
STATE OF MARYLAND
BOARD OF PUBLIC WORKS
ANNAPOLIS, MARYLAND

March 23, 2022
10:07 a.m.

PRESENT

HONORABLE LARRY HOGAN

Governor

HONORABLE DERECK DAVIS

Treasurer

HONORABLE PETER FRANCHOT

Comptroller

JOHN GONTRUM

Secretary, Board of Public Works

ELLINGTON CHURCHILL

Secretary, Department of General Services

JAMES PORTS, JR.

Secretary, Department of Transportation

JEANNIE HADDAWAY-RICCIO

Secretary, Department of Natural Resources

LISA GRIGSBY

Recording Secretary, Board of Public Works

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PROCEEDINGS

GOVERNOR HOGAN: Good morning, everyone.

ALL: Good morning.

GOVERNOR HOGAN: Welcome to the Board of Public Works.

You know, March is State Procurement Month. Procurement and contracting are obviously essential to how the State provides goods and services to our constituents and we want to take a moment to acknowledge the outstanding work of our State procurement professionals.

Through our procurement modernization efforts, which have been led by Lieutenant Governor Boyd Rutherford, we have begun to implement our new procurement system, eMaryland Marketplace Advantage; we have focused our efforts to increase participation by small and minority businesses in State procurement; and implemented process improvements to increase efficiency and make it simpler for vendors to work with State procurement offices. And we have also begun new training and education initiatives.

The Office of State Procurement is rolling out a new Maryland Procurement Academy, which is creating a rigorous curriculum offering training and skill development that will lead to a State specific certification, the Certified Maryland Procurement Officer. Our procurement teams are truly helping us change Maryland for the better and I'm proud today to issue a proclamation officially declaring March 2022 as Procurement Month in Maryland. I'd like to ask Secretary Churchill and our Chief Procurement Officer Mike Zimmerman to come up here and join the Treasurer, and the Comptroller, and I as we present you with this proclamation.

COMPTROLLER FRANCHOT: This is definitely a first, yeah.

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And congratulations. That is –

(Proclamation presented; photographs were taken.)

(Applause.)

GOVERNOR HOGAN: I also want to give a shout-out this morning to two outstanding employees who are joining us this morning from the Maryland Transit Administration. We have Antonio Oliver and Gregory Downing. And Antonio is being recognized as our Bus Operator of the Year. Gregory is our Rail Operator of the Year. We want to thank and congratulate both of them. Antonio is a ten-year veteran of MTA and is a bus operator in MTA's northwest division. And Gregory has over 47 years of service at MTA, dating all the way back to 1974, which is when I graduated from high school. He was one of the original light rail operators.

Both Antonio and Gregory achieved outstanding performance, an achievement of the highest rating on MTA's key performance indicators. These indicators reflect MTA's mission to provide safe, efficient, and reliable transit across Maryland with world class customer service. And so we have citations to present to each of them to recognize their outstanding work. We would like to ask them to come up and join us. But Antonio and Gregory are really examples of the tremendous work that all of our transit workers are doing and have been doing over the past two years during the pandemic. And I just want to thank all of our transit team, all of the workers, for all of their hard work and dedication. But I especially want to give a shout out to these guys. Let's give them a big round of applause.

(Applause.)

GOVERNOR HOGAN: Come on back here with us.

Congratulations. Thank you for your service. Thank you very much. Come on. Let's get in here.

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(Citations presented; photographs were taken.)

(Applause.)

GOVERNOR HOGAN: Thank you. That's a great way to start the day. We're not going to get you up anymore, Mr. Treasurer. I promise you can sit, rest that leg. But with that, I'm going to turn it over to my colleagues for any opening comments. And we're going to start with Hopalong --

(Laughter.)

COMPTROLLER FRANCHOT: At least he doesn't have a scooter.

TREASURER DAVIS: That's exactly why I don't have a scooter. Good morning, everyone. It's certainly great to be here with you once again. Again, as mentioned before, my thoughts and prayers continue to be with the people of Ukraine and all of those who are pitching in to help out and to do what they can to make that situation just a little bit better.

I also wanted to I guess recognize two notable deaths this week that's a little closer to home. First -- I was about to say Delegate Haddaway -- Secretary Riccio, our former colleague, former Delegate Emmett Burns passed away. Delegate Burns came in with me in 1995 and he spent his last I guess eight years in the Legislature on the House Economic Matters Committee. So we will certainly miss him. And for those of you who served with him as well, Secretary Ports and Comptroller Franchot.

MR. PORTS: He sat right in front of me.

TREASURER DAVIS: And then also Mr. Samuel Bogley.

GOVERNOR HOGAN: Bogley.

TREASURER DAVIS: He was a member of the Prince George's County Council, I believe the second Lieutenant Governor for the State. So certainly, our thoughts and prayers are with both of them or their families.

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I guess finally, for me, I would just like to congratulate the Governor, the presiding officers, Mr. Comptroller, on the gas tax relief. It shows what we can do as a State when we come together in a bipartisan fashion to work together on behalf of the citizens. We know that the rising gas prices have really been a strain on our local budgets, on our family budgets. And you know, this relief, it was immediate relief. I was telling some folks about this, that it was coming, and they were skeptical that they would actually see it. And then overnight, you know, they saw a dramatic decrease. And so, you know, that's always good, when our citizens can really see firsthand the work that's going with them.

That being said, it would be remiss of me, I was having a bit of déjà vu, and Madam Secretary, you may remember this as well. So I only bring this up as sort of I guess a reminder to folks that this is a temporary measure. That it is I believe scheduled to go away on April 16th. And the reason why I bring that up, very early in my career, or at least as Chairman, we did the same thing when we were doing electric restructuring. We essentially put a freeze on electric rates. I think in the Pepco service territory, the D.C. suburbs, we did it for about four or five years. And then in Baltimore, the Baltimore Gas & Electric service territory, we did it for like six or seven years. And for those of you who are old enough to remember, not too many people in this room, but for those of us who are old enough to remember, the big headline in 2006 was the 72 percent rate increase. So I use that as an analogy to say unless some things drastically change in the next three weeks, when this reverts back, it's going to, we're going to go back and the public needs to be aware that this is a temporary measure at from what I'm told \$100 million per month. And, you know, the gas tax goes to fund our roads and bridges and, you know, all the things that Secretary Ports is responsible for. So I'm not sure that we can continue it indefinitely, not with the

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things that we have to do. But I wanted to just take this opportunity to say that, and I would have voted for it, you know, that's not, I want everybody to be clear. If I had an opportunity to vote for this, I most, my vote would have been first. But I also wanted everyone to note that as of now, it's slated to be a temporary measure that ends April 16th. And at that point, you know, we have to be prepared that we may be going back to, you know, what the market dictates. So in any event, I will end there. But it's great to see everybody and I look forward to a productive day.

GOVERNOR HOGAN: Thank you. Mr. Comptroller?

COMPTROLLER FRANCHOT: Thank you, Governor. And thank you, Mr. Treasurer. I'd like to reiterate and repeat a little bit what the Treasurer just said. I'd like to congratulate you, Governor, for quickly coming out in favor of the gas tax holiday, and also the General Assembly for the overwhelmingly bipartisan and, when you mentioned quick consideration of this, this was lightning quick. I mean, this was, we've served many years together but I have never seen the General Assembly in an overwhelmingly bipartisan and swift way pass something like the 30-day gas tax holiday.

I think at a time when our politics are so divided and many Marylanders and Americans have lost faith, frankly, in their government, the lightning speed at which this legislation moved through the General Assembly and arrived, Governor, at your desk, not only provided a glimmer of hope that elected leaders from both sides of the aisle can come together and work together to deliver results for people that we serve. And while I'm delighted that this tax holiday was enacted and Marylanders will save up to \$100 million at the pump until April 16th, I still firmly believe that my original suggestion at the Board of Revenue Estimates for a 90-day gas tax holiday, we should extend it right now. Not -- obviously, it's going to be temporary. We need to extend this.

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As Vladimir Putin continues to wage his unjust, illegal, and immoral war on Ukraine, the global oil market will remain volatile and during this time of fiscal prosperity for the State, we're talking about the \$7.5 billion surplus that the Board of Revenue Estimates voted on and afterwards I mentioned this 90-day gas tax holiday. You know, I think the first person who voiced support for that was Governor Hogan and I and the citizens of the State are indebted to him for that. And but I think reducing it to 30 days is overly conservative. Not only can we afford to extend the gas tax holiday to 90 days, but we should extend it to 90 days to continue to provide meaningful relief to Marylanders. We estimated that it was \$250 million for 90 days which we have to pay the Transportation Trust Fund from the general fund. And there appears to be broad bipartisan support for extending it from 30 days to 90 days. Last week, Governor, I was glad to hear you speak out in favor of extending the holiday and an amendment apparently to expand the holiday to 90 days narrowly failed in the House Ways & Means Committee with a 12 to 11 vote. Although I'm pleased that the presiding officers indicated a willingness to revisit the length of this holiday and are open to extending it, I think it would be simpler, both operationally and to alleviate confusion on behalf of the driving public, if everyone just passed legislation before they adjourn to extend this holiday instead of coming back for a special session, which some have indicated is an option. Not all Marylanders are sharing the prosperity that the top 50 percent are experiencing and extending this holiday is just one of many ways that we can provide immediate economic relief to families who are currently struggling. And as Comptroller, we worked with the Legislature to make sure that the 2,300 gas stations in Maryland immediately implemented, just as the, 2:00 as the Governor signed this legislation last Friday, all 2,300 gas stations had been alerted that they needed, whether they had gas on hand that they had already taxed, they needed to lower the price right there. And

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God bless them, the Treasurer mentioned there was some skepticism from people that the gas stations would pass on the 36.1 cent savings. Almost all of them did and I applaud them for the honest, hardworking, high character entrepreneurs that they are who own these gas stations. But extending it before you leave, before everybody leaves, will alleviate a lot of the confusion. I think the money is there, obviously. It is going to be wildly popular. And to make it, to short circuit it at just 30 days I think would be missing the potential benefit and affordability of the full 90-day extension. Thank you, Governor. Thank you, Treasurer.

GOVERNOR HOGAN: Thank you. With that, we'll move to the Secretary's Agenda.

SECRETARY GONTRUM: Good morning and happy spring. Governor, Mr. Treasurer, Mr. Comptroller, there are 17 items on the Secretary's Agenda this morning and three reports of emergency procurements. Item 10 has been revised to include the total project cost and to clarify the MBE participation. Item 11 has been revised to include the project title, and Item A1 has been similarly revised to include the contract ID. There is a request for public comment on Item 5, which is a tidal wetlands license for Mr. William Harris.

GOVERNOR HOGAN: Yes, I believe we have two people signed up to testify on Item 5, which is a tidal wetlands license. Before we get to those speakers, I'd like to ask our Wetlands Administrator Bill Morgante to kind of present his recommendations for the license and then we'll hear the testimony of the citizens.

MR. MORGANTE: Good morning, Governor, Mr. Comptroller, Mr. Treasurer. For the record, Bill Morgante, Wetlands Administrator for the Board. So what we have before us is a wetlands license for Mr. William Harris, the applicant. He is the owner of shoreline property on the Chesapeake Bay in Pasadena. He has actually 225 linear feet of shoreline. And his property

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currently has no erosion control structures. So Mr. Harris has applied for a tidal wetlands license to nourish his beach with sand and to install a 41 linear foot groin, which is a jetty-like structure, on his property. His neighbor, Ms. Elizabeth Anderson, opposes the Board granting the license. Ms. Anderson has raised many concerns, and as you know would like to address the Board along with her representative.

I personally visited the site back in August and I have reviewed MDE's reports and recommendations, there was an initial one and then a revised one, and all the comments submitted. I have discussed the project with the applicant's agent, with interested persons, and with a coastal engineer to kind of deepen my understanding about the issues here.

So I'd like to just point out a number of things. The proposed 41 linear foot groin is significantly shorter than the three upcoast, three groins that actually are just north of this property. So the shorter groin is really expected to create less sand transport. And this sand and sediment transport are a key, to kind of for my lending, really, support to this project. So this shorter groin is really expected to interrupt less sediment transport than longer up coast groins have, and especially given that sand is going to be added as part of the design of this project. And that's really meant to offset any interruption of sediment transport.

So I think it's also important to like look at the unique location of the way this property sits. This beach is facing east and like examining that with the sediment transport characteristics, that really supports my own determination that this proposed groin really should not harm Ms. Anderson's property. And this is really based on, you know, to get a little bit into the weeds on this for sediment transport, it's really understanding that in the summertime, the prevailing winds and then the sediment transport are from the south and Ms. Anderson's property is south of Mr. Harris'. So then that movement of sand

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wouldn't, the groin would be north of that so it really would not interrupt it. And I think also what's important to understand for sediment transport, that in the wintertime, prevailing winds are from the northwest, which would be across the land. So really the groin at that point really wouldn't be interrupting any kind of sediment transport. However, in the winter there are also northeast storms that potentially with the winds coming out of a different direction, which would then have some bearing on this. But based on, I'm trying to understand more about these northeast storms and the kind of damage they could potentially cause to Ms. Harris, I really relied on two engineering studies that are done really examining kind of groin length and groin distance from the property boundary. MDE's report and recommendation cited one and I was able to find an additional one. And they really identified acceptable lengths and distances from a property boundary that a proposed groin should follow and the groin that is proposed should really fit within their stated parameters.

I'd just also like to mention that a beach nourishment project with a sand containment structure, in this case a groin, is a frequently regulated tidal wetland activity. It really doesn't mean that it's correct to do, but it's frequently regulated. For instance, in 2021, the Board of Public Works issued nine licenses for beach nourishment projects and eight out of the nine of them actually had a structure similar to this groin. It either had a stone structure or a timber groin.

And lastly, I'll just say that this groin that Mr. Harris is proposing of 41 feet, it is in lieu of another kind of erosion control structure that could be constructed here, and that would be a stone revetment. And if a stone revetment was to be done, that would be along the whole 225 feet of his shoreline. So I agree with MDE in evaluating the fact that the 41-foot groin is certainly less impactful in terms of putting all this additional stone than would be a 225-foot revetment.

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So I concur basically with MDE that this license should be issued and I'm happy to take any questions you might have. I know Assistant Secretary Dorsey from MDE is also here to address questions.

GOVERNOR HOGAN: Questions? Or do you want to hear the other witnesses?

COMPTROLLER FRANCHOT: Yeah, so what about the people that are here complaining about this? I mean, isn't there some happy medium that we don't have to go through an up or down vote on this that can be worked out? Why does it have to be 41 feet? Why can't it be 20 feet? Why can't they, why can't you sprinkle some magic mediation, I guess, and get this resolved? Because obviously to the extent it's now going to be argued by the adjacent landowner, maybe there is some validity to their concerns. And whether it's aesthetic or otherwise, why not reach a compromise?

MR. MORGANTE: I think that like in examining the history of the way this application has evolved, originally the groin that was proposed was actually on the property line of Ms. Anderson and Mr. Harris and was actually quite a bit longer. So, and it did not actually contain sand. So you know, I guess in my view, there has been a lot of back and forth already and compromise has really attempted to be reached in shortening the groin and actually moving it 125 feet off the property line so that then it fell within the parameters that the engineering studies like validate that they shouldn't really be harming the adjacent property. Then as well, I think there is a large amount of sand that is being added to the groin so that that is meant to really offset, if the groin was to really upset the sediment transport, that this sand would provide that so there shouldn't really be a problem with that. So you know, I guess in my view, that there has been quite a bit of back and forth and compromise made on this already. And you know, perhaps a 20-foot groin, I don't know that anyone has proposed

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that. I guess it could be evaluated. I can't really speak to that. I don't know if MDE has any additional thing to add to that?

DR. DORSEY: Good morning. For the record, my name is Suzanne Dorsey. I am the Assistant Secretary for the Maryland Department of the Environment. Thank you. Excellent summary, Mr. Morgante. And I want to also start by complimenting Ms. Anderson for the depth of her research, for the level of expertise that as a citizen she has acquired in addressing this issue. I think it's very impressive and I respect her right to bring this to the Board and to make her concerns known.

MDE staff has been working regularly with Ms. Anderson and Mr. Harris looking very hard for that compromise. In fact, the adjustment that Mr. Morgante suggested, shifting from a longer groin along (indiscernible), the existing groin that is now in place farther away from the property line and much shorter is engineered to hold in the sand. So that's the compromise, the shorter, the function of that groin is calibrated to the sand that it's trying to hold in.

COMPTROLLER FRANCHOT: But obviously, we'll hear from them, but does it have to be 40 feet? Can it be 20 feet? Would that help?

DR. DORSEY: If it's less than that design, it wouldn't function to hold in the sand and may trigger the concerns that Ms. Anderson is raising.

GOVERNOR HOGAN: We've got two people signed up --

COMPTROLLER FRANCHOT: Yeah.

GOVERNOR HOGAN: -- to speak, one in favor and one opposed. And I think we have --

COMPTROLLER FRANCHOT: Oh, okay.

GOVERNOR HOGAN: -- Stephen Sadler here for Ella (Elizabeth) Anderson. Mr. Sadler? And then we have, then Mr. Harris is available just for questions. He is virtual, I believe.

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MR. SADLER: Yes, thanks for having me here today, Governor and members. The one thing I want to say immediately --

SECRETARY GONTRUM: Mr. Sadler, can you introduce yourself for the record, please?

MR. SADLER: Steve Sadler, I'm representing Elizabeth Anderson. You didn't hear one word about justification for the groin itself. What you heard about was impact mitigation. That's not what the State requires you to do. The State requires you to show that the erosion is severe enough at the beach to warrant a structure and it requires you to show that it's necessary. It's in MDE's own guidance documents, it's in COMAR, and it's in Maryland statute. If you cannot show that, you must use a non-structural method. And a non-structural method does not include a structure. Beach nourishment and the structure (indiscernible) by the COMAR erosion control sections and it must be necessary in order to use that structure. And that's what is missing here and it has been missing from the beginning.

So what happened was, the groin was put right on the property line, which is in direct contradiction of MDE's consistent guidance to keep it off the property line. After we objected, they moved it. And one of the engineering studies that they are using to determine the location is a study from Lake Erie in Pennsylvania, a 77-mile stretch of shoreline for impact mitigation on a non-tidal body of water almost 300 miles away. The Chesapeake Bay is less than a mile from where we are standing and this beach in Pasadena, we could get to in a half an hour. So there are four questions you have to answer. Is there erosion at the beach? What is the rate of erosion? Is it severe enough to warrant any type of erosion control measure? Not just a structure, any type, and in Maryland's order of preference. And then how did you get to that conclusion? So in their preference, no action is the first preference in the matter, in that order. And no

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action is most consistent with State policies. Groins and jetties are the last. They are the least consistent with State policies. And the reason they are the least consistent is because Maryland doesn't want us to use them unless they are absolutely necessary.

We have answered all four of those questions. This shoreline is not in the database that MDE maintains itself that they designate shorelines that are suitable or appropriate for structures. It's not in there. There is another database that is statewide, not just the Chesapeake Bay, that includes over 800 areas of erosion vulnerability. They must have a medium, high, or very high vulnerability. This is not in there. There are three studies, one from the State, one for Anne Arundel County, and one independent. The last two studies were from William and Mary and from Tufts. They all say that the erosion at this beach is either very low or low, and one of them says it may even be gaining sand.

So on the flip side, Mr. Harris was relieved of his responsibilities to provide any information that we have seen in any documents, that's not there in your documents. The one you have in front of you talks about mitigation, not justification. And he was relieved of that responsibility for two reasons. The first time was because of the study in Pennsylvania, and the second time the State just finally said, because this is an appropriate sand containment structure, they didn't need any additional justification. So they shifted the burden to Elizabeth Anderson to prove that it wasn't needed. And even though that's not the way the process is supposed to work, that's exactly what she did.

So basically in closing, MDE has made one statement on erosion at this site. They said there was no excessive erosion, there is just erosion. And that is not good enough to support this structure.

COMPTROLLER FRANCHOT: I'm sorry, what did they say?

MR. SADLER: They said, they said this beach is not experiencing

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excessive erosion. And that's one of the exceptions. When you look at statute, the Living Shoreline Protection Act of 2008 says that MDE has to develop a waiver process. And one of the exceptions is excessive erosion. And they are saying it doesn't meet that. Another exception is it has to be in this database of high energy shorelines. It doesn't meet that. So all they said was no excessive erosion, there is erosion. We know there is erosion. We have been telling them that for a year now. It's very low to low. It's not severe enough to warrant a structure. It doesn't show the structure is necessary. The structure can't be used with beach nourishment unless it's shown to be necessary under the COMAR regulations, COMAR erosion control regulations. What they are basically saying, and they can correct me if I'm wrong, they are basically saying you can use beach nourishment because it's an historic beach to reclaim lost property after 1972 that you proved. But you have to prove those boundaries, you don't just do it *carte blanche*. But because this sand containment structure is appropriate, they want to throw it in there. It doesn't work that way. It has to be necessary under the erosion control structure.

So we have given evidence, based on the conditions of this beach, which is what you must do. And Mr. Harris, through no fault of his own, he hasn't had to give any because the State relieved him of that responsibility. That's not the way this should work. This structure doesn't belong there. It's not justified. It doesn't matter what the impact mitigation is. They can do as much mitigation as they want. They have to show that it's needed as the first step, and they haven't done that. We have shown it wasn't needed. So thank you. I appreciate your time.

GOVERNOR HOGAN: Thank you for your testimony. I'm assuming that this is probably not the first time you have made these arguments. You know, we have been talking about this property for a long time and

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apparently the Maryland Department of the Environment and our Wetlands Administrator don't agree. So maybe we will give them a chance to respond to the charges you just made.

DR. DORSEY: Right. No, thank you again for the opportunity. You know, first, is there erosion occurring? Yes, I want to submit that we used aerial photography to document that about on average, a little over a foot and a half of erosion is occurring every year. And the law states that you have to have erosion, and it doesn't state that it needs to be excessive. So that qualifies Mr. Harris to exercise his riparian rights to address the erosion occurring at his site. And then the law asks us to look at whether or not the site qualifies for a waiver from the living shoreline strategy. Because of the level of exposure of this site, he does meet that standard under multiple characteristics. So given that he is then allowed to, number one, with erosion install an erosion control device, we ask the applicant to look at a, the least impactful approach possible.

Now, originally Mr. Harris opted for the groin. Oftentimes with neighbors, the groin on the property is, you know, appreciated by both members, by both neighbors. This was not the case here. And as soon as that became evident to our plan reviewer, we went back to Mr. Harris and said this isn't going to work. We need a different approach. We need you to do something that doesn't impact your neighbor. And that's where Mr. Harris, as Mr. Morgante suggested, could have chosen a more impactful approach, something that would have an impact on the State's littoral and coastal rights. He chose the sand placement and a groin that was engineered to keep that sand in place for the purpose of ensuring that it had no impact on the neighbors.

A number of analyses were done by the State. We were not relieved of, and nor was Mr. Harris, of the need to do analyses. We did the analyses on the erosion. We did the analysis for a historic beach. We did an

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analysis on the appropriateness of the erosion control device for the property, as well as the waiver for the living shoreline. So we don't feel that Mr. Harris was relieved of that, nor was the State in providing all of the necessary tools to evaluate this.

COMPTROLLER FRANCHOT: I'd love to hear from Ms. Anderson -- is Ms. Anderson going to say a few words?

MS. ANDERSON: (Indiscernible).

COMPTROLLER FRANCHOT: You have been characterized as an expert so I would love to hear from you.

MS. ANDERSON: (Indiscernible) interrupt --

MR. SADLER: Could I just say --

COMPTROLLER FRANCHOT: What?

SECRETARY GONTRUM: Mr. Sadler, if you're going to address the Board, please use the microphone.

MR. SADLER: Yes, if I could just say a few things. I'm sorry. The first thing, the waiver they talked about, the waiver was issued for fetch, which is the distance that the wind can travel across the water. Fetch is not a criterion in MDE's waiver process. And I ran a waiver process for three years. I was a final decision maker. It's not a criterion. So they issued a waiver for something that doesn't exist in their own standards. It's part of what needs to be assessed.

The other thing is, when they talk about the aerial photography, aerial photography is not one of the things, in all of the items that is mentioned in any document that we have seen, to determine what the erosion is. And the reason is because it is very difficult to do. And the Army Corps of Engineers says that. So just as a quick example, and then I'll stop, they took a photo from 2007 and compared it to 2019. There were two different tidal conditions. The water in

2007 was as far out off shore as you could possibly get, and the photo up here was in 2019. So they made the estimate of a foot and a half a year or 20 feet over that 13-year span. But this was a different tidal condition than this was. And that's why there is a difference. If you look at 2005, the first discernible photo, and compare it to 2019 under the same tidal conditions, there is a five-foot difference. So the Army Corps says that it is very, very difficult to determine erosion from aerial photography, for a number of reasons. And my question would be, why didn't you go to your own mapping systems? Why didn't you go to your own studies? And even if it was a foot and a half, that is still very low to low. It's not severe enough to use the structure.

And then finally I'll say, just to reinforce the point, they are talking about a groin is less impactful than a revetment or a breakwater ecologically. I'll tell you what is less impactful: not building something that doesn't belong. That is the most favorable ecological outcome. This doesn't belong. And their basis for erosion is questionable at best.

COMPTROLLER FRANCHOT: Could I just ask, I mean, maybe she doesn't want to speak. But I would love to hear, is there anything acceptable, other than a groin? I take it the groin is the jetty?

MR. SADLER: Yes and --

COMPTROLLER FRANCHOT: I'm confused --

MR. SADLER: It's the same --

COMPTROLLER FRANCHOT: -- I had --

MR. SADLER: -- a groin is a smaller version of a jetty.

COMPTROLLER FRANCHOT: Right.

MR. SADLER: That's what it is.

COMPTROLLER FRANCHOT: Okay. But you know, obviously, people want to have the least amount possible that is consistent with the ecology.

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So is there like planting native plants or something --

MR. SADLER: Well, you would think there would be when there is beach nourishment, but that wasn't included. That's part of the process. So what we would --

GOVERNOR HOGAN: Typically we give you a chance to make your remarks and then we respond. And we are not really here to --

MR. SADLER: I know. I'm sorry, sir.

GOVERNOR HOGAN: -- but now you have raised additional issues that I'm sure they want to respond to because --

MR. SADLER: I'm sorry. Sir, I didn't mean to do that. But I just wanted to tell you, and then --

GOVERNOR HOGAN: -- back up again --

MR. SADLER: -- but I'll leave you with a point, it doesn't belong.

GOVERNOR HOGAN: -- but let these guys address the new things you just brought up.

MR. MORGANTE: I'd just like to make three points. I know Mr. Sadler mentioned that fetch is not one of the categories for issuing this waiver. I mean, I have the waiver worksheet right here and fetch is clearly one of the categories --

COMPTROLLER FRANCHOT: What is fetch?

MR. MORGANTE: Fetch is, I'm sorry, it's actually the distance over open water. So the larger that distance like the more waves can kind of gain height. So yes, I'm sorry to be using terms that may be not clear. But so that makes sense.

Another point I would just like to make is I know that, you know, they are dismissing like the validity of the studies that MDE uses regularly and I was citing as well, these engineering studies, because they are I guess from a

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different state. But you know, I really think that the same principles kind of apply for utilizing a study that even is in Pennsylvania to this situation in the Chesapeake Bay. Unfortunately there isn't enough research to always have information that is just on the Chesapeake Bay. So we have to rely on information that is relevant that is outside. And you know what? I forgot my third point so --

(Laughter.)

GOVERNOR HOGAN: -- MDE --

COMPTROLLER FRANCHOT: Careful, one, two, three.

MR. MORGANTE: Make it easy.

DR. DORSEY: Thanks. The maps that Mr. Sadler is referencing are high energy maps. And those are mapping only areas with eight feet or more of erosion occurring. Again, as we stated earlier, that the law requires demonstration of erosion. And we analyzed about 12 years of aerial images. One of the things that we do is we use a reference point to the mean high water line. So we're not looking at differences in tidal. Certainly this area is an area that's dynamic -- there are years where you actually have accretion. But on average, you have erosion here. So over 12 years of analysis, looking at a consistent line between the mean high water line and an anchored point on land, we were able to calculate that on average this site was losing about a foot and two-thirds of sand per year.

GOVERNOR HOGAN: Are there any other questions on this item?

COMPTROLLER FRANCHOT: But I just don't understand why you guys are involved as a referee on all this. I mean, why can't they just do the lesser approach, which is not some kind of structure? Because obviously that creates a tremendous amount of friction. I can see that. And obviously, that's

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here. So why don't you start with vegetation or some other non-jetty approach so that when you come out of your home where it has been jetty free for a number of years, there is something that is being done ecologically to preserve the sand and we don't have this kind of, you know, dispute, and that you guys are all involved in, and I just find it amazing that we can't work something out. But I'm just the Comptroller, so what do I know?

DR. DORSEY: I wouldn't say just the Comptroller. I appreciate that. And I do want to say that the State of Maryland was the first state in the nation to require that riparian property owners first consider a living shoreline.

COMPTROLLER FRANCHOT: Have they done that?

DR. DORSEY: And yes, they have done that.

COMPTROLLER FRANCHOT: Could they put --

DR. DORSEY: One of the living shoreline, one of the conditions for a living shoreline is the likelihood of success. So in order for a living shoreline in this location, it would, and I haven't done the engineering myself, but it would likely require a series of breakwaters in addition to material that addresses what Mr. Morgante described, the waves that occur during winter storms especially that would take out a living shoreline if it were established. So under certain circumstances, there is a waiver process that we carefully evaluate every single applicant against. And should those, should those properties qualify for a waiver, they are allowed to exercise a different erosion control device. The riparian property owner has the right to try to control erosion on his property, just as a neighbor has a right to exercise her rights to say, hey, I don't like this. And that's, you know, that's where your State public servants are working very hard and have from the beginning to achieve a compromise that balances the property owner, Mr. Harris' right to protect his shoreline with the adjacent neighbor's right to ensure that there is no negative impact on her property. We believe that the

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compromise position where this has landed does that balancing act while protecting the State's interest in the shoreline and the natural resources.

GOVERNOR HOGAN: Thank you.

MR. MORGANTE: Mr. Comptroller, to your point, I think it's important to understand here too that this property is on the Chesapeake Bay. You know, it's not on one of the smaller kind of rivers or tributaries. So you know, since I happen to have this sheet here, you know, the fetch across open water, you know, in one direction is slightly over a mile, in another direction it's slightly over a mile and a half. So it's just, you know, this significant kind of open water and action that is happening to this property.

GOVERNOR HOGAN: Thank you. Are there any other questions on the Secretary's Agenda?

COMPTROLLER FRANCHOT: Yes. I have one on Item 8.

SECRETARY GONTRUM: Item 8 is a contract for the Maryland Environmental Service. We have Director Glass available. One moment, please.

DR. GLASS: Good morning, Governor, Comptroller, and Treasurer. For the record, my name is Charles Glass, Executive Director of the Maryland Environmental Service.

GOVERNOR HOGAN: Good morning.

COMPTROLLER FRANCHOT: Thank you for being with us. This item is a request from the Maryland Environmental Service to have the Board approve a three-year contract with W. R. Grace & Co. so that MES can continue to provide solid waste management services at the W. R. Grace & Co. industrial landfill in Baltimore. As I understand it, MES would receive \$1.3 million for the material management and maintenance of this private landfill for the base term of the contract. Since this is the first contract of this nature to come before the Board as a result of the MES Reform Act of 2021, I did have a few

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questions and I really appreciate Dr. Glass being here with us today.

According to this item, Dr. Glass, MES has operated this landfill since 2014 and as I quote, the agency being “uniquely qualified to perform the work based on its successful experience operating landfills.” So I know the original agreement was entered into prior to your time at MES, but could you provide just a general overview of what is going on at MES as to service contracts that are entered into with private sector entities as opposed to State and local governments, which is where I thought the majority of your business was focused?

DR. GLASS: Yes, Comptroller. I would be happy to. So the Maryland Environmental Service provides -- we have four divisions now. The organization has been restructured into four roofs that operate throughout the State and the region in some context. One of those is Environmental Operations, which is responsible for landfilling; municipal recycle facilities in Prince George’s and Montgomery County; the landfills on the Eastern Shore, the 80-year agreement for Midshore 1 and Midshore 2 that we are currently operating, in Talbot, Kent, Caroline, and Queen Anne’s Counties. And so the team, Environmental Operations is the largest group in MES as far as operating group. And they have expertise in all of those various parts of solid waste management.

So this is one instance where a private entity in 2014 sought MES out because we have a unique management style in which we don’t just need to be present every day at every facility. So our water and wastewater treatment operators are also functioning in this mannerism so that we can go around and be circuit riders and come on for a certain amount of time to meet all of the requirements, all the permits for a facility, but then once that is done we have programmable computers that manage the systems in a water and wastewater treatment context. So the design of MES to be supportive to counties and

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municipalities also sometimes private entities find that to be cost successful for them, so a lower cost than having full-time staff dedicated to it, 40-hour weeks or more.

COMPTROLLER FRANCHOT: Well do you, are you doing something that's competitive with the private sector? I mean, I understand the services to the public agencies, which is in your charter. But why are you wandering into this other area, I take it, just because you have some expertise --

DR. GLASS: We don't --

COMPTROLLER FRANCHOT: -- do you advertise that it's available to the private sector? Because isn't that something that we were trying to avoid with MES?

DR. GLASS: We do not advertise at all for the most part. We have only been participating in MACo and MML as far as sponsorships since my time here. We participate in spaces that the private sector may choose to enter but are lower cost as an independent State agency. Usually, we are only coming in if someone, if the private sector does not want that work. I can't say that there aren't areas of environmental, in the environmental space where private sector organizations may want the State contracts, the county contracts, or even private contracts. But generally, we are not competing because we don't respond to RFPs. We don't respond to any requests unless we are asked to come in. So that's in the law, that we don't do that in the State or with municipal clients, and so we also don't do that in the private sector. We don't respond for bids, invitations for bids, or RFPs unless we are requested to participate. And then when we do, we are doing it in the interest of the environment for the State of Maryland and in providing our service and of course being cost competitive in providing, you know, great service to the environment. That's our mission, that's our goal, and that's what we stay focused on. Any financial exchange is

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secondary. But we do have, we are non-appropriated so we do work to feed the families of MES employees and keep our operations strong.

COMPTROLLER FRANCHOT: How do you determine the rate?

DR. GLASS: Oh, all of our salaries are listed and all of our wages are competitive. We're going through a classification and compensation study, because there hasn't been one for five years. And for, in comparison to private entities that do them annually, and we focus on making sure that we have a competitive rate for our staff. We also have, as has been discussed, a building excellence and success together program. So our staff receive those and that has been through the MES Reform Act and evaluated. And so we try our best to keep the most talent that we can. But of course, just like everyone else in the great resignation we are challenged with folks moving on. So we are doing our best to be cost competitive with salaries and wages and also providing a great service to the State to keep costs down for our State agencies that we serve.

COMPTROLLER FRANCHOT: Yes, but you understand my concern here that you are apparently open to anybody coming in and knocking on your door saying I'd like you to do this? And I can get it a lot cheaper than what the private sector provides for me. I mean, that's kind of a weird open door policy, I would think. I know you are not, I hear you, you are not out there actively doing it. But why wouldn't people beat a path to your doorway? And why wouldn't that be in violation of the intent of MES?

DR. GLASS: So I don't know, in my two years, the private sector is not beating down MES' doors. Ninety-five percent of our revenue is State and county, local government, and then of that five percent that remains, part of that is federal grantsmanship. So it hasn't caused a race to MES by the private sector. I believe private sector entities focus on money moving towards them, not towards other entities, even State agencies. So it just hasn't been an issue for the 51 years

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of MES' formation, or the 30 years since we left DNR. It just, MES for a long time, almost since its inception, had a corporate side since the seventies. And clients have not been, private entities have not been beating down MES' door. That's, I mean, I don't know if anyone is interested in striking that three to five percent that comes from the private sector from our rules. But we have operated in the sense of providing great service for the environment in Maryland. And that's the context of this contract and the context of others that may come to you. Sometimes we have even been operating from private clients that are actually the prime and we are as a sub to that entity. And we sometimes take that role --

COMPTROLLER FRANCHOT: Okay, that's, that's, I hear your answer. But it's five percent of your business. How many private sector clients are there? I wasn't aware --

DR. GLASS: I am going to have to get back to you on that number, sir.

COMPTROLLER FRANCHOT: Okay.

GOVERNOR HOGAN: Any other questions on the Secretary's Agenda?

COMPTROLLER FRANCHOT: Yes, I want to separate out the wetlands and this W. R. Grace thing, which I don't, I find to be unusual. And I'd like to be marked in the negative for those two --

SECRETARY GONTRUM: Items --

COMPTROLLER FRANCHOT: -- depending on but I need them --

GOVERNOR HOGAN: So is there a motion?

COMPTROLLER FRANCHOT: I would like to move that first the wetlands be denied. I think that's the position of Ms. Anderson. And you know, I do that not out of, you know, not trusting the agency. I know the agency is trying

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to do their best. But why not given a situation like this, start out with the minimum amount of erosion control and see how it goes so that we don't have a 15- or 20-year overview of erosion but we look at what is happening right now. And I happen to be sympathetic to I guess Ms. Anderson and her situation. I mean, putting a jetty out (indiscernible) you know, is not done under cordial, collaborative, collegial, neighborly support for what is going on. And if there are lesser forms of erosion control that can be done, I think we should at least explore that. And you know, just imposing a jetty I assume that it would be, regardless of where it is, but it started out being right on the border, which I find to be curiously offensive. But then it's moved. It's like one of these fences that you have between neighboring homes. There is always a resolution. But to just come in and say, oh no, the, Mr. Harris or, who I don't know, I'm sure has his own point of view, but to come in just on his side and say, sorry, that's it, we're going with him, we're doing the jetty, I think it's unfortunate. So I'm going to vote no on that and would make a motion to that effect.

GOVERNOR HOGAN: So there's a motion, is there a motion to pull it off from the Agenda and/or a motion to --

COMPTROLLER FRANCHOT: Well, whatever is necessary. I get confused sometimes as to what the process is. So do I have to separate these and does it require a vote?

GOVERNOR HOGAN: I think you have to make a motion to separate the item and/or to, you could put it all in one motion.

SECRETARY GONTRUM: I think the Comptroller can make a request to separate out an item and to hold a vote separately on that item.

COMPTROLLER FRANCHOT: Thank you.

SECRETARY GONTRUM: The Comptroller has made --

COMPTROLLER FRANCHOT: That is the custom. And so I

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would ask those two items to be pulled out, number one.

GOVERNOR HOGAN: And so then you have a motion on the floor to deny --

COMPTROLLER FRANCHOT: The wetlands.

GOVERNOR HOGAN: -- the wetlands permit that the State --

COMPTROLLER FRANCHOT: Right. Correct.

GOVERNOR HOGAN: Okay. Is there a second? That motion dies for lack of a second. What is the second motion?

COMPTROLLER FRANCHOT: It's to deny the contract procurement proposal from MES --

GOVERNOR HOGAN: And what is the purpose?

COMPTROLLER FRANCHOT: The purpose of that is to get a handle on, or I could vote to defer it, but I'm curious as to what private sector contracts, how many there are at MES. And I think we should look at that and understand, as I understand the policy it's to not to compete with the private sector.

GOVERNOR HOGAN: I think he just explained it's in the law that they do private contracts and have done since the seventies since they created it. That's why it's not a regular State agency. But there is a motion, is there a second --

COMPTROLLER FRANCHOT: Well vote, I just ask that it be deferred until we get the information about how extensive the private sector relationships are.

GOVERNOR HOGAN: I'm not sure what that does to the operation of the landfill if we don't extend it. But so is there --

COMPTROLLER FRANCHOT: I can't imagine --

GOVERNOR HOGAN: -- a second to the motion to --

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COMPTROLLER FRANCHOT: -- defer it for two weeks.

TREASURER DAVIS: I'll second it.

GOVERNOR HOGAN: To defer for two weeks?

TREASURER DAVIS: To defer for two weeks.

COMPTROLLER FRANCHOT: Thank you.

GOVERNOR HOGAN: Okay.

COMPTROLLER FRANCHOT: Thank you. That's, other than that I would move approval of the Agenda.

GOVERNOR HOGAN: Is there a second for the rest of the Agenda?

TREASURER DAVIS: Second.

GOVERNOR HOGAN: Very good.

SECRETARY GONTRUM: So the vote for --

GOVERNOR HOGAN: The deferral --

SECRETARY GONTRUM: -- approve Item 5 was two to one. So the vote to approve Item 5 was two to one in favor, so Item 5, the tidal wetlands license will be granted. The motion to defer Item 8 was two, is three to nothing, Governor?

GOVERNOR HOGAN: Yes.

SECRETARY GONTRUM: Thank you. And then three-nothing on the balance of the Agenda. Thank you.

GOVERNOR HOGAN: Very good. Now we're going to move on to the DNR Real Property Agenda.

MS. HADDAWAY-RICCIO: Good morning, Governor, Mr. Treasurer, Mr. Comptroller. For the record, Jeannie Haddaway-Riccio, Secretary of the Maryland Department of Natural Resources. We have 14 items on our Real Property Agenda today for which we are seeking approval and I'm happy to

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answer any questions you may have.

GOVERNOR HOGAN: Any questions of the Secretary on the DNR Agenda? Is there a motion?

TREASURER DAVIS: Move approval.

GOVERNOR HOGAN: Is there a second?

COMPTROLLER FRANCHOT: Second.

GOVERNOR HOGAN: Very good. You got off easy today, Madam Secretary. Thank you. We're going to move on to -- well, actually the University System Agenda has nothing on the Agenda. So they are off the hook. But we should give a shout out to the Lady Terps, sweet sixteen.

TREASURER DAVIS: Hey, can we clap?

(Applause.)

GOVERNOR HOGAN: We want to congratulate them. And we'll move on to the Department of Transportation Agenda.

MR. PORTS: Okay. Good morning, Governor, Mr. Treasurer, Mr. Comptroller. For the record, my name is Jim Ports, Secretary of the Maryland Department of Transportation. And we have 18 items to present for your consideration today, and I'd be happy to answer any questions you may have.

GOVERNOR HOGAN: Any questions on the 18 items on the MDOT Agenda?

COMPTROLLER FRANCHOT: Yes. I had Item 17. So I don't have any problem with this --

MR. PORTS: Okay.

COMPTROLLER FRANCHOT: -- I'm happy to just bring it up, though. And that we're going to approve \$125 million in general obligation bond proceeds to pay for a portion of Maryland's share of funding for the Washington Metropolitan Area Transit Authority's Fiscal Year 2022 to 2027 capital

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improvement program, this is something that all of us, particularly the Treasurer and I who used to represent areas in the Washington area, obviously I think support. I don't have any questions on the specific item, but as a long-time advocate of mass transit I wanted to take a moment and just say how critical it is and for continued investments to ensure that customers throughout the Washington region have access to a safe and reliable transit system.

The State's continued partnership with Washington, D.C., Virginia, WMATA is able to make, because of that, is able to make timely investments in passenger safety, perform necessary maintenance and rehab to ensure reliability, and provide the tools to help modernize the system. And I want to compliment the Governor and his staff for being part of it. To be more blunt, I guess, we need more investment in WMATA, not less, and new mass transportation options throughout Maryland to unify our State. This will provide greater access for employers to regional talent pools while providing a parity of public infrastructure in areas of the State that are underserved. We hear about that a lot from different areas of the State.

It is particularly important in the future we invest in the areas of the State that do not currently have high quality public transportation, especially high quality rail. Access to world class transportation would give all Marylanders the freedom to experience everything the State has to offer.

I want to thank WMATA's CEO Paul Wiedefeld for his leadership. He is departing. Formerly, he was with us at the Airport, I believe.

MR. PORTS: Yes.

COMPTROLLER FRANCHOT: He certainly will be missed, as well as all the employees who work so hard to make this system deliver for the taxpayers of Maryland. I want to salute them. And Governor, thank you and your administration for being supportive of this vital network of mass transportation.

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Okay, thank you.

GOVERNOR HOGAN: Any other questions on Transportation Agenda?

COMPTROLLER FRANCHOT: Move approval, if --

TREASURER DAVIS: Second.

GOVERNOR HOGAN: Very good. Three-nothing, Transportation. We'll move on to DGS.

MR. CHURCHILL: Good morning, Governor, Mr. Treasurer, Mr. Comptroller. For the record, I'm Ellington Churchill, Secretary for the Maryland Department of General Services. Before I introduce the Agenda, I would like to thank you, Governor, on behalf of our Office of State Procurement and procurement officers all over the State for the acknowledgment of procurement and the Procurement Month proclamation.

Today we are presenting 43 items on our Agenda. We are withdrawing Item 11 and Item 14 at this time. I would note that the Agenda features \$3.2 million in capital grants and loans, including \$1.1 million for Garrett County for the high school athletic facilities renovation, and \$150,000 to the Board of Directors of the Maryland Veterans Memorial Museum for the Maryland Veterans Memorial Museum in Charles County. We are also awarding contracts to eight small businesses and five minority businesses. We are available to answer questions that you may have at this time.

GOVERNOR HOGAN: Any questions for Secretary Churchill?

COMPTROLLER FRANCHOT: You are withdrawing Item 14?

MR. CHURCHILL: We are withdrawing Item 14.

TREASURER DAVIS: Item 21.

MR. CHURCHILL: Item 21 --

TREASURER DAVIS: -- that's the State Lottery and Gaming

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Control Agency advertising, marketing, media, and related services. I was just looking at the MBE and VSBE participation I guess goals versus compliance. How, it's not -- well, I guess it is a question. How were they able to be so successful in exceeding the goals, really, by such a significant amount? It's more I guess I just wanted to tip my hat at, you know, at the performance. But I was curious, they did exceedingly well from my perspective. So any information on that?

MR. CHURCHILL: Well, thank you for the acknowledgment and I never want to steal anybody else's thunder on this. So I will of course refer to our Office of State Procurement and John Martin in terms of the vendor pool and their approach to success, which was also acknowledged by the Office of State Procurement.

GOVERNOR HOGAN: -- on here with us.

MR. CHURCHILL: John Martin, Director, State Lottery and Gaming Control.

MR. MARTIN: Good morning, Governor, Mr. Treasurer, Mr. Comptroller. Thank you for the accolades and on behalf of the Maryland Lottery and Gaming. For the record, I am John Martin, Director, Maryland Lottery and Gaming. Oftentimes these contracts, Mr. Treasurer, are extended through our vendor network to a number of willing and able participants. And we appreciate their efforts to meet our objectives and meeting our overall marketing and advertising needs. We are just fortunate to have people who excel at what they do and happen to be part of the program. I'm very pleased and proud to have them as part of the group.

GOVERNOR HOGAN: Thank you.

TREASURER DAVIS: Congratulations.

GOVERNOR HOGAN: Thank you very much. Any other

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questions on the General Services Agenda or is there a motion?

COMPTROLLER FRANCHOT: Move approval.

TREASURER DAVIS: Second.

GOVERNOR HOGAN: Three-nothing for DGS. With that, the meeting is adjourned.

(Whereupon, at 11:13 a.m., the meeting was concluded.)