

1 STATE OF MARYLAND

2 DEPARTMENT OF THE ENVIRONMENT

3 WATER AND SCIENCE ADMINISTRATION

4 \* \* \*

5 TENTATIVE DETERMINATION TO MODIFY

6 HARFORD COUNTY'S NPDES

7 MUNICIPAL SEPARATE STORM SEWER SYSTEM

8 MS4 PERMIT

9 PERMIT NUMBER 11-DP-3310 MD0068268

10 \* \* \*

11 Thursday, August 22, 2019

12 \* \* \*

13 Held at:

14 Harford County Council Chambers

15 South Bond Street

16 Bel Air, Maryland 21014

17 \* \* \*

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1 IN ATTENDANCE:  
2  
3 STEWART COMSTOCK  
4 Maryland Department of the Environment  
5  
6 CHRISTINA LYERLY  
7 Maryland Department of the Environment  
8  
9 PAT DEPKIN  
10 Maryland Department of the Environment  
11  
12 CHRISTINE BUCKLEY  
13 Harford County Watershed Protection and  
14 Restoration Office  
15  
16 BRUCE GILMORE  
17 Audubon Naturalist Society  
18  
19 BEN ALEXANDRO  
20 Maryland League of Conservation Voters  
21

-oOo-

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1 are Christina Lyerly, who is the Harford  
2 County Permit Administrator, and Pat Depkin.  
3 I want to thank everyone from the  
4 Department and the public officials from  
5 Harford County who helped us in getting to  
6 this spot today.  
7 In accordance with Maryland's  
8 Administrative Procedures Act, a Tentative  
9 Determination to Modify Harford County's MS4  
10 Permit has been published in the Maryland  
11 Register, advertised in The Aegis on July  
12 5th and July 12th, 2019, sent out to the  
13 Department's Interested Party List for  
14 Harford County, and publicized on the  
15 Department's webpage, where the proposed  
16 permit modification and supporting fact  
17 sheet material can be found.  
18 Everyone who signed up to speak  
19 today or signed the Attendance Sheet will be  
20 added to the Department's Interested Party  
21 List and will receive notice of any actions

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1 P-R-O-C-E-E-D-I-N-G-S  
2 (6:01 p.m.)  
3 MR. COMSTOCK: Good evening and  
4 welcome.  
5 Today is Thursday, August 22nd,  
6 2019, and by my watch it is just a little  
7 after 6:00 p.m., like 6:01 or so.  
8 Today's Public Hearing is  
9 regarding the Maryland Department of the  
10 Environment's, the Department's, Tentative  
11 Determination to Modify Harford County's  
12 National Pollutant Discharge Elimination  
13 System, or NPDES, Municipal Separate Storm  
14 Sewer System, or MS4, permit. The permit  
15 number is 11-DP-3310 MD0068268.  
16 My name is Stewart Comstock, and  
17 I am the Sediment and Stormwater Program  
18 Review Division Chief within the  
19 Department's Water and Science  
20 Administration.  
21 With me today from the Department

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1 regarding this permit.  
2 If you want to be on this list  
3 for this permit and did not sign in, please  
4 do so before we leave today.  
5 The purpose of tonight's hearing  
6 is to accept public comment on the  
7 Department's Tentative Determination to  
8 Modify the County's MS4 Permit. The  
9 Department has some introductory remarks  
10 regarding this action. And after that, I  
11 would like to give Harford County, the  
12 Permittee, an opportunity to comment. And I  
13 believe they're on the sign-up list.  
14 Do we have any local elected  
15 officials here today? No? Okay.  
16 After that, we'll work down the  
17 list of speakers who signed up to give  
18 testimony today.  
19 It looks like we're going to have  
20 plenty of time to do this, and we would like  
21 to make sure everyone who would like to

<p style="text-align: right;">Page 6</p> <p>1 speak has plenty of time to do so.  2 For background, Maryland has been  3 delegated authority by the U.S. EPA to  4 administer the NPDES Program in this State.  5 Final stormwater regulations were adopted by  6 EPA in November 1990, according to Section  7 402(p) of the Clean Water Act.  8 These regulations require, in  9 part, that owners or operators of storm  10 drain systems serving populations of greater  11 than 100,000, including Harford County,  12 apply for a Phase 1 NPDES MS4 Permit.  13 To improve local water quality in  14 the Chesapeake Bay, Harford County's most  15 recently issued MS4 Permit, on December  16 30th, 2014, included a requirement for the  17 restoration of 20 percent of the impervious  18 surface area within the County that was not  19 already managed for stormwater to the  20 maximum extent practical.  21 On April 18th, 2019, Harford</p>	<p style="text-align: right;">Page 8</p> <p>1 permit.  2 A new phase of Maryland's  3 nutrient trading program with authorizing  4 regulations in the Code of Maryland  5 Regulations, or COMAR, 26.08.11, were  6 formally adopted for use on July 16th, 2018.  7 EPA reviewed and did not object  8 to Maryland's trading policy updates and  9 draft MS4 permit modification language.  10 The trading policy allows MS4s to  11 acquire nutrient credits, and that was not  12 in place at the time of Harford County's  13 NPDES MS4 Permit when it was issued.  14 EPA, the Department, and the  15 Maryland Courts of Appeals have determined  16 that the 20 percent impervious surface  17 restoration requirement is an approved  18 effluent limit consistent with and  19 satisfactory for addressing both the  20 Chesapeake Bay and other applicable total  21 maximum daily load, waste load, allocations.</p>
<p style="text-align: right;">Page 7</p> <p>1 County formally requested a modification to  2 their NPDES permit to use Maryland's newly  3 authorized nutrient trading program as an  4 option to help meet its 20 percent surface  5 area restoration requirement.  6 The Department has determined  7 that Harford County's MS4 Permit may be  8 modified to allow the use of the nutrient  9 trading for the following reasons:  10 In accordance with the Code of  11 Federal Regulations, 40 Section 122.62, the  12 Department may receive new information which  13 justifies applying conditions different from  14 those in the permit if the information was  15 not available at the time of permit  16 issuance;  17 In accordance with 40 CFR Section  18 122.62, the Department may modify an  19 existing permit when proposed standards and  20 regulations covering the permitted activity  21 may have changed since issuance of the</p>	<p style="text-align: right;">Page 9</p> <p>1 That doesn't trip off the tongue  2 very well anymore.  3 Trading for amounts of total  4 nitrogen, total phosphorous, or total  5 suspended solids that would have been  6 reduced through the 20 percent impervious  7 surface area restoration requirement will  8 have a similar net effect on local and  9 Chesapeake Bay water quality.  10 Now, I'd like to ask if anyone  11 from Harford County Government is here and  12 would like to add comments to the public  13 record at this time?  14 MS. BUCKLEY: Can you hear me?  15 I'd like to thank my colleagues  16 at MDE for scheduling this hearing to  17 consider local comments and concerns  18 regarding Harford County's MS4 Permit  19 Modification. We have worked collectively  20 and respectively for many years under the  21 MS4 Program. I hope to continue that</p>

<p style="text-align: right;">Page 10</p> <p>1 successful working relationship into the  2 future as we collaborate in developing the  3 fifth generation MS4 permit.  4 I applaud MDE's effort thus far  5 in coordinating with the five large  6 jurisdictions to determine proposed permit  7 requirements based on each community's  8 capabilities and unique circumstances. We  9 look forward to participating in a similar  10 process once our current MS4 Permit expires  11 in December 2019.  12 Harford County has requested a  13 permit modification in order to allow the  14 County to use Maryland's newly authorized  15 nutrient trading program. Nutrient trading  16 is an option the County could use to meet  17 its 20 percent impervious surface  18 restoration requirement within the permit.  19 We appreciate MDE's support of  20 nutrient trading and the efforts necessary  21 to develop and receive approval for this</p>	<p style="text-align: right;">Page 12</p> <p>1 the County to significantly increase the  2 number of restoration projects completed,  3 increase project size, to lower project cost  4 through economies of scale, and to begin  5 developing long-term plans and priorities.  6 Since this dedicated fund was  7 established, we have been able, on average,  8 to double the amount of project credits  9 constructed per year. Since our previous  10 permit expired, the County has completed  11 construction for 52 restoration projects,  12 including 21 stormwater facilities either  13 upgraded or constructed, 29 miles of stream  14 restoration restored, 36 acres of trees  15 planted.  16 We currently have two projects  17 under construction, two slated to begin  18 construction in September, and 16 projects  19 under design, for a total estimated cost of  20 over \$23 million.  21 Making a measurable impact in</p>
<p style="text-align: right;">Page 11</p> <p>1 program.  2 Harford County wants to be  3 successful in its stormwater management  4 program, with a goal of full compliance with  5 our permit. We support taking proactive  6 steps to improve our natural environment.  7 Good water quality is important to us as a  8 community and to our citizens. We are  9 dedicated to making as much progress towards  10 the goals as the County is able within its  11 means.  12 In March 2019, the County Council  13 adopted a resolution to allocation a portion  14 of the recordation tax into a dedicated fund  15 for watershed protection and restoration  16 projects. This equates to approximately \$2  17 million per year, a portion used towards  18 debt services, approximately \$6 million  19 annually -- that allows approximately \$6  20 million annually in bonds.  21 This dedicated fund has allowed</p>	<p style="text-align: right;">Page 13</p> <p>1 improving stream health is a big undertaking  2 that requires more commitment than just the  3 MS4 office. We have been successfully  4 working with both our school systems and  5 Parks and Rec to focus our restoration  6 program on County-owned properties. This  7 also allows us to condense design schedules  8 and therefore accelerate restoration.  9 Likewise, we are currently  10 recruiting for our second class of Watershed  11 Stewards. Watershed Stewards are community  12 advocates trained through an academy  13 developed and administered through the  14 University of Maryland Extension Office. We  15 consider our Watershed Stewards an extension  16 of our office who engage the public to  17 participate in small-scale restoration.  18 While Harford County has taken  19 steps to accelerate the pace of restoration,  20 there are factors outside of our control  21 that influence scheduling, most notably the</p>

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1 lack of experienced contractors to  
 2 accommodate the pace of restoration within  
 3 Central Maryland.  
 4       Again, thank you, MDE, for  
 5 providing the MS4 community with the ability  
 6 to consider nutrient trading as an option  
 7 for meeting its 20 percent impervious  
 8 restoration requirement.  
 9       MR. COMSTOCK: Thank you.  
 10       I believe, as I said, I only have  
 11 one other individual on the list signed up  
 12 to speak, and that would be Bruce Gilmore;  
 13 am I correct? Bruce, if you would like?  
 14 I'm sorry.  
 15       MR. GILMORE: My name is Bruce  
 16 Gilmore, B-R-U-C-E, G-I-L-M-O-R-E. I'm here  
 17 representing the Audubon Naturalist Society.  
 18 I have a written statement to read into the  
 19 record.  
 20       Before I do that, I would like to  
 21 make a request to the Department of the

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1 Environment that it prepare an information  
 2 sheet of some sort that lets us know the  
 3 status of the permittees who, in 2018,  
 4 requested modifications to the permits and  
 5 those permit modifications were granted.  
 6 And we would like to know the status of each  
 7 of those in terms of whether they're --  
 8 where they are in securing trading or not.  
 9       As to the four that we've been  
 10 hearing this summer, we would like also the  
 11 same kind of list of your design and  
 12 composure -- composition that has that same  
 13 information. And we would very much  
 14 appreciate that.  
 15       MR. COMSTOCK: So noted.  
 16       MR. GILMORE: And I would like  
 17 the record to reflect that Mr. Comstock has  
 18 been most gracious in discussing this with  
 19 me before the hearing, and I do appreciate  
 20 that as well.  
 21       As I said, I am appearing at this

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1 public hearing on behalf of the Audubon  
 2 Naturalist Society to read this oral  
 3 statement into the record. We will be  
 4 submitting written testimony on the proposed  
 5 Permit Modification during the public  
 6 comment period.  
 7       As is made clear in the Fact  
 8 Sheet at Page 2, Phase 1 MS4 permits are to  
 9 address, quote: "Stormwater concerns  
 10 related to local and Chesapeake Bay TMDL via  
 11 a 20 percent restoration requirement for  
 12 impervious surfaces that have no treatment."  
 13       Achievement of Bay and local  
 14 TMDLs should be characterized as the  
 15 cornerstone provision of all Maryland Phase  
 16 1 MS4 permits. Given the clarity of the  
 17 above description of the purpose of these  
 18 permits, it must be of great concern about  
 19 how any permittee can achieve the ultimate  
 20 goal of nutrient and sediment pollution  
 21 reduction for Chesapeake Bay and local

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1 waters if the current permit impervious  
 2 surface restoration goals are being missed.  
 3       This concern is illustrated by  
 4 the Harford County experience in  
 5 implementing its current MS4 Permit.  
 6       As set forth in its latest Annual  
 7 Report, Harford County has an ISR 20 percent  
 8 goal of 2,218 acres. That is 2,218 acres  
 9 for the current permit term.  
 10       In its Annual Report, at Page 55,  
 11 the County indicates that it has restored a  
 12 total of 251.7 acres and that an additional  
 13 239.8 acres is to be completed by the end of  
 14 FY 2020. For a total restoration by any and  
 15 all means, the County anticipates completing  
 16 897.8 acres.  
 17       I would like to pause here and  
 18 say these are numbers that come from the  
 19 Annual Report. They may have been overtaken  
 20 by the time that's gone by as we've gone --  
 21 between now and the end of the Annual Report

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1 presentation.  
 2       Nevertheless, applying the  
 3 arithmetic, this would leave 1,020.2  
 4 untreated acres to be addressed. Given the  
 5 instant Permit Modification Request, this  
 6 remainder number is to be accomplished  
 7 through nutrient trading.  
 8       Unless Harford County is prepared  
 9 this evening to state what the means to  
 10 proceed with the required nutrient trading  
 11 are, we are left to guess between now and  
 12 December 30th, 2019, the expiration date of  
 13 the current Permit, as to whether the full  
 14 1,320.2 acres will be met.  
 15       If Harford County cannot complete  
 16 the required 20 percent ISR, very real  
 17 consequences loom. These consequences  
 18 include that the County will not meet its  
 19 pollutant reductions and then it will fall  
 20 further behind in its obligation to  
 21 participate in the 2025 goal of meeting the

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1 Chesapeake Bay TMDL.  
 2       The Annual Report, at E4,  
 3 displays an ISR project less costs and  
 4 pollution reduction results. They are  
 5 meager, and the table is not very  
 6 informative since it does not include the  
 7 pollutant baseline.  
 8       At Pages 58 through 60 of the  
 9 Annual Report, Harford County describes the  
 10 status of four TMDL restoration plans:  
 11 Chesapeake Bay, Bynum Run, Bush River, and  
 12 Swan Creek. The history of these plans,  
 13 which would give a good indication of how  
 14 pollutant loads were being reduced, is that  
 15 the first two are incomplete and that MDE  
 16 has given a date of January 31, 2019, as a  
 17 deadline for updates to the plans and  
 18 addressing issues related to spreadsheet  
 19 development and use. What we don't know is  
 20 whether that deadline was met.  
 21       For the second two plans, MDE

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1 prepared comments on them on May 31st, 2018,  
 2 and the County has sent its responses back.  
 3 We do not know if those plans were approved  
 4 or what their more precise status is.  
 5       Thus, perhaps for four years of  
 6 the current Permit, no TMDL -- it is  
 7 possible -- I don't say that it is definite,  
 8 but it is possible that no TMDL restoration  
 9 plan was finalized. If that's incorrect,  
 10 I'm sure the record will reflect that I, in  
 11 this presentation, was wrong.  
 12       So, we are left with unaddressed  
 13 issues for a Permit ending in a little over  
 14 four months.  
 15       Thank you for this opportunity to  
 16 present these comments. Written comments on  
 17 this and other permit modification requests  
 18 will be submitted during the comment period.  
 19       MR. COMSTOCK: Thank you, Bruce.  
 20       We had another individual come in  
 21 while we were already started. I imagine

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1 you would like to speak?  
 2       MR. ALEXANDRO: Yes. Thank you.  
 3 Thank you for the opportunity. Apologies  
 4 for getting stuck in traffic there. But --  
 5       THE REPORTER: Identify yourself.  
 6       MR. ALEXANDRO: My name is Ben  
 7 Alexandro, and I'm with the Maryland League  
 8 of Conservation Voters, which represents  
 9 over 20,000 supporters, many of whom are  
 10 voters here in Maryland.  
 11       And also, before that, I was  
 12 actually with the Environmental Finance  
 13 Center, that worked on the Chesapeake Bay  
 14 Restoration Financing Report, specifically  
 15 on the nutrient trading section of that, so  
 16 I'm very familiar on what kind of can make  
 17 or break a trading program.  
 18       THE REPORTER: Spell your last  
 19 name, I'm sorry.  
 20       MR. ALEXANDRO: A-L-E-X-A-N-D-R-O.  
 21 I'm the Water Program Director for Maryland

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1 League of Conservation Voters, also acting  
 2 as State Lead for the Choose Clean Water  
 3 Coalition.  
 4       So, there's a number of things  
 5 that we're really concerned about here, as  
 6 we've spoken on other hearings for some of  
 7 the other counties. But in some ways, we  
 8 feel that Howard -- I mean, excuse me,  
 9 Harford County is more egregious.  
 10       First of all, MDE must not modify  
 11 permits just to avoid enforcement in  
 12 noncompliant counties. Because it's about  
 13 to expire, we think it's inappropriate, but  
 14 even more so, according to the recent  
 15 Financial Assurance Plan, Harford County is  
 16 attempting to use trading to account for 12  
 17 percent of their impervious surface  
 18 requirement and half their obligation.  
 19       But it's more egregious than  
 20 other areas because, in a lot of other  
 21 counties, they're just trading for time,

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1 where they actually have planned out.  
 2 They're like, oh, we just need a little bit  
 3 more time to complete these but we have  
 4 different projects in place that can cover  
 5 that.  
 6       I have seen no evidence of that  
 7 in this County in which they are planning to  
 8 do real on-the-ground projects, you know, or  
 9 indicated in their Financial Assurance Plan  
 10 or otherwise.  
 11       And so, we're very concerned that  
 12 it's going to basically -- allowing this to  
 13 happen is going to weaken the permit in and  
 14 of itself. Basically, rewarding  
 15 noncompliance by doing an accounting  
 16 mechanism to look like you're getting the  
 17 rest of the way there and, at the same time,  
 18 can really be very damaging to the validity  
 19 and the robustness of the trading system  
 20 itself as a market.  
 21       So, the most important component

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1 of nutrient trading is additionality. It  
 2 should really be used to do financing new  
 3 projects, innovative projects, things that  
 4 were beyond what would have happened  
 5 otherwise. And, you know, preferably, this  
 6 would be like real money being spent to go  
 7 to real farmers to do great things on their  
 8 lands, like repairing buffers, et cetera.  
 9       But we don't see any plan to do  
 10 that in Harford County. We only see a  
 11 County exercise in their Financial Assurance  
 12 Plans. Zero dollars allocated to  
 13 "jumpstart," quote, unquote, a trading  
 14 market.  
 15       So, you know, this is really a  
 16 big problem for the trading system as a  
 17 whole. If MDE doesn't prohibit it,  
 18 wastewater treatment plants operating under  
 19 those three parts per million could generate  
 20 thousands and thousands of nitrogen credits  
 21 they could sell cheaply or Harford is

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1 planning to have -- could be able to get  
 2 them for nothing at all.  
 3       And that would basically flood  
 4 and crash the market, meaning that no farmer  
 5 or anyone else would have any incentive to  
 6 come in to do those new innovative practices  
 7 that a trading market, if run right, could  
 8 do.  
 9       So, we're very concerned about  
 10 this, and we really hope that these finances  
 11 just go for trading for new credits. But  
 12 there's a lot of other concerns we have,  
 13 even if you get that right, that fundamental  
 14 piece to make the market work.  
 15       And that's, first and foremost,  
 16 hot spots. You know, Harford County has  
 17 several impaired waterways and still a long  
 18 way to go to meet local TMDLs.  
 19       And MDE assured the Water Quality  
 20 Trading Advisory Committee, when the  
 21 regulations were going on, that they were

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1 intended to strict trading on impaired  
 2 segments, but it's been a little bit opaque  
 3 on how it's going to be addressed in the --  
 4 we have a County with many different  
 5 watersheds. How exactly is going to work  
 6 where you have some impaired watersheds  
 7 within them?  
 8       So, we really are very concerned  
 9 about those and the potential for  
 10 environmental justice issues, where you have  
 11 underserved communities often suffering the  
 12 brunt of environmental pollution.  
 13       So, if you're going to allow  
 14 trading, it really needs to include  
 15 limitations so the County addresses these  
 16 concerns and replaces them with real  
 17 projects.  
 18       And finally, I want to echo  
 19 previous speakers, some of their concerns,  
 20 looking more clearly on how these things are  
 21 calculated and how these trades are really

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1 going to be moving forward, particularly  
 2 with some differences between MDA and MDE's  
 3 trading system and how it's shown online,  
 4 you know, so it's really clear where these  
 5 credits are coming from, where they're  
 6 going, et cetera.  
 7       So, we've been really working  
 8 hard for years and have given a lot of  
 9 feedback and have gotten a lot of feedback  
 10 from many sectors on how to do it right.  
 11 And, you know, Maryland LCV, as well as  
 12 dozens of Choose Clean Water member  
 13 organizations have sent MDE multiple  
 14 letters, commented multiple times, been  
 15 involved in these Water Quality Trading  
 16 Advisory Committee meetings, and we're  
 17 really hoping that MDE will heed some of our  
 18 concerns so we can actually have a  
 19 functional system and not just a paper  
 20 exercise to free counties from their Clean  
 21 Water Act obligations. That's a dangerous

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1 precedent for MDE in the future.  
 2       Thank you.  
 3       MR. COMSTOCK: Thank you.  
 4 Anybody else?  
 5       (No Response.)  
 6       MR. COMSTOCK: Thank you all.  
 7       Anybody that wants to submit  
 8 written testimony after today can do so up  
 9 until October 3rd, 2019. Comments can be  
 10 submitted to Mr. Raymond Bahr, Maryland  
 11 Department of the Environment, Water and  
 12 Science Administration, Sediment,  
 13 Stormwater, and Dam Safety Program. The  
 14 address is 1800 Washington Boulevard, Suite  
 15 440, Baltimore, Maryland 21230.  
 16       He will also accept comments at  
 17 his e-mail address: Raymond, R-A-Y-M-O-N-D,  
 18 .Bahr, B-A-H-R, @Maryland.gov.  
 19       Additional information about this  
 20 Permit Modification can be found on the  
 21 Department's website www.MDE.Maryland.gov.

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1       After the comment period has  
 2 closed on October 3rd, the Department will  
 3 develop a Response to Comments document that  
 4 will support the final determination to  
 5 modify Harford County's MS4 Permit.  
 6       Anyone who signed up on our  
 7 Attendance Sheet today or gave testimony  
 8 will be added to the Interested Party List  
 9 for Harford County and will be kept apprised  
 10 of all Permit actions via e-mail  
 11 announcements.  
 12       Again, I want to thank everyone  
 13 for attending this evening's public hearing  
 14 and for your participation in these  
 15 important matters.  
 16       If there -- I call this hearing  
 17 closed. Thank you.  
 18       (Hearing concluded at 6:26 p.m.)  
 19  
 20  
 21



1 CERTIFICATE OF TRANSCRIPTIONIST  
2 I, BRENDA STALEY, do hereby  
3 certify that the proceedings were recorded  
4 electronically at the time and place  
5 mentioned on the cover sheet thereof, and,  
6 thereafter, transcribed by me; that said  
7 hearing is a true record of the statements  
8 made; that I am neither counsel for, related  
9 to, nor employed by any of the parties to  
10 this proceeding;

11 And further, that I am not  
12 financially or otherwise interested in the  
13 outcome of this matter.

14 As Witness by my hand and  
15 signature as indicated below.

16  
17  
18 *Brenda Staley*  
19 -----

20 BRENDA STALEY  
21

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