is a company that over the years happily pays the fine when there is a problem and just moves on as business as usual. And so at a time when we are all trying to clean up the Bay, the government, the citizens, how can we justify it to ourselves, to our kids, to allow a development where you've got a wetlands administrator, as the Comptroller mentioned, allowing pesticides, contaminants of all different sorts going into the Chesapeake Bay and the Chester River?

LIEUTENANT GOVERNOR RUTHERFORD: You know, I, okay. I think you've gone a little bit outside your length.

MR. FALSTAD: Yep. Thank you very much for your time and I appreciate it.

LIEUTENANT GOVERNOR RUTHERFORD: Well, we'll listen to someone else next. I think we should hear from K. Hov. at this time. Is there -  
-

SECRETARY MCDONALD: Hovnanian, the attorneys for K. Hovnanian, the applicant?

MR. SCHALLER: Good morning, Mr. Lieutenant Governor, Madam Treasurer, Mr. Comptroller. I'm happy to be before this Board once again.

LIEUTENANT GOVERNOR RUTHERFORD: Please introduce yourself.

MR. SCHALLER: My name is Charles R. Schaller. I am an attorney with Linowes and Blocher and I'm here on behalf of the applicant.

I have heard some points today that are troublesome and certainly taken out of context, but I think we need to come back to why we are here. As the Comptroller pointed out, this project has had a long history. I think both Ms. Tung and Mr. Morgante also pointed that out. But what this Board needs to realize is the project is in its location because the county deemed it the appropriate place. That is a land use issue by the local jurisdiction. It is in a priority funding area. It is in a growth area. It has received the Chesapeake Bay's Critical Area approval. There is a developer's rights and responsibilities agreement with the county. There now is in place with the county for the conveyance of the Tanner parcel, 131 acres, to be set aside for an ecopark. There is a reduction in density. Those are all land use issues that are beyond this Board's jurisdiction. And while people may disagree as to the location and other issues, what this Board needs to focus on is what the Court of Appeals said in April of 2013: the activity, the fill. And the only points that we have fill in this, we have a bridge, I mean a pier, excuse me. We are directionally drilling a sewer line under State wetlands. We're not going through it, we're going under. And now we apparently are going to regulate stormwater. K. Hovnanian disagrees with the Board's position on

regulating stormwater as has been described. We have submitted our position on that in paper. We just respectfully disagree.

This Board when it looks at the statute, you are supposed to take under 16.202(g) the criteria, ecological, economic, developmental, recreational, and aesthetic values. We satisfy all of the regulatory and statutory criteria. As we heard back in 2013 and back in 2007, the Secretaries of the Maryland Department of the Environment say we satisfied all the criteria.

We are now here before you once again to ask for a favorable recommendation from this Board. K. Hovnanian has done everything it has been asked of by the government and worked with the government at the local level and at the State level. We have gone above and beyond. There has been much to say about the stormwater and I'll get to that. But what people should remember from 2007 to 2013, as Ms. Tung pointed out, we reduced the scope of the project. This project had four elements. Then it had two in 2013. Stormwater is back on today, but the bridge going to the Tanner parcel was removed. That removed almost 10,000 square feet of impact. The density was reduced. And the ESD was assured to this Board. And what people have taken out of context, the original application included stormwater.

If you think back to the 2006 report and recommendation from the Maryland Department of the Environment and the administrator, they addressed stormwater there. The public has had their opportunity to comment on it. It was

part of the original application. As Ms. Tung from MDE stated in I think it was February of 2003 or late spring, there was a public hearing on this whole project. They didn't say anything about stormwater.

COMPTROLLER FRANCHOT: Well let me interrupt just for a second. Your statement is that the public hearing on the granting of this Board's action on this permit is satisfied through the statute by something that was held in 2003?

MR. SCHALLER: I'm not giving you a legal opinion, Mr. Comptroller. But what I am telling you as a factual matter there was a public hearing required under the statute back then. There was also a public hearing in 2007 before this Board, and the stormwater was part of that application at that point. There is no question in my mind that the public has had ample opportunity to comment on this point, address this point. And what this Board needs to remember is what the scope of its activity being requested of. And while there's a lot of complaints about a land use issue, that ship has sailed, to use that phrase. The issue before this Board is strictly under 16.202(g). And that's what the Board should stay focused on.

COMPTROLLER FRANCHOT: That's your opinion, Mr. Schaller.

MR. SCHALLER: That is absolutely my opinion, Mr. Comptroller, after doing this for 25 years. I have been immersed in this statute

and the regulatory process, some for the better, some for the worse. But I have seen a lot of projects come through the Board and the State. And this project is probably one of the best projects out there, employing environmental site design to the maximum extent practical. As Mr. Morgante pointed out, the bioswales, the retention ponds, the rain harvesting. This is far above what a typical project employs out there. And this project was ahead of the curve back in 2007 and 2013.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

Counselor, can you start wrapping it up?

MR. SCHALLER: Sum up?

LIEUTENANT GOVERNOR RUTHERFORD: Yes.

MR. SCHALLER: Yes. So from our perspective we believe that K. Hovnanian, the applicant, working with the wetlands administrator and the Board of Public Works, satisfies the statutory and regulatory criteria. We believe that this Board should look upon it favorably. It has done everything it has asked of it. We do have our expert on stormwater if we really want to get into a debate on that. He's a professional engineer with McCrone, Inc., but he submitted his materials on paper. And we would simply ask that you grant the license on the terms and conditions proposed by Mr. Morgante because it is good. It is the right project. People may differ over the location, but as far as the project goes with the Critical Area Commission oversight, with the local oversight, and the local

jurisdiction having authority over the final stormwater plans, this is a project that this State can be proud of. People can disagree personally, but from a regulatory point of view it's a good project.

LIEUTENANT GOVERNOR RUTHERFORD: Do you have any questions?

TREASURER KOPP: Yes. As you know, I don't like this project where it is. But I follow the argument about the legal requirements. You mentioned both the Tanner transfer?

MR. SCHALLER: Yes, Madam Treasurer.

TREASURER KOPP: And the ESD assurance. Is that, and we talked two years ago --

MR. SCHALLER: Correct.

TREASURER KOPP: -- about assuring both those things in some way, either through contract, through use of public Open Space money by the county in order to tie down the Tanner property forever --

MR. SCHALLER: Correct, Madam --

TREASURER KOPP: -- when none of the people here are here. What is the progress on that, and what --

MR. SCHALLER: There is an agreement entered into between Queen Anne's County and the applicant dated October 8th, 2013 and it specifically requires those assurances, I believe was the word we used at the last

hearing. And so they will be incorporated. The county, it's in the written agreement, and that has been provided to the Board.

TREASURER KOPP: Okay.

MR. SCHALLER: Signed by the county and the applicant. So once we receive our final building permit the Tanner property gets transferred. It has a conservation easement for it to remain as a park out there. And we are going to employ ESD to the MEP.

TREASURER KOPP: In all of the phases, even where it's not required?

MR. SCHALLER: And you are referring to phase one --

TREASURER KOPP: Yes.

MR. SCHALLER: -- because of the grandfather, yes, that is our intention and it's part of the agreement.

TREASURER KOPP: Thank you.

COMPTROLLER FRANCHOT: Just following up on the Treasurer speaking of the assurances, could you comment on the, I think the previous speaker spoke about a settlement with the Department of Justice recently with your company that you represent, something to the extent of 160 Clean Water violations in the Chesapeake Bay watershed alone? As well as violations in 16 different states? I couldn't quite follow the details. But when did that settlement occur, and what exactly were you settling?

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MR. SCHALLER: Well, Mr. Comptroller, I think Mr. Falstad is incorrect in his characterization out there. I can tell you today K. Hovnanian is compliant on all of its projects. It has resolved its issues with the Environmental Protection Agency. And that is as much as I'll say.

COMPTROLLER FRANCHOT: When was that resolution?

MR. SCHALLER: That resolution was reached, five, six years ago through the settlement and those conditions have been satisfied.

COMPTROLLER FRANCHOT: What did I read about recently in the paper?

MR. SCHALLER: I'm not sure. I don't read the paper.

COMPTROLLER FRANCHOT: Oh, really?

LIEUTENANT GOVERNOR RUTHERFORD: Good for you.

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: That's a good thing.

COMPTROLLER FRANCHOT: Yeah.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you. I think we don't need to --

COMPTROLLER FRANCHOT: Yeah, no, I have one other --

LIEUTENANT GOVERNOR RUTHERFORD: -- go into all that history.

COMPTROLLER FRANCHOT: I have one question, just because I want to find out whether there have been any recent settlements on Clean Water actions and any --

LIEUTENANT GOVERNOR RUTHERFORD: I think he just told you that.

MR. SCHALLER: To answer his question, Mr. Lieutenant Governor --

COMPTROLLER FRANCHOT: Thank you.

MR. SCHALLER: -- there have been no recent settlements or actions that Mr. Falstad referred to. His information is simply inaccurate.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you very much.

MR. SCHALLER: Thank you, Mr. Lieutenant Governor, Board members. We look forward to your favorable disposition.

LIEUTENANT GOVERNOR RUTHERFORD: Jeffrey Horstman? Riverkeeper?

MR. HORSTMAN: Good morning.

LIEUTENANT GOVERNOR RUTHERFORD: Good morning.

MR. HORSTMAN: My name is Jeff Horstman. I appreciate the opportunity to address the distinguished panel.

I am the incoming Executive Director of the Midshore Riverkeeper Conservancy located in Easton. We have 2,200 dues paying members, ten full time river advocates, scientists, and we are the largest watershed organization on the Eastern Shore.

What I've just heard up here is incredibly disturbing. I'm going to change my entire testimony as a result. First of all, saying that development is better than ag doesn't take into account the reduced water table and the pulse effect that you get from these high events. When you have a lot of stormwater runoff you create these ponds and it lowers the watering table. When you get a storm surge event everything overflows at once into the river and you get a pulse. It ruins the habitat for the fish. I think the wetlands administrator might want to address this at some point.

But if that was true the Western Shore would have the cleanest water of anywhere because it's all developed, and that's not the case. So I don't think that we can go with this argument that urban is better. I don't think he knows what the best management practices are. I don't think he knows what crops are planted on those fields. I don't think he knows what is being applied so I think that statement is false and I take exception to it.

Let's talk about what's changed since 2003, okay? We've heard that we had a hearing in 2003. This area is between Cox Creek and the Chester River. It routinely floods today, okay? I live there. Route 18 floods. We have

evacuation issues. Adding 1,200 houses in a flood plain with rising seas doesn't make sense to the Board of Public Works, I hope.

LIEUTENANT GOVERNOR RUTHERFORD: Well but isn't that, that's a local land use issue. I think that you would need to talk to the locals about that issue. And they still will have jurisdiction over the next step in this.

MR. HORSTMAN: Yeah, I do. And I do want to bring common sense into government at some point. And I think that the Department of Public Works should protect us from rising seas, should protect the citizens and the community. And I think you should protect us from developments like this that will hurt us economically and environmentally as it sinks into the river over time.

LIEUTENANT GOVERNOR RUTHERFORD: I agree with the sentiment.

MR. HORSTMAN: Okay.

LIEUTENANT GOVERNOR RUTHERFORD: However, we are a nation of laws. And we have certain responsibilities and we have obligations. And some of the things that you may want us to do are things that maybe you need to talk to the Legislature about.

MR. HORSTMAN: Okay. Well let's --

COMPTROLLER FRANCHOT: Obviously I have great respect for the Lieutenant Governor. But this idea that the Board of Public Works does not have a constitutional obligation to defend the public interest is just a lot of

nonsense. And I understand the Supreme Court's decision. Well, sometimes the Supreme Court is wrong. And --

LIEUTENANT GOVERNOR RUTHERFORD: Our higher court has decided that.

COMPTROLLER FRANCHOT: Yeah --

LIEUTENANT GOVERNOR RUTHERFORD: And we are a country and a State of laws. And so you know, even, there are many times we don't agree with the laws, the way they are written as well as the interpretations. But that's what separates us from a lot of anarchy.

MR. HORSTMAN: Okay, well let me keep going because you guys can fight this out after --

COMPTROLLER FRANCHOT: Thank you. Thank you.

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: Thank you.

MR. HORSTMAN: So the proposed development is an old style sprawl development, okay? It's not new clustered development and the ponds are very close to both waterways. Okay? So think of this. It's going to flood with rain. It's going to flood with storm surge. And the ponds are going to overflow into the river. And you've seen the picture of the Conowingo Dam, right? When the Conowingo Dam has a heavy storm surge we get the plume. The same thing is going to happen on a smaller scale, but proportionately the cause and effect will

be the same on our rivers. These stormwater ponds, which may or may not be deep enough, are going to be overwhelmed by the storm surge and we're going to get sediment, toxins, all of the things that he said were bad are going to overflow into our rivers and it's going to have the Conowingo effect.

The University of Maryland says we should plan for a 2.1-foot rise in sea level by 2050. Most people say we should predict a five-foot rise by 2100. This is the wrong development in the wrong place. Queen Anne's County is not opposed to development. We want, I mean, we want smart growth, we want common sense. We want, you know, just we don't want you to grant this wetlands application because most of it, the land use was decided over ten years ago, 15 years ago, 2003. Since then we have had the Chesapeake Clean Water Blueprint. Okay? That has been a big change. I think we need to have more hearings and I think our legislative bodies should be examining ways to protect us from stuff like this.

And that was not my testimony but it worked. So thank you for your time.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you very much. Hold on --

TREASURER KOPP: Can I just ask you one question? Did you give -- that was excellent.

MR. HORSTMAN: Thank you very much. I hope you take it to heart.

TREASURER KOPP: I do take it to heart. I also take the words of the Maryland Court of Appeals to heart.

MR. HORSTMAN: As I do as well.

TREASURER KOPP: Did you testify to the same effect before the county in 2013 when the Tanner property hearing came up?

MR. HORSTMAN: In 2013?

TREASURER KOPP: Yes.

MR. HORSTMAN: I didn't know there --

TREASURER KOPP: It would have been really --

MR. HORSTMAN: I don't, I was -- no. The answer was no.

LIEUTENANT GOVERNOR RUTHERFORD: He said he's, he's recent.

TREASURER KOPP: Okay. Sorry.

MR. HORSTMAN: I mean, I've been, I went to the Ivy League of the Eastern Shore, Washington College, which is having some struggles today.

TREASURER KOPP: Oh, terrible.

MR. HORSTMAN: But I've been on the Eastern Shore my whole life but I'm new in this position.

COMPTROLLER FRANCHOT: Yeah, if I could ask a question?

Because --

MR. HORSTMAN: Yes, please.

COMPTROLLER FRANCHOT: -- thank you for separating the Lieutenant Governor and me. That was very helpful.

(Laughter.)

COMPTROLLER FRANCHOT: But let's just, if I could ask your opinion? I happen to have a different opinion about the Supreme Court. I call them --

TREASURER KOPP: It's the Court of Appeals in Maryland.

LIEUTENANT GOVERNOR RUTHERFORD: Court of Appeals. Court of Appeals --

COMPTROLLER FRANCHOT: I call them the Supreme Court because I spent 20 years in the Legislature, I never even knew they were, that was the Supreme Court. It sounds like some kind of appellate court. It is our Supreme Court in Maryland. I disagree with them on this. But I'd like to ask you, since we have been directed by them to take the ecological, ecological, this is the court, the Supreme Court --

LIEUTENANT GOVERNOR RUTHERFORD: Court of Appeals.

COMPTROLLER FRANCHOT: -- this is the ecological, economic, developmental, recreational, and aesthetic values associated with this

wetlands permit application to preserve the wetlands, to prevent their despoliation, being despoiled, and being destroyed. And so even if putting aside my argument, which I think is valid but that's just me, I take it it's your view that based on the Court of Appeals, Supreme Court decision, we can turn this down based on ecological, economic, developmental, recreational, and aesthetic values?

MR. HORSTMAN: Yes sir, I completely agree with you. I think you are letting the camel's nose get under the tent with this one little license and the whole wetland will be destroyed over time.

LIEUTENANT GOVERNOR RUTHERFORD: All right. Thank you very much.

COMPTROLLER FRANCHOT: Okay. And I have something I'd like to correct the record with, since we just received testimony. This is -- well, I'd just like it entered into the record. And I guess their counsel was correct. It didn't happen recently. But Hovnanian Enterprises and Pulte Group settle Clean Water Act violations in Virginia and Maryland. It says March 6th, 2013, Hovnanian Enterprises and Pulte Group have agreed to pay civil penalties respectively in separate settlements with EPA resolving alleged Clean Water Act violations at construction sites in Maryland and Virginia. And my only point is, we apparently are going to grant this permit based on assurances from a company that has an obviously checkered record in dealing with both the Justice Department, the EPA, and that's my --

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Well I'd like --

COMPTROLLER FRANCHOT: -- and I think that's a fair point since the testimony was nothing is, you know, nothing is amiss here. This is an agreement based on assurances. And, boy, I'd like to find out the truth --

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

COMPTROLLER FRANCHOT: -- before we vote it.

LIEUTENANT GOVERNOR RUTHERFORD: Well I think he also said agreements have been reached which were signed by the parties. And as I mentioned before, that we are a country of laws. And there's a responsibility that we have. And I'd like to call for a vote on this. Do we have a motion? Well I move for a vote.

MRS. ELASIK: Is a woman allowed to speak?

LIEUTENANT GOVERNOR RUTHERFORD: Women are allowed to speak but --

COMPTROLLER FRANCHOT: Why can't we hear from some of the citizens? Are you signed up to speak, ma'am? Well isn't the --

LIEUTENANT GOVERNOR RUTHERFORD: Yeah, but we're moving along pretty well. We're, since you raised your hand first, you would be allowed to speak and then I'm calling for a vote.

MRS. ELASIK: Thank you very much. Good morning, Lieutenant Governor, Treasurer Kopp, and Comptroller Franchot. My name is Suzi ElasiK. I'm spokesperson for Queen's Landing Homeowners for Transparency. We are a 349 condominium unit in Queen's Landing. We do exit on Castle Marina where Four Seasons is going.

Lieutenant Governor, you are absolutely right. We are a State of laws and MDE has violated the law.

In Queen's Landing alone in just two years 71 new homeowners are there, not to mention Bayside and all the other communities. There are 1,000 people adjacent and MDE statute says, I believe somehow, anyone adjacent should get that package in the mail and there should be a special hearing before there is a BPW hearing. This was not done. And this is the law.

Secondly, are you voting as a liaison of the Governor, or are you voting in your own personal capacity choice today, sir?

LIEUTENANT GOVERNOR RUTHERFORD: I actually ask the questions here.

MRS. ELASIK: Okay.

LIEUTENANT GOVERNOR RUTHERFORD: I am representing the Governor, and voting on the Board of Public Works. And I am able to do that under authority of the Governor and of the State.

MRS. ELASIK: Thank you very much.

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LIEUTENANT GOVERNOR RUTHERFORD: Why is your question?

MRS. ELASIK: Please, sir?

LIEUTENANT GOVERNOR RUTHERFORD: Why are you asking that question?

MRS. ELASIK: Well we are very concerned over the fact that Hovnanian is a client of the Hogan companies. We are very concerned that on the Governor's Advisory Board was the Regional Director Vice President, I believe his name was DeCesaris, who was on the Governor's Advisory Board. So I won't ask the question, but my concern is is there a conflict of interest here?

LIEUTENANT GOVERNOR RUTHERFORD: No, there is not. The Governor's holdings in the Hogan companies are separated in a blind trust. He is not active in the management of the company and he has not been briefed on this project.

MRS. ELASIK: Thank you, sir.

GOVERNOR HOGAN: Or on anything else in this Board agenda.

MRS. ELASIK: Thank you, sir. In Queen's Landing our Homeowners for Transparency champions homeowners' rights and as I mentioned our only exit is Castle Marina. We have three objections to the Four Seasons project.

First, we're concerned about safety and lives. There are now approximately 1,000 units adjacent to this new development and that means 2,000 vehicles, plus there's two restaurants back there. In an emergency this would be a catastrophe, as the gentleman mentioned. How can you approve Four Seasons with 1,100 units, 2,000 more people, that's 4,000 people trying to exit onto one road. And this is life threatening.

Secondly, they say a leopard doesn't change its spots. We have great concern over Hovnanian. And yes, I have the same report. There were 161 construction sites on the Chesapeake Bay watershed that he violated. How on earth can you sit here and issue a wetlands license to this company who has so many violations? And I say again, leopards don't change their spots.

And I want to say that the Chesapeake Bay Foundation found that 52 percent of respondents in Queen Anne's County and 61 percent of respondents in Kent Island oppose this development. You have an obligation to the people on Kent Island to have another public hearing. How many thousands of people have bought new homes or, you know, resale homes and have not had the advantage of a hearing? MDE is violating its own statutes. And Governor, or Lieutenant Governor, this is the law.

Number three, I believe you all would agree we love our Chesapeake Bay and the Chester River and our wetlands and waterways, and we want them protected. Please don't vote for this wetlands license and let your

legacy, legacies be one of destroying our waterways and wetlands. A forefather of our great country, Henry Clay, said government is a trust and the officers of the government are trustees and both the trust and the trustees are created for the benefit of the people.

You have our trust. We want your vote for the benefit of the people. Not for Hovnanian, who is a developer, as was Governor Hogan, and is on his list, and who does and did business with Governor Hogan. So we kindly implore you to please do not approve the Four Seasons project today. Please have a public hearing per the MDE statutes so that anyone that did not attend the other hearing, which I don't know if it's 2003 or 2010, but it has to be done today so you will hear the citizens of Queen Anne's County. Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you very much. I move for a vote.

TREASURER KOPP: Governor?

LIEUTENANT GOVERNOR RUTHERFORD: Yes?

TREASURER KOPP: I have, I have a question that I would like to add. I appreciate your wanting to rush but this is a very important issue we've spent a lot of time on.

LIEUTENANT GOVERNOR RUTHERFORD: I don't think, but I don't think we've been rushing this.

TREASURER KOPP: I have one question to, I didn't mean rushing it, it's too late to rush it.

(Laughter.)

TREASURER KOPP: I mean much too late. No, no, no, I shouldn't have said that. I was wrong. Come to a closure soon. And I guess since maybe the Department of the Environment Deputy -- I'm sorry, I can't recall your name.

LIEUTENANT GOVERNOR RUTHERFORD: Tung.

TREASURER KOPP: Tung.

MS. TUNG: Yes?

TREASURER KOPP: The process. Assuming this is, if this is granted --

MS. TUNG: Mm-hmm.

TREASURER KOPP: -- it then goes to the, in terms of overseeing the development by the county --

MS. TUNG: Mm-hmm.

TREASURER KOPP: -- which is the authority, what is the process after this?

MS. TUNG: The Queen Anne's County is in charge of the stormwater --

TREASURER KOPP: Right.

MS. TUNG: -- plan. We, I think there's some suggested conditions --

TREASURER KOPP: Right.

MS. TUNG: -- where we would be meeting with the developer at various times prior to construction beginning to make sure that everybody is on board. But in general unless there's something new that comes up once this is approved, if you choose to approve it, Queen Anne's County, which is what it really should be. It's a local issue. They monitor and will be watching the stormwater plan and approving the stormwater plan.

TREASURER KOPP: That's what I thought. Their departments, local planning --

MS. TUNG: Yes.

TREASURER KOPP: -- (indiscernible) and local planning and zoning --

MS. TUNG: Yes.

TREASURER KOPP: -- their department will be looking at the site design, the things like the rain gardens, the bioswales, the sort of things --

MS. TUNG: Yes.

TREASURER KOPP: -- that our advisor told us was built into this plan, the best practices?

MS. TUNG: Yes. We --

TREASURER KOPP: That will be monitored. And in terms, one question that hasn't been raised today but was raised two years ago, was the way the pipe itself is built, whether it can withstand --

MS. TUNG: Mm-hmm.

TREASURER KOPP: -- pressures and stuff. Who monitors as that goes in?

MS. TUNG: Well MDE took an initial look at the plans that were given to us in 2013 and there are engineers on staff and so forth that looks at that. I haven't heard that there were any issues with the pipes themselves. But again, if there's, you know, one of our big concerns is, arose through the fact that if stormwater is coming out and starts eroding the soil then that could wind up in the wetlands. And that's where the county would come in and make sure that that is not happening and if it starts happening they would have to make the modifications according to what the county wants them to do.

TREASURER KOPP: That part of normal --

MS. TUNG: Yes.

TREASURER KOPP: -- monitoring? It's not --

MS. TUNG: Normal monitoring, yes.

TREASURER KOPP: Okay.

LIEUTENANT GOVERNOR RUTHERFORD: And didn't you say at one point that the pipe that is going under the wetlands is 20 feet below the --

MS. TUNG: I believe it was 20 feet, yeah.

TREASURER KOPP: Yeah.

MS. TUNG: And the entry and the exit is outside the wetlands area.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

TREASURER KOPP: That was my question in follow up.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

TREASURER KOPP: Thank you very much.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you. Again, I have a motion for a vote on this. In favor or a second?

TREASURER KOPP: Governor, yes, no. Governor, I'll second it. I am quite certain this is going to court again. I think it's the wrong development. I think it's in the wrong place. But I think based on how the court constrained, despite the legal advice from Mr. Falstad, I look back to the advice from the Attorney General's Office and the advice from our scientific advisor. And I think that it is appropriate for the Board of Public Works, which is not a Department of Public Works by the way --

LIEUTENANT GOVERNOR RUTHERFORD: Yes --

TREASURER KOPP: -- the Board of Public Works to grant this license. The process has been followed. The next step would, if it goes forward and I'm sure it will go to court first, will be to see that it's built properly, that the Tanner property is transferred appropriately to the county which obviously reduces the size of the project very significantly.

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm.

TREASURER KOPP: And that all of the environmental constraints that have been placed into the conditions in the license are followed. I think the impact of this project on the rest of the infrastructure of the State, on the possibilities of evacuating Kent Island, on quality of life, is not good. I wouldn't authorize it but I don't think that's the role of the Board of Public Works. And I think, as you said Governor, that maintaining a rule of law is just as important, is more fundamental than almost anything else in this country.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you. Mr. Comptroller?

COMPTROLLER FRANCHOT: If I could explain my vote? Because I think we are essentially doing something that is unlawful here, in violation of Maryland statutes. But I certainly appreciate the, and respect the Treasurer and the Lieutenant Governor. But I happen to think that this is an example of irresponsible suburban sprawl on one of the most beautiful pieces of land frankly in the entire State, for those of you that have been lucky enough to go

out there and see this property. And I would recommend everybody go to the, I can't remember whether it was the *Sun* or the *Post* that had some video on this stunningly beautiful land. And it's going to be subjected to this suburban sprawl. And what's going to be the result? Well, the highways and the bridges are going to get even more congested, blocked up than they are right now. It's going to discharge harmful pollutants into the Chesapeake Bay and its tributaries. It's going to accelerate growth patterns that will aggravate overcrowding in our schools that are already busting at the seams. So make no mistake about it. This is a vote for sprawl, as the Treasurer correctly noted, in a completely inappropriate area. And boy, this is, I applaud the citizens who came here. I would have been happy to sit and listen to everybody who had signed up. I think that's the normal protocol. Thank you. Hang in there. Help is on the way ultimately. Reinforcements are going to be there. Because this is just a complete disgrace, what we're doing right now under the guise of, oh well, we're just obeying the law.

(Applause.)

LIEUTENANT GOVERNOR RUTHERFORD: Okay. So with the Treasurer's vote in favor, I'm voting in favor. It's approved two to one.

COMPTROLLER FRANCHOT: Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you.

I have another question on the Agenda.

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SECRETARY MCDONALD: Okay.

LIEUTENANT GOVERNOR RUTHERFORD: A2, Public Safety and Correctional Services.

SECRETARY MCDONALD: This is an emergency report about -  
-

LIEUTENANT GOVERNOR RUTHERFORD: It's an emergency.

SECRETARY MCDONALD: --the high temperature line. Is Mr. Bezanson still here, perhaps?

LIEUTENANT GOVERNOR RUTHERFORD: Maybe we should wait just a second while the change of the guard.

SECRETARY MCDONALD: Please try to exit quietly. This is the ECI high temperature line. Oh Secretary Moyer is here, too, thank you.

MR. MOYER: I guess it's still good morning. Good morning, Governor.

LIEUTENANT GOVERNOR RUTHERFORD: It is morning. Thank you. I believe.

MR. MOYER: Assistant Secretary Dave Bezanson will make comments for me on this one.

MR. BEZANSON: Your question, sir?

LIEUTENANT GOVERNOR RUTHERFORD: Yes. It's an emergency procurement that was declared in August and awarded on the 26th of August and it's just now coming to the Board now in November. That seems a bit of a delay.

MR. BEZANSON: The award date was August 26th.

LIEUTENANT GOVERNOR RUTHERFORD: Yes.

MR. BEZANSON: And we submitted our report to the Board of Public Works approximately 45 days after that. And Sheila, maybe you can help me on when you got the report?

SECRETARY MCDONALD: I'm trying to see the date of when you actually submitted it here. I started a new system September 24th so I think it was, yes, 30 days after and you have 45 days. And so when it gets into us on September 24th the procurement advisor has to look at it and review it and put it on the next available Agenda. So he did get it in on time --

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: -- which is what the regulation is to us. And then it took one more meeting to get here, since it's a report and not an active procurement.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: We're, actually I'm glad you pointed that out --

LIEUTENANT GOVERNOR RUTHERFORD: And you are going through transition, too.

SECRETARY MCDONALD: Because, yeah, so we're going to be marking our things better so that you will clearly be able to tell when they were received. We're actually working on that right now.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: So thank you for pointing that out.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: But this particular one actually was okay. There are others sometimes that --

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Next time.

(Laughter.)

SECRETARY MCDONALD: That's a good question. And you might have one coming up, but we'll talk about that next time.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Thank you. All right. On the Secretary's Agenda, did we have a motion on all with the exception of the one we already voted on?

COMPTROLLER FRANCHOT: Thank you. Move approval.

TREASURER KOPP: Second.

LIEUTENANT GOVERNOR RUTHERFORD: All in favor? So Madam Secretary, we approved all the remaining items on the Agenda with the exception of Item 9, was that?

SECRETARY MCDONALD: Right. Which --

LIEUTENANT GOVERNOR RUTHERFORD: Which we voted separately.

SECRETARY MCDONALD: Right. We've got that. So now we're on to the Department of Natural Resources Agenda.

MS. WILSON: Good morning, Governor --

LIEUTENANT GOVERNOR RUTHERFORD: Good morning.

MS. WILSON: -- Madam Treasurer, Mr. Comptroller. Emily Wilson with the Maryland Department of Natural Resources. We have nine items on our Agenda today and I'd be happy to try to answer any questions.

LIEUTENANT GOVERNOR RUTHERFORD: Any questions? Questions, sir?

COMPTROLLER FRANCHOT: No. Move approval.

LIEUTENANT GOVERNOR RUTHERFORD: I've got to find something. Second? All in favor?

COMPTROLLER FRANCHOT: Aye.

TREASURER KOPP: Aye.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you.

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MS. WILSON: Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: Madam Secretary, we have the Budget and Department of Budget and Management.

MR. BRINKLEY: Good morning, Lieutenant Governor. It is still morning, seven more minutes. Madam Treasurer, Mr. Comptroller, the Department of Budget and Management has submitted four items for today's Agenda and I have representatives here to address any concerns or questions you might have.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. I have a question on Item 1-S. And I think the Comptroller does as well. Can someone explain what services MJ Management is going to be providing for what will be a total of \$65 million?

MR. BRINKLEY: Anna Lansaw, Director of Procurement, and Carl Parr, Director of Mobility Transportation.

LIEUTENANT GOVERNOR RUTHERFORD: And we have the Secretary here as well. But we can --

MR. RAHN: If I may to introduce this to you, Lieutenant Governor, if that's all right?

LIEUTENANT GOVERNOR RUTHERFORD: That's fine.

MR. RAHN: For the record, Pete Rahn, Secretary of the Maryland Department of Transportation. And I would first say congratulations to --

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LIEUTENANT GOVERNOR RUTHERFORD: Grandpa?

COMPTROLLER FRANCHOT: -- the impending grandfatherhood of the Comptroller.

LIEUTENANT GOVERNOR RUTHERFORD: Yeah, what are you going to go by? Are you going to be --

COMPTROLLER FRANCHOT: I don't know.

LIEUTENANT GOVERNOR RUTHERFORD: -- Grandad? Grandpa? Poppy?

(Laughter.)

COMPTROLLER FRANCHOT: Yeah.

MR. RAHN: And if you don't know --

LIEUTENANT GOVERNOR RUTHERFORD: Grandpa Comptroller?

(Laughter.)

MR. RAHN: You have to negotiate that with the other set of grandparents.

COMPTROLLER FRANCHOT: That's what I have been told very emphatically.

LIEUTENANT GOVERNOR RUTHERFORD: Ah, oh, okay.

MR. RAHN: At the time with our first grandchild I was told that grandchildren are the reward for having not strangled your children as teenagers.

So --

LIEUTENANT GOVERNOR RUTHERFORD: And your ability to pay them back, too.

MR. RAHN: Yes, exactly. So members of the Board, I'd like to give an overview of what this procurement is all about. So this, these services we are required to provide by federal law. We have to provide paratransit and mobility services to ADA certified individuals that live within a certain distance of our fixed bus routes. And so we have to provide these services by federal law. And the program has very limited options for us as to how we meet that because under State law we are prohibited from using taxicabs. And so currently we use the mobility vans that you have probably seen around which are really intended for paratransit passengers.

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm.

MR. RAHN: People in wheelchairs, and special needs. Although a large number of our ADA certified clients in fact can use cars. And so we pay \$50, we pay \$50 per passenger for the mobility vans. Under this car service our cost would be just under, it would be right at \$18 per passenger. And this contract is to have a service provide that service. They are then paid \$18 per passenger after they provide that service.

LIEUTENANT GOVERNOR RUTHERFORD: And this is, that \$18 is part of the \$65 million --

MR. RAHN: That is. That's --

LIEUTENANT GOVERNOR RUTHERFORD: So the management team actually contracts or pays for the car service?

MR. RAHN: So this is the service in which we will pay them \$18 --

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MR. RAHN: -- for each passenger that utilizes this service. Our estimation is this will save us \$18 million a year over using mobility vans. And so --

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Let me just interrupt for a moment. The Comptroller just said to me something that was, I thought when I was reviewing this. Is that, and it goes to the legislation, that it doesn't make sense that we can't use taxis. Now I said, and this shows how modern I am, I said why not Uber? You know?

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: So when we were reviewing it, I said wouldn't Uber, now the difference, of course, Uber, it's not necessarily, you know, they are public people driving the vehicles. But still it kind of, particularly when I saw van service, and it said same day premium

service, which Uber can provide that. You can get the Uber Plus, or Uber XL. And so.

MR. RAHN: Lieutenant Governor, we actually compared these costs to Uber --

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm.

MR. RAHN: -- as to what it would cost. This is slightly more than Uber. Uber did not bid. They were actually approached to see if they would bid on this and the problem is that the service area that we have to provide is actually quite large and requires a substantial fleet of cars to be able to do this. And so the issue has been that Uber, while it has individuals who decide they want to provide services through that, was not, they didn't believe that they could meet all of the requirements of the service area and the time requirements. But to me this, the biggest, the biggest issue with this, and I quite realize there were a number of red flags here that would draw attention from the Board.

LIEUTENANT GOVERNOR RUTHERFORD: Like a single bid.

MR. RAHN: But the issue, but the decision to go forward was just simply the fact that we have the opportunity using the limited options available to us to save \$18 million per year on this service. And we hope to encourage a number of people who are using vans to actually switch to this service and again add to the overall savings that we believe we can receive from this service.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Let me make sure I understand, though. The \$65 million that is paid to MJ company, MJ Management, I believe it is, they will retain the car service, or the car service is part of their group and this is all paid. It's not an additional \$18 on top of \$65 million?

MR. RAHN: That is correct.

LIEUTENANT GOVERNOR RUTHERFORD: That wasn't very clear. Okay.

MR. RAHN: We do not just, correct, Lieutenant Governor, we do not just give them \$65 million or \$17 million a year, or whatever.

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm.

MR. RAHN: They, this is the expenses that we anticipate we will incur --

LIEUTENANT GOVERNOR RUTHERFORD: So it's up to?

MR. RAHN: -- over a three-year period. And actually over a four-year period.

LIEUTENANT GOVERNOR RUTHERFORD: Right.

MR. RAHN: Four years. (Indiscernible).

LIEUTENANT GOVERNOR RUTHERFORD: Yeah, four --

MR. RAHN: So yeah, over a four-year period we believe that that's how much we could in fact pay to them. But we don't give, this is not a

payment to them lump sum. There's not an advance. They earn it on a per car basis, per trip basis.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

TREASURER KOPP: But the cars are subcontractors? I mean, how exactly does it work?

MR. RAHN: I'm going to need to have you explain how --

TREASURER KOPP: I mean how much, how much is going into overhead and how much is going into actually transporting people?

MR. PARR: Carl Parr, Jr. Thank you. They have a fee basically, you know, I mean they do add a fee to it. And they are providing some other services as well that are incorporated into the \$65 million. They are providing travel training services, where we encourage mobility clients to get back and be able to use fixed route and not rely on mobility.

LIEUTENANT GOVERNOR RUTHERFORD: What is the travel training services? You just said they provide travel training?

MR. PARR: Travel training services is where we have a group of people, in this case it would be subcontracted to MJM --

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm.

MR. PARR: -- that actually work with the mobility clients and try to get them acclimated to using the fixed route services that MTA has available rather than the mobility services which of course are a lot more expensive.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. So, okay, so they will work with people who have been in the vehicles --

MR. PARR: Right.

LIEUTENANT GOVERNOR RUTHERFORD: -- either in the mobility vans or these new car service to try to encourage them to use Light Rail where it's appropriate --

MR. PARR: Exactly.

LIEUTENANT GOVERNOR RUTHERFORD: -- or the Metro where it's appropriate? Okay. I'm not going to get to the how question. But that's --

COMPTROLLER FRANCHOT: Yeah, no, I have a few questions, thank you. So this is a four-year contract, as you noted, including the option year. It's \$65.3 million to MJ Management Services of Baltimore and it's going to do the Mass Transit Administration Call-A-Ride program. My obvious concern, which the Lieutenant Governor has noted, I think he has some empathy with me on this issue, is there was only one response --

LIEUTENANT GOVERNOR RUTHERFORD: Yeah.

COMPTROLLER FRANCHOT: -- received to the RFP. And it was the response of the incumbent.

MR. PARR: It's a complicated service. It was, the bid was sent out to many other people. They didn't respond to it. We actually made phone

calls to them to see why they didn't bid and basically they said that they were unable to handle it, they didn't have an infrastructure in place that could handle --

COMPTROLLER FRANCHOT: Is Paul Comfort here?

MR. PARR: No sir, he's not.

COMPTROLLER FRANCHOT: Well he ought to be here. Please. I have a lot of respect for him. He's a great guy. I have a huge amount of respect for Secretary Rahn. But, you know, our briefing document said that there's no incumbent because the service delivery model is being changed. And frankly the high regard I have for those two gentlemen, I'm not even going to respond to that nonsense. We have often described these single bid contracts as less procurement and more vendor protection, incumbent vendor protection. So I have a few questions.

In my background notes my concerns were elevated by the fact that after the fact other firms complained about the inadequate time that they were given to prepare and deliver a proposal for what's rather a complex service but essentially not rocket science. We're talking about automobiles. I kind of wish Uber had been interested because they have the added value of, they actually work. And I've dealt with this paratransit program for 30 years. And it never seems to properly work. People are standing on the curb in the cold waiting for the promised ride from the dispatch.

So anyway, and this is a, my concerns about the single bid contracts are very well documented. In the interests of time I won't go through them in this instance but we are told we are saving \$16 million. We are told that every time. It's a good deal for the State, trust us. Well how about some proof? Like two companies competing in public and we'll see whether it's a good deal for the State. It might be a good deal but it might not be the best deal.

So why did the RFP for something as complex and important as paratransit service delivery, why was it put on a 30-day fast track? Why not provide a longer window, three months for example, that would provide other firms with added time to review the opportunity and make an informed business decision such as bidding?

MS. LANSAW: I'm Anna Lansaw, Director of Procurement for the Maryland Transit Administration. We, as you know we go through the control agencies. It was vetted through both our AG counsel and everything. Because of statutory requirements of not allowing to use taxicab services we had to ensure that the RFP was non-restrictive and to try to put out a more competitive bid to obtain solicitation. By the time we got to that point our limited time factors to getting to ensure that we could get to, to provide the services before the current contract utilizing taxicab service expired. That way we had something in place. So the contract, we were on a short timeframe. I did go back to legal asking, requesting if we could extend the current contract and they stated because of the

legalities of the current contract we could not extend with the current contract with the taxicab services. So we were limited in the solicitation period. We did put it out for 30 days and tried to vet and we did directly solicit all known vendors that were provided to us. We called them, we asked them. And we did try to obtain more interest besides the incumbent. One vendor actually stated that they had a direct conflict of interest because they had a vested interest in the Yellow Cab Company. They could not. The other two vendors that we did directly solicit, the capacity that they were expected to cover could not even, they could not even meet. Even if combined forces, those two companies got together as a joint effort, they could not meet the capacity of what we were requesting in services.

COMPTROLLER FRANCHOT: Okay. And how long has MJ Management had the existing Mass Transit Administration Call-A-Ride contract?

MS. LANSAW: Six years.

COMPTROLLER FRANCHOT: Six years. Okay. And in addition to delivering the rides to the region's paratransit users, does, does MJ also manage the call center under this proposal?

MR. PARR: No sir.

COMPTROLLER FRANCHOT: Who does?

MR. PARR: The calls for the Call-A-Ride program go directly to the companies that are handling them. In other words --

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COMPTROLLER FRANCHOT: Excuse me?

MR. PARR: -- there's --

LIEUTENANT GOVERNOR RUTHERFORD: So MJ contracts with the sedan companies and that's what you're saying --

MR. PARR: Contracts with the sedan companies --

LIEUTENANT GOVERNOR RUTHERFORD: -- they go, and the sedan companies --

MR. PARR: -- and then, right, and then, and you, the mobility client can call whatever company they want to directly.

COMPTROLLER FRANCHOT: So there is no dispatch then? A centralized --

MR. PARR: Exactly. Which is one of the major savings.

COMPTROLLER FRANCHOT: Okay. So can you help me understand exactly what the company is going to be doing? And whatever profit -

MR. PARR: MJM?

COMPTROLLER FRANCHOT: -- yeah. Whatever profit it's going to, what's their profit margin here? The Treasurer asked about administrative costs.

MS. LANSAW: MJM will provide us a, will charge a monthly service fee. They coordinate all efforts between the sedan services. So whatever

contract they negotiate with the sedan services on their rates and everything, they will pay, they will get a profit from the sedan services based on the utilization that is being given to those sedan services. We're not sure exactly what the profit is that they will obtain as it is a subcontractor between them and their sedan services that they subcontract.

COMPTROLLER FRANCHOT: Okay. And over the last six years, what has been MJ Management's on time performance matched up against those for similar East Coast transit authorities such as WMATA, MARTA, SEPTA? What is, have we established higher expectations for service reliability in this current contract?

MR. PARR: It is higher expectations. It's not comparable to WMATA just like it wouldn't be compared actually to mobility because it's just -

COMPTROLLER FRANCHOT: Well, no, it is comparable.

TREASURER KOPP: Why?

COMPTROLLER FRANCHOT: How much time does it take?  
Yeah.

LIEUTENANT GOVERNOR RUTHERFORD: Does WMATA have a mobility issue?

MR. PARR: I'm sorry?

LIEUTENANT GOVERNOR RUTHERFORD: Doesn't WMATA have a mobility component?

MR. PARR: Yes, but not a Call-A-Ride program. I mean, in the WMATA, WMATA basically has a similar model to what we have in mobility where you call the reservations department, you book your reservation --

LIEUTENANT GOVERNOR RUTHERFORD: I think that was the Comptroller's question. Comparing what we had in place with this particular vendor, MJ, to what WMATA's, so it's the history comparison. Have we done anything of that nature? I believe that was the Comptroller's question.

COMPTROLLER FRANCHOT: Yes, it was. What's their record since the incumbent vendor, although that was not in the briefing materials, they are the incumbent vendor and they have been doing this for six years? How do they compare as far as the actual output? I understand the \$65 million is our job. That's the input. How about the output?

MR. PARR: Their on time performance is, I mean I don't know what the percentage is. They maintain the records. We get a monthly report from them. And then based on client complaints, things like that, it's a great service.

TREASURER KOPP: It's a great service? So you've got a record?

MR. PARR: I don't know what the on time performance is. I don't have that in front of me.

TREASURER KOPP: So how do you know it's a great service?

LIEUTENANT GOVERNOR RUTHERFORD: Yeah.

MR. PARR: I'm sorry.

MR. RAHN: I think part of the issue, if I may, is the comparison of the mobility vans to this service which is in essence same day, and that's where the premium comes from. They can call for their ride and as soon as it can be available to fit their schedule it can take them. On the other mobility vans you have to call a call center, it has to be reserved, and a lot of our complaints come from the performance of those vans and the on time performance of the reservation. But this really is not a comparable service to the vans. This is, premium makes it sound, you know, almost like you're calling a black town car. That's not the case. You are probably a Toyota Camry that will show up and be able to take you. So the, in place of this what used to be there were cabs and the cabs would come and pick you up. And at that point it was determined the law prohibits us from doing what we were doing. And that's what this is to replace.

LIEUTENANT GOVERNOR RUTHERFORD: So was MJ a cab company?

MR. PARR: No. They handled the contract.

LIEUTENANT GOVERNOR RUTHERFORD: They managed the cabs?

MR. PARR: They managed the cab companies.

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LIEUTENANT GOVERNOR RUTHERFORD: Okay. All right.

I have a couple of questions --

COMPTROLLER FRANCHOT: Yeah.

LIEUTENANT GOVERNOR RUTHERFORD: I originally wrote down three, but now I think I have four. I'll go to the fourth one because I didn't write it down. So you'll still have the mobility service with regard to the vans for those who are in a wheelchair or need that type of service?

MR. PARR: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: That will still be operating. But then you'll have the sedan service separately?

MR. PARR: Yes, sir.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. So I think it goes to that point that you were raising, that it's a little different. And I guess the hope would be that there's improvement in terms of the service response? Because you now have two fleets it sounds like.

MR. PARR: Basically. And the client also has the opportunity to use whatever company they want. If they don't receive the service they want from one company, they have the ability to call another sedan company that's in the program.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. My, and then my, one of my written questions, and this is something I think we should

think, you know, going forward. And all those procurement executives that are in here, when we have situations where we have large contracts, break them up. You know, because if there are only a few large companies or organizations that have large reach to do this, we are not getting the kind of competition that the Comptroller was just talking about. I know based on the timing it may have been difficult to do it here. But some forethought as far as where you're going with more contracts, large contracts, that there's only a limited group that can handle the breadth of it, that you divide it up by geography. I mean, there's nothing to say that Uber or someone else couldn't have done the geography if they competed for it in a smaller area, and the same for, you know, dividing the State up. I mean we're, even though we're not a large State, you know, if you're walking or driving it is large. So, you know, looking at zones, breaking it up so that there's more competition that can be, that could manage their unit on the Lower Shore, or they manage their unit on the Upper Shore, or in Western Maryland, or in Central, and dividing Central even further.

So something that's, so I say that not just to the Department of Transportation and MTA, but all the others who are still here. That when you are looking at these contracts and in many cases we get single bid because the contract is large and a couple of the big guys don't want to play in it. And so it's up to you all to start thinking a little bit more outside the box, that you can break

these contracts up and you can regionalize and it gives more opportunities for other businesses to compete in this.

MR. RAHN: Lieutenant Governor, I just want to reemphasize that, so our option without this contract is that we have to provide the service through the mobility vans at \$50 per ride.

LIEUTENANT GOVERNOR RUTHERFORD: Right.

MR. RAHN: And so the savings of \$18 million a year is not hypothetical. It's real. So we either pay \$50 or we pay \$18.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MR. RAHN: And so it's a genuine savings of \$18 million per year. And, and so that's what caused us to continue through on this process with what we have.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. And let me just get to my next question and maybe this goes to Sheila as well. Are we approving also the renewal or are the renewals going to come back to us? We are approving the fact that the renewal is in the contract but they have to come back?

SECRETARY MCDONALD: You've got that exactly.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. I just wanted to clarify that. Okay. So that's, the renewal will come back in three years, which is a long time. My third is what is the typical ridership for these, this service based on the taxi service that was provided before?

MR. PARR: Right now we're providing, MJM is providing a little less than 2,000 trips a day.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. And that's throughout the State?

MR. PARR: Yeah, well throughout the MTM service of the MTA service area, which is --

LIEUTENANT GOVERNOR RUTHERFORD: Oh, it's only in the MTA service area?

MR. PARR: Yes, sir.

LIEUTENANT GOVERNOR RUTHERFORD: Oh, okay. So that's another thing that I wasn't quite sure of.

MR. PARR: So I mean --

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MR. PARR: I didn't want to challenge your zone --

LIEUTENANT GOVERNOR RUTHERFORD: Yes. Well but still within MTA service area then you could zone it. So yes, take out the, all due respect to the Senator here, take out the Eastern Shore on that. Or Western Maryland.

MR. PARR: Right.

LIEUTENANT GOVERNOR RUTHERFORD: But you know that --

MR. PARR: Those aren't areas that we cover.

LIEUTENANT GOVERNOR RUTHERFORD: -- it still could have been broken up --

MR. PARR: Right.

LIEUTENANT GOVERNOR RUTHERFORD: -- in terms of the MTA zone.

MR. PARR: Okay.

LIEUTENANT GOVERNOR RUTHERFORD: So okay. I think you --

COMPTROLLER FRANCHOT: Yeah, no, this obviously other than being a single bid contract where we have to go on scout's honor I guess that this is good for the State, because there's no competition so we don't really know, do we?

MR. PARR: We can compare it to the previous contract.

COMPTROLLER FRANCHOT: Exactly. Yeah, that's exactly right. But --

MR. PARR: Which was a savings.

COMPTROLLER FRANCHOT: Not to pick a bad issue but it's like --

TREASURER KOPP: Yeah I --

COMPTROLLER FRANCHOT: No, I have a follow up question. Which is this one has the added ornament attached to it of my favorite initiative by the agencies, which is to put a gun to the head of the Board of Public Works and say, hey, either vote for this or no paratransit. When does the contract run out?

MS. LANSAW: November 30th, sir.

COMPTROLLER FRANCHOT: I mean, for that alone I'm going to vote no. And anybody that takes a cheap shot and says I'm not in favor of paratransit and getting people to dialysis and other places that they need to go, that's a cheap shot. What we're doing, what I'm doing, or suggesting we do, is that we cancel, we reject this contract and we ask you to go out and properly bid the contract so there's competition and come back to us and prove that you have a good deal, the best deal. I'm happy to support that. But the only way we're ever going to reform the procurement system with all respect to everybody here is if we send a message. And so, and I have complete confidence that Secretary Rahn will enable everybody to be picked up on time just as they are now well after whatever it takes to rebid this. But we need competition. And we just did a contract for you a month ago that was a single bid contract. And that was for ten times this, \$650 million. I would have voted against that. But here is a good, this is a nice, you know, it's big but it's not too big. And I would importune my colleagues to reject this and tell you to go back and competitively bid it.

LIEUTENANT GOVERNOR RUTHERFORD: You know I like exactly what the Comptroller just said. And I think that there is an avenue that we can go when this rebids and possibly save the \$18 or a portion of that per ride, and it's called because you have basically put us in a situation where we will have to have an emergency, you can go through an emergency procurement for a period of time to allow you to rebid this contract looking at the possibility of narrowing or breaking up the service area to allow for more competition and you can come back with an emergency contract. And we can go forward from there. But I think if, I think that the Comptroller is right and we do at some point have to, you know, be strong, even with our agencies. I know some people are not used to that. That, you know, with the agency of the executive branch. But I think we have to hold everyone responsible. And so this is, you know, it shouldn't have come to this point.

I do agree, and we may need to look at and talk to our legislators in terms of why they exclude cab service. I don't know why that's the case. The world has changed and I think they are still in the pre-Uber, pre-internet, pre-modernity side of the world. And we need to look at that. But I think there is an avenue to address the concerns. Madam Treasurer?

TREASURER KOPP: Well I find myself in an interesting position because I was about to surprise the Comptroller I think by sort of going down the

same road myself. I would like to know what your, I assume you are going to keep your current contract and the question is some foregone savings, if anything?

MR. RAHN: I mean our AG has told us we cannot continue with taxis.

LIEUTENANT GOVERNOR RUTHERFORD: And that's why I said that you could, that because you are on the first -- I'm sorry. Because the first is the drop dead date, or the 30th is, that you will make the justification, or can make a justification for an emergency procurement for some period of time that allows you to bid this. I see nodding from the procurement expert there. And then bid that contract out.

TREASURER KOPP: For sedan service.

LIEUTENANT GOVERNOR RUTHERFORD: And service.

TREASURER KOPP: For sedan service.

LIEUTENANT GOVERNOR RUTHERFORD: For the sedan service. Right. Which is pretty much before us.

TREASURER KOPP: Let me just say, I was very troubled when I saw, and this ties into the same thing, that in the award you asked why, you looked into why there weren't more bids and there were a number of things, including, which was laid out in bullets just as they are here, the last one being the RFP response time was too short at 30 days. A bullet that doesn't appear here on the public record. I find that very troubling.

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm.

TREASURER KOPP: Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: Yes. Okay.

COMPTROLLER FRANCHOT: Well I would make that motion that the Lieutenant Governor suggested. I think it's an excellent one. I applaud him. I applaud the Treasurer. And I think this is, unfortunately you are the contract that this is being settled on. But I have every confidence that the Secretary can manage the delivery of the services and I would look forward to having a successful procurement, which would be defined by multiple bids, that we have an opportunity to look at rather than, you know, vote yes or the services end. I think that's --

LIEUTENANT GOVERNOR RUTHERFORD: Right.

COMPTROLLER FRANCHOT: -- pretty straightforward. And I really, really appreciate the Lieutenant Governor. He doesn't have to. You know, this is your agency. And I know it's not easy. But, and the Treasurer, because she has often talked about the need to keep services seamless. I can see that. But I think what we're doing right now is a huge boon to the taxpayers of the State of Maryland because it says we're not only going to thank you for giving us your money to spend on public services, we are actually going to demand competition and transparency. And hats off to my colleagues.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you. Any other questions on the --

SECRETARY MCDONALD: -- vote on Item 1? Are you --

LIEUTENANT GOVERNOR RUTHERFORD: Yeah, we'll vote on Item 1. The motion for the vote just on Item 1?

COMPTROLLER FRANCHOT: Yeah, move approval.

SECRETARY MCDONALD: Approval or disapproval?

TREASURER KOPP: No.

COMPTROLLER FRANCHOT: Approves, disapproval, sorry.

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: Second. Moved for a vote. Second?

TREASURER KOPP: Second.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. All disapproving?

COMPTROLLER FRANCHOT: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. No, any approvals? I think it's kind of in the reverse. So three disapprovals of the contract. Thank you. And we'd be willing to talk further.

Any other questions on the Transportation? Or DBM? I was thinking this was Transportation for a moment. DBM's Agenda? Do we have a motion on the remaining --

COMPTROLLER FRANCHOT: Move approval on the remaining items.

TREASURER KOPP: Second.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. All in favor on the remaining items with the exception of Item 1? All in favor, Sheila? You're up.

SECRETARY MCDONALD: Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: Any opposition heard? Okay. I think we have the University System.

MR. EVANS: Good afternoon. Joe Evans representing the University System of Maryland. We have three items on the Agenda. We're here to answer any questions.

LIEUTENANT GOVERNOR RUTHERFORD: No questions. I had sought some information on the rankings of the on call contract for 2A. I did get that information and thank you very much.

MR. EVANS: Yes, sir.

LIEUTENANT GOVERNOR RUTHERFORD: I don't have any questions.

COMPTROLLER FRANCHOT: Not for me either.

LIEUTENANT GOVERNOR RUTHERFORD: Any questions?

TREASURER KOPP: No, favorable.

LIEUTENANT GOVERNOR RUTHERFORD: Thank you.

MR. EVANS: Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Do we  
have a --

COMPTROLLER FRANCHOT: Move approval.

LIEUTENANT GOVERNOR RUTHERFORD: Second?

TREASURER KOPP: Second.

LIEUTENANT GOVERNOR RUTHERFORD: All in favor?

COMPTROLLER FRANCHOT: Aye.

LIEUTENANT GOVERNOR RUTHERFORD: Aye. Any  
opposition? I guess not, if we're all in favor. Okay. Department of Information  
Technology, sir?

MR. GARCIA: Good morning, Governor, Madam Treasurer --

LIEUTENANT GOVERNOR RUTHERFORD: We're now in  
afternoon, officially.

MR. GARCIA: Good afternoon.

(Laughter.)

MR. GARCIA: I'm David Garcia with the Department of Information Technology. We have four items on the Agenda. One is a hand carry, and we have representation, and I'm happy to take questions on the Item 4.

LIEUTENANT GOVERNOR RUTHERFORD: Any questions on

--

COMPTROLLER FRANCHOT: Not for me.

LIEUTENANT GOVERNOR RUTHERFORD: Questions?

TREASURER KOPP: No.

LIEUTENANT GOVERNOR RUTHERFORD: I just want clarification on Item 1 and 2. That, okay, these, I guess these two items are related and that's why we're bringing them together. Remind me, our threshold is? Our threshold on, Sheila, our threshold on approving items?

SECRETARY MCDONALD: -- yes, because sole source it actually would be less. But they are coming to you because they are retroactive.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Oh, because --

SECRETARY MCDONALD: The first one is retroactive.

MR. GARCIA: The first one is retroactive.

SECRETARY MCDONALD: And the second one --

LIEUTENANT GOVERNOR RUTHERFORD: Yes, that's right. The first one is retroactive.

SECRETARY MCDONALD: And it's because of the sole source amount for the \$180,000, yes.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. All right.

MR. GARCIA: I have Mr. Kevin Combs from --

MR. COMBS: Good morning.

LIEUTENANT GOVERNOR RUTHERFORD: Good morning.

MR. GARCIA: -- Public Safety.

MR. COMBS: Kevin Combs, Chief Information Officer, Department of Public Safety and Correctional Services. How are you all this morning?

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

COMPTROLLER FRANCHOT: Excellent. Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: And why was this not brought, the first one brought earlier, the sole source?

MR. COMBS: We, the paperwork was submitted and I know that there were some issues or challenges that came up during the procurement. And I have our procurement director Ms. Butler here to address those.

MS. BUTLER: Good afternoon. Rosetta Butler, Acting Director of Procurement Services for DPSCS. To address your question as Kevin, actually Mr. Combs actually started off on, there were some challenges. First of all, we have two, we were trying to make the two maintenance contracts congruent,

which means we wanted them to expire on the same date. Prior to that they had two different expiration dates. So putting them together on one date made it more beneficial for the department. As well there were some issues with the terms and conditions and getting those approved, which caused a delay.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. But the first contract was awarded back in April of this year, and now the, Sheila the threshold, because it's a sole source it doesn't have to meet the \$200,000?

SECRETARY MCDONALD: No, it doesn't. You are correct. It actually is lower. I think for DoIT it's 50?

MR. GARCIA: It's \$100,000.

SECRETARY MCDONALD: It's \$100,000 for DoIT.

MS. BUTLER: It's \$100,000.

LIEUTENANT GOVERNOR RUTHERFORD: For Information Technology?

MS. BUTLER: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: Oh, okay. I didn't realize that.

SECRETARY MCDONALD: -- sole source. So both of them would have to come to the Board anyway.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MS. BUTLER: Yes.

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SECRETARY MCDONALD: The first one is coming because although it's missing from the item I assume that they are asking the Board to make a finding that this is a voidable contract --

MS. BUTLER: Correct.

SECRETARY MCDONALD: -- so they need your support on Item 1.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: Because of the retroactive. But both of them would come for the amount because of sole source.

MS. BUTLER: Correct.

LIEUTENANT GOVERNOR RUTHERFORD: As a sole source. And because IT has that specific threshold?

SECRETARY MCDONALD: Yes.

MS. BUTLER: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: And, okay.

SECRETARY MCDONALD: The \$200,000 is for competitively bid contracts. I have to --

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: -- pull my brains out. But --

LIEUTENANT GOVERNOR RUTHERFORD: Is it only in IT? I'm sorry to put everybody through this. There was no IT Department when I was here before.

SECRETARY MCDONALD: You're right. There was not. No, the IT I think parrots DBM's.

MS. BUTLER: Yes.

SECRETARY MCDONALD: So perhaps the procurement chief of, the procurement advisor of the Board of Public Works who might be able to stand up and --

LIEUTENANT GOVERNOR RUTHERFORD: Right.

MR. GNALL: Sir, for sole source it's \$100,000 (indiscernible) level, for single bids \$50,000.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

SECRETARY MCDONALD: And it is the same for DBM and DoIT.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MR. GARCIA: And this is retro.

LIEUTENANT GOVERNOR RUTHERFORD: Right. So this should have come back, should have come in. Now is there a reason why --

MS. BUTLER: It should --

SECRETARY MCDONALD: Well but they would have had to bring it to you anyway --

MS. BUTLER: To you anyway --

LIEUTENANT GOVERNOR RUTHERFORD: Right.

SECRETARY MCDONALD: -- when they should have had that in their thought pattern. Correct. Yes.

LIEUTENANT GOVERNOR RUTHERFORD: So and what was the reason for it not coming in? Why did it, why was it not presented back in, before April of this year? The first contract?

MS. BUTLER: Okay. The first contract?

LIEUTENANT GOVERNOR RUTHERFORD: Right.

MS. BUTLER: So let me just make sure I'm on the same page. This is two contracts that we put together as one contract. One contract ended --

LIEUTENANT GOVERNOR RUTHERFORD: Is this, we're talking about Item 1?

MS. BUTLER: Item 1. Yes.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MS. BUTLER: Yes. Item 1 is actually two portions. Let me have Kevin kind of give you a background of the two different maintenances and then I can lead into --

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

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MS. BUTLER: -- if that makes, because it's two contracts so I think it's beneficial that you know --

LIEUTENANT GOVERNOR RUTHERFORD: Okay. All right.

MS. BUTLER: -- the difference between the two.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MR. COMBS: Yes, there are two contracts. There's two pieces of this system that we use DataWorks for. It's for the facial recognition software system that we use.

Originally we had done it just for the criminal side, which is one portion of it which is the MIRS version. We also expanded out to start taking on photos from MVA for the drivers license. So there were two separate contracts initially for the side for this, one for the criminal side and one for MVA. The criminal side I think was due February --

MS. BUTLER: February 28th.

MR. COMBS: And that was missed. And then the second one was the end of March --

MS. BUTLER: March.

MR. COMBS: -- which was missed as well. So the idea was to take these and put them into one contract, one date, one thing to monitor.

MS. BUTLER: Correct.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. So Item 1 is the consolidation of two contracts. But it was, the term started in April. So why was it not brought to the Board --

MS. BUTLER: Prior to?

LIEUTENANT GOVERNOR RUTHERFORD: Right, prior to now.

MS. BUTLER: Yes, prior to now. So that's --

LIEUTENANT GOVERNOR RUTHERFORD: And prior to April.

MS. BUTLER: Yes. Yes. So that goes back to my original statement where there were some issues in reference to the agreement of the terms and conditions. This contract was originally bid out through a competitive sealed bid back in 2008. When we had to do the sole source contract, of course, the terms, the State terms and conditions changed significantly between 2008 and now. So when we went back to DataWorks we had to kind of work through the legality part of them accepting, you know, our now State terms and conditions. So that took some time to go back between our --

LIEUTENANT GOVERNOR RUTHERFORD: Okay. I'm not --

MS. BUTLER: Yes?

LIEUTENANT GOVERNOR RUTHERFORD: I don't know, maybe I'm just tired.

MS. BUTLER: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: But it still doesn't get to the point of you entered into a new contract with DataWorks with a term of April 1st, 2015 and we're now in November and it wasn't brought to the Board of Public Works at least in March of 2015.

MS. BUTLER: Correct.

LIEUTENANT GOVERNOR RUTHERFORD: I know there were all these terms and conditions --

MS. BUTLER: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: -- there was consolidation of the two contracts. But when you did that consolidation it should have been then when there is an agreement, there is a recommendation to the Board for approval, that should have been in March at least, maybe earlier.

MS. BUTLER: Understood.

LIEUTENANT GOVERNOR RUTHERFORD: Why? That's the question.

MS. BUTLER: Okay. So if I, if I may revert back to, you know, our forgiveness letter that actually states that, you know, again the contract, one of the contracts ended February 28th. One ended April 1st. As stated in the forgiveness letter which we have actually submitted to you guys is that the procurement officer determined that he would not be able to finalize the contract

and obtain all the approvals prior to the expiration date of the contract. I know that --

LIEUTENANT GOVERNOR RUTHERFORD: But it sounds like the, it sounds like the software was continued to be used from April 1.

MS. BUTLER: That's correct.

LIEUTENANT GOVERNOR RUTHERFORD: They didn't have a contract.

MS. BUTLER: That is correct. Because --

LIEUTENANT GOVERNOR RUTHERFORD: There are provisions that can be done, we just talked about emergency procurements.

MS. BUTLER: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: There's expedited, if you make the case it can be done.

MS. BUTLER: I understand.

LIEUTENANT GOVERNOR RUTHERFORD: And I, you know, I -- yeah, Mr. Secretary, maybe you can add something to this.

MR. MOYER: I can. Lieutenant Governor, Madam Treasurer, Mr. Comptroller.

LIEUTENANT GOVERNOR RUTHERFORD: And you can be open and frank with us.

MR. MOYER: I always am.

LIEUTENANT GOVERNOR RUTHERFORD: There's no one listening.

MR. MOYER: I think, you know, the challenges we've been going through. Rose has stepped in as my Acting Director of Procurement. We are doing a national search for a new person for this position. So a lot of these things, as you all have asked for and we are trying our best to deliver. We know the process needs to be better.

LIEUTENANT GOVERNOR RUTHERFORD: Mm-hmm.

MR. MOYER: This one was pretty, it was a technical one related to, it's the database of all the mug shots captured with us and over at MVA. In a lot of even recent cases this has been used. It's not an excuse, but I look you straight in the face and say --

LIEUTENANT GOVERNOR RUTHERFORD: So you're going to say transition was part of the problem?

MR. MOYER: Yes, sir.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. And I'm not giving you a hard time. You said acting. I kind of knew from talking to the Secretary previously --

MS. BUTLER: Yeah. Well, I have the Secretary to back me up.

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: Yeah. Well, I knew from talking to the Secretary previously that there were some challenges in the procurement shop and you were making changes. And so this is some of the stuff that's coming home.

MS. BUTLER: Yes, sir.

LIEUTENANT GOVERNOR RUTHERFORD: But I, but you know in future when I'm asking why I don't need all the --

MS. BUTLER: I understand.

LIEUTENANT GOVERNOR RUTHERFORD: -- because it didn't get to the particular issue, and the issue is people dropped the ball.

MS. BUTLER: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. And it's fine. That's why we have erasers on pencils, you know. Because some of the young people here don't know what a pencil is. But --

(Laughter.)

MR. MOYER: But just make sure you do better because he controls my job. Just remember that, okay?

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: All right. Well thank you all.

MR. MOYER: Thank you.

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LIEUTENANT GOVERNOR RUTHERFORD: Any additional questions for this? Okay.

COMPTROLLER FRANCHOT: Move approval.

LIEUTENANT GOVERNOR RUTHERFORD: All, second?

TREASURER KOPP: Second.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. All in favor? We're all in favor.

COMPTROLLER FRANCHOT: Yep.

LIEUTENANT GOVERNOR RUTHERFORD: Transportation? I thought we already talked to you.

MR. RAHN: Hopefully this will be brief.

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: We'll decide that.

MR. RAHN: Members of the Board, I'm Pete Rahn, Secretary of the Maryland Department of Transportation. We have six items for you today.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Any questions?

COMPTROLLER FRANCHOT: Item 5.

TREASURER KOPP: At the Airport?

LIEUTENANT GOVERNOR RUTHERFORD: Yes.

COMPTROLLER FRANCHOT: So Mr. Secretary, we are being asked to approve 17 leases with eight different subtenants to provide concession services at BWI Marshall Airport. These lease agreements are negotiated between the subtenants and AIRMALL, who has served as the concessions manager at the Airport since 2004. I don't have an issue with these leases, necessarily, although there was some concern about the Phillips downsizing of their restaurant. But I'll leave --

LIEUTENANT GOVERNOR RUTHERFORD: We got a letter, a letter supporting --

COMPTROLLER FRANCHOT: -- I'll, good, well I'll, whatever. You are going to make everybody happy up there at some point, I assume. But what I would like to just mention, first of all the leases look like a great combination of local and national chains coming in. But I do question the insistence that MAA, the Maryland Aviation Administration, has on protecting AIRMALL from legitimate vendor competition. And let me just explain what the issue is there.

In 2004 the BPW, this Board, over my personal fierce objection as a delegate from Takoma Park, awarded the concessions management contract to AIRMALL rather than HMS Host, a Maryland based company. In December of 2006, just as then Governor Ehrlich and then Comptroller Schaefer were about to leave office, the BPW extended I believe at its last meeting AIRMALL's contract

for five years, from 2017 to 2022. This extension also gave MAA something good, which is the authority to terminate the contract with AIRMALL for convenience effective April of 2017. And if MAA believes it's in the State's best interest to do so, which is the criteria in the contract, I understand AIRMALL would have to get quite a bit of separation money, anywhere from \$3.7 million to \$9 million. But we do have the option to terminate this and rebid it.

So my question is, given the administration's admirable commitment to saving taxpayer money, and I underline that admirable. Because that's very refreshing. But that's all going to be done through a better procurement system. Why wouldn't you ask the MAA to take the opportunity in 2017 to test drive the marketplace to see what else is out there? I don't mind AIRMALL. I've given up on, I've gotten over my disappointment. I don't even think it was them, it was someone else that I was upset with. They are now the possessors of this. But I don't assume for a second that AIRMALL wouldn't win the contract hands down, especially because there are such huge penalties built in. But it doesn't seem to me it would do any harm, and potentially gets quite a benefit from initiating bid competition in 2017 just to simply get us the assurance that we are still getting the best possible deal in the marketplace. And we've been locked into this relationship, obviously, for 12 years and three administrations. I'm not upset with the company. I love BWI Airport. But and I assume a rebid would result in AIRMALL winning. But shouldn't we do that?

LIEUTENANT GOVERNOR RUTHERFORD: I think, wouldn't we still be in --

COMPTROLLER FRANCHOT: I guess the question, oh here's --

LIEUTENANT GOVERNOR RUTHERFORD: Yeah, Ricky Smith, explain --

COMPTROLLER FRANCHOT: Yeah. Good. I didn't see you come up there. I'm sorry.

LIEUTENANT GOVERNOR RUTHERFORD: But yeah --

COMPTROLLER FRANCHOT: I apologize. The Director of the Airport.

LIEUTENANT GOVERNOR RUTHERFORD: After you introduce yourself can you explain there is a penalty that we would have to pay if we rebid? But introduce yourself first.

MR. SMITH: Yes. Good afternoon. I'm Ricky Smith, Executive Director and Chief Operating Officer for the Maryland Aviation Administration. Yes, Lieutenant Governor, you are correct. There would be a cost associated with that.

But let me start out by saying, one, we have enjoyed a very positive partnership with AIRMALL over what amounts to about a 12-year period, who has delivered for the State through the Airport what has been an award winning program offering food and retail options to the public. Typically

whenever we consider a decision to cease a contract prior to its expiration it's based on some compelling reason for doing that. We typically go beyond just convenience. There is normally some malfunction, lack of function, or some issue associated with that, with the services provided by that contract.

AIRMALL continues to generate for the Airport through its subtenants an increasing amount of revenues through the food and retail program. Their customer service ratings are very strong. They continue to bring concepts and operators that has met, that meet the public's interest in the way of local operators, minority operators. I think you mentioned the diversity of our program is one that's best in class in the industry. And so there has not been a compelling reason for considering ceasing the contract in 2017. And that has been --

COMPTROLLER FRANCHOT: Just all I can ask you is your consideration of that. Take a look at it. I respect what you are saying. All I'm saying is I think AIRMALL would win it hands down with the \$3 million to \$9 million penalty that is built into it. I don't think anybody would question that a long term relationship like that should be thrown out the window. I'm just saying competition is the goal.

MR. SMITH: Understood.

COMPTROLLER FRANCHOT: And so if you can keep it in consideration, I see Major Riddick, my good friend out there. After he got out of politics he opened up a pizza stand up at the Airport.

LIEUTENANT GOVERNOR RUTHERFORD: Yeah, became a rich man honestly.

COMPTROLLER FRANCHOT: Yeah.

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: So.

COMPTROLLER FRANCHOT: Yeah. It's gosh darn good pizza and hey, maybe I'll think about that if I get out of politics.

LIEUTENANT GOVERNOR RUTHERFORD: And Chick-Fil-A there.

COMPTROLLER FRANCHOT: And Chick-Fil-A I guess is coming. But seriously just keep an eye on this and an open mind if you would. Because I think it would be good for the issues that we're pushing, which is transparency and competition --

MR. SMITH: Understood, sir.

COMPTROLLER FRANCHOT: -- to at least consider that.

MR. SMITH: Okay.

LIEUTENANT GOVERNOR RUTHERFORD: Question?

TREASURER KOPP: Could I just for the second time today ally myself with the Comptroller's point?

MR. SMITH: Treasurer, you are scaring me with that --

TREASURER KOPP: It's scaring me, too.

(Laughter.)

LIEUTENANT GOVERNOR RUTHERFORD: Hey, you are both from Montgomery County, you know?

TREASURER KOPP: No, I think scanning the horizon is always a good idea. I too, as you know, did not support this contract in the beginning --

MR. SMITH: Yes.

TREASURER KOPP: -- and have come to really appreciate what it has done for the Airport. I think BWI is, BWI Marshall is great. It's a great airport. I was just there very recently again. But to know what is possible out there, despite the fact that we have made great profit that I had not anticipated when I voted against this is great.

I had another question. Which is when you were discussing, or when MAA was discussing not following this practice of bringing each contract to the Board but a more generic one which is giving you the right to go off and do this, there was a pledge to not go beyond 2025. And I don't, that was oral, as I recall. And it doesn't really matter because we didn't go in that direction.

LIEUTENANT GOVERNOR RUTHERFORD: Right.

TREASURER KOPP: But are you still adhering to that?

MR. RAHN: Well I think the issues could, I think all of these, and none of these extend beyond 2025.

TREASURER KOPP: No, they don't.

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MR. RAHN: And the only issue would be is as we expand the Airport, as we continue to expand it, with additional international gates, there will be the opportunity to place additional services and it's a potential that depending upon whatever it is that goes in there that they will have to amortize their investment over a period of time. That's purely hypothetical. We have nothing right now that says it goes beyond --

TREASURER KOPP: All right. Well just know if we continue going down the street, especially if you all don't decide to take the option to see what else is out there and just continue the way we're going, I think there is a secondary high threshold of credibility for things that go beyond 2025. That's just my feeling. I won't be here, perhaps, then. But I can't believe that, you don't want to just go on forever.

MR. SMITH: That would be an extraordinary situation for us.

TREASURER KOPP: Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

MR. RAHN: I hope that the, I mean, that it's understandable that the investments that these --

TREASURER KOPP: Yes.

MR. RAHN: -- businesses have to make in the Airport to accommodate their business are substantial and they need enough time --

TREASURER KOPP: Yes.

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MR. RAHN: -- to be able to amortize and recoup that investment.

TREASURER KOPP: Yes.

LIEUTENANT GOVERNOR RUTHERFORD: Okay.

TREASURER KOPP: And things pass thresholds. I'm not saying  
a barrier.

LIEUTENANT GOVERNOR RUTHERFORD: Yeah.

TREASURER KOPP: But just an understanding --

LIEUTENANT GOVERNOR RUTHERFORD: Right.

TREASURER KOPP: -- when you go longer and longer and  
farther out --

LIEUTENANT GOVERNOR RUTHERFORD: Yeah. There  
would be more scrutiny.

MR. SMITH: Yes.

TREASURER KOPP: Yeah.

MR. SMITH: Understood.

LIEUTENANT GOVERNOR RUTHERFORD: All right. Any  
other questions?

COMPTROLLER FRANCHOT: No. Move approval.

TREASURER KOPP: Second.

COMPTROLLER FRANCHOT: Of the Agenda.

LIEUTENANT GOVERNOR RUTHERFORD: Of the  
Transportation Agenda?

COMPTROLLER FRANCHOT: Yep.

LIEUTENANT GOVERNOR RUTHERFORD: All approved.  
Thank you.

COMPTROLLER FRANCHOT: Thank you.

LIEUTENANT GOVERNOR RUTHERFORD: Okay. Thank  
you, everyone.

(Whereupon, at 12:45 p.m., the meeting was concluded.)