

VIRGINIA BEACH WETLANDS BOARD  
VERBATIM VB07-300 NVW

SANDLER AT INDIGO BAY, LLC  
(FORMERLY TATE TERRACE REALTY INVESTORS, LLC)



21 May 2007

Chairman Plumlee: Okay. We're up to Item D on old business, Sandler at Indigo Bay.

Lonnie Warren: Formerly Tate Terrace Realty Investors, LLC, VB07-300 NVW. The project is to construct site development activities including bulkhead, riprap, fill, excavation, oyster reef installation, wetlands creation and community piers involving wetlands adjacent to Marlin Bay Drive contiguous to Pleasure House Creek in Virginia Beach. This application was deferred from the January 16<sup>th</sup> Public Hearing and here are the photos. Here are the site photographs starting at Mitigation Area 1. That's our last photograph.

Wayne Couch: Mr. Chairman, for the benefit for those in the audience that couldn't see the bottom of the screen, each photograph is labeled in accordance with the submitted plan. It describes where that photograph was taken. Some people might not be able to see that.

Chairman Plumlee: Alright. And there's some new people that have come in since the meeting started. If anyone who wants to speak has not had an opportunity to sign up to speak, this is probably going to be the last chance that you have to do that. Okay? Alright, so are we ready for comments of VIMS, I think?

Dr. Vinson: Okay. I'm going to read the initial findings and recommendations and then because they have not previously been read into the record and then I'll note when I start with the revised comments.

"Findings and Recommendations:

We have reviewed the proposed Indigo Dunes project from an environmental perspective and have determined that certain design elements warrant careful consideration. Specific aspects of the development plan and their resulting impact to environmental resources are discussed below, along with alternatives, when appropriate, to reduce impacts to the riparian buffer, wetlands, and the subtidal aquatic community.

NOTE: A number of omissions, contradictions and errors were identified in the joint permit application and support documents during the review of this project. Significant discrepancies have been indicated below along with any assumptions that were made in order for VIMS to complete this review of the project.

Project description: The proposed development of a 1,063 unit multi-density residential community will result in the filling of 59,608 sq. ft. (1.36 acres) of vegetated tidal wetlands, 52,724 sq. ft. (1.21 acres) of vegetated nontidal wetlands, 1.12 acres of tidal waters and 1.32 acres of nontidal open water habitat. The applicant proposes to compensate for impacts to wetland resources through the on-site creation of 6.09 acres of tidal wetlands and 0.17 acres of wetland enhancement. The project is located adjacent Pleasure House Creek and Crab Creek, tributaries of the Lynnhaven River in Virginia Beach, Virginia.

Purpose and need: Section 404 of the Clean Water Act (CWA) regulates the excavation and discharge of fill material into waters of the U.S., including wetlands. CWA Section 404 b(1) guidelines require that applicants demonstrate the purpose and need of a proposed activity that will result in the permanent loss of wetland resources. If purpose and need for the project can be demonstrated, then efforts to sequentially avoid and minimize impacts to wetlands must be exercised and demonstrated during the earliest design phases of a project. Though the applicant has stated in the joint permit application (JPA) that 1,063 residential units are necessary to make the project financially viable, no economic analysis has been provided to justify this level of build-out. The scale of the development directly affects the degree to which avoidance and minimization measures are successful in limiting impacts to tidal and nontidal wetlands. In order to review the project at this time, we have assumed here that the applicant is able to provide the necessary economic data to support the proposed scale of the project. Survey datum: None of the plan view project drawings depict the location mean high water (MHW) or mean low water (MLW), making it difficult to validate the proposed tidal wetland impact figures presented in the JPA. In addition, the elevation datum referenced on sheets 3 through 15 (of 30 sheets) is the North American Vertical Datum 1988 (NAVD 88). This datum is a fixed geodetic datum whose elevation relationship to mean sea level may not be consistent from one location to the next. No information is provided by the applicant as to how the NAVD 88 elevations for MLW and MHW were derived or extrapolated from a known tidal benchmark such as the National Ocean Service tide stations located at Cape Henry and the Chesapeake Bay Bridge Tunnel. The applicant references tying the project survey to the City of Virginia Beach Geodetic Control Monuments "H-2-1" and "1499-1" although again, no information is provided as to relationship of these benchmarks to a tidal datum. Further, the datum used to reference MLW

and MHW elevations on sheets 14 and 15 is the National Geodetic Vertical Datum (NGVD) of 1929, incorrectly reported as NGVD 88. The NGVD elevations for MLW (-0.92 ft.) and MHW (+1.34 ft) on sheets 14 and 15 are nearly the opposite of the NAVD 88 elevations reported for MLW (-1.36 ft) and MHW (+0.91 ft) on sheets 3 through 15, raising questions regarding the correct determination of MLW, MHW and the mean tide range (2.27 ft. as reported by the applicant) and the extent of tidal wetlands on-site. We have assumed here that the NAVD 88 elevations have been correctly derived from a tidal datum and are accurate.

Erosion and sediment control: Elevations provided for cross-sections on sheets 16 through 30 are not referenced to any geodetic or tidal datum. In addition, the proposed elevations of the seaward extent of the proposed tidal wetland creation areas are not shown on sheets 17-21, 25, 26 or 28. No elevations are provided for tidal wetland creation on sheets 29 and 30. No erosion sediment control structures are shown at the toe of slope depicted on sheets 20, 22, 23 and 30. No sediment curtain is depicted for the proposed fill of the existing open water pond on sheet 21. Also, the proposed 10 ft. tidal fringe marsh depicted on the Section F rendering is not shown in the cross-section at the bottom of sheet 21 or in plan view on sheet 6. We recommend the proper use of E&S control structures and the stabilization of all disturbed areas with native species to recreate a multi-strata buffer between development, open water and tidal wetlands.

Oyster reefs: Cross section drawings indicate that the base of the proposed oyster reefs will be subtidal, although the cover letter dated January 15, 2007 indicates the proposed placement of these structures will be intertidal mudflat. Extensive oyster restoration efforts encouraged and sponsored by numerous state and federal agencies along with local environmental advocacy groups are currently underway in the Chesapeake Bay and in parts of the Lynnhaven River system. While we support oyster restoration per se, we are unable to equate this activity with compensation for the loss of tidal and nontidal wetland ecosystem services. Although we do not consider the proposed 0.24 acres of oyster shell reefs compensation for impacts to tidal or nontidal wetland resources, we encourage its inclusion in a multi-faceted mitigation plan that provides compensation in addition to that required by permitting agencies. The purpose and scope of the proposed oyster planting is unclear from the application. We recommend the applicant consult with VMRC and VIMS before initiating any activities involving the placement of alternative cultch materials in tidal waters.

Avian habitat: If permitted, construction activities will occur over many months to years as the project development occurs in phases, resulting in the disturbance of wading birds and shorebirds currently utilizing the

project area as foraging, breeding, and nesting habitat. The driving of piles associated with the construction of the two 11 story towers will likely displace the local population of water birds from the vicinity of the project site for an undetermined period of time. However, we are unable to quantify the extent of this potential impact at this time.

**Tidal floodways:** Tidal floodways are proposed on sheets 3, 5, 6, 7 and 10 to connect the proposed tidal wetland creation with Pleasure House Creek. However, no impacts to existing tidal wetlands are reported with the exception of the floodway on sheet 6 (213 sq. ft.) and one of the two floodways depicted on sheet 10 (166 sq. ft.). These reported figures appear inconsistent with the typical cross-section of the floodway shown on sheet 15 indicating impacts to intertidal and subtidal habitats will occur. Based on a 5 ft. wide channel width "...excavated through the existing tidal salt marsh..." with 3:1 side slopes will result in an approximately 18.62 ft. wide floodway channel structure. We recommend compensation for impacts associated with construction of the riprap floodway channels along with the addition of filter fabric beneath the rock to prevent the revetment from settling into the sediment, thereby maintaining the invert elevations as designed and the tidal connection between the existing and created wetlands. No floodways or grading is proposed for wetland creation areas H and I. This design raises questions as to the creation sites' ability to achieve the hydrology necessary to support tidal wetland vegetation. Also, the nature of the area between creation areas H and I is unclear from sheet 11 of the application.

**Piers:** As proposed, the canoe/kayak floating pier depicted on sheet 13 will site on nonvegetated wetlands at low tide. The repetitive, cumulative impact to the benthos resulting from this design shortcoming is ecologically undesirable. If a public canoe/kayak launch is to be provided, we recommend piercing out to deeper water in order to provide water access regardless of tide stage. If a public observation platform is to be provided along Pleasure House Creek, we recommend eliminating one of the two proposed piers depicted on sheet 3 to reduce impacts to the existing fringe marsh. Because of their close proximity to one another and to the new observation deck being constructed by the City along Shore Drive (VMRC #05-2794), a third pier in this location appears redundant. In addition, no minimum clearance is provided between the marsh surface and the observation piers as depicted in cross-section on sheet 13. In order to reduce shading impacts to existing vegetated wetlands, a minimum of 1 ft. of clearance should be maintained between the lowest support structure of the pier and the marsh substrate for each foot of structure width. The purpose of the structure immediately adjacent to the proposed canoe/kayak access point is unclear from the application (sheet 3).

Bulkhead: As discussed in section E of the support document, the majority of the site will be filled with "well graded sand" to approximately 9 ft. above mean sea level. We have assumed here that the area landward of the proposed bulkhead depicted on sheets 7, 8, 10, 11, 24, 25, 26 and 28 will be filled to raise the elevations out of the 100-year floodplain. However, the use of this structure and the applicant's design approach results in a significant reduction in the buffer width between the proposed towers and constructed marsh. Because there is no shoreline erosion, it appears that the sole purpose of the bulkhead is to raise the site elevations in order to facilitate the development of the buffer immediately adjacent the proposed constructed tidal marsh. Significant encroachment into the buffer is undesirable from an environmental perspective as bulkheads sever the connection between riparian, intertidal and subtidal habitats, alter the natural contour of the shoreline, change near shore wave dynamics, and may result in the loss of wetland and upland vegetation during or following construction.

Stormwater treatment: Sediment and nutrient reduction is one of the most difficult challenges facing the restoration of the Lynnhaven River system. As discussed in the stormwater narrative, the proposed stormwater management plan appears to significantly reduce the amount of phosphorous presently entering Pleasure House Creek from untreated runoff leaving the project site and adjacent neighborhood.

In conclusion, certain design elements of the Indigo Dunes project warrant careful consideration due to their potential to significantly alter riparian buffer, wetland and open water habitat. Impacts to existing tidal wetlands channelward of the existing berm have been avoided with the exception of the floodway channels and canoe/kayak pier, which is preferred from an environmental perspective. The proposed stormwater management plan appears to provide a significant improvement to the quality of stormwater leaving the site and adjacent neighborhood. However, we encourage the applicant to continue to work closely with review agencies to ensure that the project is designed to avoid and minimize impacts to sensitive environmental resources to the maximum extent possible."

And now this starts the revised comments of May 18, 2007.

"We have reviewed correspondence from the applicant's agent, Kimlee-Horn, dated April 5, 2007 that provides responses to the original VIMS comments. Of particular interest to VIMS was the survey methodology used in data collection that included mean low water, mean high water and the limit of the Virginia Beach Wetlands Board jurisdiction (1.5X mean tide range). Information provided by the agent regarding the conversion of a known National Ocean Service tidal datum to NAVD 1988 appears consistent with the standard and accepted survey techniques. Therefore,

we accept the extent of tidal wetlands delineated by the applicant and depicted in the application as accurate.

The agent has indicated that numerous corrections will be provided in revised drawings to be submitted to the City of Virginia Beach. These corrections include: (1) All elevations referenced to NAVD 88; (2) Elevations of tidal wetland creation on sheets 29 and 30; (3) Detailed plan of erosion and sediment (E & S) measures to be employed; (4) Detailed buffer restoration planting plans; (5) Cross-section of intertidal oyster reef; (6) Cross section of flood channels depicting 1:1 side slopes; (7) Deletion of one pier; (8) Deletion of unidentified structure adjacent to canoe/kayak access; and, (9) Maintaining a minimum clearance of 1-ft. for each foot of pier width between the lowest structural member of the pier and the marsh surface.

Though impacts to existing wetland resources resulting from this project are significant, the majority of impacts to avoid the highest value fringe marsh along Pleasure House Creek. Proposed impacts to open water, hydrologically restricted tidal wetlands, and nontidal (*Phragmites australis*) wetland habitats may be compensated by a properly designed, constructed and monitored tidal wetland creation project. Wetland compensation should be designed to restore and enhance the ecosystem services lost as a result of development. Because balancing the sustainability of these services with economic development is often difficult, we encourage the applicant to continue to work closely with local, state and federal permitting agencies to accomplish this goal."

Mr. Miller:

The recommendations from the Planning Commission are as follows:

"The project consists of approximately 69 acres above tidal wetlands. If developed, the project will consist of a mixed use of single family, town homes, mid and high rise condominiums, a 2,800 linear foot waterfront pathway, canoe and kayak launch, and an open to the public 21 acre creek front park.

A mixed use approach for treatment of both on and off-site stormwater is proposed. Currently, stormwater runoff from approximately 25 acres of developed portions of Ocean Park is discharged directly into tidal waters. Also, approximately 51 acres of developed Ocean Park discharges stormwater runoff into a failing stormwater retention basin maintained by the City. If the project is developed as proposed, both on and off-site stormwater runoff will be treated through the integration of a series of stormwater management methods and the failing City retention stormwater basin will be modified to function as originally intended.

All compensation for the filling of tidal wetlands is proposed on-site. The applicant's agent has indicated that the subject jurisdictional wetlands compensation will be at a 4:1 ratio or 6.09 acres of created marsh. 0.17 acres of tidal wetland enhancement is also proposed via the conversion of Phragmites to a tidal Class I and II marsh. Additional habitat enhancements are proposed including, but not limited to, osprey nesting platforms, oyster shell plans, and bayscape plantings throughout newly established side slopes and residual uplands.

Due to the project's potential for moderate impact on the estuarine environment, the Planning Department recommends approval of the project subject to the following conditions:

1. A vegetated wetlands monitoring plan shall be submitted to the Coastal Zone Administrator prior to any dredge activity. Said plan shall provide for inspections at 4 month intervals, documented with photos, infill planting as needed, and written summary by a licensed professional duly authorized to practice within the Commonwealth. If Phragmites attempt to recolonize the site (both wetlands and uplands area), the plan shall address how this species will be eliminated. The monitoring plan shall address three growing seasons.
2. It is assumed that all proposed floodway systems earmarked to feed tidal marsh will not exceed 5' in width post side slopes obtaining final angle of repose. Also, a design depth of two feet below mean sea level may involve a floodway channel in excess of 5'.
3. The applicant shall convene with staff to discuss the need for additional floodway support systems to feed proposed tidal wetland mitigation areas H and I.
4. Revised plan view drawings shall identify MHW and MLW. In addition, the applicant's agent shall address discrepancies associated with the submitted NAVD vertical tidal datum of 1929 and 1988. If said discrepancies result in additional impacts to wetland resources, the subject request should be deferred.
5. Elevations for all cross sections shall reference recognized geodetic or tidal datum and shall reflect pre and post site conditions.
6. Amend cross sections H and I as necessary to incorporate tidal wetland mitigation.
7. Sequencing of events and erosion and sedimentation control facilities will be addressed with the submission of detailed site plan review. Efforts should be made to install wetland mitigation areas in

advance of upland construction. The applicant shall provide additional clarification regarding the sequencing of wetlands compensation and upland construction.

8. ~~The pedestrian walkway substrate shall be comprised of organic pervious material to the greatest extent practicable."~~

That's it.

Chairman Plumlee: Thank you. Alright. Would the representative of the agent come forward now to present the applicant's submission. And, I would just ask everyone to try to, you've been great so far, but please try to stay seated and quiet as much as possible so everyone can hear. Alright, go ahead.

R. J. Nutter: If you could Chairman, give us one second we might set up a few of these features, if you wouldn't mind.

Chairman Plumlee: Sure

Chairman Plumlee: Has anyone else come in that has not had an opportunity to sign up to speak for or against this project? If you would come down here, please, and sign the sheet in front of the Clerk, Gloria Winkler.

Let's take a five minute recess right now and come back to hear the application.

Chairman Plumlee: Okay. If everybody could take a seat or quiet down, we'll get started. Mr. Nutter, I'm going to try to keep close to ten minutes—I understand you have quite a presentation to give us and I'll give you time but I want to stick as closely to the time as we can.

Also, I want to note for the record that a letter has been submitted to be made part of the record. This is opposing one of the Board Members, or it's a letter opposing them from objecting to them hearing the matter based on a conflict of interest. The City Attorney has written a letter concluding that there is no conflict of interest. Both the letter of objection and the City's response will be made part of the record. I think everyone is satisfied with that level of discussion.

R. J. Nutter: Yes, Sir.

Mr. Chairman, I have some other documents as well for Mrs. Wilson when she's ready.

Chairman Plumlee: Alright. If you could identify them when you hand them over to Kay then we can keep track of them.

R. J. Nutter: Yes, Sir, I'll be happy to do that.

Chairman Plumlee: Thank you.

R. J. Nutter: And we have sufficient copies for everyone.

First I'd like to begin, Mr. Chairman, my name is R. J. Nutter. I'm an attorney. I represent the applicant. I have been sworn in as have the others of part of the applicant's team today. I want to let you know who we have here for you and how we propose to present this to you, I'll put it that way. In addition, to myself, we have Doug Groff, Karl Mertig and Ken Dierks of Kimlee-Horn. In addition, those from Adam Sandler's office, we have Kristine Petrocheck and Debra Williams. From my office I have Michael Lebia, an associate in my office, and Daniel, forgive me, John is our partner in Richmond and is former Secretary of Natural Resources from Commonwealth of Virginia. All are available for questions, if you would like to have any questions beyond myself.

First let me just say I wanted to thank this Board and this Staff, including Mr. O'Brien, for a number of things. First, they have put a lot of work in this application. It goes to say that they've tried to be objective and we recognize that and we're happy with the results that they've come to. I want you to know right off the bat that the staff recommendation of approval, all of the recommendations recommended by staff are acceptable to the applicant. I had to acknowledge their hard work on this application.

In addition to that, I'd like to tell you how we'd like to try to present this today, which is, I'm going to try to give an overview of the application, what the impacts are. Following that we'll have two gentlemen speaking, Mr. Groff will be speaking very briefly about the stormwater aspect of this proposal. It has some neat aspects independent of the application per se. In addition to that, Karl Mertig is going to talk about the mitigation plan since that may be subject to a lot of questions as well. That's how we are proposing to proceed today, Mr. Chairman.

I'd also like to begin at the time by giving you, remember I told you I thanked you for the time giving a 90 day deferral. Well, during that time, the applicant's representatives have had several additional meetings with staff, your staff. They've have had several meetings with VMRC and meetings with VIMS, all pursuant to the VIMS comments that were prepared by David O'Brien back in December. I have a list, this is a list of, labeled Indigo Dunes. Kay, for the record. These are a list of things that have been modified in this application since we last appeared before you. I'd like to just, while she's marking that and passing it out, I did

want to tell you a little bit of what's happened because one of the biggest issues we had last time, you may recall, was the question of whether the datum or the measure of determining the method of calculation for how to measure mean high water, mean low water and all the features on the property were correct. Well, as a result of that, you, fortunately David O'Brien has now confirmed, that in fact, that is correct, which we're very satisfied with. So I can tell you, without question, that is now beyond repute. The second most important part about that is he has, a number of changes have been made here to reduce impacts, all of which, frankly, are contained in Mr. O'Brien's report to you. But I did want to highlight them for you for the record and for those in the audience.

All referrals to any VB and MGBB have been corrected in the booklet. The seaward elevations are the proposed title wetland is depicted by scale on sheets 17-21, sheets 25, 26 and 28 in response to VIMS inquiry. The elevation showing the tidal wetland creation on sheets 29 and 30 has been added. Pursuant to a VIM comment, a meeting was held between the applicant and a representative of the VMRC with respect to the oyster planting plan, a plan which was favorably reviewed by VMRC. A cross section of the proposed oyster reef has been modified to reflect VMRC comments. That's also been added. The proposed side slope of the title flood channels is going to be modified from a 3:1 slope to a 1:1 slope. This will be submitted. We will further reduce the impacts beyond what's in the report. Filter fabric will be added to the base of the floodway riprap as requested by VIMS. A floodway will be added at the request of VIMS to wetland creation area, as requested. This will allow full tidal flow into that new wetland area. A second floating pier on the plan and, as you heard in comments, Dr. Vinson read into the record from VIMS will actually have been removed to reduce impacts. And a minimum clearance between the observation pier that will remain has been modified to be correct. Namely, it will be at least five-foot above the top of the marsh. All of these things have been added since that time and verified so that we now know, ladies and gentlemen, the information we have to work with is correct.

I'd like to, now that that's kind of out of the way for a second, I'd like to begin by giving a little history of this property because that is a very significant feature of this property. It's also significant for the state and the Commonwealth of Virginia as well as your Wetlands Board's ordinances that gauge how you should evaluate an application. We'll refer to that on many occasions throughout the course of the morning. This will be the first of those.

Because this property is about 69 acres of high ground, it's about a 114 acres if you would follow the lot lines out into Pleasure House Creek. One of the things that is part of this application that we haven't discussed

at all but it needs to be part of the record, and that is that the area that is below mean high water and out to the center line of the creek, those additional acreages, are being proposed to be turned over to a conservation easement by the applicant. That's significant because in this case the applicant has a King's Grant to these features out in the water, which as you know, was an exemption from State law that would allow the applicant to fill those areas and to dredge those areas without the necessity of a permit. It's one of the exemptions under the State statute. That, however, is being relinquished as part of this application so I can tell you before we even hit the upland areas, we're going to be spending most of our time on this morning, the areas from the property line into the upland areas will in fact be preserved as a result of this application. That may seem like a routine thing but I will tell you that one act will reverse over 400 years of the ability to melt and dredge that property. Those come directly from the King of England. It's been traced back to that linear age. So this is a significant alteration of what could occur on this property in time, if another owner of this property wished to do something differently with it.

The second thing I will tell you once we've hit the upland area is this property has been highly manipulated. In fact, it is the result of a dredging activity by the City of Virginia Beach and the Army Corps of Engineers. I'm going to show you...the exhibit I'm holding my handout for Kay's benefit and the record, is titled Chronology of Filling Activity of Indigo Dunes 1970 through 1974. The four photographs I'm depicting in them as one exhibit are all contained in the joint permit application. The only difference that we've added in this review is that we've put a yellow line in where the property lines are. The significance of these lines in these photographs indicate very clearly that the level of activity on this property during this time period. What it notes is that between 1970 and 1974 this property was originally a marsh area. It was a dredged spoil disposal site again for the U.S. Army Corps of Engineers and at that point this would have been the City of Virginia Beach for that dredging activity. It very clearly depicts in these photos that the areas that were being disturbed in this application before you were all predisturbed activities, prefilled activities prior to 1972, which is a significant component in the statute and in your wetlands application guidelines. By that I mean we have avoided all the fringe wetlands on this property as VIMS properly points out. All the fringe wetlands around the perimeter are being avoided and the only wetlands that are being affected are the areas here, here, here, here, here, which were all disturbed prior to 1972. And, as you know, the acts, civic league draws you attention to those areas that if they must be impacted should be wetlands that are disturbed prior to 1972.

The second thing I'd like to point out to you is that this area has been, I'm afraid, not just the subject to mass and mass of manipulation, but frankly,

it's been poorly controlled. My client only recently acquired this property and what we find on this property is very element in the information that's been provided to you. This has been used for a dump site for all sorts of appliances, automobiles have been left here. Automobiles have actually been towed on this property by chains around the property and set afire. There have been numerous off-road vehicle activities. In fact, as recent as this past week, there was an article in the paper about some children in the area who have used this site for off-road vehicles highly impacting the vegetation and wetlands and the animals that live on the site. So it is a site that has considerable problems to it when we started looking at how to deal with it. I will tell you that in addition to that it has, because of a combination of sea birds and a large amount of animals that are allowed to roam on the property extraordinarily high fecal coli form counts. In fact, the fecal coli form counts measured, coming off of this feature right here, measure over five times the allowed limit for safe swimming. It's Health Department regulations. Five times over safe swimming limitations. So, we have a site therefore that has, we believe, a lot of need for some attention after being a highly manipulated site. It is, frankly, a fabricated site as a result of the dredging activities in the 1970's and there were actually three different dredging activities during that time. The important part of that is when this was dredged and created, every inch of the area that we are seeking approval from you today, in your jurisdiction, all of those areas were never intended to be tidal wetlands. I can guarantee you that on a number of occasions, really in threefold.

First of all, when the Army Corps of Engineers authorized this and there were starting to be breeches, the Army Corps of Engineers on seven separate occasions wrote letters to the then owner urging him in the nicest way they could to close off title impacts on this property. That was done after some time but I will tell you that all of the areas that will be affected today, none of those were intended to have tidal influence. And had those steps been taken, there would be no need to apply to you for any of the tidal wetlands that are before you today.

The second evidence of that, and this is the other document I'm going to give to you all, is a Wetlands Board decision in 1983, by this Board, which was unanimously approved by then all six members of the Board were sitting. That's before your day. And significant about this, this is an application by the then property owner to come in and fill some areas where they'd actually washed some of the equipment off during the dredging process, a self made lake on the property, and to repair the berms around the perimeter. And those berms were aligning title influence to get up into the property. They said we've got to close that off because otherwise those are going to be subject title influence. And this, not this particular Board, but the Board in fact in 1983 voted unanimously to authorize the fill

Chairman Plumlee: Did you say 1983 or 1986?

R. J. Nutter: I'm sorry, 1983. Forgive me.

Chairman Plumlee: Alright.

R. J. Nutter: ...unanimously voted on that. I will give Mrs. Wilson copies of that review. Interestingly enough, I noticed, when there was a call for opposition, there was no one, no one came forward. Quite different from today, needless to say, Mr. Chairman.

Chairman Plumlee: Times changed since 1983.

R. J. Nutter: Lots changed since 1983. That's exactly right. Oh, for the good old days. At any rate, I did want to let you know that.

Now, if I could, I've kind of got you to a point where we've discussed the property leading up to the upland area. We've discussed the highland manipulated nature of the site. I'd like to go on and show you an exhibit that really focuses now on just what is exactly before you and the narrow scope of that application.

The exhibit I've just placed up on the Board and for Kay's purposes,

Kay Wilson: Actually, they have given us copies of all of these. I think Kimlee-Horn did and they have been distributed to the Members.

R. J. Nutter: This is an exhibit that has been extrapolated from the information in the joint permit application. And I show it to you because it denotes several things that we wanted to highlight about this. That is the narrow scope of the application for you. You are, at this point, are looking at .74 acres of tidal wetlands we impose to impact. And I'll show you where those are. And you are looking at about .77 acres of non vegetated tidal wetlands that we are imposing to impact. Those areas are roughly right in here, the perimeter around those ditches. These are three ditches, as you know, that were created for dewatering facilities for the dredge disposal site. And the photographs I just showed you earlier depict that those were on the property as early as 1974. The other area is approximately located right in here for one of the residential buildings. And, finally, the area right around the City pond because that is also part of a plan we have to modify that feature. The areas, these areas here, again, are .74 acres of tidal wetlands. They're vegetated and we are proposing a mitigation plan to offset the impacts of those that is over 4:1, depending on how you want to measure that. That's probably one of the highest mitigation programs

we've ever done. But it's important, I think, to point out to you why we need to do this and what the benefits are, the public benefits, of closing those areas, or filling them. As you may know, right now a large portion, this property, what little as you know, there's no development on the property whatsoever at this point. But notwithstanding that, this property, together with the property that runs up in this area, is an exhibit I'm going to show you next is also contained in your joint permit application, Tab G. The purpose, Kay, this is also provided to Kay in copy as well. This is an aerial photograph of the area around this property and I will highlight for you. This is the Indigo Dunes property here. The area in brown, this one I wish we'd used a different color, quite frankly, which is more than twice the size of the entire Indigo Dunes property, currently drains through a feature that we propose to fix during this process. A drain through one of these channels here out into the creek, untreated, or through the City's B&P system right here, which is both undersigned, number one, and number two, it's failing because of lack of maintenance opportunities by the City. What that means is that an area more than twice the size of this property currently drains through this property today, all the storm water for that area, completely unchecked. Now, my point to you, the reason we are filling those areas, and we're filling two or three of these ditches right here. The sole purpose for that is to direct the stormwater into a stormwater system will be built around where one of those ditches exist today. These features don't serve a stormwater facility, they're literally just drainage ditches that run directly out of the water and they have pipes at the end of them. And remember I told you in 1997 the berms had been raised to prevent those from becoming tidal. What they did was they put pipes in their. They are contained in your application. Those pipes allowed the drainage to come out without regarding tidal activity to go in. What happened over time, however, is those pipes have sunk down into the ground. If those pipes had not sunk that we would not even be before you today. But they did sink down into the ground and therefore those areas are before you because they have tidal influence. As a result, that means all this water comes out here in one of these features. Now, I want to give you some idea how much water we're talking about on an annual basis and the impact it has on this creek and on the Lynnhaven River and on the Chesapeake Bay because it is a considerable amount of water. The exhibits will come with one of the later speakers, but I'll tell you that on an annual basis, the amount of water coming out of this system, unchecked, is over 92 million gallons a year. I'm going to repeat that. 92 million gallons of water a year, which we plan, in this application, to capture all of that water and put into a stormwater system that we'll tell you about shortly. So when you talk about public benefits derived from this application, I want you to know how significant that is. And that is not possible to do unless we close those ditches.

Chairman Plumlee: Are there other points that you wish to make today, Mr. Nutter?

R. J. Nutter: Yes, Sir. I'll try to move it on?

Chairman Plumlee: Yes.

R. J. Nutter: Yes, Sir. Yes, I would like to talk and let you know about that. I'd like to let you know about the oyster plan because the areas that we are proposing impact...remember I told you about .74 acres are for vegetated. .77 acres are nonvegetated. Of that .77 acres, about .24 acres are actually oyster reef programs. We are proposing to put into the river a series of oyster reefs out here to actually help improve the water quality there. It was recommended by your staff. We're happy to do it. But, actually, we're not claiming it as mitigation as one of the current VIMS reports indicated. Quite the opposite. In this case, the applicant is actually having to mitigate for putting the oyster restoration program on those waters.

Chairman Plumlee: Mr. Nutter, just on that one point, I was curious. Can we stipulate to that condition, although we can't require it, and then it can become a requirement of the permit, which they will be held to? Do we know, Mrs. Wilson?

Kay Wilson: What condition?

Chairman Plumlee: For the oyster reef.

Mr. Miller: It's out of our jurisdiction.

Chairman Plumlee: It's out of our jurisdiction. They're not required to have it but we can make it a condition of the permit and hold them to it even though we couldn't have required it to begin with.

Kay Wilson: Mr. Nutter seems to indicate that he would have no objection to that so it shouldn't be a problem.

Chairman Plumlee: So it would be a stipulated to condition and that would hold them?

Kay Wilson: Yes.

Chairman Plumlee: Okay. Thank you, Sir.

R. J. Nutter: And as part of our application as well, what we found is that VMRC didn't have the same policy but we tried to tell them that it was very important to Virginia Beach, that oyster restoration, and therefore we wanted to include it as staff here had requested that. So we will be happy to make that as a condition of the application, Mr. Chairman. But, I did want to point out to you those numbers.

And also, I'd like to share with you just a couple of points and then I will turn it over to the other gentlemen so we can keep moving things along.

First of all, and that is, in evaluating the scope of this application, you know what you have before you. In addition to that, there are, the State statute authorizes you to (inaudible) the way the public/private benefits and detriments, other proposed activity. I think the law is very clear on this point that the proposed activity affected is really the proposed activity by the wetland issues, not might what happen on the future development of this property. That is left to the province of the Planning Commission and City Council. In fact, I can share with you and I told Kay I would provide this to her, there's an Attorney General opinion on very similar facts in 1973 on this very point when raised before the application for the VMRC, not local Wetlands Boards on that exact same issue and it held very clearly the province of land use issues in effects of upland issues are unique to the province of City Councils and Planning Commissions in the Commonwealth of Virginia. But at any rate having said those things, we have no less tried to look at what those public benefits are to this application in addition to stormwater and I'm happy to tell you there's quite a bit. There's the oyster restoration program we've talked to you about. A massive stormwater program we're going to tell you about shortly. A conservation easement is going to be placed over the wetland areas in addition to relinquishing the King's Grant I just told you. What that means is, these areas which have been completely manipulated are now going to be completely controlled with conservation easements over these areas. That is very significant and the first time this property will be subject to regulatory approval and regulation by this body.

Chairman Plumlee: Hold on one second, we have a question.

Mr. Miller: I had heard earlier you were going to donate all of the subaqueous bottom to the conservation easement. You are also going to do all tidal wetlands as a part of that conservation easement?

R. J. Nutter: We'll have a conservation with tidal wetlands, actually the other, I'm sorry, Mr. Miller, is going to be, we're not sure how the State might want to take that yet, quite frankly.

Mr. Miller: Okay.

R. J. Nutter: Maybe independent or conservation easement. That's the only distinction that I could draw between the two. But, yes, it's our intention to put a conservation easement over the wetlands.

Mr. Miller: As well as the subaqueous bottom?

R. J. Nutter: Yes, Sir.

Chairman Plumlee: Has there been a determination of title by a Court going back to the King's Grant on that particular parcel?

Kay Wilson: Not to my knowledge.

R. J. Nutter: It's in the process of, not by a court, but we have to submit that as part of the joint permit application, Mr. Chairman. That information has been submitted to those agencies.

Chairman Plumlee: Thank you.

R. J. Nutter: Yes, Sir.

Finally.

Mr. Ripley: Mr. Chairman.

Chairman Plumlee: Yes, Sir.

Mr. Ripley: Does the conservation easement also the buffer areas that we're dealing with also or not. This Board is dealing with, on the plans?

R. J. Nutter: Chesapeake Bay?

Mr. Ripley: Yeah.

R. J. Nutter: It probably will in a large measure because it is probably the same area. Let me describe for you. The other reason we did this in particular exhibits. The same one I posted earlier. In addition to showing where the actual jurisdiction areas are, in addition to that I'll tell you that this plan also shows this light green color is the area of the perimeter fringe wetlands that are described in the VIMS report. None of those areas are being impacted with one exception. The only place we're impacting those perimeter wetlands, and this is what people think if they see these beautiful pictures of gorgeous wetlands they think we are destroying those. We're not at all. Actually, we're making them larger and I'll show you that in just a second.

Chairman Plumlee: Please keep you voices down while we hear the applicant. You'll have your opportunity to be heard.

R. J. Nutter: Thank you. The only places we are impacting the fringe wetlands at all is to open new features for watering areas behind them to make the

mitigation area function as a proper wetland. That's the only location. And one of the things you will notice we changed, remember I told you how they wanted us to make those slopes 3:1 and access to 1:1 like this. To further reduce those impacts we have not calculated those additional reduction impacts in this application as it stands before you. But I did want to show there would be a further reduction. That's the only place we are impacting those wetlands. The next area, the dark green color you see on this depiction, are the proposed new areas of wetlands. Those are the new mitigation area, as your staff points out (inaudible), is all on property, which oft times is not the case. Same watershed. Also significant, we're mitigating every bit of wetland impact, be it before you or not, non tidal or tidal, is all being mitigated by tidal wetlands on this property. All those tidal wetlands will be fully functioning at a ratio of 4:1. Now let me tell you what that means as a practical matter. We will be affecting 1.51 acres of non tidal and tidal wetlands. When we are all done, you will have 6.09 acres of new tidal wetlands on this site. It's an increase of 4.58 acres of tidal wetlands on this property. And, you will have a stormwater system that now complies with City code requirements and treats all this water I'm going to tell you about and we will go into that process. So, that's why I'm saying, it's, we understand there's opposition to the development but this application from a water quality perspective is really unprecedented. It preserves the wetlands on the perimeter, increases by over 4.5 acres and treats the water quality on this site. And it would not be profitable to treat that water quality unless we did that. Let's see. If I could just close with one last thing for you.

In the process of this application, we have tried to remain very true to the ordinances that you've adopted and that are on record here in the Commonwealth. We have tried to avoid fringe with highly protected, highly functioning wetlands as is your ordinance specifies. We have limited, the only times we are impacting wetlands on this site, are wetlands that were disturbed prior to 1972, which under the Act specifically says that's where you have to disturb, that's where disturbance should be.

Third, we tried to give you evidence that these were never intended to be tidal features at all, both by actions of the Army Corps of Engineers and by prior Boards that you're sitting on today, that evidence of that fact. So we've tried to minimize and avoid wherever we can and we've tried to provide increased public health by state of the art stormwater system that doesn't exist any longer on this property today. It would not be possible without that. So, I think if you weigh the public benefits of this, the conservation easement, the oyster reef restoration program. And I won't talk about the development. That's not really before you. But just the features that are in the wetlands we believe this would merit your consideration of approval. Again, all the conditions, Mr. Chairman, are

acceptable and I'm happy to answer any questions you or the Board Members might have.

Chairman Plumlee: Mr. Nutter, I think it will be more productive if we have you come back as a rebuttal person after you've heard the oppositions' comments and we can then sort of focus our questioning once we hear some of the objections. But if anyone has an urgent question they'd like to ask of Mr. Nutter, they can go ahead.

Mr. Ripley: Did you say that you had a speaker that's going to address the drainage system?

R. J. Nutter: Yes, Sir, we do. The next speaker will actually speak to the stormwater drainage system and give you some great exhibits for that as well. I'll ask Mr. Doug Groff of Kimlee-Horn.

Chairman Plumlee: Thank you, Mr. Nutter. Now I gave Mr. Nutter some considerable time to present this large project but I'm going to ask everyone, even those speaking in favor of the project, to try to keep to the three minutes and to keep to the points because just by sheer numbers I'm going to have to kind of restrain the discussion somewhat. But thank you, Mr. Nutter. Are you leaving these exhibits.

R. J. Nutter: Yes, I will for the next speakers.

Chairman Plumlee: Alright, thank you. We have others that are set up to speak in favor of the project and their time is limited to three minutes.

Doug Groff: Members of the Board, my name is Doug Groff, that's Groff. I'm an engineer of record. I'm a licensed engineer in the State of Virginia. I have five and one-half years of storm hydrology and hydraulics experience.

As Mr. Nutter previously mentioned, the offsite drainage currently drains through the three drainage ditches outlined right here, untreated, as well as is discharged through a pump station into the existing City basin. What we are proposing to do with the City basin is to expand the size of it and allow additional discharge from the onsite areas to go into the City's basin. The outfall structure on the existing basin has two 54 inch diameter steel flat gates which are wedged open. We don't know who wedged open, but there's a 12 inch diameter pipe stuck in the (inaudible) gates.

Chairman Plumlee: Show us where the gates are you are talking about.

Doug Groff: The flood gates or the flat gates are right about in this location on Crab Creek. They are wedged open that allows the tidal influence back into the

City basin during high tide events, which has deteriorated the stormwater quality features of the basin. That basin was constructed in early 1994, five years in advance of the Virginia DCR regulations, which were enacted in 1999. For the purpose of this analysis we assumed that this basin would treat fifty per cent of the phosphorus being loaded into it in the current condition. We are proposing to increase the volume of the basin as well as provide a wetlands (inaudible) around the basin. This will increase the efficiency to 65 per cent. That means for every 100 pounds that come into the basin, 65 pounds are removed from the stormwater. The three drainage ditches will be filled in. One will be converted into a stormwater management basin. The offset areas will go into the stormwater system for Indigo Dunes. They will be treated through a vortex system, which will remove a lot of the sediment, oils and trash. You know styrofoam cups, plastic bags from the stormwater before being discharged into the basin. Those vortex systems are allowed to remove 20 per cent of phosphorus (inaudible), the hydrodynamic removable. But we are not taking that into account since we will not have a cement floor base. That is improved methodology by DCR. The third basin will be over here at the location of the existing pond. That will also be converted into a storm management feature that will also drain into onsite areas. For onsite drainage, we will have bio filtration in the areas located here and here as well as green roofs on the two towers. The bio infiltration basins will have the underdrain system for high stormwater events, which will drain the infiltration features and it will then discharge directly into the storm system and then go into the basin.

Chairman Plumlee: Alright, Mr. Groff, you've exceeded the three minutes and I think I want to give you time to answer questions of the Board members. So, is there any other key component of what you're trying to present here that you need to finish up with?

Doug Groff: In addition to bio filtration of all the onsite parking on the roads will be consisting of large river rock stone. It will be pervious areas instead of impervious area, which will decrease the amount of runoff from the site.

Chairman Plumlee: Okay. Any questions for Mr. Groff:

Mr. Miller: As an engineer and one that is qualified to say this, what would be, if you were to take the water quality of the runoff at this point right now, prior to this construction, how would you describe how much cleaner or not it would be when the construction is complete?

Doug Groff: Based upon the offsite drainage area from Ocean Park, there's approximately 94.5 pounds of generated phosphorous.

Mr. Miller: Okay.

Doug Groff: Through the proposed development and the proposed improvements to the stormwater system, we would be moving 103 pounds of phosphorous from the stormwater combined offsite and onsite. I don't have the exact breakdown between offsite and onsite.

Mr. Miller: Right.

Doug Groff: Incidentally, the removal requirement by Virginia DCR for Indigo Dunes is 37.5 pounds so we are significantly above the requirement.

Mr. Miller: Thank you.

Chairman Plumlee: Any other questions of Mr. Groff? Mr. Ripley.

Mr. Ripley: The system itself, did you finish describing your system? When I read it, I thought it had more involved than what you've said. The vortex you mentioned.

Doug Groff: There's three different tiers for onsite drainage.

Mr. Ripley: Okay.

Doug Groff: Okay. The first tier is vinyl filtration. That's in selected areas where we can do the parking lots with depressed medians planted with vegetation that's highly efficient in removing phosphorous from storm work. The second is the vortex system. We are discounting that from the calculations because we don't have sediment floor base on the basins. So instead of having a sediment floor base, we are using

Chairman Plumlee: Sediment what? Say that

Doug Groff: Floor base.

Chairman Plumlee: Okay.

Doug Groff: They remove sediment instead of having to dredge out the basins after construction constructed with sediment. We have the vortex and that will remove the sediment and do the same objective.

Mr. Ripley: Is the floor bay on top of the surface?

Doug Groff: It's usually below the water surface on all basins.

Mr. Ripley: Okay.

Doug Groff: So you don't have to dredge out the entire basin. It's just a small area in the basin.

Mr. Ripley: Tell me about the fill material that's proposed in here. Is that a sandy fill material or what are you proposing and how will that help you with your drainage system or not.

Doug Groff: We don't know the exact location that the fill will come from but will be a well grade of sand, which will allow a high infiltration rate back into the ground water.

Mr. Ripley: So you're filling with sand?

Doug Groff: Actually, yes.

Mr. Ripley: Not clay and other materials like that or other inner material?

Doug Groff: No, the only place that we might have clay is in the location of the basins to keep the water in the basin from going back into the ground water.

Mr. Ripley: Sure. Okay.

Chairman Ripley: Any other questions?

Dr. Vinson: Okay, you say you are going to decrease the phosphorous concentration by 103. Correct? It's 94 coming off of Ocean Park. Do we know how much would come off of this development?

Doug Groff: I don't have the exact figure. I believe it's about 66 pounds from this development that we are removing. Of the 103, the 66 pounds goes from Indigo Dunes. The rest is from Ocean Park.

Dr. Vinson: Okay. And what about nitrogen? Any comment about nitrogen?

Doug Groff: The Virginia DCR standards remove specifically for the phosphorous removal. That's their key stone (inaudible). We have not looked into nitrogen at this time but we definitely can do it.

Dr. Vinson: Thank you.

Chairman Plumlee: Any other questions of Mr. Groff?

Dr. Vinson: Last question.

Chairman Plumlee: Sure.

Dr. Vinson: On the vortex systems, who will be responsible for those?

Doug Groff: The Homeowner's Association of Indigo Dunes.

Dr. Vinson: Okay. Thank you.

Mrs. Brown: That was my question. Who'd be responsible if it's

Chairman Plumlee: To maintain?

Mrs. Brown: To maintain after?

Doug Groff: To what my understanding is, the homeowner fees for Indigo Dunes would maintain the three basins including the City basin. Maybe through (inaudible) with the City. I don't know how that would work legally. But the vortex systems would be maintained by the Homeowner's Association for Indigo Dunes.

Chairman Plumlee: Thank you Mr. Groff. Please tell us who you are. Mr. Groff, you were under oath. Right? You were sworn in?

Doug Groff: Yes.

Chairman Plumlee: Okay. That's the word I was searching for. Okay. Please give us your name.

Karl Mertig: My name is Karl Mertig. I am environmental scientist with Kimlee-Horn and Associates. I have been sworn in. I've been working on this project for about two years now. I had a lot of points I wanted to make but, for brevity sake, I'll hit some of the high points.

Chairman Plumlee: Please do that.

Karl Mertig: One of the things that Mr. Nutter mentioned was 92 million gallons of stormwater that is currently passing through the site untreated through one of the three outfalls. Just to give you an idea of what that means, breaking it down to the perceptual level. You may or may not be aware of the water tower on Shore Drive. That is a 2 million gallon tank. So 92 million gallons of stormwater is dumping 46 of those tanks untreated into the Lynnhaven River every year. That's what that means. One of the comments that Mr. O'Brien had mentioned in his first review of our proposal was the floating pier resting on intertidal mudflats at low water. We have gone out and actually performed an onsite survey of the limits at mean low water and the floating pier will be seaward of mean low water. So, Mr. Worrell, I'll be coming to VMRC to speak with you about that.

One thing we haven't really talked about is the mitigation and the details of that and the success of that. If I could, I wanted to go through a few images that I provided to you.

We've seen a lot of pictures and we've heard a lot of talk about the wetlands that are on site and certainly there are some very, very nice wetlands on the property. Those wetlands primarily are along the perimeter of the property and these are the non impacted wetlands at Indigo Dunes. These wetlands were not impacted through any of the dredging cycles. They are seaward of the berm that was constructed to maintain and contain the dredge material and these wetlands are what we seek to emulate through our mitigation plan.

A second feature of our mitigation plan, which we really haven't tried to quantify because we are not actually creating these wetlands, is the wetland enhancement to the non impacted wetlands, which are behind the berm, the dredged spoil containment berm. These wetlands do not function as well as they could because of those pipes. They don't have an unrestricted access or conduit to the rest of the Lynnhaven system and instead rely on those undersized pipes to exchange nutrients and provide habitat for the aquatic organisms in the river. We plan to remove these pipes and create unfitted access through the location of where those pipes were. Two of these wetlands that are behind the berm, that we are not impacting, enhancing their functions and values to the rest of the system.

And if I could speak to the mitigation that we are proposing. As you've been told, and as you've seen in the photographs, this site has been filled. It was a marsh at one time. That means under this sand, which we will excavate to create these new wetlands, exists the remnant marsh surface, the organic material, much of the prior root mat, is in existence on this site. What that means for us is as we excavate to this area we have the organics, we have the new trends, we have the right stuff underneath this sand that we need to replant with our plants, which will enable those plants to begin very, very quickly providing the functions and values that tidal marshes can do. We can create a tidal marsh in mineral soil but the organics are lacking, which provide the true functions and values of this tidal marsh. These organics are inexistent on this site within our mitigation area. I've provided a time series of photographs to you from last year. We've heard some question about how quickly will this be re-established. These are four photos of the site in Norfolk, which was planted in 2006 and show you the progression of that site through one growing season from the individuals planting the marsh in February through November showing the marsh in its fall blooming with the spartina patens by putting out seed and the new baccharis putting off its seed as well.

Chairman Plumlee: Did you oversee that project?

Karl Mertig: I did, yes, Sir.

Chairman Plumlee: Okay.

Karl Mertig: And then, if I could speak to the longevity of tidal marshes. I've also provided photographs of three successful tidal plans that members of my firm have been involved with. One is at Virginia Aquarium, the boardwalk project, the Birdsong Library, Larchmont Library in Norfolk, which was a tidal restoration, and the port authority wetland, which was actually created out of a pine forest. As I mentioned, wetlands can be created in mineral flats. It may or may not be as productive, which is a scientific word, as wetlands which are created only in natural organic surface which is what we are proposing.

And if I could reiterate, all of the wetlands, both existing, enhanced and created will be preserved in perpetuity. Our wetland mitigation plan will have a phragmites control plan, which as you know, the site currently has quite a bit of phragmites on it. That will be removed and controlled. And, the wetlands once preserved will be protected in perpetuity. Not only will we have the conditions that your Board has placed on us for ensuring success of these wetlands but we will also have conditions. We have conditions that are Corps permit. We will likely have conditions from the Department of Environmental Quality as well.

Chairman Plumlee: Okay. I'm going to have to ask you to stop at this point. Is there any questions of Mr. Mertig?

Dr. Vinson: Yes, Sir. One of my biggest concerns with the wetlands that are going to be created is the impact that I perceive of the buffer loss to their viability. I understand that we have prior converted wetlands, we're going to convert them back, but in the plans it looks like we're losing an awful lot of buffer and I know that that's interval, at least in my humble opinion, to their survival. Can you comment on that, please, Sir?

Karl Mertig: Tidal wetlands from a purely scientific standpoint to meet the requirement of being tidal wetlands rely only on a (inaudible) tidal exchange of nutrients and sediments coming into the system and then leaving the system being intermittently exposed and flooded. Upland buffer habitat is something that the organisms in tidal marshes can use for various life stage cycles. But I'm not sure exactly when you talk about buffers, certainly buffers have many diverse benefits. In terms of buffers being necessary for tidal wetland mitigation or tidal wetlands themselves to survive and be functional, they certainly do not directly correspond to the success or failure of a tidal marsh. They may enhance it but they are not

the determining factor on whether or not a marsh is successful or can survive.

Chairman Plumlee: Mr. Mertig, I'm going to ask you to have a seat. I'm going to call you back up but we've got four students from Cape Henry who are going to have to be at school by 12:30 and we're going to accommodate their schedule by having them heard now. We'll have you come up and answer any remaining questions that a Board member has. Thank you very much, Sir.

Good morning. Have you been sworn in already?

Bryce Northington: No, I have not.

Chairman Plumlee: Alright. Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth.

Bryce Northington: I do.

Chairman Plumlee: Alright, please state your name and your address.

Bryce Northington: My name is Bryce Northington. I live at 2216 Hermit Thrush Lane. It's in the neighborhood area on the Bay. I just have a few quick points to make.

First, Subsection E of VMRC's criteria for evaluating alterations of wetlands states that high density development in or immediately adjacent to wetlands and/or other floodplains is discouraged. And I stress adjacent to because the applicant has obviously made it clear that the impact isn't directly in the wetlands. The rationale for this statement is as follows. Development in low lying areas and on high energy confines has historically created costly flood control and flood relief problems including claims for indemnification. Additionally, hydrological changes in surface runoff patterns are caused by the paving over formerly absorbent soil. The usual effect is an increase in both the amount and the rate of surface water flow often contributing to shoreline erosion and other problems. Finally, high density development that leads to a concentration of contaminating constituents in urban surface water runoff, which can severely stress receiving waters in the adjacent marine environment. There appears to be a direct relationship between population density and a watershed and increased bacterial levels in adjacent waters. This may lead to the imposition of long term restrictions on the direct marketing of shell fish. In the specific criteria section of VMRC's criteria for evaluating alterations of wetlands, Subsection B relates to filling dredged material disposal. In Subsection 1 it states that filling in wetlands or sub aqueous areas for the singular purpose of creating waterfront upland property is

generally undesirable. The rationale (inaudible) for this statement is as follows. Marine resources are finite, provide man valuable services and products and are delicately balanced in an intricate web of biological and physical interactions. Permanent loss of these resources and unnecessary alterations jeopardize this delicate ecological balance. We would argue that protective riparian buffers are intrinsically linked to wetlands, are necessary to support the diversity of ecological values and functions of wetlands and add to their biological and societal value. This project proposes to fill wetlands and reconfigure the landscape resulting in a loss of 13 acres of protective riparian buffers in order to maximize a profit estimated at over 500 million dollars. Thank you.

Chairman Plumlee: Thank you very much. Any question for this opponent?

Mrs. Brown: You did an excellent job.

Bryce Northington: Thank you.

Chairman Plumlee: Nicely done. Who's next that needs to get back to class because I don't want you rushing out of here.

Carter Gibson: My name is Carter Gibson. I live at 1224 Masters Row, Chesapeake, Virginia. I have a seasonal home on 84<sup>th</sup> Street.

Chairman Plumlee: Have you been sworn in, Sir?

Carter Gibson: I have.

Chairman Plumlee: Thank you.

Carter Gibson: I am presenting an e-mail submitted by a woman, Windy Crutchfield, a resident of Shore Drive who is eight months pregnant, may have brought her toddler with her today and could not plan on reading this statement here as she had to go to work.

"As a resident with two homes in the Shore Drive corridor, I have kept an open mind about the proposal to develop this location. I recognize the interest of a property owner to be able to maximize the investment potential of his private property. Establishing the lovely walking trails and viewpoints along this treasured piece of land will increase the property value of my homes. However, the addition of 1,100 new homes can do nothing but degrade the quality of living of us residents and the natural habitat that has already made its home on Pleasure House Point. If a long range view is taken, property values along Shore Drive will plummet as a direct result of this proposed development. People live along the bayfront for the enjoyment of the lovely semi-private beaches, the access to fishing

and enjoyment of exploring the wonders and the wetlands area. This development diminishes all of those activities. With the increased population come more safety hazards, oppressive traffic and undeniable pollution to the wetlands and the Bay. People will find improved quality of life elsewhere and the tax benefits of the City reaps will plummet. We time and again that the CBPA is overruled by allowing encroachments into the 100-foot resource protection area. This should only be occurring when the natural habitat will be improved or unhindered by their requested permits. Not only does this actually destroy the wetlands, the development of Indigo Dunes in entirely self-serving for the City's immediate tax gain and the developer's financial gain. We have to use our common sense and knowledge of the area despite the claims of various experts that we have hired to overcome objections to the development. Of course, the addition of nearly 1,100 new homes is going to strain the City's resources and traffic for this area. Also, what happens every time we create manmade wetlands? Mother nature replaces it with what she intends for the area. (inaudible) looking City Council is going to realize the residents of Indigo Dunes will eventually demand improvements be made to this area, just like Sandbridge, at the City's financial detriment. I applaud the City for the improvements that are underway along Shore Drive to make it safer and more resident friendly. Keep up the great work but say no Indigo Dunes. Windy Crutchfield, a resident of Shore Drive."

I would also like to make a personal statement of one of the applicant's benefits for building Indigo Dunes, which is saying that once Indigo Dunes is built, that there will be no more off-roading, which as you stated, severely impacts the wetlands. I don't think the way to fix that is to fill them in. Thank you.

Chairman Plumlee: Thank you, Mr. Gibson. Any questions for Mr. Gibson? Thank you, Sir. Be safe driving back. Who else from Cape Henry?

Guy Carmeli: My name is Guy Carmeli. I live at 2509 Shepherds Lane in Virginia Beach, Virginia.

Chairman Plumlee: Have you been sworn in, Sir?

Guy Carmeli: No, Sir.

Chairman Plumlee: Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

Guy Carmeli: I do.

Chairman Plumlee: Okay. Go ahead.

Guy Carmeli: I'm reading an e-mail from Michael Bloom who raises some points about the proposed Indigo Dunes construction.

"I restate my opposition to the development plans of Indigo Dunes on Pleasure House Point for the following reasons: it fails to provide good stewardship for the Bay, a resource we desperately need to preserve. It eliminates open space land identified for purchase by the City. The space we need when Virginia Beach starts to look like a typical overcrowded big City. It is not supported by the existing infrastructure, which are already overstressed. Additionally, I understand that this development violates a number of local codes including private and public benefits from a proposed development are overshadowed by the anticipated public detriment. The development will cause more harm, safety, traffic, pollution, etc. to the community than good. City Code 1408, Subsection B, paragraph 1, City Code 1408 Subsection A, paragraph 2 and 4 BAC 20, lines 390-340, Subsection C. The subject site is a priority acquisition site for open space in accordance with the City's 2000 Outdoors Plan. City Code 1408, Subsection B, paragraph 1 and City Code 1408, Subsection A, paragraph 2. The applicant has not minimized impacts to wetlands prior to filling in the site. The only reason wetlands are being filled in is to maximize density and increase profit. City Code 1408.1, Subsection A, paragraph 1 and Code of Virginia 28.2 1308 and 4 BAC 20 lines 390 -340, Subsection A. I urge the City Council to deny this request by eliminating the Indigo Dunes project and please do not change zoning and do not allow conditional use permits.

Thank you.

Chairman Plumlee: Thank you. Any questions?

Mr. Miller: I'd just like to make a comment for the impressive comments that you and other students have made and I'm sure will come up later, but one thing that we all need to keep in mind here is that the infrastructure and traffic and CPBA buffers in open space, all of that are valid concerns for various bodies. All we are concerned with is the effect on the wetlands from mean low water to one and one-half times above.

Guy Carmeli: Yes, Sir.

Mr. Miller: Thank you.

Guy Carmeli: Thank you, Sir.

Chairman Plumlee: Thank you very much. Anyone else that needs to head back to school by 12:30 needs to go ahead. Alright. I think we're ready. We do have one more? Okay. Good morning.

Stephen Parnigoni: Good morning. My name is Stephen Parnigoni. I live at 1705 Jermyn Lane, Virginia Beach, Virginia.

Chairman Plumlee: Have you been sworn in, Sir.

Stephen Parnigoni: No, Sir.

Chairman Plumlee: Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

Stephen Parnigoni: I do.

Chairman Plumlee: Okay, go ahead.

Stephen Parnigoni: I'm a rising junior at Cape Henry Collegiate School. I live in close proximity to the proposed Indigo Dunes site. I'd like to say if you ask anyone in my school who might be taking Marine Biology they would definitely tell that it is a detrimental, there will be a detrimental impact on the wetlands. The wetlands cannot thrive, I repeat, cannot thrive on artificial wetlands. I would also like to talk about what my school has done to raise support for this. We have put on fund raisers like movie nights and yesterday we did a seven hour benefit concert fueled by the leaders, Bryce Northington, Carter Gibson, Guy Carmeli and Jeff Brooks. This shows that we do not take this cause lightly and we would like to see justice made. Thank you.

Chairman Plumlee: Thank you very much. Any questions? Alright. Thanks.

Mrs. Brown: Brian, I would just like to say that, as a former school teacher, that, and I think all of us would probably say the same, I'm very impressed with these students that have come down to take their time and to get involved in the local community. My hats off to you. Their parents and everything. You did an excellent job.

Chairman Plumlee: You did a great job. Please be safe heading back to class. Alright, we need to get on with Mr. Mertig. You were still up. We want to thank all of the folks from Cape Henry for coming, not just the speakers. Alright, let's get going.

Karl Mertig: I'm really not sure, is this rebuttal time or is this?

Chairman Plumlee: No, what it is, I wanted to make sure all the questions the Board had of you, you had an opportunity to answer them. So, at this time if anybody has any comments or questions from your presentation, it's time to ask them.

Dr. Vinson:

One more. Might as well. We heard about the quality of the fringe marsh that's there. Could it be that that's because of the condition of the rest of the site? In other words, again, my concern is a buffer and the impact on the viability of the marsh that's existing and that will be created. In particular because along that south, where the high rise is there's going to be a retaining wall right to the marsh, correct, or as best as I can tell for quite some distance. Your comments, please, Sir.

Karl Mertig:

The, if I can use the board. The existing marsh located seaward of the berm on the property is disconnected, if you will, from the remainder of the property by that berm, which is four or five feet high. As you mentioned, the southeastern portion of the property currently, as proposed, would have a retaining wall. That retaining wall is proposed for an area also behind an existing berm in that area. One of the factors that severely degrades tidal marshes, in my opinion, is the hardening of shoreline landward of tidal marshes. And that's because the marshes rely on sediment to maintain a stasis or a static equilibrium, if you will. Our proposal saved the area on the southeastern side proposes to maintain a vegetated natural slope behind not only the existing wetlands, which are not going to be touched which have that berm been present day, but then the newly created wetlands and the enhanced wetlands will be backed by a soil slope planted with bayscape vegetation. The shore where a seaward berm will act as a wave break as it has on that property for the last 40 years preventing the direct wave attack of the newly created wetlands. We're not creating any new wetlands seaward of that berm. Everything is interior to that berm and that berm is being breached in several areas to provide for wetland flushing. You know, in terms of artificial wetlands vs. natural wetlands and created wetlands, all of the wetlands that are proposed for impact are, if you will, artificial. They have established themselves since the dredging and rehandling of dredge spoil material on this property. In terms of the buffer itself, as I mentioned, the vast majority of the wetlands on site will have that vegetated slope landward of them. They will not have a hardened toe behind them; and, if it would please the City and please the staff, we would be amenable to re-evaluating the need for the retaining wall on the southeastern portion of the property and replacing that with a slope. One of the reasons we placed the retaining wall there, just so you understand our logic, is that is the area of the most or highest amount of wetland impacts on one side of that structure. As you heard in Mr. O'Brien's report, the 404B1 guidelines, which is a separate law, federal law, which we must also comply with, mandates that we avoid minimize and then mitigate. The retaining wall was an attempt to avoid and minimize wetland impacts in that area by having a vertical structure behind the berm so that we wouldn't have direct wave attack on the toe of that structure and meeting the tenements or

intent of that law. But we would be willing to look at putting a slope in that area behind the first slope as well.

Dr. Vinson: Thank you.

Chairman Plumlee: Thank you very much. Are there other speakers in favor of this project? Let's go ahead and come forward.

Mr. Ripley: Could I ask him a question?

Chairman Plumlee: Oh yeah, I'm sorry. I apologize.

Mr. Ripley: The planning plan to provide this mitigation of six acres, when would that go in and how long will it take for that to establish?

Karl Mertig: I appreciate you bring that up. I meant to make that point. The applicant proposes to conduct all of the mitigation and all of the impacts at one time regardless of the amount of time it takes to ultimately build out the project. In all likelihood, the project area will be raised out of the floodplain, stabilized, the wetlands mitigation would be created within the span of a year or so. And then the actual development would occur going forward from that point. So the mitigation would be planted in the spring of the year following site manipulations. So, if we started working on the site in let's say June of 2008, the mitigation would be planted, the work, the grading would begin commensurate with the site work. But the planting would occur the following spring as would the planting in the upland buffer areas in the upland areas on the site to help ensure survival. That's when the plants are beginning to come out of dormancy and the best time for planting those species.

Dr. Vinson: One more.

Chairman Plumlee: Yeah.

Dr. Vinson: The hydrology of the site, ground water,--when we were out there on tour, I did a taste sampling of one of the, I think, the biggest area there and it was

Chairman Plumlee: and he's still with us.

Dr. Vinson: yeah, I'm still...I treat myself. It was one that was not connected by pipes and it was salty or brackish. Okay? Or at least my taste buds told me that. Can you comment about that at all about the, and I don't know if this plays in with the BMP's that are going to be created. Is there any concern about transmission of pollutants by ground water into the natural system? Am I asking, making any sense?

Karl Mertig: Well, before I answer, can you point out exactly where?

Mr. Miller: It's the one to the left, farthest to the left.

Dr. Vinson: Yeah, I think it was that one. Was that where I was, Bill?

Mr. Miller: Yeah, that's where you were at?

Dr. Vinson: Yeah, Bill tried to push me in but.

Karl Mertig: Well, I'm not qualified to speak to the ability of the tongue to distinguish

Dr. Vinson: Well, I am see, so.

Karl Mertig: I don't doubt that you didn't taste salt. As Mr. Groff mentioned, the site's going to be raised with sandy material except for the locations of the ponds, which may be required to be lined with clay or bytenyte so that we can be assured that the stormwater that comes into the ponds doesn't drain through the bottom of the ponds into the river but actually stays within the ponds.

Dr. Vinson: Exactly my concern.

Karl Mertig: And that is something that we are prepared to do should be geotechnical report come back and tell us that

Dr. Vinson: Okay.

Karl Mertig: you're not going to keep water in the pond at the elevation you would like to have it. You must line the pond.

Dr. Vinson: Okay. That answers my question perfectly. Thank you.

Karl Mertig: And also, I believe it's in the application, we did conduct a shallow grill water study across the site to look at the ability to do onsite infiltration. And that data, I believe, is in the permit application. We found a depth to ground water anywhere from three to six feet below the existing ground surface. And so we will be able to maintain the two feet of separation between the seasonal high ground water table and the bottom of our infiltration structures once the site is developed.

Chairman Plumlee: Alright. Thank you very much. Anything else? He'll have an opportunity to come back if we need to address something specific. Who is the next speaker for the applicant or in support of.

R. J. Nutter: I believe, Mr. Chairman, it's Rod Rodriguez.

Chairman Plumlee: Okay. Morning, Sir.

Rod Rodriguez: Mr. Chairman.

Chairman Plumlee: Have you been sworn in?

Mr. Rodriguez: No, Sir.

Chairman Plumlee: Do you swear to tell the truth, the whole truth and nothing but the truth?

Mr. Rodriguez: I do.

Chairman Plumlee: Thank you.

Mr. Rodriguez: I just recently resigned in 2006. I was Chairman of the Wetlands Board

Chairman Plumlee: Distinguished Chairman.

Mr. Rodriguez: for about 8 years. I've walked the site with Mr. Scarper and other staff members and the Wetlands Board. On three different occasions walked the site. In all the amount of time what's on the board, I've never seen a mitigation offer of this amount, percentage wise. I mean they really put a lot of time and effort and engineering into how to do this mitigation. I just urge you to consider all the work that they've put into this thing and in the amount of mitigation they've offered. You can remember when everybody came in here, nobody ever talked about mitigation. But they do now and I just urge you to approve this application.

Chairman Plumlee: Thank you very much.

Dr. Vinson: Well, don't we get to ask him questions?

Chairman Plumlee: No, we don't.

Dr. Vinson: Oh, Okay.

Chairman Plumlee: Actually, we can ask him questions but I don't think anyone's that interested in asking Mr. Rodriguez questions. But we do appreciate your coming here and giving us your comments, Sir, very much. Anyone else to speak in support of the application? Yes, Sir, please come forward and identify yourself and let me know if you've been sworn in.

Ken Dirkson: My name is Ken Dirkson the Director of Environmental Services of the Chesapeake Office of Kimlee-Horn. I have not been sworn in. I will be speaking on behalf of the applicant.

Chairman Plumlee: Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

Ken Dirkson: I do.

Chairman Plumlee: Thank you, Sir.

Ken Dirkson: I'll keep my comments short and direct to Section 14.08.1 of the Standards and Use Development of Wetlands. What I want to make, ladies and gentlemen, is that we have spent a great deal of time studying and following these standards. If you look at that standard, it says the following standard shall apply to the use and development of wetlands and shall be considered by the Board in the determination as to whether any impact required by this Article shall be granted or denied.

1. Wetlands primary ecological significance shall not be altered so that the ecological systems of the wetlands are unreasonably disturbed. We have preserved the 8.6 acres of fringe and wetlands on this site virtually in tact. You have seen VIMS' report and the addendum that David wrote on May 18<sup>th</sup> that indicated that we have largely avoided the wetlands of primary ecological significance. Those are the fringing wetlands that have grown up naturally around this property.

2. For the maximum extent practicable, development shall be concentrated in wetlands of lesser ecological significance. The wetlands that we're impacting have grown up around manmade features on this property after it was filled with dredge material back in the early 70's. These areas are not fully functional in the sense that they don't have full tidal influence. They are wetlands of lesser ecological significance, primarily phragmites, and they are areas that are not the kind of Class I, fully functional, wetlands that we see along the fringe of the property.

3. Wetlands that have been within that section, wetlands that have been irreversibly disturbed before July 1, 1972. You've seen the aerial photographs that show that this site was filled in 1970 and 71. So clearly, all those areas that were previously wetlands were filled prior to 1972 and we have concentrated our development in that area. In long vegetated wetlands, which have been irreversibly disturbed prior to January 1, 1983. Those wetlands that are out there, the non vegetated wetlands that we are disturbing were created by virtue of those canals being dug through the fill material prior to 1983.

So clearly, we've met, I believe, the standards of item 1 and item 2 of Section 14.08.1. And, we've also finally concentrated our development in areas outside of wetlands and I call your attention to page 18 of the Environmental Support Document that shows that of the 69 acres of developable property, we are impacting 4.8 acres of wetlands, 4.8 percent of wetlands. That means that over 95 percent of this project is in non wetland areas. And only 16 percent of the tidal wetlands within the property boundary will be impacted. So we have clearly met that standard.

The point I want to make, ladies and gentlemen, is that we have spent a great deal of time working with the City staff to ensure that our project was consistent with these guidelines and I ask you to approve it on that basis. We'll certainly be glad to answer any questions. There are lots of details about this project that we are prepared to provide to you but this project has been designed to ensure that it met the standards that you all are asked to approve to use when you approve a project.

Thank you.

Chairman Plumlee: Thank you, Sir. Anyone else to speak in support of this project that wishes to come forward right now. Alright, I think we're going to take about a 20 minute break. Is that going to create big problems for any of the speakers that are going to come up next for the opponents? Alright, well let's go ahead then and get started. I would that ask that the people. Now hold on, hold on a second. I would ask that the people that need to speak first because of scheduling, I mean I'm talking about within the next 15 to 20 minutes because we are going to take a lunch break...that they come up and start to give the comments and that we're going to proceed in an orderly fashion as we can. But to accommodate people with schedules where they absolutely must leave in the next half an hour then come forward. If not, we'll take our lunch break now, come back in 20 minutes and get started for the rest of the Hearing. Anybody want to come forward now? Alright. Please state your name, Sir. Tell us if you've been sworn in.

Bob Leavenworth: Good morning. I've been sworn in.

Chairman Plumlee: Okay.

Bob Leavenworth: My name is Bob Leavenworth. I live at 3840 Jefferson Blvd. in Ocean Park. I'm a retired Naval Officer and electrical engineer. I am not an environmentalist. My family has owned this property since the late 1960's. Notwithstanding many of the attributes of this applicant's desire to develop, and I'm in favor of any landowner having that right to develop, I am very concerned about the impact of this on a number of

areas. The ones that they would have you believe that you're interested in is a very small percentage of the entire development project. However, I would invite your attention to the fact that the Lynnhaven River has been sort of destroyed over the last 40-50 years due to extensive development. The increased pollution due to various runoffs to the added density population that inhabits the area and the fact that you can't add a thousand residences, even though it's outside the wetlands area as so aptly pointed out, and not have some impact on that grass that's growing out there to me is inconceivable. Notwithstanding, I think many of the things they've said they want to do, if we can hold them to it, and maybe a little jaundice, but is it really going to happen that way? I don't know. As aptly pointed out, the property that they're talking about is manmade. They dump spoilage in there. And the Sandler Company intends to dump more fill in there to raise the property. Are we really adding a benefit or are we just adding to the problem. I am opposed to the project on the basis that its size will impact wetlands and impact a number other factors. I would like to see the project go forward on some other kind of scale. Thank you very much.

Chairman Plumlee: Thank you. Any questions?

Mr. Miller: Just a quick one 'cause I think we're going to hear this a lot this afternoon. Believe me, I have the same concerns you have about the quality of the river. I've lived there even longer than you have. But, I would like to know if there are any specific things that you see in this project that will degrade the quality of the runoff or of the wetlands. And what specifically do you think is going to damage the spartina alterna flora and the ecology of the wetlands?

Bob Leavenworth: I believe that you can't add a thousand homes within several hundred feet. Albeit, outside of the high water mark and expect that you're not gonna infect the number of cars that are going to be there, the number of people that are gonna be there, the number of grasses and lawns that are gonna be there, the fertilizer they're gonna put on those. I think it's going to have an affect on the wetlands. And I'm setting aside the other affect on City services and so forth.

Chairman Plumlee: Any other questions? Thank you very much, Sir.

Bob Leavenworth: Thank you. My cardiologist will thank you, too.

Chairman Plumlee: Anyone else that feels they need to come up right now? Yes. And again, identify yourself. Tell us your address and let me know if you've been sworn in.

Herbert Felini: My name is Herbert Felini. I'm on Sandpiper Road, Virginia Beach and I have been sworn in. The wetlands permit application submitted for this

development states "the non tidal wetlands at Indigo Dunes have low value as well a habitat". Mr. Sandler and his team also stated on their April 5<sup>th</sup> response to Virginia Institute and Marine Science's questions that "no information on avian habitats has surfaced in consultations with the Department of Conservation and Recreation and Virginia Commission of Game and Inland Fisheries". These statements are inaccurate and horribly misleading. A multitude of species that depend upon Pleasure House Point and the surrounding ecosystems will be greatly impacted by this proposed development. Information in this statement, and the one to follow by my daughter, was reviewed and certified as accurate by Dr. Maynard Chaus for the Department of Biology at Virginia Wesleyan College. In October 27, 1998 site impact assessment, Walter Priest of the Virginia Institute of Marine Sciences found that the interior tidal wetlands were "integrally linked to the Pleasure House Creek system" and that these "wetlands and open water areas provide important fish and wildlife habitat that contributes to the high quality of habitat found in Pleasure House Creek". He further stated that "from the viewpoint of marine environment, every effort should be made to minimize the filling of these wetlands and other open water areas because of their value to the Pleasure House Creek system". The site in question is one of the last remaining undeveloped stretches of shoreline in the area. Dr. Chaus has frequently visited the area for marine biology and ecology field trips. He noted that numerous wildlife species use the area's habitat. He also noted that the loss of these wetlands would harm native wildlife. These wetlands represent an essential element of the local ecosystem. During 1994 review of the western portion of the subject site for a public boat ramp, the National Marine Fishery Service reported that Pleasure House Creek and surrounding areas are particularly important to the juvenile blue crab. The shallowness in the shore areas of Pleasure House Creek and submerged aquatic vegetation found in the lower Chesapeake Bay serves nursery habitat for the newly set of larvae. The larvae metaphors, infant juvenile blue crabs and spread to the Bay during fall and spring. Numerous fish species are known to occur in Pleasure House Creek to include the anchovy, Atlantic croaker, spotted trout and stripped mullet. The 1994 study by the National Marine and Fishery Service also documented two marine mammals as visitors to Pleasure House Creek--the Harvard Seal and the Aquatic Bottlenose dolphin. The seals may inhabit the area from December through March and the dolphins the spring and summer months. According to the 1994 National Marine Fishery Services report, two species of turtles are also known to occur within the project area. Specifically, the western portion of the subject site. The Loggerhead Sea turtle and the World's most endangered sea turtle, the Kemp's Ridley sea turtle. Both species are Federally listed as endangered. These two species are seasonal visitors to the shallow water habitat within Pleasure House Creek. Dr. Chaus has also observed the diamond back terrapin in the area. This turtle is listed in the Virginia Department of Game and Inland

Fisheries as a State's species of concern and is also a Federal species of concern.

Chairman Plumlee: Any questions for Mr. Felini? Mr. Felini was that information concerning the endangered species that you had gone through? Tell me the source of that information again.

Herbert Felini: I'll have to defer. My daughter will be up next, if you don't mind.

Chairman Plumlee: Alright. Thank you.

Herbert Felini: Thank you.

Nicole Felini: I can provide a listing of all the sources used to identify the endangered species after this, if you'd like.

Chairman Plumlee: Wonderful. Please tell us your name and your address.

Nicole Felini: My name is Nicole Felini and I live at 3714 Rockbridge Road in Ocean Park and I have been sworn in.

The Lynnhaven estuary is located within the Atlantic flyway, a migratory route utilized by many bird species. The 1998 site impact assessment by the Virginia Institute of Marine Science noted "bird diversity was very high during the spring site visit indicating that these areas are important wintering habitat and migratory corridors for water fowl and leading birds. Among the birds that are known to occur in the Pleasure House Creek are the leas tern, the great and common egrets, brown pelican, the great blue heron and the boat tail grackle. There have also been reports of Bald Eagles in the local area. According to the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation, both the leas tern and the brown pelican are listed as State species of concern. The Bald Eagle is protected under the Endangered Species Act as a federally threatened species and is also protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Dr. Chaus conducted a detailed census of the bird community composition through the Lynnhaven River including two sites on the property of interest and three sites adjacent to it. During his surveys he noted 27 bird species that used the marshes and adjacent waters on site. The Virginia Institute of Marine Science review of this project noted that, if permitted, construction activities will occur over many months to years as the project development occurs in phases resulting in the disturbance of wading birds and shore birds currently utilizing the project area as foraging, breeding and nesting habitat. The driving of piles associated with the construction of the two 11 story towers will likely displace the local population of water birds from the vicinity of the project site for an undetermined period

of time. In a letter from the U.S. Department of Interior dated 29 November 1972, the DOI states that 25 to 30 acres of wetland fill appear to be in violation of the Rivers and Harbors Act. It also refers to these wetlands as a unique and indispensable part of biotic community by providing food, shelter and nursery areas from any animals which inhabit the estuarine ecosystem. The DOI referred to the filling of wetlands as the riparian owner obtaining upland real estate at the expense of public resources. DOI's bureau of Sport Fisheries and Wildlife objected to the filling of wetlands and their significant adverse affects on public fish and wildlife resources, especially where there's no demonstrated public need. In 31 July 1997 in a letter from the Corps of Engineers, the Chief of the Regulatory Branch characterized the wetlands associated with interior canals as performing many wetland functions. During agency coordination reviews from Mr. McClesky's application to fill interior tidal wetlands, the Virginia Department of Environmental Quality recommended that tidal wetlands not be filled and the National Oceana Atmospheric Administration recommended that the Corps provisional permit be denied because of objections to the proposed filling of tidal wetlands. The current application seeks permission once again to fill these valuable natural wetlands and in the process the proposed project would destroy approximately 13 acres of protected riparian buffer and encroaching to the diminished remaining buffer. These proposals are squarely inconsistent with Section 1408, paragraph B, subparagraph 2 of the Virginia Beach Wetlands Ordinance. If this project is approved, wetlands of primary ecological significance will be altered and the ecological systems in those wetlands will be unreasonably disturbed. This project will directly impact the multitude of species that depend upon Pleasure House Point. Several of these species are federally designated as endangered, threatened or a species of concern and they deserve our protection.

Chairman Plumlee: I don't want to rush you off, were those all the comments that you wanted to make?

Nicole Felini: Yes.

Chairman Plumlee: Okay. Anyone have any questions of Miss Felini?

Mrs. Brown: I didn't catch, what happened in 1997?

Nicole Felini: The

Chairman Plumlee: There was a letter from the district

Nicole Felini: Corps of Engineers

Mrs. Brown: For?

Nicole Felini: A Chief of the Regulator Branch was just mentioning that the interior canals are performing in many wetland functions. It's just a Corps of Engineer letter that I cited.

Mrs. Brown: Was that requested fill then at that time or just the?

Nicole Felini: I would have to

Mrs. Brown: Okay, that's fine. I just

Nicole Felini: find (inaudible) to determine that.

Mrs. Brown: Okay. Thank you.

Chairman Plumlee: Any other questions?

Mr. Ripley: I've heard the two speakers mention 13 acres lost buffers and I'm not sure where that's coming from.

Mr. Miller: The Chesapeake Bay Act Buffers.

Mr. Ripley: Oh, you're talking about the

Mr. Miller: Yeah, the Chesapeake Bay.

Mr. Ripley: They're not losing them? They're

Mr. Miller: Well, no, they're building on them.

Mr. Ripley: They're building? Okay.

Mr. Miller: I think it is important to know one other thing. I was involved back in the early 70's when all of that was covered up and when Dr. Spencer Wise and a bunch of other people tried to stop that and tried to get the Corps not to do it. That is not our concern now. There's nothing that we can do about the fact of how it was covered back in 1972 and it's really not pertinent to the discussion we're having now. Although, it is certainly true.

Chairman Plumlee: Any other questions of the speaker? Okay.

Nicole Felini: Thank you very much. I'll make sure that the list of sources are provided.

Chairman Plumlee: Do you want to make any comments based on what was just said?

Nicole Felini: I think regardless of how or why these wetlands have been filled in in the past, 70's or whenever, the fact is species do use this property and it's a foraging area, nesting area and as my Father noted, the most endangered sea turtle in the world uses this area—Kemp's Ridley sea turtle. It is federally protected as well as two other types of turtle and you have several birds that are State species of concern. If these wetlands are impacted, we could lose those species in the area and they deserve to be protected.

Chairman Plumlee: Thank you very much.

Nicole Felini: Thank you.

Chairman Plumlee: Alright. I'm going to take a break right now. We're going to take a break for about 20 minutes.

Tim Solanic: We have one more.

Chairman Plumlee: We have one more?

Todd Solomon: We have one issue.

Chairman Plumlee: We have a lot more, I think.

Todd Solomon: I do but we, I'm afraid after 20 minutes we may lose half the crowd and hopefully none of you coming back. But, I would like, if you wouldn't mind, just let everybody in opposition stand up just in case others who aren't speaking are here just to oppose.

Chairman Plumlee: Go ahead.

Todd Solomon: Everybody in opposition please stand.

Chairman Plumlee: Okay. All those in opposition have stood. Thank you very much. Now, I can see there's a number of people here and someone has mentioned that you may leave if we take a 15 minute lunch break. I'd ask you to stay, if it's important to you. We're going to take 15 minutes and have our lunch and come back.

Chairman Plumlee: Okay. Let's go ahead and get to this...everybody get their seat again. Is Wayne in the room? Hold on. We're still waiting on a few staff people to come back. Okay, we're still waiting on a few staff members to get back but I want to read into the record. Do we have the recording going, Kay? Ask Gloria. I don't have any idea. Gloria, I need the tape machine to get going because I'm going to read into the record all of the e-mails—the

people that have sent e-mails in opposition that we've received their e-mails and that we're placing their e-mails in the record as part of this Hearing. So, if I'm being recorded, I'll go ahead and start reading:

Don Allen, Steven Ambrose, D. Atkins, Ronald E. Augustine, Laura Baity, Marry Anne and Ronald Balding, Kim Barker, Michael Blume, Jerry Bocrie, Ruth Boynewicz (I think that's better than trying to pronounce it), Robert Bunch, Margaret Burns, Bill and Claire Cason, Angelo Celesia, Edward Chittenden, Ann Cleland, Josie Collier, Carol Collins, Lawrence Connor, Charles Comb, Mary Craig, Tom Crockett, Wendy Crutchfield, Neil Curtain (President, Church Point Homeowners Association), Veronica Dana, Sam DeLong, Dan Demers, Kurt and Michelle DeVito, Dave Dodson, Tammy, John, Kate and Molly Dodson, Jennifer Downin, Lisa Doyle, Samuel Estep, Ginger Farris, Michelle Frasher, Tony Gills, John Grawl (VP Landing Condo Association and President Charlemagne Condo Association), E. K. Gregory, John Groff (Sunset Watch Condo Association), Gene Hansen, E. W. Harrington, Heidi and Mitch, J. Tony Hendrik, P. Lawrence Hester, David and Dorothy Hilliard, Frederick Hough, Sam Hribal, Jason@levelupdesigns, Donald Jeffries, Arthur Jenkins, Rex Jenkins, Walter and Susan Karlau, Jessica Kline, John Kobus, Gary Lakin, Jerelyn Lawrence, Leana Lewis, Rebecca Lowrance, Paul Lynch, Susan Lyon, Michael Maraia, Joseph and Maria Martinez, Claudia MaConathy, Helen MaConathy, Josie, Mark, Mia Maconathy, Tom McLemore, Stephanie McManus, Kim Miller, David Mims, Empsy Munden (President, Cape Story by the Sea Civic Association), Vincent Nakovics, Delilah Nguyen, Donald J. O'Brian, Kevin Oaks, John Olliges, Bill and Arlene Owens, Todd and JoAnn Parker, Patricia Patrick, Chuck and Estella Patton, Maryann Perrini, Ehidi Pocklington, Jason Poole, Stephanie Poole, John Redmon, Allen Rohanna, Leslie Rosenstock, Howard R. Royster, Gerald M. Sandler (Lesner Point Condo Association), Dave Savino, Kenneth C. Scandal, Elizabeth Schmidt, James and Kim Schmidt, Darrell Schmidt, Michael Schmidt, Leslie Shafer, Pauline and John Sherrill, Rob Sisson, Charles M. Smith, Harry Smith, Nancy Snyder, Tim Solanic, James Speckhart, Carl Sterzing, Julie Sterzing, Sarah Sterzing, Walt Stone, Stanley Summer, Martha J. Thereault, Jamie Todd, Larry Tollence, Wendy Vaughn, Michael Veraldi, Jonna-Dawn Walker, Kim Watts, Carolyn Webber, Howard Weinberg, C. L. Wells, Melissa Wiegand, Will {campcrell@cox.net}, Shirley Woodrow, Quinn Zimmerman, Jennine Zumbuhl, I believe.

And I apologize for the mispronunciations but all of your comments to the folks that I just read off the list have been put into the record and I wanted to assure you of that. So, I've read the list. If you didn't hear your name, then it probably means that your e-mail wasn't included in the record so you may want to present it to Kay Wilson. If you come up and provide her with your comments, she'll make it part of the record.

Alright, we're ready to proceed with further comments of the opponents to the project. And, if you could read from the list, I'm talking to Gloria Winkler, our Clerk of the Board, and she will read your name and if you hear your name, please come forward and make sure I know whether or not you've been sworn. Thank you.

Clerk: Daphne Atkins

Daphne Atkins: Could you hold on just a second, I'm going to set up.

Mrs. Wilson: I would remind you that anything you show to the Board has to come to me. You won't get it back. It has to be forwarded to VMRC. Everything that you show to the Board.

Unknown: Is that right?

Mrs. Wilson: Yes.

Chairman Plumlee: Yeah, it becomes part of a record that is sent to the VMRC if there is an appeal of the Board's decision then they have the full record before them to consider.

Unknown: Well, you all are welcome to these before us.

Daphne Atkins: Sir, Laurie Sorabella has to go. Would you mind if she went before me?

Chairman Plumlee: I don't mind.

Laurie Sorabella: Hello, I'm Laurie Sorabella. I'm Executive Director of Lynnhaven River Now. This is Andrew Fine, he's Co-Founder of Lynnhaven River Now.

Chairman Plumlee: Have you been sworn in?

Andrew Fine: I have not.

Chairman Plumlee: Okay. Do you swear to tell the truth, the whole truth and nothing but the truth.

Andrew Fine: I don't intend to speak.

Chairman Plumlee: You don't intend to speak? Okay.

Andrew Fine: Unless there's some questions.

Chairman Plumlee: Alright. Go ahead.

Laurie Sorabella: Thank you. I am presenting a public statement prepared by our Executive Committee. Lynnhaven River Now is a non profit organization dedicated to protecting and restoring water quality in the Lynnhaven River for the benefit of current and future generations. To preserve and enhance the river's health, we work to protect and restore vital habitats such as wetlands, riparian buffers and oyster reefs that filter polluted runoff and improve water quality for the river and its marine life. We work to identify and reduce the sources of nutrients, sediment, chemicals and bacteria entering the Lynnhaven River and we work to raise citizen awareness of the river's problems and engage the community in a restoration effort. It is not typically our organization's practice to comment on individual development projects within the Lynnhaven River's watershed. As stewards of the Lynnhaven River, we strongly support the existing wetland and Chesapeake Bay Preservation Area regulations that are in place to protect the health of the Lynnhaven River. Therefore, we believe that any development project that is proposed within the Lynnhaven River's watershed, including the proposed Indigo Dunes project, should avoid impacts to the wetlands and to the existing buffer with 100-foot minimum that falls within the Chesapeake Bay Preservation Area. On behalf of the Lynnhaven River Now Executive's Committee, volunteers and 2,500 members, I thank you for your consideration of our position and for your assistance in helping to protect the health of the Lynnhaven River.

In addition to our public statement, I just wanted to make a quick comment about something that I've heard during the presentations.

Chairman Plumlee: Don't worry about the time.

Laurie Sorabella: Okay.

Chairman Plumlee: Because you're speaking for a lot of people. Go ahead.

Laurie Sorabella: Well, thank you. The one thing that I did want to make comment about is we had heard that the water coming off of this property has five times the safe swimmable, fishable bacterial levels and I have pulled and brought with me the Division of Shellfish Sanitation's sampling stations and the results of the fecal coli form that they report. Looking at stations 70-2 and 70-5 and looking at the numbers that they have for fecal coli form an average is 2,000. It does not appear that the areas are even at swimmable, fishable themselves much less exceeding them by five times.

Chairman Plumlee: So, let me make sure I understand what you're saying. They had, I believe the testimony was there was 93.5 pounds of sediment coming out, roughly, I don't know, was that one particular

Dr. Vinson: No, Mr. Nutter made a comment about eco coli form counts being quite high coming off of...

Mr. Miller: one of the drainage systems.

Mrs. Brown: Yes.

Dr. Vinson: Yes.

Chairman Plumlee: And your testimony is that it is not high at that point and it hasn't reached the level where there's a prohibition on swimming?

Laurie Sorabella: That's right. According to, just looking at the stations that the Virginia Department of Health samples monthly.

Mr. Miller: Laurie, could you point out where those stations are? 'Cause I think what Mr. Nutter said was it was off of one of, they were measuring that as they came out of one their ditches.

Laurie Sorabella: Okay.

Mr. Miller: Where are those stations?

Laurie Sorabella: The two stations are not reflected on here.

Mr. Miller: Okay.

Laurie Sorabella: I've got a map with me.

Mr. Miller: There's a pointer right there, a laser pointer on the front of the desk.

Chairman Plumlee: At the front of the podium.

Laurie Sorabella: Okay.

Mr. Miller: And you can point to it with that.

Laurie Sorabella: Okay, looking at the map that I see on the wall, they fall approximately here, right at the outflow to Crab Creek.

Mr. Miller: Right.

Laurie Sorabella: And they fall just in this area right here.

Mr. Miller: Thank you.

Chairman Plumlee: Any other questions?

Mrs. Brown: Were you aware of the 92 million gallons of water that they say is coming through this area now?

Laurie Sorabella: Yes.

Mrs. Brown: And have you, as a group, addressed what you would like to see done with that?

Laurie Sorabella: The water that flows through there currently, the majority of the watershed, the majority of the Lynnhaven River's watershed, is not treated when it outflows into the Lynnhaven River. So, it's not desirable to have untreated water flowing out into the Lynnhaven River.

Mrs. Brown: So you're well aware of it and hope to do something about that in the future?

Laurie Sorabella: Yes.

Mrs. Brown: Good. And one thing that piggybacking on what Steve said...and so you're saying that the...your count is five times less than what was presented?

Laurie Sorabella: These are numbers that are sampled by the Virginia Department of Health, the Division of Shellfish Sanitation, and they take samples monthly. The numbers that they have, I have just done the average of since 2000. So, the numbers that they're presenting at those two stations are in the range of 60-70 most probable number per 100 ml, which is the way they sample bacteria. So a 68 and 75 for the averages that I see. The swimmable, fishable level is safe to swim and fish until you reach 200 most probable number. And so when they presented that the numbers exceed by five times that would indicate that the water is a 1,000 most probable number and the average as I see at the stations that the Division of Shellfish Sanitation samples, those numbers are 60 and 70.

Mrs. Brown: That makes me feel better. I was afraid we were going to have to diaper all the wildlife.

Laurie Sorabella: Oh, and Andrew points out that maybe we should mention the level for shellfish is 14, most probable number. So, we'd like to see it dwindle below 60 and 70 but we're not at a 1,000.

Mrs. Brown: Good.

Chairman Plumlee: Any other questions? Thank you very much for your presentation.

Laurie Sorabella: Thank you very much for your time.

Chairman Plumlee: Hello. Please tell us your name again.

Daphne Atkins: My name again is Daphne Atkins and I live in the Chesapeake Beach neighborhood.

Chairman Plumlee: Okay. And you've been sworn in?

Daphne Atkins: I have been sworn in. So. We have assembled a group of presenters today representing Civic Leagues and citizens along the Shore Drive corridor. And, in fact, this application has attracted the attention of environmental groups from all over the Country who are carefully watching what happens in this Hearing. Today's speakers have been in consultation with environmental attorneys, scientists, engineers and planners who collectively have decades of experience in evaluating issues such as those being presented today. These professionals have donated their time and expertise at no charge because they feel so strongly about this proposed development. They've visited the property, reviewed its histories and corroborated for countless hours to review the joint permit application and the laws which govern wetlands. With regulatory experts, we have reviewed the application in light of the Clean Water Act, the Rivers and Harbors Act, Virginia State Law and most importantly, the ordinance which stipulates wetland preservation requirements in our City and the basis for our being here today. We've prepared these two exhibits being placed before you to illustrate the gravity of the situation we're discussing today. Forty, 50, 60 years ago this entire area was wetlands. And we'll show you a picture of that later in our demonstration. And actually, we have a picture in the booklets we have for you. The exhibit details the 1.51 acres of wetlands which fall under the jurisdiction of this Board. And those...

Mrs. Wilson: She needs to stay at the microphone or we can't get her report.

Chairman Plumlee: Okay.

Mr. Miller: There's a pointer.

Chairman Plumlee: Yeah, if you look at the front of the podium.

Daphne Atkins: I know but I can't see red.

Chairman Plumlee: Oh you can't, okay.

Daphne Atkins: I have a hard time seeing red.

Chairman Plumlee: Well, you can bring the exhibit closer to you, too, if you need to do that.

Daphne Atkins: Okay. These areas in red are the areas that fall under the jurisdiction of this Board. And at first glance they might appear fairly insignificant, however, by the applicant's own admission, if these wetlands shown in red are not allowed to be filled, then the riparian buffers, which we've shown in green, will be required taking up a total of approximately 13 acres. With both the wetlands and the buffers enforced, nearly one-fourth of the property will be undevelopable, which is the basis for the applicant's request for the permit to be approved today. In exchange for all of those wetlands and buffers, over 14 acres, the applicant is offering less than six acres of created wetlands with arguable marginable functions and values, the most of which are to be constructed within the existing riparian buffers along the shoreline. I'm almost done. According to our laws and regulations, there are three things you must find

Chairman Plumlee: Don't worry about the flashing light.

Daphne Atkins: Oh, I'm not.

Chairman Plumlee: Just keep going. I'll tell you...

Daphne Atkins: I was going right through it.

Chairman Plumlee: Good.

Daphne Atkins: According to our laws and regulations, there are three things that you must find to approve an application. Otherwise, it must be denied. And those are the Clean Water Act, the Rivers and Harbors Act, Virginia State Law and the ordinance which stipulates wetland preservation requirements in our City.

Number 1. Three things you must find. All reasonable mitigated actions including alternate siting, which would eliminate or minimize wetlands loss or disturbance must be incorporated in the proposal.

Number 2. The proposal must be clearly water dependent in nature, and

Number 3. The proposal must demonstrate clearly its need to be in the wetlands and its overwhelming public and private benefits.

Again, if the proposal does not meet any one of those three criteria, it must be denied according to the regulations and the laws. It's as easy as that statement.

This proposal fails to meet any one of these criteria. Wetlands do not function in a vacuum. This applicant does not want the wetlands because of the limitation imposed by the required Chesapeake Bay Preservation Act buffers. The regulations require that this application be denied. Please look at these exhibits as they represent visually what is at stake in the substance of your decision today. It will be referred to throughout our presentation and I will now turn our presentation over to the rest of the group.

Chairman Plumlee: Thank you.

Daphne Atkins: Thank you.

Chairman Plumlee: Any questions of this speaker? Alright. Who's up next? Are these exhibits going to stay out for the next speakers?

Daphne Atkins: Yes. We thought we'd signed up in order so we can present our program in order.

Chairman Plumlee: Gloria, who's next on the list next after Ms. Atkins?

Clerk: Mike Wills.

Chairman Plumlee: Mike Wills? Let's follow the list that we have. Please have a seat, Sir, we're going to move on to Mr. Wills who's next on the list. Is that right?

Daphne Atkins. Thank you.

Mike Wills: Good afternoon. My name is Mike Wills and I live at 3841 Jefferson Blvd. in Ocean Park and I haven't been sworn in yet.

Chairman Plumlee: Do you swear to tell the truth, the whole truth and nothing but the truth?

Mike Wills: I do.

Chairman Plumlee: Okay, go ahead.

Mike Wills: The application fails to meet Section 1408b.1 as proposed public and private benefits of the proposed activity do not exceed the anticipated public and private detriment. Naturally, the applicant had designed this project and maximed profit and proposed stormwater enhancements, osprey polls and oyster reefs to entice the Board to approve a project that is not notorious on its own right. The myth of development is that taxes generated from developed property covers a cost of municipal

infrastructure projects and services needed to support the development in the long term. But this is rarely the case.

The monetary benefits that accrue to the developers of this project and the City will be far outweighed in comparison to the long-term public detriment in developing this Pleasure House Creek property. The City would lose a huge tract of undeveloped land as a top acquisition priority of the Virginia Beach Outdoor Plan. The plan states a top priority to acquire a large area of undeveloped land at Pleasure House Point, which provides unique natural amenities, including visual and physical access to Lynnhaven Bay, natural trail opportunities and preservation of the scenic vistas unique to the bayfront area.

By allowing this project to eliminate 13 acres of resource protection area, buffer and deposit fill, which would destroy all the mature trees on the property, residents and citizens, alike, would suffer from a loss of wildlife that add value and improve the quality of life in this community. The huge potential for quality education and outreach on the parcel would be crippled, and the existing use of Pleasure House Creek as an aesthetically pleasing destination for kayak eco tours would be severely hampered.

Moreover, one of the most often overlooked aspects of open space protection is the direct economic value that environmental ecosystems add to housing prices. Natural ecosystems, including wetlands and riparian buffers with mature trees and understory vegetation, contribute to overall environmental quality and reduce air, water, and noise pollution and provide environmental amenities, such as aesthetic views and active and passive recreation opportunities.

Economists use the Hedonic pricing method to value environmental amenities that affect the price of surrounding residential properties. In one case study in Southold, Long Island, planners found properties adjacent to open space had on average 12.8 percent higher per acre value than similar properties located elsewhere. In this test case, the value of preserving a 10 acre parcel of open space surrounded by 15 average properties was calculated at \$410,907. The subject property is approximately 70 acres and is bordered by hundreds of units in the Marlin Bay, Ships Cabin, Ocean Park, and other surrounding residential developments. When property value enhancements next to dedicated open space are combined with savings from new infrastructure demands associated with proposed development in the form of roads, stormwater, schools, police, fire stations, etc., the economic value of the open space often outweighs the loss of revenue proposed to be generated by taxing the new development. That's it.

Chairman Plumlee: Thank you, sir. Any questions for the speaker? Alright. Who's next?

The Clerk: Steve Kohler and then Nancy Felini.

Chairman Plumlee: I believe Ms. Felini has already spoken.

The Clerk: Nicole has, not Nancy.

Chairman Plumlee: Okay. Thank you. There's two. Thank you.

Unknown Speaker: I believe Nancy Felini might have left.

The Clerk: Did she leave? Okay.

Chairman Plumlee: Please, state your name, sir?

Steve Kohler: Hi, I'm Steve Kohler, resident of Virginia Beach, 4817 Lauderdale Avenue.

Chairman Plumlee: Have you been sworn in?

Steve Kohler: Yes, sir.

Chairman Plumlee: Okay. Go ahead.

Steve Kohler: My name is Steve Kohler, President of the Chesapeake Beach Civic League. Our organization voted unanimously to oppose this project for various reasons, one of which focuses on environment concerns. You have heard some of those reasons already. In addition, the application fails to meet Section 1408-B2 as the proposed development does not conform with the standards prescribed in Section 1408.1 of the Virginia Beach Wetlands Ordinance and the Code of Virginia Section 28.2-1308 and the guidelines promulgated by the Commission pursuant to the Code of Virginia Section 28.2-1301.

The application fails to meet the standards, "for use and development of wetlands", in Section 1408.01 of the Virginia Beach Wetland Ordinance. The first standard states that, "wetlands of primary ecological significance shall not be altered so ecological systems in the wetlands are unreasonably disturbed". It also fails to meet similar provisions of Section 28.2-1308 of the Code of Virginia.

It's our view that contrary to the Wetlands Ordinance and other provisions, wetlands of primary ecological significance will be altered so that ecological systems and wetlands are unreasonably disturbed. Documents filed by the applicant, many of the wetland areas are referred to as, "manmade wetlands". This is a matter of bias perspective and in our

minds an inaccurate one. A majority of the area proposed to be developed was once a natural wetland ecosystem. Interestingly, the applicant's vicinity map prepared by Kimlee-Horn and taken from U. S. Geological Survey Topographic Maps shows the majority of the site as wetlands. This information is corroborated by the official July, 1945, Princess Anne County Soil Survey, wherein all areas in orange and labeled with the letter "T" are identified as Tidal Wetlands. This map will be included with things to be submitted at the end.

According to the applicant, between 1971 and 1972, 1 million cubic yards, approximately 84,000 dump truck loads, of fill was placed on the property behind a perimeter berm and these natural wetlands were filled. In 1973 and 1974, respectively, the existing ponds and channels were excavated. Previously placed fill was removed, and the elevation and vegetation requirements that defined Tidal Wetlands in Virginia were reestablished.

Kimlee-Horn's Chesapeake Bay Preservation Act Water Quality Impact Assessment states that the wetlands system, landward of the berm, "has become tidally influenced and has been colonized with wetland vegetation for a sufficient period, that the resource protection area buffers now extend deeply into the property". These conditions have persisted for at least the last 32 years, and over that time approximately 2.14 acres of vegetated and non-vegetated tidal wetlands, that would be 1.51 acres of which, are within your jurisdiction, the Virginia Beach Wetlands Board, have reasserted themselves. There is no dispute that at one time these 2.14 acres of wetlands were part of a much larger natural wetland ecosystem, but their diminished size and temporary burial does not render them manmade or any less valuable in the wetland inventory of the City of Virginia Beach of the Commonwealth of Virginia. Thank you.

Chairman Plumlee: Any questions for the speaker?

The Clerk: Bob Costello, Leslie Cornwell.

Mrs. Wolcott: Mr. Chairman?

Chairman Plumlee: Yes?

Mrs. Wolcott: Question, please. Would it not be more efficient if we had these materials that they keep referring to to look at while they're making presentations?

Chairman Plumlee: We encourage, if you're referring to materials, that if you can make them available to the Board Members that would be a good idea. Let's give them over to Ms. Wilson, and she can pass them across.

Bob Costello: I was just going to hand them all. Do you want me to do that?

Chairman Plumlee: Well, they need to be stamped as part of the record.

Bob Costello: We're also going to submit that too. You can take these home with you.

Chairman Plumlee: These are copies for us?

Bob Costello: Correct.

Kay Wilson: I need them. I still need them.

Chairman Plumlee: Don't cross her.

Bob Costello: I tried before, I know. Are there any alternates?

Kay Wilson: No.

R. J. Nutter: Got an extra?

Bob Costello: Pardon me?

R. J. Nutter: Do you have some extras?

Bob Costello: Would you mind paying for our FOIA request?

Chairman Plumlee: If the applicant needs to look at a copy, we'll be more than happy to provide a copy.

Kay Wilson: I'll start passing, if you want to start.

Bob Costello: Okay.

Chairman Plumlee: Go ahead, sir.

Bob Costello: Good afternoon. My name is Bob Costello. I live at 4909 Bradpoint Lane. That's off of Pleasure House Road. I have not been sworn in.

Chairman Plumlee: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Bob Costello: I do.

Chairman Plumlee: Go ahead.

Bob Costello: Mr. Nutter has paraphrased the Virginia Beach Wetlands Ordinance several times, and the final proponent in favor of the applicant's request has stated this piecemeal. Let me go ahead and state in entirety Section

1408.1, Paragraph B, Subparagraph 2. It states, "To the maximum extent practical, development shall be concentrated in wetlands of lesser ecological significance in vegetated wetlands which have been irreversibly disturbed before July 1<sup>st</sup>, 1972, and non-vegetated wetlands which have been irreversibly disturbed prior to January 1<sup>st</sup>, 1983, and in the areas outside of wetlands".

It is our argument that this development does not meet those standards. As discussed previously, we would argue that the applicant proposes to fill and reconfigure 2.14 acres of natural wetlands that are of significant ecological value. The proposed development is concentrated in wetlands which were initially disturbed between 1971 and '72, with additional manipulation that continued until 1977. However, the filling and disturbance in these natural wetlands is not irreversible. In the areas where the owner removed fill to create ponds, ditches, and other features, natural wetlands reestablished themselves and these natural wetlands persisted over the ensuing 32-year period of neglect.

Site studies found historic wetland peaks as close as 16 inches to the existing soil surface. If fill were removed and site hydrology restored, then former natural wetlands could easily become reestablished. In truth, this is exactly how the applicants propose to create the mitigation wetlands that they argue will be successful by digging down, removing fill, and establishing hydrology, even as their testimony today indicated they were intending to do. The applicant's CBPA Water Quality Impact Assessment also states that, "non-tidal wetlands adjacent to but not connected by surface flow with tidal wetlands exist on the site, as well". The applicants go on to say that these areas are dominated by salt meadow hay, spike grass, soft rush, and marsh elder. These are all characteristic tidal wetland plants, still more proof that even if not connected by surface flow because of past filling practice, the remnant flora dominated by tidal wetland species points towards the property's tidally-influenced and tidal-wetland vegetated past and the likely prospect for restoration.

Throughout coastal Virginia, it has been consistently shown to be relatively easy and successful to restore refilled tidal wetlands by simply removing fill to preexisting wetland grades, restoring tidal influence, and planting with appropriate wetland species. The Pleasure House Point site poses a rare and extraordinary opportunity to restore acres, perhaps tens of acres, of tidal wetlands while preserving tens of acres of riparian buffer, open space, for scholarly research, education, and outreach and support the City's ecotourism initiatives. Thank you.

Chairman Plumlee: Any questions for the speaker?

Mr. Miller: I do have one.

Chairman Plumlee: Yes, sir?

Mr. Miller: Because I understand exactly what you said, and I think you're right about the fact that because it was wetlands and because the peat's under there it could be restored.

Bob Costello: Yes, sir.

Mr. Miller: I'm trying to understand practically how you envision that unless the City buys it. Are you proposing that the property owner restore that, pay for restoring that?

Bob Costello: I'm not proposing exactly how the funding would go about doing that. I'm just showing the possibility of that being done, that within the standards defined in the Wetlands Ordinance this is not an irreversible situation on this property. Whether it be the owner that restores it or whether it be the City that restores it, it is not irreversible. Thank you.

Chairman Plumlee: Any other questions? Thank you, sir. Next speaker?

Clerk: Leslie Cornwell and then Mark Walker.

Leslie Cornwell: I started out with "good morning" here, but we're already into the afternoon. My name is Leslie Cornwell, and I have already been sworn in. I'm a resident of Bay Lake Pines and have lived there for approximately 40 years. The applicant fails to meet the standards in Subsection 28.2-1308B of the Code of Virginia and is not consistent with guidelines promulgated by the Virginia Marine Resources Commission, specifically those related to, "wetlands mitigation, compensation policy, and supplemental guidelines" for VAC20-390.

Section 4, VAC20-390-30, states that the Board should, "consider appropriate requirements for compensation only after it has been proven that the loss of the natural resource is unavoidable and that the project will have the highest public and private benefit". Simply put, the loss of natural resources posed by this project is totally avoidable and will not have the highest public and private benefit. Wetlands are proposed to be filled to accommodate the building pads for a high-rise condominium 0.95 acres of tidal wetlands, alone, smaller residential dwellings, and to satisfy storm water requirements for more development than the site can accommodate without destroying these features.

Just because compensation is proposed in some form, the Board may not overlook the legal requirement that wetland impacts must be unavoidable. In this case, wetland impacts are avoidable. Reconfiguring 2.14 acres of

ecologically significant tidal wetlands, filling 1.6 acres of living sub-tidal aquatic resources, and the resulting permanent loss of 13 acres, 56 percent of functional riparian buffer, coupled with the proposed encroachment into the remaining diminished resource protection area buffer, are proposed for convenience and designed to maximize profit beyond the lawful capacity of the property and the conditions created by the landowner and allowed to persist for over 32 years. As a result, the Board should not even consider compensation for proposed wetland impacts. The VMRC guidelines suggest that the Board must deny the current application. Thank you.

Chairman Plumlee: Thank you very much. Any questions for our speaker? Okay. Thank you.

Clerk: Mark Walker and then Tim Solanic.

Mark Walker: Good afternoon, Board Members. My name is Mark Walker. I live in Chesapeake Beach, and I have been sworn in. The Virginia Code 4VAC20-390-40 outlines three criteria that must be met before the Wetlands Board can authorize a project that will destroy wetlands. It states, "If the proposal cannot meet one or more of these criteria, the activity shall be denied or must occur in areas apart from the wetlands, and since the proposed activity should stand on its own merits in the permit approval process, compensation should not be used to justify permit issuance."

The three criteria are as follows, and, again, these are the criteria which the proposed project must meet before the Board can authorize wetlands to be destroyed. Criteria Number 1, all reasonable mitigative actions, including alternate siting, which would eliminate or minimize wetlands loss disturbance, must be incorporated into the proposal. The applicant is trying to put 5 pounds of development in a 3-pound natural ecosystem.

Through historical manipulation and destruction of much of the natural wetlands and subject site and subsequent inaction, the previous owner of this property has created the conditions that currently exist, and we discussed that earlier. Any development hardships under regulations are created by the previous owner and, therefore, have existed for 30 years as a self-imposed hardship. The current applicant now seeks permission to fill and reconfigure additional tidal wetlands, eliminating 13 acres of riparian buffer and obliterating all the mature trees and natural vegetation on the remaining side to develop a, "profitable waterfront residential community". The applicant has not tried to develop it from the legal constraints of the property and as a result the applicant fails to meet the criteria in 4VAC20-390-40, and the law requires that it be denied.

Criteria Number 2. The proposal must clearly be water dependent in nature. Development of residential housing is not water dependent in nature and as a result the applicant fails to meet the criteria in 4VAC20-390-40, and the law requires that it be denied. In addition to the Virginia Code, the project is inconsistent with Section 4 of the VMRC Wetland Guidelines entitled "Criteria for Evaluating Alterations of Wetlands". These guidelines state that alteration of the shoreline is ordinarily not justified for purposes or activities which can be conducted on existing fast lands or inlands and which have no inherent requirement for access to water resources. Residential housing has no inherent need for access to water resources. It may be desirable, but the desirability should be allowed to not destroy wetlands in the permanent elimination of protective riparian buffers. Accordingly, VMRC guidelines would suggest the Board must deny the project.

Criteria Number 3 –

Chairman Plumlee: Mr. Walker, please, mind your time.

Mark Walker: -- I'm finishing up right here.

Chairman Plumlee: Okay.

Mark Walker: The proposal must demonstrate clearly its need to be in the wetlands and its overwhelming public and private benefits. There is no need for the project to be in the wetlands, only the need for the convenience and maximization of profit. Short-term private benefits are far outweighed by public detriments in this case and as a result the applicant fails to meet the criteria in 4VAC20-390-40 and the law requires that it be denied.

Chairman Plumlee: Thank you, sir. Any questions for the speaker? All right. Thank you.

Clerk: Tim Solanic, and then Todd Solomon.

Chairman Plumlee: The applause is dying down. That means people are getting worn out.

Tim Solanic: I was going to thank you for –

Chairman Plumlee: You might want to hurry up.

Tim Solanic: Right. I have a three-minute statement based on our presentation. I also had a statement that we were going to submit that there was a possibility one of the students were going to read into the record that Mr. Miller had spoke to earlier. I don't know if I should turn this in, if you want to –

Chairman Plumlee: You could submit it and it will become a part of the record.

Tim Solanic: -- if you want to peruse this idea.

Chairman Plumlee: If you have copies for everyone, go ahead and submit it.

Tim Solanic: Unfortunately, I only have one copy.

Chairman Plumlee: Well, then hand the single copy and we'll pass it around. It will become part of the record.

Tim Solanic: For the record, good afternoon, as you said. My name is Tim Solanic. I live in Ocean Park and I have been sworn in. The project is also inconsistent with Section 4 of the VMRC Wetland Guidelines entitled, "Criteria for Evaluating Alterations in Wetlands". The previously stated Subsection B states that, "alteration of the shoreline is ordinarily not justified" for purposes or activities which can be conducted on existing fast land and which have no inherent requirement for access to water resources.

Section B4 goes on to say the alteration is ordinarily not justified, "when the alteration will result in any discharge of effluence which impair wetlands, water quality, or other marine resources". Even with the storm water BMP's, the excessive and unnecessary development proposed will render this site 52 percent impervious and will permanently destroy 13 acres of protected buffers. Existing soils with a very rapid permeability and slow runoff will be replaced with up to 8 feet of unknown fill, as stated earlier today, permeability and runoff rate. Mature trees, shrubs, and understory vegetation will be replaced with manicured turf lawns and landscapes maintained in perpetuity with fertilizers and pesticides. Trash and other debris will be generated from the proposed "urban development".

Impacts relating to the excessive development proposed that can only come through unwarranted destruction of natural resources will impair wetlands, water quality, and other marine resources to an unnecessarily greater degree than a development sized appropriately to accommodate the protection of these natural resources as the law envisions.

Subsection B5 -- I have two pages -- Subsection B5 states that the alteration of the shoreline is ordinarily not justified, "when there are viable alternatives which can achieve the given purpose without adversely affecting marshes or other natural resources". As we have discussed, since residential housing is not water dependent, the owner of this property has a legal right to develop the property but only in a way that preserves the wetlands and protective buffers. The site is purportedly

valued at over \$18 million with a rumored sale price of \$25 million. The cost of construction, as stated in the application, is approximately \$458 million, and a sales value reported in the press of \$1 billion, for a profit of over \$500 million.

This over-inflated value is based on an assumption of developability which ignores environmental development constraints, hence the offside of 1,063 units which the applicant admits today even cannot be achieved without filling wetlands, permanently destroying 13 acres of protective buffers, encroaching on the remaining buffers, and losing most, if not all, of the mature trees on the site. In a circular way, the unrealistic value of the property based on a potential development that cannot legally occur causes a submission of the type of project now before the Board. Only by upholding the provisions of the local and state laws regarding wetland protection and denying the proposed project will the true value of the property start to come into focus, and that true value will drive a development scenario that can meet beneficial environmental restrictions on the land. Thank you.

Chairman Plumlee: Thank you very much. Anyone have any questions for the speaker? All right. Thank you. Who's next, Gloria?

Clerk: Todd Solomon, and then Mark Feltner.

Chairman Plumlee: Is there someone raising their hand in the back?

Unknown Speaker: Yeah, if you don't mind, I just had a phone call from my wife. I've got to leave on an emergency but I'll take two minutes.

Chairman Plumlee: Alright. Come on. It must not be that big of an emergency.

Unknown Speaker: I am on the list of speakers. Thank you very much. I have not been sworn in.

Chairman Plumlee: Okay. Do you swear to tell the truth, the whole truth and nothing but the truth?

Unknown Speaker: Yes, I do.

Chairman Plumlee: Please state your name and address.

Wally Damon: My name is Wally Damon. I live at 2242 Greenwell Road, Virginia Beach.

Chairman Plumlee: Go ahead Mr. Damon.

Wally Damon: 600 feet off of Shore Drive. I'm a 50 year resident of Virginia Beach most prominently Chesapeake Beach, Virginia. I grew up here. I used to work for Mr. Miller's father. I know a number of people who are involved. I went to school with some of the Sandler's relatives. I am opposed to this. I'm a carpenter. I have a little bit of a construction management education and this is just the wrong thing to do, at the wrong time and at the wrong place. This is something that, if time allowed, I could give you a dozen different reasons not to do this. But when I first started going up and down Shore Drive it was a flat bridge to get to John B. Dyle Elementary School in 1956 and then we built the Lesner Bridge. I'm an example of somebody who's lived in this area for a long time. And we are, a lot of us, many people are opposed to this. Please do what you have to do to help get this thing to go away. Thank you very much. I've got to go to my doctor's appointment.

Chairman Plumlee: Thank you for your time.

Wally Damon: Anybody got any questions?

Chairman Plumlee: You'd better get home for that emergency. Okay, Sir.

Todd Solomon: Good afternoon. My name is Todd Solomon and I live in Cape Story by the Sea in Virginia Beach. I have been sworn in. I'm the final speaker in your packet, if you've been following along. I don't think Walt was in our packet. That last one. Stick around. You'll have to find out where I am. That'll be your test.

To summarize the previous, we had 11 speakers kind of disjointed back and forth for this whole meeting. The proposed project cannot meet any one of the standards let alone all three required by 4VAC20390-40. As a result, the Code states that the Wetlands Board shall deny the application. And since the provisions of the Code cannot be met, the application also fails to meet the State guidelines promulgated by the Commission pursuant to the Code of Virginia Section 28.2-1301. In that it fails to prevent despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation. Set in a similar fashion, but in a different document, the proposed application is inconsistent with Sections 1408b3, the Virginia Beach Wetlands Ordinance in that the proposed activity does violate that proposes the intent of this article, Code of Virginia, Chapter 13, Section 28.2-1300, Title 28. As described in Section 1408b3 it goes on to state that if the Board finds that any of this criteria set forth in the Subsections 1, 2 and 3 of this Subsection are not met, the Board shall deny the permit application. The JPA before you outlines an extensive project that will fill 1.51 acres of valuable title wetlands within the jurisdiction of the Wetlands Board. It would sever the permanently and permanently destroy

13.0 acres, as shown on one of our slides right there, 13.0 acres of ecologically linked and protective buffers would encroach into remaining diminished buffers, replace highly permeable soil with over 50 percent impervious surface, remove most, if not all, of the mature trees on the site and replace them with manicured lawns and landscaped open space all contributing to unnecessary degradation of water quality and marine resources. For this great ecological damage, the benefit of the developer would also profit in close to \$500 million. For the public, the benefit would be a walkway in a kayak (inaudible) whose public assets could be terminated by future homeowner associations. The same amenities could be incorporated into a development that preserves wetlands and buffers. So, the proposed application, the public benefit identified is far outweighed by the public's detriment. Approval of this application would certainly set a dangerous precedence in the following manner.

The RPA buffers are being vacated at the applicant's request, which appears to be a special privilege not granted to other owners that own property in the CBPA. This one is important. There's no hardship and the need for the requested impacts rest solely on the desire for high density development.

The final and third bullet for essentially setting this in dangerous precedence. The request does not comply with the proposed intent of the Bay Act because of the extensive impacts to the RPA.

And one last paragraph. With the property being the largest remaining undeveloped parcel on the Lynnhaven River, and with the Lynnhaven River in the process of making a slow, but steady comeback, I could strongly say that this vote will be one of the most important, if not the most important ever made by the Virginia Beach Wetlands Board. It had been proven several times that this application before you cannot meet the State and Local standards that guide this Board. It is our sincere hope that you uphold these standards and deny this application as proposed. We have also submitted in that book of documents that support our argument, our copies of all the e-mails, just in case you didn't get them all, they are all in there. We have also wanted to state for the record that in light of the fact that this project is so controversial with so much opposition that the public still has not been kept in the loop on all submitted information. Two of these examples being the documentation of the Planning's final comments that we recently received, I think as of yesterday, and documentation of the recent conversations between the applicant of VIMS that was apparently submitted in spite of numerous requests to the staff.

Thank you.

Chairman Plumlee: Thank you, Mr. Solomon. Are those all the comments that you would like to make?

Todd Solomon: These are all the comments of this section that are part of that proposal.

Chairman Plumlee: Alright.

Clerk: I still have two more people, three more people.

Chairman Plumlee: Alright. Any questions of Mr. Solomon?

Tim Solanic: We want to officially submit this. There's a...

Chairman Plumlee: What is this? What are you submitting?

Tim Solanic: This is multimedia disc documentation backup resources for some of the presentations today.

Chairman Plumlee: This is materials we haven't seen?

Tim Solanic: Correct.

Mrs. Wilson: And you won't see them if they are audio visual discs. You will not see them.

Chairman Plumlee: Right. Because...

Mrs. Wilson: They cannot be considered.

Chairman Plumlee: That's right. Since they cannot be considered by the Board....

Tim Solanic: (inaudible) cannot be considered?

Mrs. Wilson: Well, if they're discs, I can't...

Chairman Plumlee: They can't be played. They can't be seen. We're going to make our decision today.

Tim Solanic: Well, it's the WQIA files that were submitted by the applicant. It's the Lynnhaven Watershed Plan, Part IV, Issues and Recommendations. It's the JPA from October 2006 Indigo Dunes that was...

Chairman Plumlee: Is there a need to make that part of the record that you can articulate for us right now?

Tim Solanic: Yes, the need to put this on the record is because, as you know, this can be appealed by either side going forward. The only documentation that can be used in an appeal going forward must be submitted today.

Chairman Plumlee: That's not accurate. The VMRC will allow us additional materials be submitted during their review. But, is this really additional material that is going to be submitted or is it duplicate?

Tim Solanic: There's resources that back up the savings here from--would you like to go thru—I can read the cover sheet, if you'd like.

Chairman Plumlee: Yeah. I think that.... Why don't you read it from the podium so it can be put on the record. Thank you, Mr. Solomon.

Mr. Solomon: Thank you.

Tim Solanic: I didn't want to read it. That's why we just printed it off. Documents and information submitted in opposition Indigo Dunes and Pleasure House Point permit #062601 includes, but not limited to, two poster boards with maps that were copied directly from materials submitted to the JPA. Roughly two dozen page argument. Roughly three dozen page supporting documentation for argument including color photos. Table 4 – fish species known to occur in Pleasure House Creek. Table 5 – avian species known to occur in Pleasure House Creek.

Chairman Plumlee: I'm talking about the materials that you're handing up right now. We have the exhibits that you've just referred to. And we have the notebooks that have been passed out. Those are already part of the record.

Tim Solanic: Correct.

Chairman Plumlee: Are there additional materials that you want to introduce that haven't even been address or taken up by anyone?

Tim Solanic: Actually, the next 40 some items.

Chairman Plumlee: Okay.

Tim Solanic: Well, that's why we weren't sure...

Chairman Plumlee: If we're not going to have an opportunity to review them before our decision, I don't think it's appropriate to just stuff the record. But, we have looked at all the e-mails. We've looked at all the materials that we've introduced thus far.

Tim Solanic: Well, this includes protest letters...

Chairman Plumlee: Are these protect letters that were not provided to us in advance?

Tim Solanic: Protest letters from the Burroughs family, Land Trust, Etc., re joint federal state permit number...

Chairman Plumlee: I think you have to answer what I'm asking you. Okay. Are these letters that we have not already been provided in advance of today's Hearing?

Tim Solanic: I am not sure because I don't have complete confidence we have 100 percent of all the material that's been submitted for the application.

Chairman Plumlee: Well, I don't know what that means.

Mrs. Wilson: The only thing I have concerns about are these.

Tim Solanic: Well, they're PDF files.

Mrs. Wilson: Okay. The Indigo Dunes...

Tim Solanic: And, if it's...

Chairman Plumlee: Hold on. Do not interrupt her, please.

Mrs. Wilson: Indigo Dunes, Chesapeake Bay, WQIA files. Are those in the application? Because we don't know what they are.

Chairman Plumlee: Do you know what they are?

Tim Solanic: Yes.

Chairman Plumlee: What are they?

Tim Solanic: It's the 157, I believe it's 57, page application for the Chesapeake Bay Preservation Area Board.

Chairman Plumlee: This is the application that's been filed by the applicant with the Chesapeake Bay Board? Is that what you're saying?

Tim Solanic: It's recommended by our experts who could not be here today to submit that for the public record.

Chairman Plumlee: We're not going to allow that to be placed in our record. What else?

Mrs. Wilson: Well, Lynnhaven Watershed Plant, Part IV, Issues and Recommendations. I don't know what that is either.

Tim Solanic: That's printed from the vbgov.com site. It's the Lynnhaven Watershed recommendations, which addresses, and we're not trying to be a pain or anything, we just have the impression from our experts that we need to get the amount of documentation that we want to get on the record here. And, I don't want to be here any longer than you do, believe me, and I appreciate your time.

Mr. Miller: May I say something for the record?

Chairman Plumlee: Well, hold on a second, Mr. Miller. I want just to be clear. We're not going to look at this information. If you're planning on an appeal, well then you can take your information up to the appellate level which will consider your additional information, if it's appropriate.

Tim Solanic: Okay.

Chairman Plumlee: Now, if this is material that we've had an opportunity to review and should be made part of the record, then that's fine but swamping the record with material we didn't even have a chance to read I don't think is an appropriate process and we're not going to do it.

Unidentified Speaker: Well, that wasn't my personal attention in any way. It was guidance

Chairman Plumlee: Okay. That's fine. I don't care where it came from. It's not going to happen. So, let's move on. Okay?

Tim Solanic: I apologize for...

Mr. Miller: I would like to voice an objection to the ruling of the Chair. We get material that we put into the record from our own staff that isn't distributed earlier than the day of the Hearing. It happens not often but it does happen. I think ... I just disagree with all respect. What difference does it make? We make the exception for ourselves. It seems like we should make it for people who are objecting.

Chairman Plumlee: Well, we have...but if you'd said, Mr. Miller, those materials were provided in advance of the Hearing we have the opportunity, whether we sat down and read them or not, they were available to us. We've looked at many, many materials that have been provided to us and this is just not the stage to start stuffing the record with materials that we had no opportunity to look at until the end of the Hearing. And so, that's my position. Is there a legal point that you need to make, Kay, with regards to what should come in in this point in the record?

Mrs. Wilson: Well, the box I'm holding appears to be the three discs, which you won't have an opportunity to look at. The other appears to be opposition letters and I can't tell you which ones you already have. We have all the ones that were given to staff. And then some newspaper articles. That's what's in this book, this box.

Chairman Plumlee: Alright. Thank you very much.

Tim Solanic: Could I make one statement?

Chairman Plumlee: Yeah, please.

Tim Solanic: We didn't see any downside into having duplicate e-mails. There's several articles in here, which might be duplicate, so that's why they were presented here today. There was no intention in any way to stuff, you know, material here at all. Based on advice.

Chairman Plumlee: Thank you very much.

Mrs. Wilson: So, what are we putting in?

Chairman Plumlee: We're going to...let's put in the materials that are objection letters and make sure all those go in.

Mrs. Wilson: Okay.

Chairman Plumlee: And with regards to the discs, I don't have any idea what's really on them. It doesn't sound like we know what's on them, that that not be placed into our record. Thank you very much.

Mrs. Wilson: What's in the book? I mean is the book more than this or is the book.

Mrs. Brown: That's a different book, isn't it?

Tim Solanic: This is what's in the book.

Clerk: Is Mark Feltner here? And then Gary Lakin.

Mrs. Brown: Tim. Tim. Tim. In your book, do you have any letters from groups. You said something about national groups that haven't been given to us. I mean, we have like we have letters from the Civic League. Are there any letters from groups that haven't been put on record?

Tim Solanic: There's a statement from a planner from the Chesapeake Bay Foundation, for one example. There's a statement from the Burrough's family from an earlier application.

Chairman Plumlee: But you're making all those part of the record. What I've said is, all of the opposition letters be made part of the record.

Tim Solanic: Right, right.

Chairman Plumlee: What's on the disc would not be. So, that's in essence how it should go because the applicant can probably anticipate all of these objections and have some reasonable idea what's in these hundreds of letters that have come through. The themes are pretty straightforward.

Tim Solanic: Yes, Sir.

Chairman Plumlee: But when it comes to the other discs and materials, the applicant has had no opportunity to review those. And so, we're not going to do it and that's the end of the discussion on them. Thank you.

Tim Solanic: Thank you, Sir.

Mrs. Wilson: The only thing I did not put in to evidence, Mr. Chairman, were the three discs. There's a notebook that I think looked repetitive, particularly the one you just got but it's there. I marked it as an exhibit as well as this box of things. So those are what I put in....

Chairman Plumlee: Well, and I would like time before we get to the end of this Hearing for the applicant to have a chance to look through those and to make sure that they have had a chance to respond to any of the information that's been submitted to this Board. That's the only way to have a fair process here. Okay.

Mark Feltner: Hopefully, I'm a lighter note. For the Board's record, I'm Mark Feltner, 1356 Pamlico Blvd, Chesapeake, VA. I'm also the President of Virginia Code (inaudible). By thanks to the Board for the opportunity to make a brief general statement regarding the proposed Indigo Dunes development. Virginia (inaudible) now is a non profit group of recreational (inaudible) and environmental advocates working to maintain the public's access to and the protection of Virginia's coves.

Virginia (inaudible) now opposes the proposed Indigo Dunes development. We oppose the development because first and foremost Indigo Dunes removes the existing wetlands and negatively impacts the Lynnhaven River, which currently does not meet water quality standards. The Lynnhaven is closed for shell fishing now and further development threatens the status of the water body as even being fishable/swimmable.

We also oppose Indigo Dunes as it not only eliminates existing much needed wetlands but will restrict historical public access to a unique, natural resource that (inaudible) crab in Pleasure House Creeks.

On a personal note, I was in my (inaudible) just yesterday in Pleasure House Creek, doing a little fishing, and I just can't fathom how this proposed development is going to continue to keep me there and in the same wonderful disposition. Therefore, we request of and recommend to the Wetlands Board that the proposed permit application for Indigo Dunes be denied and any similar development on the site be stopped. We believe the best use of the property is a green way for public use, environmental education, water quality improvement and wetlands protection for the Lynnhaven, Virginia Beach residents and the general public to appreciate and benefit from for generations to come.

I've got a copy of all of that. Hopefully no questions.

Chairman Plumlee: Thank you very much. Any questions of the speaker.

Clerk: Gary Lakin and then Walt Stone

Gary Lakin: Good morning Board Members, my name is Gary Lakin. I have been sworn.

I recently bought my dream home after 22 years of service and I am just right up the river on the other side of Shore Drive there. I bought it a year ago. Part of the...about half an acre lot includes a 75-foot buffer zone in areas on the Bay in development that was built in the mid 80's. I called the Planning Department to find out before I bought what could be done with that buffer zone and they said nothing. It's part of the Chesapeake Bay Preservation Act buffer zone. Again, that's a development built in the mid 80's. Why would we then decrease or make exceptions to the rule to these buffer zones for a development now when we have a river that's dying, a bay that's dying, when we have oceans that are dying?

As a runner, I have run the perimeter of the property about a hundred times. I wanted to take exception with the developer's characterization of the poor conditions. Sure there's a mud pit, there's dog feces there, now and then, there is immense beauty in this property. The species that are there are incredible. I've seen more species on this piece of property than any of the wildlife refuges in the local area, short of Chincoteague. It is especially beautiful at sunrise, at sunset during the migrations. This is a gem piece of land.

Finally, having a degree in marine science, I wanted to ask the Board Members to consider carefully the impact of installing a bulkhead in a

dynamic environment where that bulkhead could create scouring or silting that would kill (inaudible) wetlands. Either one. In a major storm would those wetlands even be around any more? Please consider that carefully.

And, finally, riparian buffers do matter. Take exception to the developers' consults. The value of riparian buffers is very well published in all the websites of the City, the State, the Chesapeake Bay Preservation Society. They do matter. They do matter. Thank you.

Chairman Plumlee: Thank you very much, Sir. Any questions for the speaker? Alright. Thank you.

Clerk: Walt Stone.

Chairman Plumlee: How many speakers do we have left on the list, Madam Clerk?

Clerk: This is the last one on the list they provided.

Chairman Plumlee: Okay.

Clerk: Then we have about six on the other list.

Chairman Plumlee: Thank you very much. Yes, Sir, please state your name.

Walt Stone: Hi. My name is Walt Stone. I started off with good morning here. I'm going to adjust that to good afternoon, ladies and gentlemen of the Board and Chairman Plumlee.

My name is Walt Stone. I have been sworn in and I have been a resident in the Ocean Park area of Virginia Beach since 1989. I am here to speak in opposition to the project proposal known as Indigo Dunes. I, and many others like me, from the bayfront community are asking you and other (inaudible) boards to carefully consider the outcome of the development proposal of this size in this narrow corridor and its ultimate impact on the quality of life in the environment. There are no justifiable benefits to the greater good of our community that come from such a massive loss of wetland resources and buffers, its indigenous marine and wildlife in the addition of over 2,500 more people in this area. Ladies and Gentlemen of the Board, the wetland regulations state, as you all well know and I know has been stated many times, that if anyone of various specific conditions are not met, a project permit must be denied. It's with that I would like to in the following minutes to cover questions that we've had related to this project and its impact. They are as follows.

1. What exactly are the benefits of this proposal and its adding over 1,000 more units to be built on an existing wetland and its resource

protected areas? If there are benefits, where do they exceed or outweigh the more obvious detriments? The recent response from the applicant, the bayfront needs more condominiums, is less than acceptable. Why hasn't there been a full air free wetland elimination done when there have been so many conflicting inaccurate data reporting errors? Isn't this the data on which decisions are to be made regarding actual impacts to this wetland inland area. If the numbers are wrong at this point, how can any expert be telling us that they'll be able to predict and control for no increases in pollution levels and that there will be minimal impacts to the environment is simply not believable when one considers the number of factors and problems that will occur as will any project once the land has been cleared, filled and construction begins. It is well known that these types of developments are the number one source of pollution and destruction problems occurring within the Eastern Seaboard in the Chesapeake Bay region.

Just of note, too, because it was brought up, the agent referenced 92 million gallons of runoff water that's currently being discharged. At what impacts there would be post development versus pre development with phosphorus and nitrogen loadings and I think that they've estimated that there would be a no-net increase, maybe even a lesser discharge. We contracted with a Maryland-based environmental expert. They came and they did an independent eval, which I can provide the Board that data, if they need to see that. And, basically, they estimated and the fellow said that it was just simply common sense that he cannot put that amount of development in impervious area on previously undeveloped, totally pervious site and not have an increase in pollutants. It's virtually impossible no matter what the system infiltration is. And, I think they estimated numbers that were maybe 10-20 units higher than the numbers that are sited by the agent and the JPA.

2. Why has avoidance and minimization not been fully utilized by this proposal as a first and best practice needs to protect the existing environment. The developer's agent has sited use of low impact development techniques for LID. However, this project is anything but LID designed according to staff environmental land planner from Chesapeake Bay Foundation, Joe Lurch. I have a letter from him here. Actually he quoted on the last sentence on page 18 of the JPA narrative, the applicant states "if all impacts to ditches and buffers were avoided in the site developed into four separate parcels, LID techniques would likely not be feasible due to the lack of land for their construction". Joe Lurch says this statement represents a gross mischaracterization and a lack of understanding of LID.

3. How do the financial needs of this project to maximally impact the site justify the measures being used and for what reason can it not be done

in a different manner? Why has the developer not provided a financial analysis for justification of the design and its extremity of impact? The JPA also states that much of the wetland area is of minimal and/or only marginal value because of its history of creation, its present structure and its current functioning as a buffer and a pollutant removal system. Not one advisory expert that we've consulted with has agreed with such thinking and statements. Why do the agents state that these wetlands are dead in a recent article? Why does the JPA state that there is less than full inundation of the tidal wetland areas due to restriction through several flow pipes located along the berms? By observations, these pipes have never been filled above half way mark even during heavy storm force events when there has been obvious full flooding within the plain. The current flow structure through these pipes allows completely, uninhibited tidal action and flow which can be seen in photographs taken during heavy periods.

Further descriptions of the land and its features have been misattributed or are inaccurate and have formed a basis for justifying certain elements of design.

While not immediately related, I just want to make a point that or ask a question of what permit was issued to the original landowner prior to Sandler that allowed them to, in December 2005, impact tidal wetlands and tidal flow by bisecting this section between two larger bodies of water with sand bag fill and quarry rocks. Where this may have allowed four-wheel drive vehicles access to the interior of the property's water edge (inaudible). What it did no was that it changed the wetland features significantly that would then later be regulated by (inaudible) process and were there ever a proposal to develop? Ladies and Gentlemen of the Board, I'm asking along with 99 per cent of the Shore Drive, bayfront community to make a decision that will protect our community and the wetland resources that remain in the area. Thank you for your time.

- Chairman Plumlee: Thank you Mr. Stone. Any questions from Mr. Stone? Yes.
- Mrs. Wolcott: Yes, Mr. Stone. Do you have copies of the report with you today?
- Walt Stone: Yes, Ma'am. The letters?
- Mrs. Wolcott? Yes, please.
- Walt Stone: Yes.
- Mrs. Brown: Mr. Stone, who was Joe Lurch with the Chesapeake Bay Foundation?
- Walt Stone: He's an environmental land planner.

Mrs. Brown: Okay. I just didn't know who he was with. Thank you.

Walt Stone: I submitted that copy for...

Chairman Plumlee: Thank you very much.

Mrs. Brown: Thank you very much.

Chairman Plumlee: Next speaker, please.

Clerk: Herb Jones and then Richard Williams

Chairman Plumlee: Hopefully we've heard some of the same themes coming out in the speaker's comments, so if you could try to give us information that you believe is unique that we have not already heard that would be very much appreciated. Go ahead, Sir.

Herb Jones: You're trying to sensor me, are you?

Chairman Plumlee: That's right.

Herb Jones: Thank you, Mr. Chairman and Members of the Board.

Much of what I wanted to say has been said. I'll spare you that. It seems to me that when we heard the opponents of the application this morning, I would like to give you one word of caution. That is, the best laid plans of mice and men (inaudible). Your task, as I see it, is to determine whether the best use of the wetlands are being impacted. Such things as erosion control and flood control and reduction of pollution and habitat for the wildlife for the (inaudible) of the area. You have to ask yourself the question, are these things going to be better after than they were before? And I think probably all the technical and data that you've received up to this point kind of answers that question a little bit. One thing that hasn't been talked about is the issue of climate change. You're probably all aware the United Nations report with 90 percent of the world's scientist agreeing to it that we're headed for a precipitous ocean level rise over the next century. The report says that all dwellings within 500 feet of the U.S. coast line will not survive. That's about two football fields wide. However, most of that is because of manmade decisions. Your decision today is going to be a manmade decision. One decision we can make is a stop building on low lands and wetlands. Yesterday on our community there was a person coming from Louisiana who spoke and he said now that a year and a half later the devastation of Katrina is still there big time. He said most of that could have been prevented if they hadn't built in the low lands and the wetlands around that area. I have a solution for the

proposal. Recently our City Council gave \$13 million of our taxpayers money and the Board of the Foundation of the Aquarium is going to contribute another \$12 million for the rehab of the aquarium. The model of the aquarium is conservation through education. You have an opportunity to do something about conservation through regulation. And I think we can probably come up with similar kinds of money which will be just as important to save and work in the public safety of 500,000 residents of the community. I hope you will begin this process by denying the application to fill in this very fragile piece of ground. Thank you very much.

Chairman Plumlee: Thank you, Sir. Any questions for the speaker? Standing ovation. Okay, who's next?

Clerk: Richard Williams and then Janet Woods

Richard Williams: Good afternoon. I'll try to keep this brief.

Chairman Plumlee: Thank you.

Richard Williams: As the previous gentlemen spoke and he referred to climate change in the last few years, it's become clear that we are at a tipping point both globally and locally in terms of our impact on the environment. It is clear from the outpouring of opposition from the community that people in this community are taking this threat seriously. The owner has an opportunity, at this point, to establish a legacy of conservation. The owner is choosing not to do that so it is up to the State and Local government to take that stand and deny this and establish a legacy of conservation. Thank you.

Chairman Plumlee: Thank you, Sir. Who's next?

Clerk: Janet Wood and Elizabeth Dyer.

Janet Wood: Good afternoon.

Chairman Plumlee: Good afternoon.

Janet Wood: Thanks for your time. My name is Janet and I am a Virginia Beach native, grew up here, up and down Shore Drive like a lot of us. One thing that I'd like to point out that I haven't really heard anything about today. Well, let me preface this by saying that my career and my marriage took me away from Virginia Beach for a number of years. I was in San Diego, California. And, originally, it was great because the environment was so much like Virginia Beach in that it was coastal living and very agricultural, as well, with strawberry fields and tomato field and avocados and citrus and so on. And then it's kind of like one day I woke up and

went, oh my goodness, this place has been (inaudible) with development. They allowed developers to come in and rape, basically. The fields were gorgeous and it's all gone. So, I think you probably get my point. I mean I don't have any printed material with a lot of data like you've heard today. I'm just kind of speaking from the heart and that wetlands area, I've got to tell you on behalf of a lot of people, when we sit across the inlet at Dockside for dinner or whatever, when I'm there or at Chick's Oyster Bar and I look across the inlet, it breaks my heart to imagine that these high rise towers—I can't fathom it basically. Something interesting that I read in preparation for a trip to Savannah, Georgia. So the story goes that the Prudential Insurance Company wanted to come in and put in a large office building and complex for their business and Savannah turned them down. They like their culture just the way it is and they don't feel the need to have too much big business and I can respect that. It's a beautiful little city and they've decided to preserve a great deal of it. I would hope that we could take the same position. I also would like several other people like to comment on the fact that this proposal. Well, let me back up and say I went to two presentations given by the Sandler—one at Cox High School and one at Baylake Methodist Church. And, I remember distinctly listening to Art Sandler talk that evening as he was starting this presentation and he talked about having grown up and down Shore Drive just the way that I did when they delivered seafood for his family's business. And I quote word for word he said that night. He said "my brother and I like Shore Drive just as it is". And I thought well where's the irony in that? It's a very ironic statement because if they proceed with this development, Shore Drive, it won't be the same. How can it be? So, I, just having had the California experience and watched San Diego turn into L.A. or some extension thereof, you might want to give some well and hard thought to how this would affect our community. Thanks.

Chairman Plumlee: Thank you very much. Next speaker, please.

Clerk: Elizabeth Dyer and then Teresa H. Curtenaz

Chairman Plumlee: How many more after that, Gloria?

Clerk: After her, it's three.

Chairman Plumlee: Okay. Alright, we're coming in, coming in for a landing.

Elizabeth Dyer: I'm going to try to make this as brief as I can. My name is Elizabeth Dyer. I live off of Shore Drive in Ocean Park. And I have a letter from Dr. Maynard Chaus who could not be here today. He is down in Florida doing some research. It's a more recent letter than the one that was submitted earlier that Nicole Felini had read. And it says:

"To Whom It May Concern: I am writing to voice my opposition to the proposed Indigo Dunes construction. While I'm a resident of Norfolk, I teach at Virginia Wesleyan College in Virginia Beach and my students and I have frequently visited the marshes and mud flats in this area for marine biology and ecology field trips.

In addition, I conducted a detailed census of the bird community compensation through the Lynnhaven River including two sites on the property of interest and three sites adjacent to it. During my surveys there, I have noted 27 bird species that use the marshes in adjacent waters on the site and five additional species seen at nearby sites similar to the marshes in the area. Of the birds observed, several are marsh specialists—the Clapper Whale, the Marsh Wren, Seaside Sparrow, another type of sparrow, four species of Heron's and Egret's. Seven of the bird species that I have observed strongly avoided more urbanized habitats. In addition, I have observed Diamondback Terrapin in the area and this is a turtle that the Department of Game and Inland Fisheries has as a protected species. A site in question is one of the last remaining undeveloped stretches of shoreline in the area. Numerous wildlife species use the area as habitat and many people also use it for recreation including fishing, kayaking, canoeing, crabbing, hiking, walking their dogs and enjoying the scenery. The last of these wetlands will harm both native wildlife and recreational uses. Many studies have noted that numerous functional values of wetlands, and I am sure that you are well aware of the benefits of this habitat. I urge you to not allow any variances as they will destroy or degrade precious wetland habitat."

Just one more thing. Some of the other speakers had mentioned about New Orleans and flooding. I guess one of my concerns is when you are filling in the way the developer's proposing, I don't understand where you wouldn't have major flooding in the adjacent neighborhoods. Destruction of millions of acres of wetlands has been ongoing for generations. The importance of retaining Pleasure House Point is underscored by the fact that it is a salt water marsh wetland. And, hence the taste of the water when you're talking about the salt water, 'cause it is a salt water marsh wetland. Such a property is the most highly productive of the wetlands. In this case the home of crab and numerous other local fish that come to breed in the protected environment. Once the breeding is complete, they go back into the Chesapeake Bay. Oysters are finally making a comeback at Pleasure House Point. Finally, Pleasure House Point wetlands are an integral part of an extensive eco system. PHP links to the Lynnhaven River, other waterways, Chesapeake Bay, protected barrier islands, fisherman's isle of refuge and beyond.

The incremental acre by acre destruction of wetlands poses serious threats that ought to be enough to cause you to reject the requested variances.  
Thank you.

Chairman Plumlee: ~~Thank you very much.~~

Clerk: Next is Larry Conner

Teresa H. Curtenaz: Hi, I'm Teresa Curtenaz. I live at 3734 Chesterfield Avenue. I have not been sworn in.

Chairman Plumlee: Raise your right hand, please. Do you swear to tell the truth, the whole truth and nothing but the truth?

Teresa Curtenaz: I do.

Chairman Plumlee: Go ahead.

Teresa Curtenaz: I had not planned on speaking today but when I saw the photos that the proponents of the wetlands project I had to speak out because those photos made it look like it was an area of desolation and ugliness and just a place you would never want to go. But, I walk around that area three or four times a day with my dogs.

Chairman Plumlee: All of the Board Members have been to the site.

Teresa Curtenaz: Yes, so you know how beautiful it can be and the birds and the animals that are there. You know, I've seen probably 15 of those 27 bird species that he's talking about and I can't imagine what's going to happen if the Board approves this variance that's going to allow them to do that. What happens to the animals in the meantime when they're digging up and doing whatever. You know, that's my concern. I understand that property owners have their rights to build. I'm definitely an individual rights person and I understand that people want to do what they want to do. And, I'm normally for that. But my biggest concern is what's going to happen to these animals because that's their home, that's what they're going to do and it's going to be destroyed, you know. And, that's what I'm concerned about.

I also want to apologize to the Sandler team there. I didn't think that was very nice what happened earlier when that rudeness that was going on. So, I apologize to them. I think at sometimes you have to agree to disagree.

Chairman Plumlee: I must have missed the rudeness. I thought everybody's acted pretty well. So, we'll just keep going.

Clerk: After Mr. Conner is Ken Scandell.

Larry Conner: Good afternoon. My name is Larry Conner. I have not been sworn in.

Chairman Plumlee: Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

Larry Conner: I do.

Chairman Plumlee: Thank you, Sir.

Larry Conner: I am the President of the Baylake Pines Civic League and we voted overwhelmingly against this project.

Chairman Plumlee: How many members of your Civic League?

Larry Conner: What's that?

Chairman Plumlee: How many members of your Civic League?

Larry Conner: We have over 300.

Chairman Plumlee: Thank you.

Larry Conner: I want you to look at your map here. I know you've been on the site when it's covered with trees and it's full of wildlife. Now imagine it as you see it here covered with concrete. And can you imagine the runoff that's going to come from this concrete and the fertilizer used to the different landscaping projects and (inaudible). The construction itself is going to impact on the river there. So I want you to think of one thing. If you believe that this project is not gonna hurt the Lynnhaven River or the Chesapeake Bay, you vote for it. But if you believe it's gonna hurt it, I challenge you to vote against it. And, also, if you think about how are you going to enforce all of these plans the builder said he was going to do. I don't believe they're gonna do it. Thank you.

Chairman Plumlee: Thank you for your time, Sir.

Clerk: Ken Scandell

Chairman Plumlee: The name again, please.

Clerk: Ken Scandell

Unidentified: He had to leave.

Chairman Plumlee: Okay. Who's next?

Clerk: That's it. Oh, excuse me, I'm sorry. Jack Bryan.

Chairman Plumlee: We had a hidden list?

Clerk: He's on a different list.

Chairman Plumlee: Okay. That happens.

Jack Bryan: Swear me in, please.

Chairman Plumlee: Do you swear to tell the truth, the whole truth and nothing but the truth?

Jack Bryan: I do.

Chairman Plumlee: Thank you.

Jack Bryan: Thank you. My name is Jack Bryan. I live in Baylake Pines on Shore Drive and I grew up in Ocean Park. I was born in the area and fished, played, trapped in the area. Of course times have changed and those practices are not as easily allowed and some are not allowed any more in that area.

Some things that I'll bring to your attention and I am not a scientist. I have a university degree and I did attend some classes but I'm not going to pretend to be one. Please don't accept me as an expert. This area here. Actually, it's easier if I start with this. My neighbors in the area, when I grew up, one block away had iron in their water. In the next block over they had sulfur in their water. And the next block over they had sweet water. This area, I also attended college with a gentleman who works for DEQ. His name is Scott Bruce and he's the one who found or help assist with the locating of the meteor site which impacted and formed the Chesapeake Bay. He explained to me that during the last glacial transfer, as it melted and traveled north, that rocks were deposited in this area and sand was deposited in this area forming a lot of these areas like we're discussing today. Our tidal areas that have (inaudible) basically sand dune. When I grew up, this area here on this end of the development was Dew Live Oak and pine trees. And anywhere that that stopped you hit loam and mud in the creek. At that time there was a fisherman who was working through here. I believe his name was Mr. Byrd and his house was here on what was Mr. Fentress' property after that. There was access for his shallow draft (inaudible) rises. What is significant about that is these trees right here, just recently, very tall pine trees died. They may have died from insects but something weakened them. That was right after

Three Ships Landing was developed. And at that time the City placed a water pipe to drain this area to replace the deluge ditching that was in the area. And at different times, even though the tide's not up and even though it hasn't rained, we'll hear the pump station fire up, and it's a rather large propeller in there, and it will suck the ground water out of the area. My point is that these

Chairman Plumlee: Where's it pushing the groundwater?

Jack Bryan:

It pushes it out at Pleasure House Creek in the (inaudible) right there. And I believe some of that's justified because it does a dilution of the nutrients or things that we consider harmful. Also, this pump house over here, I'm not sure if that performs the same function, but that pond right there is natural. It's my opinion that there is a natural spring there because I swam in that when I was a youngster. It was very strange to us there would be fresh water so close to salt and we thought it was a neat little thing. We also trapped right beside it because it was fresh water animals wouldn't care to drink. There are a couple other site there that have been covered up. Now, if this happened before the dates that you referred to, your Board was formed, there's a point where the platitudes and the ability to put on these blinders may be important to the legal point of this. But at some point the deed for the action becomes more important and I'm not really going to try and out science the scientist, but we just can't negate the actual deed of what is happening here. What we get is some areas here that are salt water intrusion. I can recall that this area right here that is getting salt water intrusion has some fresh input to it. What I see is that we've got a little bit of an interesting (inaudible) that's just occurred just before your group was formed. This property right here was cut away and a deluge ditch had been set up here and now there's an underground drain. That, in this area right here, use to drain towards this area. If there is a loamy area that was covered with sand for the dredging, a loamy substrata that was covered with sand before that dredging. And the grass was also covered and it's rotting and such in there. That is still a biofilter that should be draining in that direction and should be feeding Pleasure House Creek and not feeding Crab Creek. These things have sort of been pushed aside and there's been a little complicity with the City to do this. It's terrible for me to say this because I have 20 years experience in construction as well as 10 years experience in bankruptcy in counseling with Bank of America. So my area of expertise is not in this but if I need to say that it's time for some of the lawyers and some of the engineers in the City to say, hey, we may have said this in the past or allowed this in the past or permitted in the past, but when the purpose of that property having sand put on it was to collect sand at that location and a 25 year lease was provided and that sand was removed and sold to the Resort Area proper. Then, it's time to revert that property back to it's previous use or at least try and do something to make that biofilter work again. It's been

said before that it's possible. But I ask you all to make your decision.  
Thank you.

Chairman Plumlee: Thank you very much. Next speaker, please. Those are all the speakers we have, okay, in opposition. Anyone that got left out? Okay. What we're going to do is, we're going to take about a 10 minute break. We're gonna give...and I want to specifically point out that with these new exhibits, I want to give the Council for the applicant the opportunity to look through those exhibits before he's had his chance to make his rebuttal. Also, with regards to the other documents that we did not want to permit to go into the record, if you would talk among yourselves with the applicant and the opponent that wanted to put those into the record, if they are documents that the applicant would waive any objection to having them submitted in the record, I will consider that. Otherwise they will not be allowed. Alright. So we'll take a 10 minute break and come back.

Chairman Plumlee: Okay. Let's go ahead and get ourselves together here. Have a seat. Alright. Let's go ahead and begin the rebuttal portion and here because of the number of comments given by the opponents there's significant ground for the applicant to cover a rebuttal and so I'm going to permit the applicant ten minutes to make his rebuttal. Is there any comments? Anything? Alright, I think there was one comment from the City Attorney.

Mrs. Wilson: Yes. Remember the Board has asked that I clarify that exhibit, which is a letter from the Department of Conservation and Recreation to Mr. Scarper of the City from the Principal Environmental Planner, Shawn Smith is in regard to a Chesapeake Bay Preservation Area application and is not in regard to this wetlands application.

Chairman Plumlee: Thank you.

Mrs. Wilson: Thank you.

Chairman Plumlee: Alright. Mr. Nutter would you like to begin?

R. J. Nutter: Thank you very much. You're very kind, Mr. Chairman.

For the record, my name is R. J. Nutter. I spoke this morning, earlier. I'd like to try to address some of the technical issues that were raised and at the same time highlight some of the features that I think we can respond to quite easily.

A couple of things I'd like to relay to you. We did have comments from people who liked the avian population at this site. There are birds on this site. There are birds on every site. My office...I'm lucky enough to have

two red-tail hawks in my office and we have the highest building in Hampton Roads right now. But, my point to you on this is that the information she was referring to, which is very valuable information, was submitted pursuant to an applicant filed in 1994. That application was for ~~actually some of the filling of the creek out there~~ no one is proposing, by the way. That application went to the Army Corps of Engineers and a full Section VII coordination was required with fish and wildlife. The correspondence that was read to you by Miss Felini, I believe her name is, if I'm correct, all came from that. My point to you is, the Army Corps of Engineers issued the permit after that Section VII consultation finding there was so significant impact on the avian population. In addition to that, we performed, independent of that, and it's contained in Tab E of your booklet, an independent evaluation of that that submitted to the departments along with this which would still go to DEQ and others. But I can tell you that while avian is not really within the purview of this Board, I don't want this Board to think that we haven't given careful consideration to every environmental issue including the bird population on this property. I can tell you there are between no, no endangered species or threatened species on the site. The turtle sighting that we heard reference to actually was part of a study that was given to us as part of this application and that study showed that there is a sighting of a protected turtle somewhere in that region. It was never put on this property. It could be on virtually any property in that watershed. But no one has seen it on the piece of property and there's no evidence it was ever on this property. So I can tell you with great certainty we have no issue with respect to that.

Chairman Plumlee: Was there any sort of letter from a federal agency indicating that there are no endangered species on this property?

R. J. Nutter: I believe...I think, Karl, I believe what happens is we have to do a survey, which we've done to submit to them and confirm if any found and confirmed that there were none. In fact, one of the saddest things that there are a large population of turtle eggs on this property but they're destroyed by people trespassing on the property by dogs. So I will tell you that, yeah, there are species here that will be affected by their elements in the environment other than development. So, but any rate.

I'd also like to comment about the Lynnhaven River issue. When they raised the question about the fecal coli form. I'm not going to spend a lot of time on this but I don't want you to think we were misleading the Board in any way. From what I understand, the samples they took were in this area and some were in this area, which of course have lots of water flow and lots of water activity. The actual study we did came off this feature right here where there's less turbidity, of course, and actually I will submit these, if you don't mind, Mrs. Wilson. This was the actual study and it

shows the fecal coli form count at that level was 920. I'm going to miss this (inaudible). Let's say parts per million, I believe, milliliter. I'll rely what's on here, forgive me, but this is signed, certified by Universal Laboratories at that location.

Mrs. Wilson, thank you very much.

Mrs. Brown: Was that done just one time?

R. J. Nutter: Forgive me? Yes, Ma'am.

Mrs. Brown: Just one time.

Chairman Plumlee: That's a single collection?

R. J. Nutter: A single collection, yes Ma'am. I don't want to mess up anyone's water situation out there but I can tell you we are trying to clean that up. We knew it was an issue and we're trying to take some responsibility in cleaning up in the process.

Some of the other things, though, I really want to comment on and that is that the conditions out here were created by us or our predecessor and then if we have a self inflicted hardship. Well, first of all, hardship isn't part of this application, as you know. And second, the conditions that are here are a result of public activities. The Army Corps of Engineer pursuant to a study of where to put a dredge spoil site so that everybody at the Lynnhaven River could have access to their waterfront property. That is why this area became a dredge spoil site. It was for public services by public agencies. My client, nor the predecessor in title, have ever put one iota bit of sand on this property. It's all been done by public authorities for the public benefit and good. So I just want to let you know that we have not engaged in that whatsoever.

Finally, if I could comment briefly on the DCR letter that Mrs. Wilson commented on as well, the 2006 letter. A couple of things about that. That does in fact only apply to the Chesapeake Bay Act portion which has not yet, of course is not before this Board. But the most important part about that, that letter was written prior to the time the multiple changes to this application had been made.

Chairman Plumlee: What letter you speaking to?

R. J. Nutter: This is a letter that was part of the (inaudible) conservation resources in 2006. And I bring it to you because, quite frankly, it was before this application was modified substantially moving buildings, structures, features well back on the property from where the impacts would be. So,

they are free to comment again when resubmit that portion of the application, but it was written on the application. It is no longer part of this application. And not before you all at all. But I did want to let you know that a lot of movement has occurred since that time.

I think I really have to highlight the features that what we are here today to talk about. Because the opposition has raised some very technical points and most of the points they've raised is the result of an e-mail by the Shore Drive Community Coalition website, which I am going to introduce into the record in just a second. It's from Todd Solomon and he basically tells everybody the reason why you've got such a litany of repeated measurements that you do is because he's telling everybody here are the sections in the Code we want you to talk about. Here's what we want you to say.

Chairman Plumlee: But they got advice.

R. J. Nutter: Exactly. And I'm just saying that's the reason behind it. My point is we clearly disagree with it, number one. Number two the Act is very clear that you look to the public, private detriments of the activity impacted in this case, the filling of 1.15 acres of wetlands. Mrs. Wilson, if I could. Maybe the most significant aspect of this, and we'll be talking about the benefits of this application that would not be available without this application. As I indicated to you all earlier, for the benefit of the many people who are still here, I'm not going to put the boards back up because they've all complained they can't see when I do that, Mr. Plumlee.

Chairman Plumlee: Thank you.

R. J. Nutter: It's alright. But you do recall that I relayed to you that the principal reason behind this is for stormwater protection and additional protection for adding additional habitat around the perimeter of this property. That is what has driven our desire to submit this application. The Chesapeake Bay Preservation features, which are not before you, are still going to be protected by the Chesapeake Bay Preservation Act and by that Board. Buffers don't disappear. Buffers are there to protect features. They are there to protect features. And what's happened, when those features, which are by the way completely untreated today, so they are hurting the water quality out there, they're not helping it. When those features disappear, the Chesapeake Bay Buffer Act does not disappear. It remains on the property. We will have buffers on this property consistent with that Act. That's what I want you to understand. The most important part, though, is, we cannot treat the stormwater on this site unless we can close those areas off. We cannot do it. And the reason is because those areas are draining as I've shown you through these properties today in these four areas. The other gentleman was right. There's additional pumping

occurring right here by the City as well, also untreated, but it's not on our property so we can't get to it. But I'd love for the City to take a program to hit that and start working on that issue as well. You cannot fill these areas. You cannot accomplish the stormwater treatment unless we fill them. Because if we do, and that's in essence what we're doing. We're going to take this one, turn it into a stormwater feature, filling this one and this one. That's where it comes in. This one gets completely redone. As every testimony before you is that was developed four years, I'm sorry, five years before the current standards on the design of those features and it's failing. So, it's predesigned and it's failing on top of that. The only way you can correct stormwater features on this site is by approving this application.

Finally, I'd like to talk about the public benefits for this, which we emphasized earlier which are: (1) you get a conservation easement over this entire area; (2) you get a King's Grant over the area that could in fact lead to further dredging and filling; (3) the stormwater system that we've already talked about; and, (4) which no one in the opposition has, not one word came forward about this....4.58 new acres of tidal wetlands, fully flowing, fully functioning. So if you look at it from that point, the habitat in this area gets larger with this application. It doesn't get smaller. What gets smaller is the pollution going into that creek in the Lynnhaven River and the Chesapeake Bay. That's what gets smaller. The issues about what the development will be, of course, is left up to another body, another day. I'm sure that will be a Hearing that I will not soon forget. But I can tell you what we're trying to do here is actually improve things. Add habitat. Clean up stormwater. And so that's why we're really before you. And that's why, quite frankly, the Act says what it does. The Act, as you can see, does not reference any other provisions other than the ones we've mentioned right here in the Act. It said, "the anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment". We've shown you repeatedly the public benefit by this movement. There's been no offer of anything about the detriment to this other than to where the houses might be, and that's going to left up for a future court or a future body. (inaudible) conform to the standards set forth. And if you look at those standards, there in 1408.1. Those standards say that you should avoid wetlands of primary ecologic significance just like VIMS said that we've done. All of the perimeter wetlands are preserved in this process. And, it says to the maximum extent practicable, development shall be contrary to wetlands of less those impacted prior to 72 and that's where the impact occurs. So we're consistent with your guidelines. And third, it does not violate the purpose and intent for this article.

While I was listening to John Daniel a few minutes ago and he said, you know R. J. the purpose of the wetlands is to do three things. It's for flood

protection around the country. It helps break up wave activity in (inaudible). It's for water quality and it's for habitat. Every single aspect of those conditions this application furthers. You get additional acre....I've shown you, remember the map I showed you of all of the extra wider-green-area. You've got additional habitat, you've got additional water quality protection and you get additional flood protection on this. In fact, if you were to vote no on this application, you'd be saying I do not want 4.5 acres more of tidal wetlands. I do not want a stormwater system that's going to clean up this area because not one speaker has said I live there, I'm taking responsibility. Here's what I want to do. The only person who said I 'm going to clean it up is this application. That's the part that surprises me. They can oppose that development. I don't blame them. I understand it. They don't want it. But let's try to separate and segregate the environmental enhancement this application offers with that issue because they're very, very distinct issues.

I joked one time. I don't, if you wanted to grant us 2,000 units on the property, you couldn't do it. If you wanted to say you're limited to 10 units on the property, we couldn't do it. But what we can do is deal with the issue before us. And I appreciate, Mr. Chairman, your indulgence on time. You and others have been very kind to us and the other speakers. I think we all feel the same way. We've all been given our time.

Chairman Plumlee: You've done a great job. Everybody's done a great job. Now is an opportunity for Board members to ask questions on rebuttal of Mr. Nutter.

Mr. Miller: May I?

Chairman Plumlee: Yes.

Mr. Miller: Mr. Nutter, I've got one significant question for you.

R. J. Nutter: Yes, Sir.

Mr. Miller: In VAC 20-390-40, the specific criteria. The first sentence does say in order for a proposal to be authorized to destroy wetlands and there are wetlands and there are wetlands being destroyed although I understand your argument that they are not as nice as the ones that are not being destroyed, but they are being destroyed.

R. J. Nutter: Uh, huh.

Mr. Miller: And so on. Then it gives you three criteria, all of which must be met. I can see your arguments clearly for one and two. You need to give me your arguments to number three. And that is, that the proposal shall demonstrate clearly its need to be in the wetlands. I understand the public

and private benefits that the water quality, the new stormwater system will....but please explain to me how this project must be in the wetlands.

R. J. Nutter: I'm happy to do that, Sir. The reason it has to be in the wetlands is because the wetlands have come up into the site where the stormwater features are being...we can't go in and clean any of these up. Cannot do it unless we impact those wetlands. That's why the drainage kind of goes without....if you think about it, maybe it makes perfect sense. The stormwater system from the adjacent areas is coming into this area today. Huge impact on there. That's a water activity...

Mr. Miller: I understand that. I do not...isn't there a wetlands there at the eastern most portion of that piece of property that's being destroyed that is not, that that argument doesn't hold water for.

R. J. Nutter: This portion? We have a small portion here that is, by the way, 80 percent phragmites.

Mr. Miller: I understand. It's still wetlands though and it is being destroyed. Why is it that that has to be done?

R. J. Nutter: The reason this has to be done is really twofold. Number one. That area has a low...it was supposed to be evened out by the agencies when they put it in. That was violated in terms of the contract. So this area has an opportunity here that it can survive. However, the problem with it is it has no strong tidal flows to it whatsoever. So that's why it's been inundated with phragmites.

Mr. Miller: I understand all that. I'm trying to get the need that it must be destroyed.

R. J. Nutter: The need it must be destroyed is 80 percent of that site is phragmites. The phragmites, as you know, kill and attack wetlands. Part of this plan, we will be able to eliminate that portion of the project. Eliminate that entirely. By putting back on a 4:1 ratio strength

Mr. Miller: I understand that and that's the strength of this application is the 4:1 but I'm trying to get. This is a fairly clear, legal obligation that that clause needs to be satisfied.

R. J. Nutter: Yes, Sir. I agree and I'm just suggesting to you what it does it allows us to eliminate a species that attacks those wetlands to an area that does not have sufficient drainage for that tidal activity to support them long term and replacing it with any of the other. That's why I think the public benefits are.

Chairman Plumlee: Any other questions for Mr. Nutter?

Mrs. Wolcott: Do you have any study or report that substantiates that claim that that's 80 percent?

R. J. Nutter: Well we have the survey that Kimlee Horn performed shows...I'm happy to call them up and ask them after the question but

Chairman Plumlee: Alright. Do they need to come up to respond to that specific issue?

R. J. Nutter: They mapped those out all through the property where those highest levels are. Yes, Ma'am.

Mrs. Wolcott: With that being 80 percent phragmites?

Karl Mertig: Yes, Ma'am.

Chairman Plumlee: No, no. You have to come up to the podium, please, and again tell us who you are because later when we look at the record we won't be able to know who is making the comment.

Karl Mertig: Yes, Ma'am. My name is Karl Mertig with Kimlee-Horn and Associates.

Chairman Plumlee: Thank you.

Karl Mertig: As part of the joint permit application contained within this application, is a copy of our wetland delineation, which was confirmed by the U.S. Army Corps of Engineers. Our wetland delineation consists of wetland data sheets, which characterize the wetland community at each data point. Without going through here and looking at where each individual data point was taken, I can't directly, right now, point to which one was in this area. However, that information is in here and is on the map that is in the application. There were data points taken within that wetland.

Chairman Plumlee: Thank you, Sir.

Dr. Vinson: Question for you, Sir. And perhaps it's the other gentlemen. Could Indigo Dunes handle its runoff without impacting the wetlands and those ditches?

Mr. Miller: The two westernmost?

Karl Mertig: No. One of the criteria or one of the basis of design of the City stormwater pond was that approximately 24 acres of the Indigo Dune site

Dr. Vinson: I'm sorry. I'm sorry. I'm talking about Indigo Dunes and I'm not talking....'cause see what really bothers me

Chairman Plumlee: Let's not have everybody stand up, too. Let's go ahead and have a seat and wait. Let's let him take his time here. You know you feel like you've got somebody standing over your shoulder at the computer some times you make too many mistakes, so let's take our time. Go ahead.

Dr. Vinson: What concerns me is, and I'm very appreciative of the fact and maybe we just considered a proffer, that Indigo Dunes wants to handle the offset site runoff but I'm concerned that the City hadn't handled that. So, my question really is, can Indigo Dunes handle the stormwater running off of that development without impacting the wetlands or the ditches or the open water?

Karl Mertig: No.

Dr. Vinson: No? Okay.

Mr. Miller: May I follow up on that? If the development were not as large as it is, if the number of square footage and buildings and all were different, can it handle its runoff without impacting those two canals on the western end?

Karl Mertig: No, it would not. And the reason for that is, regardless of the type of stormwater system that is designed on the site, at the end of the day that water has to outfall somewhere. We're surrounded by wetlands. I can't outfall that stormwater into Pleasure House Creek in any way, shape or form without either using the onsite ditches, which are surrounded by wetlands, which I would have to disturb to outfall the water to those ditches, without modifying the pipes at the ends of those berms if I were to outfall upstream of the berm because those pipes are not adequately sized today to handle the stormwater runoff from Ocean Park much less from anything we do on Indigo Dunes. So, for any stormwater system that would be constructed on that site, I must impact the wetlands on that site to some extent.

Dr. Vinson: Oh, okay. Alright. I understand that. But you could handle your runoff without doing, if you reduced the footprint, etc., without doing what you're proposing and if you didn't have to consider the runoff from Ocean Park. I know that's a tough question.

Karl Mertig: Doug Groff is a professional engineer for stormwater. I would feel better if he spoke to that.

Chairman Plumlee: That's fine.

Dr. Vinson: Yeah. It's a huge hypothetical and...

Mr. Miller: No, but it's good.

Doug Groff: Once again, my name is Doug Groff. I'm a professional engineer dealing with stormwater and hydrology and hydraulics. So what was the question?

Chairman Plumlee: Did you hear the question?

Doug Groff: I'm sorry. Can you repeat it?

Dr. Vinson: The question is. Being appreciative of the handling of the Ocean Park runoff. Okay. But let's take that out of the picture. Okay? Can this project be so designed to handle its own stormwater runoff with... I mean I realize you're going to have to impact some wetlands but you're not gonna have to impact the ditches and the open water areas, right? I mean couldn't you...

Doug Groff: As Karl had mentioned, the three pipes approximately at this location, there are three 15 inch cast iron pipes. They are not adequately sized for the Ocean Park drainage as it stands right now. To increase the amount of stormwater runoff from any type of new development would mean that those pipes would have to be upsized.

Chairman Plumlee: But the question is that you're not dealing with Ocean Park.

Doug Groff: Okay. If we were to create some other type of development. I don't know what type of density or what that type of development would look like, but there might be some methodology of having, based now in this area. However, this area is already supposedly being served by the existing City basin. To have a development in this area, that area and this area and have the square footage for the basin and have the basin outside the buffers, I don't think that would be conceivable.

Dr. Vinson: Okay.

Mr. Miller: I'm sorry, I've got another one.

Chairman Plumlee: Is that something Mr. Groff needs to answer, you think?

Mr. Miller: Yes.

Chairman Plumlee: Okay.

Mr. Miller: My concern... I can see where you would have to upsize those pipes at the end for the neighborhood or for this development, that makes sense to me. But the thing that's holding me up here is filling those two canals. Could

you not do this development somewhat reduced without filling those two canals. Yes, put in a larger pipe. Maybe putting a BMP where some of those apartments are, buildings are now. Is it necessary to fill those two canals?

Doug Groff: Are you referencing

Mr. Miller: That one and the next one. Yeah.

Doug Groff: Uh, the only way we can develop this area, here, because of the way that the CBPA buffers exist right now is that it would have to be a high rise tower, some unknown size, with an associated parking lot and a basin and that would be a very small area to put all those features in. So I

Mr. Miller: I understand that but it could be done?

Doug Groff: I'm not sure what could be done here. Something could be done.

Karl Mertig: I believe we could hypothesize all day long as to what could or could not be done given a certain set of circumstances. What we have to live with as people who are trying to develop a piece of property in this area with the given constraints with that stormwater. That water comes across our land now. We're stuck with it. We've got to do something with it. If we in any way, shape or form touch that system with our improvements. Not only do we have to do something with it, we have to bring it up to standards. So, that is why, you know, my statement was no, we really can't develop this property without doing something with that stormwater.

Mr. Miller: I understand. My problem is it needs to be...it's demonstrated clearly that it needs to be in the wetlands and that's what I could see putting, and this is ridiculous, but it could be done. You could put one-fourth the amount of development on there and make it not economically feasible but you could do that and not need to disturb the wetlands and those two ditches.

Karl Mertig: And I think, you know, I can't speak to what is or is not economically feasible. I don't know what that number is.

Mr. Miller: Right. I don't know either.

Chairman Plumlee: Alright. Thank you. Are there more questions?

Mr. Ripley: I have a question of Mr. Nutter.

Chairman Plumlee: For Mr. Nutter. Okay, thank you gentlemen.

Mr. Ripley: And it's along the same line. Mr. Nutter, when ya'll were considering conceptualizing the development of this project, did you consider other types of developments in here or were they more, where I 'm going with this is, were you considering high rises or anything like that that. Tell us about that.

R. J. Nutter: I'm happy to.

Mr. Ripley: Tell us how you landed on this scheme.

R. J. Nutter: Because that's an important point, Mr. Ripley. Part of what the process of development looks here—I haven't wanted to get into the development side, but I want to respond to your question.

What we wanted to do was to make the properties adjacent to Ocean Park compatible to properties within Ocean Park. So you will note that this portion of the property right here is to the commercial property, part of Ocean Park, but is not really for residential. Portions of the property all along here are all single family, duplexes and townhouses. We purposely located the high rise features, which contain 30 percent of the density at this site—30 percent of density is moved away from Ocean Park toward these features. Far away as we could from Ocean Park knowing the impact on the adjacent residential areas. We wanted to put those features away. So, that part of the rationale. Mr. Miller you also asked about why here? We're trying to serve a land use issue. I meant everything I said about the phragmites and the low water flow (inaudible) and so forth, but in addition to that they were trying to move these features as far away as Ocean Park as possible, which is a land planning goal is what we are trying to achieve, quite frankly. We are trying not to have high rises throughout the property.

Mr. Ripley: And going with this low rise these footprints kind of force you around more on the side?

R. J. Nutter: Yes, Sir. It forces us into certain features. We have to balance a lot of things when you're looking at this and that's why we tried to always raise the highest (inaudible) for whatever we're doing. That's why the wetlands was so important to us to improve that perimeter wetland area and treat that stormwater. The only trouble with not treating the ditches in theory that you might be able to do it, then you have that much unchecked water and a thousand pounds of fertilizer rolling, and I don't know what the percentage would be per ditch, but you'd have that unchecked fertilizer going into the river. In fact, the interesting thing, if we were trying to develop a property. That's against the law. We wouldn't be able to do that today. That's why we view that as something as a major positive to pick that up. In fact, we're doing it but we're required to do it. Required

because we're impacting that system. So this way we get to clean it up at no expense to anyone.

Mr. Ripley: And may I ask another question?

Chairman Plumlee: Yeah, certainly. Yes, Sir.

Mr. Ripley: It's a little different but it has to deal with the King's Grant subject that you brought up.

R. J. Nutter: Yes, Sir.

Mr. Ripley: In that King's Grant, in the water area itself, at one point was there ever a marina or any type of source like that that would have depended you to get to the water? I don't see the argument that it's not water dependent. That would mean every residential lot that's on the water around this whole City is not water dependent. I don't get that.

R. J. Nutter: I don't either.

Mr. Ripley: Was there ever a time where you had a marina in this plan?

R. J. Nutter: Yes. I will tell you that the original plan adopted by City Council in 1970 proposed a marina at this location. A large marina. It was a 20 acre marina at this location obviously with the intent of dredging that entire watershed. Because as you know, we tried to get the crew team in here. One of the reasons we were eliminating one of the features in here 'cause there's not enough water for the crew team. So, it would take a massive dredging effort to go in and get that area. So, yes, that's a very real proffer, if you will, the relinquishment of that right. 'Cause I will tell you that the original plan called for a 27 acre marina at that location.

Chairman Plumlee: Alright, Mr. Nutter. Another question?

Mrs. Brown: Yes. I just want, maybe a point of order, you were earlier back onto the report of analysis, the fecal coli form.

R. J. Nutter: Oh, yes, Ma'am.

Mrs. Brown: Back on that. 'Cause I just got the piece of paper.

R. J. Nutter: Okay.

Mrs. Brown: 'Cause you clarified that you thought that some of the Lynnhaven Now was done in 2006. Are you aware that your one time was done in December 14, 2005.

R. J. Nutter: No, Ma'am. What I was saying is these, after the 2006 letter I was referring to, is not regarding fecal coli form. It's a letter from DCR dated, I think it's December 2006. I didn't know when the (inaudible).

Mr. Brown: So probably what Lynnhaven Now had, their water counts are probably more accurate than this one that was done in 2005?

R. J. Nutter: I don't believe so. And the reason why, and just speaking, I 'm not an expert, I really couldn't say to be perfectly honest, Mrs. Brown. But I can tell you that any water testing over in these areas where you've got lots of activity, lots of water flow is going to read those substantially lower number in my opinion than anything up in this area where you have such low turbidity.

Mrs. Brown: Okay. But there's no reason why you haven't done anything more recent than 2005?

R. J. Nutter: This is the document we were basing that result on. Yes, Ma'am.

Mrs. Brown: Thank you.

Dr. Vinson: Mr. Nutter.

R. J. Nutter: Yes, Dr. Vinson.

Dr. Vinson: Can you address, it was the third criteria, but the second criteria concerns me. It's from the wetlands mitigation compensation policy. The proposal shall clearly be water dependent in nature.

R. J. Nutter: Right. I think. That doesn't mean that you can never develop property internally unless you have a marina. I think it means that water dependent in this case is that there's no way to clean up the water quality, the stormwater, which is a water dependent activity, unless we in fact do that. That's what we're trying to do is clean that stuff up and replace it with very good high (inaudible). That's what the goal here is and that's why I know there are people who don't want that area at all developed, perhaps. And my response is then let's sit down and talk and go to Council and all the things we have to. But that's a very different question than cutting off an unchecked mass amount of water that's going into that area.

Chairman Plumlee: Any other questions from Mr. Nutter? Thank you Mr. Nutter. And I would just say to all the speakers today, everyone has done an excellent job presenting their case. This is a difficult decision for the Board and right not you're going to watch us in action as we try to figure out what

we're going to do. I would think that we should have some comment possibly before a motion or if someone is ready to make a motion then maybe we can have comment after a motion being made.

Dr. Vinson: Can we get any input from Mr. O'Brien?

Chairman Plumlee: If that's needed, we can do that.

Dr. Vinson: I have a question for him.

Chairman Plumlee: Mr. O'Brien. Thank you for staying into the afternoon.

David O'Brien: You're quite welcome, Chairman Plumlee, Members of the Board, good afternoon.

Dr. Vinson: Back to a prior concern that I had expressed. If you have any comments or maybe you don't about the viability, survivability of the wetlands, old and new, when the buffer is impacted because of my concerns about what we have there as a buffer now and what we will have when the project is completed.

David O'Brien: Well, I think you raise an excellent point regarding the integrity of the riparian buffer. Right now there is a functional buffer. It's to be removed and replanted in areas with what the applicant is regarded as bayscaping species.

Obviously, an intact, functional buffer is probably more desirable than something that we may or may not achieve through that restoration effort. My primary concern, or one of my primary concerns is to maintain some sort of a buffer between the tidal wetland habitat and any upland improvements or upland areas that remain on the parcel. The bulkhead that is proposed along the certain, I guess it's the southwestern portion of the property, will sever that link between those tidal wetlands and any upland property. And one of the greatest concerns now, and it was addressed or at least mentioned by a number of the opponents this morning, was that as sea level rises we need to be cognizant of the ability of marshes to keep pace with that sea level rise. And a bulkhead precludes that. A bulkhead terminates that. So the wetlands that are created between the natural wetlands, the fringe wetlands, on site in those proposed wetlands, the agent proposes to compensate with, are subsequently going to be ephemeral in nature. They're not going to be able to retreat as sea level rises. Whereas a property designed and sloped buffer would allow that so that you could preserve the ecosystem services that a tidal marsh provides for a longer period of time.

Dr. Vinson: So, there is concern about the buffer and its impact on the wetlands? You have concern?

David O'Brien: Absolutely. To take issue with what Mr. Mertig said earlier, that buffers do not, and I, Gloria has this verbatim, I am assuming, but as I wrote it down, Mr. Mertig said that buffers do not directly relate to the success or failure of a tidal marsh. I have to take direct opposition to that position. A buffer is integral in making a salt marsh a viable ecosystem habitat so that it can continue to perform its ecosystem functions.

Dr. Vinson: Okay. And, just one other, I mean, most of the talk has been about phosphorous permitted maybe exclusively, but and maybe this is something that you don't want to comment about either, but we hear an awful lot about nitrogen and we've got our toxics, etc., etc. So, I hear and I appreciate what you said about the phosphorous but I also have concerns about the nitrogen and the other things that are going to come off once this site is developed, which, you know, is going to happen no matter how it's developed. I guess maybe I'm just thinking out loud.

David O'Brien: Well, Dr. Vinson, I believe those are valid concerns. In the estuarine ecosystem it is nitrogen which is the limiting nutrient rather than phosphorous in regards to phytoplankton blooms and excessive nitrification of the waterways. We're constrained by, I guess, the stormwater regulations that DCR imposes on developments in that they regulate or reduce the phosphorus. And that's valid. But phosphorous is a limiting nutrient typically for fresh water systems. And in the estuarine environment, you're right in saying that nitrogen is really our concern. So, you know, the applicant is not required to produce those calculations but certainly it warrants some consideration of what type of nitrogen reduction would be achieved through the proposed stormwater management plan.

Mr. Miller: I have two questions, Mr. O'Brien. One is, there's a tremendous amount of concern initially with the delineation of the wetlands based on the data provided. I would like your assurance that the delineation and data as far as water levels are concerned are accurate now. That's first.

David O'Brien: Yeah. The information that has been provided by the applicant in addressing my original comments and concerns at this point has satisfied my questions and I acknowledge that, you know, generally accepted survey techniques have been employed. I won't validate their work. It would appear that they have followed standard techniques and I'm comfortable with the numbers that they have produced are accurate.

Mr. Miller: My second one is a hard one, especially for a scientist from VIMS to venture anything other than strictly scientific advice but it's very

important to me. One of the things that I look at in this application is whether or not the Lynnhaven River will be better off or worse off as far as wetlands are concerned. Not buffers although buffers have to be taken into consideration. Now, the way it is right now, before any of this proposed activity is one thing. I'm looking at a scale here. And the scale is, I don't know if it's balanced or not or which way it tips. And the other is after this with the added less than natural but added ratio of 4:1 wetlands, created wetlands, to mitigate. Can you venture an educated, which you are, guess as to whether the river is going to, as far as the wetlands are concerned, will be better off or worse off when the smoke clears on this development?

Chairman Plumlee: I don't think we should put out decision off to Mr. O'Brien. I think that's why we're here.

Mr. Miller: But he can tell me about water quality and he can tell me about runoff. And you can at least comment on it. You don't have to answer that question.

David O'Brien: That is a very difficult question, Mr. Miller, I'm sure you are aware of that. But, on paper, the stormwater calculations tend to indicate that phosphorous will be reduced.

Mr. Miller: Right.

David O'Brien: And typically, that's a good thing for water quality although we've already discussed just a few minutes ago that we really should be focusing on nitrogen. The creation of wetlands in a 4:1 ratio for those that are lost, that sounds like a good thing on paper as well. It's all with the execution and the follow through. You know, a comprehensive planning plan, monitoring plan. Those are integral parts of any sort of compensation project. I think maybe, to back up a little bit and this was pointed out a little bit earlier as well is, you know, this project really needs to be evaluated based on its own merits separated from the compensation. If you're comfortable that everything has been done to avoid and then minimize the impacts of the marine environment, then, you know, obviously you vote your conscience. But it's that stepwise evaluation process that needs to be followed.

Mr. Miller: Thank you very much.

Chairman Plumlee: Alright. Any other questions for Mr. O'Brien? Thank you, Mr. O'Brien, for coming here today and staying so long.

David O'Brien: Oh, you're certainly welcome.

Chairman Plumlee: Alright. I think it's decision time so let's start to discuss this as a Board. If there is a motion that someone would like to make and we can consider the motion. Or, if we prefer to just discuss this and make comments, we can start with Mr. Ripley and then work our way across and I'll save mine for last. So why don't we start with Mr. Ripley.

Mr. Ripley: Well, I'll have a couple comments. Everything that we've talked about today regarding this property, the wetlands, the uplands, the streets, the buffers and the drainage system is all part of the neighborhood. It's all integrated together and it's, trying to separate this project from the adjoining neighborhood is kind of a hard thing to do given that it drains through it. In similar experience I've had with BMP's, if you will, that have wetlands in them, once you touch them just as the engineers for the applicant testified to, if you touch them, you've got to deal with them. You've got to correct them, you've got to drain them right, you've got to size them right, you've got to deal with the wetlands, mitigation, etc. So, I think what they said there was is really correct. I think to disregard the fact that this water that's draining out of the neighborhood through this property is happening, it would be kind of a hard thing to do, in my opinion. And I won't separate them. I think they're tied to one purpose of my statement. And the tough thing we've got to do here is balance, which is I think a couple of you said here, is balance the public need with the desires of the applicant and private property rights. And obviously we've got a flash point here 'cause the neighborhoods out here in a big way and that's good. I mean that's, this neighborhood pays attention not to what's going on. When I was on the Planning Commission, and this has been the 2000 pound guerilla that's been in the room, you know, for as long as I was over there and prior to that and the zoning has always been a very high dense zoning. You know, I fully expected, when I first saw this plan for it to be something on the order of what you would see down on in Miami Beach, high rises, if you will, and something that's probably incompatible with the neighborhood. So when the applicant, and that's the reason I asked the question is because when the applicant brought this plan forth and the scale of it and I realized we're getting away from the wetlands, but it's been brought up so I want to, I think it affects whether or not you are able to actually move into those wetlands was the fact that they brought the scale down to the neighborhood. Given the density that you have in their with other types of drainage techniques you certainly could achieve the maximum density probably outside of those wetlands but you would be much higher in height. So, I see that's the trade off, quite frankly, for the issue that you brought up, Bill, and that's, you know, what is the purpose of going into those wetlands. And I think that you have to try to balance the public need and the public benefit to the drainage system that's actually draining directly into our estuary right now. So, those are my comments. I, you know, I think staff is, you know, I lean very heavily on what staff thinks because they have the expertise

and I've learned to respect the Planning Commission, Planning Department staff recommendations for the last eight years that I've dealt with them and in having to deal with environmental issues and seeing these environmental recommendations come forth, I think that given the quality of the development, the quality of the compensation that's going on and the quality of the water that's going to be treated, I'm leaning towards approval of the project.

Mrs. Brown: And that's what makes this Country great. Virginia Code, I feel, we have not, number 3, the purpose shall demonstrate clearly its need to be in the wetlands. I don't feel that that argument for my personal satisfaction was done. I think that there are other ways to clear up the \$92 million, I mean the 92 million gallons of stormwater, if that's the true figure, other than having a development. And, I'm sorry that the conservation easement, and I commend them for doing this, I just wish it would have gone a little bit further. We could have had more of a conservation easement. One thing I want to say that impressed me and I think any time that you can get the youth to get involved and to show the interest and have the passion that they have because they are the future of our City and they certainly did that today and I think, you know, that they, you know, we need to have more of that and I appreciate. But I still have some concerns and I wish we could of, we could of at least had the Virginia Code, the number 3 purpose identified a little bit more but I appreciate all the questions that were answered. So, I guess I'm saying that I will vote against.

Chairman Plumlee: Mr. Miller.

Mr. Miller: This has been extremely difficult for me for many reasons. One is being so close to it at my former business and where I live. And listening to the arguments, many of which do not have anything to do with what we have to do today and yet have a lot to do with whether or not this project should eventually be approved. One of the solutions has not occurred and that would be for the City, as an open space thing, to either condemn and purchase. If that's not legally possible, to make an offer on this piece of property that the owners might consider. But that hasn't been done and we cannot consider the future of that. We are not the Chesapeake Bay Preservation Board, which has to do with the tremendous arguments that have been raised about the buffers. We're not the Zoning people, we're not the Planning people, we're not the City Council. All of those Boards and agencies and governmental bodies will have to be gone through, if this is approved.

I have four things that I think would have to be added if this were approved to conditions. One is the oyster reefs would be made actually a part of this, a condition of this application. That the bulkhead would have to be eliminated and the suitable buffers created there with riprap or

whatever. However that's done. The conservation easements would need to be a fact. Both for the subaqueous bottom and for the tidal wetlands. And then, I don't know if this would work or not. Kay, I would ask you a question here. Is it possible in real estate to put deed restrictions on either condominium associations or private property owners as they buy the property to say that on this piece of property, because nitrogen is the problem in our river, it is not phosphorous, and it's a problem everywhere in the river, I would love to see the City have the guts to outlaw nitrogen fertilizers on the shoreline of the Lynnhaven River. They haven't done that. Could we, would it be possible in this thing for us to require. You know, I need, you're a lawyer, you need to answer..

Mrs. Wilson: Well, I understand that, Mr. Miller. I don't know what kind of ownership there will be here. I don't know whether it will be a condominium homeowners.

Mr. Miller: You don't have to know that to answer my question. You don't have to. Can a condominium association or a seller of a piece of land put a deed restriction that nitrogen fertilizers may not be used on the property.

Mrs. Wilson: I don't know.

Mr. Miller: Okay. Who would know?

Mrs. Wilson: We need to find out, and we can find out for you at the next meeting, but I don't know that I can find out for you at this moment.

Mr. Miller: We have other attorneys here. Does anybody know?

R. J. Nutter: We can agree to that, Mr. Miller, if that's your issue.

Mrs. Wilson: What kind of ownership are you going to have? Are you going to have condominiums?

R. J. Nutter: He would be the owner of the properties so whatever agreements we have would pass to whoever develops the property.

Mr. Miller: Okay.

Mrs. Wilson: If they agree to it, and agree to put it on, I don't have a problem with that.

Mr. Miller: Okay. Thank you. They're my points.

Chairman Plumlee: Thank you. Mrs. Wolcott.

Mrs. Wolcott: I have to say that I'm very torn as well. I fully understand how the homeowners and residents of that area would be opposed to this for many reasons. But we're here today to make decisions based strictly on those areas that are within our realm. I heard many people talking about the fact how they walk this property and run the property and have enjoyed the property. It's not theirs. It's not a public property. It's a private property. And therefore, the owners of that property do have the right to the exclusive use and development of that property. I do have the concerns, same concerns as you do, Mr. Miller. The oyster reef I think is very important and I don't think the bulkheading should be done at the western part. If those things would be agreed to, I would be in favor of this.

Chairman Plumlee: Thank you. Mr. Bahringer.

Mr. Bahringer: Yes, I guess my, my feelings about this proposal is that all of the discussion and all of the arguments back and forth about mitigation and compensation and what the City should be doing with their stormwater and what can be done if we accept some disagreeable alternatives to what might—it ignores the fact that the City Codes and regulations require the first, the first requirement is avoidance. And, that, to me, seems that it's totally overlooked. I haven't heard anything about what could be done on this piece of property and in the process of avoiding disturbing wetlands. It would seem to me that there is a scale, a degree of development that could take place on this property avoiding the wetlands impacts. The requirement for water dependence, again, I could see what is proposed here could be built, done in Arizona in the middle of the desert. It is not dependent upon water. The driving criteria or force appears to be more economic than consideration of the fragility of the ecosystem that exists there. There does not seem to me to be a clear overriding necessity for this to be built in a wetland. So obviously, I'm opposed to this.

Chairman Plumlee: Thank you. Dr. Vinson.

Dr. Vinson: Well, I've had probably as many questions as anyone today and I appreciate the answers I've gotten. One thing that really impacted me most recently was Mr. Mertig's response as far as being able to develop this area and accommodate stormwater from the project because we've got a property owner that, you know, given some other circumstance, has a right to do something with their property. The question is what that is. And I'm a little bit at a loss because of not having the economics and who knows, if I had them, if that would help me. I'm just a Pediatrician. But, the big concern is, and I do take a big picture perspective because I think that's important. And I do have a Master's in Environmental Science and Policies so I do have some experience, but it really bothers me that the City or whomever, you know, has not handled the stormwater when we've got this extensive history with this property. But because of that do we

now allow some other manipulation so to speak of the environmental resource, is that ultimately going to be for the best? I have obviously concerns about the buffers and the viability of the wetlands and I think I am appropriate in considering that. I have concerns about it being water dependent. I appreciate Mr. Nutter's point because I've thought a lot about that this weekend. And if we don't ever allow any wetland impacts, you know are we ever going to, you know, have any kind of development, good, bad or otherwise. And this is a beautiful, beautiful development. But I have concerns about the water dependent nature of it and the economics of it and its need to be in wetlands. I certainly appreciate Mr. Miller's comments and conditions. I think they go quite a way but I don't know if that's quite far enough to make it acceptable to me at this point.

Chairman Plumlee: Alright. Well, first, I'd like to thank everyone for giving their comments. They were all great. And, Mr. Nutter, I knew would do a fabulous job. He did a fabulous job.

This is a difficult project. When it comes to large projects like this in particular, I have to think back to the reason why this Board exists. And, that's set forth is a very simple sentence by the Legislature. The Wetlands Act, effective 1972, 35 years ago, in order to protect the public interest to promote the public health safety and economic and general welfare of the Commonwealth and to protect public and private property, wildlife, marine fisheries and the natural environment as declared to be the public policy of the Commonwealth to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in the manner consistent with wetlands preservation. In that one sentence there's a lot of common sense.

First and foremost, we protect the wetlands. We cannot gamble with a project where we might have a 4:1 increase in wetlands or it may ultimately improve the quality of the water. We don't destroy wetlands in the name of water quality. I think that's a real problem for me. I think we have to first find every way possible not to impact the wetlands. And, one of the issues brought up in VIMS comments that weren't really addressed, was the channeling that would have to be done for all the creation of the wetlands. And this is very important. If you look in Tab 9 of our notebooks that we have as Board Members, you'll find the guidelines of the VMRC, and this channeling into marshes can really lead to poor water circulation, water quality problems. There's no guarantee that the promised six acres of wetlands will actually occur, but we can be promised, we know for sure that if the development goes forward in the areas that there will be a definite disturbance of important wetlands and I can't agree to let that go forward if I can vote against it and I think I will today. So, I think we need to probably hear a motion since we've made comments, if someone would like to make one at this time.

Mr. Miller: Well, to see which way it goes, I'll try. This is about as a difficult a motion just as far as the mechanics of it go. I would like to preface at the beginning of my motion the fact that the other Boards handle areas that we're not responsible for and I won't go into all the reasons 'cause they're good reasons on both sides.

Here's my motion. I move that application VB, hold it, I don't even that number. Let me get it.

Chairman Plumlee: It's 06-300.

Mr. Miller: Okay. We'll put that in the record. ....be approved with the following conditions. I would list every condition that was listed by VIMS. I would list every condition that was listed by the Planning Department and I would add four more conditions that the oyster reefs become an approved part of this plan, that the bulkhead be eliminated and that a buffer and slope be handled in a way that's acceptable to the staff. That the conservation easements for both subaqueous and tidal bottoms be a part of this approval that that needs to occur unless it is impossible, legally, for it to occur. And lastly, that the deed restrictions be placed on every piece of real estate sold on this property that would prohibit and forbid the use of nitrogen fertilizers.

Mrs. Wilson: Mr. Miller, just a thought. Do you want to restrict it to deed restrictions or would you like to say other matters?

Mr. Miller: or other means possible, legally. It may be in condo rules.

Mrs. Wilson: It may be in documents or something, just as long as it gets there.

Mr. Miller: Right.

Dr. Vinson: I'm sorry. Can I help you?

Mr. Miller: Yeah, sure, please.

Dr. Vinson: When you say restrict. Maybe I didn't hear it with both ears. Restrict meaning totally.

Mr. Miller: Totally restrict.

Mrs. Wolcott: Prohibit

Mr. Miller: Prohibit.

Mrs. Wolcott: Substitute prohibit?

Mr. Miller: Prohibit the use of nitrogen?

Dr. Vinson: Will plants grow without nitrogen?

Mr. Miller: Yes, they will grown naturally. Clover does a good job. It produces its own. And, anyway, that is the motion. I would say that....I thought I turned my phone off. Thank you. That's all. I'll just leave it at that.

Chairman Plumlee: Okay. We have a motion, do we have a second.

Mr. Ripley: I'll second it.

Mrs. Wilson: Mr. Miller, we need to go to the rest of the motion.

Mr. Miller: Oh, I've got to read this legally. Here we go.

Mrs. Wilson: Yes, you do, Sir.

Mr. Miller: And this to be approved with the following conditions, which we have listed.

1. The anticipated public and private benefit of the proposed activity exceeds its public and private detriment;

And, I'm going to add my own thing here. If I were on the Planning Commission or if I were at the Chesapeake Bay Board, I would not say that, necessarily.

2. The proposed development conforms with the standards prescribed in Section 1408.1 of the City's Wetlands Zoning Ordinance and Virginia Code Section 28.2-1308 and the guidelines promulgated by the VMRC pursuant to Virginia Code Section 28.2-1301, including the Wetlands Mitigation Compensation Policy, whereby "no net loss" of wetlands on this project was achieved by:

- a. the use of on-site compensation

3. the proposed activity does not violate the purposes and intent of the City's Wetlands Zoning Ordinance or Virginia Code Section 28.2-1300 and following.

Chairman Plumlee: Okay. We have and we have a motion, seconded by Mr. Ripley. Is there any discussion? No discussion.

Clerk: The vote is open.

Mrs. Brown: This is a motion...

Chairman Plumlee: This is a motion to approve with the conditions that Mr. Miller had recited.

Clerk: By a vote of 3 to 4, the motion to approve has failed so the application of Sandler at Indigo Bay, LLC is denied.

Upon motion by Mr. Miller, seconded by Mr. Ripley, to **APPROVE** the application of **SANDLER AT INDIGO BAY, LLC, AS CONDITIONED, FAILED**, due to a negative vote. Consequently, the application was **DENIED**.

**VOTE: 3-4**

Members Voting Aye:

William R. Miller, III, Ronald C. Ripley and Barbara M. Wolcott

Members Voting Nay:

Nils S. Bahringer, Molly P. Brown, J. Bryan Plumlee and Dr. Steve Vinson

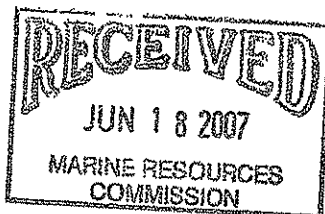
Members Absent:

None

Members Abstaining

None

Chairman Plumlee: Thank you for coming.



CERTIFIED TO BE A TRUE COPY OF A VERBATIM FROM  
THE CITY OF VIRGINIA BEACH WETLANDS BOARD  
MEETING ON 21 MAY 2007 PERTAINING TO SANDLER AT  
INDIGO BAY, LLC, FORMERLY TATE TERRACE REALTY  
INVESTORS, LLC

*Gloria Winkler*  
GLORIA WINKLER, CMC  
CLERK, WETLANDS BOARD