

## News

### Schaller Quoted in Baltimore Sun

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#### **KENT ISLAND PROJECT AGAIN SEEKS APPROVAL**

##### **Courts revived large, bay-area development opposed by O'Malley in '07**

By Michael Dresser and Timothy B. Wheeler, The Baltimore Sun

Six years after Gov. Martin O'Malley tried to kill a Kent Island housing development in an environmentally sensitive area near the Chesapeake Bay, the state Board of Public Works will be asked to reverse course Wednesday and approve permits that would allow the project.

The revival of the Four Seasons plan comes after state courts slapped down O'Malley and Comptroller Peter Franchot for their votes in 2007 to derail the project over concerns that it would contribute to bay pollution.

At the time, the 2-1 board vote — with state Treasurer Nancy K. Kopp dissenting — was seen as a victory for environmentalists. They took it as a sign that O'Malley and Franchot would take "green" concerns into account more than their predecessors, Gov. Robert L. Ehrlich Jr. and Comptroller William Donald Schaefer.

However, New Jersey-based developer K. Hovnanian turned to the courts to argue that the Board of Public Works had exceeded its powers when it went beyond the narrow question of whether to issue permits and rendered a judgment on the merits of the project. The Queen Anne's County Circuit Court agreed with the developer last year, and in April the Maryland Court of Appeals upheld the ruling and ordered that the issue go back to the board.

Environmentalists said the decision shows the weakness of Maryland's laws that are intended to control growth in sensitive areas.

Dru Schmidt-Perkins, executive director of 1000 Friends of Maryland, said Four Seasons would be built in the wrong place — just north of U.S. 50 in a low-lying critical area bordering the Chester River and with limited highway access.

"It just doesn't make sense at a time the state is looking pretty hard at where it's putting infrastructure and how do we protect the coastline because of sea-level rise," she said. "To put a major development like this in this kind of location, there's just nothing good about it. But legally, I'm not sure what the options are."

Richard E. Hall, Maryland's planning secretary, pointed out that the proposed 1,079-unit development would be built in a place that Queen Anne's County has designated for growth and that county officials support the project.

"The fact is that the state has a very limited role in where development occurs, despite what some say," he said.

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The same three-member Board of Public Works will be asked to approve installation of a sewer main beneath Cox Creek and construction of a community pier up to 503 feet long.

The project has been scaled back from its 2007 version, which called for construction of 1,351 housing units. Under the new plans, a stormwater discharge system would be moved to a less sensitive area, a 135-acre parcel would be donated to Queen Anne's County to mitigate the impact on tidal wetlands and a proposed 250-foot bridge over Cox Creek would be eliminated.

"The company reached out to the community and the state to address any lingering concerns from the 2007 project and believes the current plan addresses those concerns," said **Charles Schaller**, a lawyer for Hovnanian.

The Maryland Department of the Environment and the board's wetlands administrator, Doldon W. Moore Jr., are recommending approval of the permits, citing the modifications made by the developer.

Maryland Secretary of the Environment Robert M. Summers said the changes the developer has proposed, including the changes to the storm drain system, would reduce the impact on tidal wetlands bordering the site.

Summers said his department's review was limited to the impact on wetlands of laying a sewer line and building a 10-slip boat pier. Even if the state board approves the wetlands license, the project still would require other permits, including county approval of its stormwater pollution controls, he noted.

Lee Anne Chandler, science adviser to the state Critical Area Commission, said that even in its reduced scale, Four Seasons would be the largest single development in the 1,000-foot Critical Area bordering the bay and its tidal rivers.

**Schaller** said his client hopes the Board of Public Works will act favorably Wednesday, but its members were noncommittal.

Takirra Winfield, a spokeswoman for O'Malley, said the governor hasn't made up his mind on the permits.

"He's going to consider the item and he's going to consider all of the information at the board on Wednesday, and then he'll make his decision," Winfield said.

Andrew Friedson, a spokesman for Franchot, said the comptroller has yet to decide. And even though Kopp voted to approve the permits before, an aide said her vote is not assured.

"It's premature for her to make a decision. I think she needs to read the position of MDE and the wetlands administrator," said Deputy Treasurer Susanne Brogan.

Some are urging the board to at least postpone a decision.

Jay Falstad, executive director of the Queen Anne's Conservation Association, contends that it is premature for the board to act on the application, arguing that it has not been properly reviewed by the Maryland Department of the Environment or by the county's planning commission. He said the board is being pressured to approve the project.

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"With a 1,100-unit subdivision, what is being done to mitigate the stormwater runoff?" Falstad asked. "To date, no one has seen anything. ... It would be irresponsible for the state to grant a wetlands license without a full review of this project."

Falstad's position has the support of two of Queen Anne's five county commissioners, while three have written a letter to the board urging approval of the permits. All five are Republicans.

Steve Arentz, president of the commissioners, called opponents' objections "irrelevant and unrelated" to the wetlands issue before the board.

"Quite simply, this project has met every criteria for development in our county and fits the smart-growth initiative as it is in a growth area, and meets the goal of being served by public water and sewer," Arentz said.

**Schaller**, the developer's lawyer, said there is no reason for further delay.

"This matter is ripe and ready for the board to act," he said.