Circuit Court for Queen Anne's County
Case No.: 17-C-15-020385

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1705

September Term, 2016

CHESAPEAKE BAY FOUNDATION, INC., et al.

v.

K. HOVNANIAN'S FOUR SEASONS AT KENT ISLAND, LLC, et al.

Meredith,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: November 22, 2017

This appeal is the latest of many legal proceedings generated by a developer's quest to develop a mixed use adult community known as "Four Seasons" on Kent Island. In this appeal, the appellants are opponents of the project, namely: Chesapeake Bay Foundation, Inc.; Queen Anne's Conservation Association, Inc.; Midshore Riverkeeper Conservancy, Inc.; Chester River Association, Inc.; Robert W. Foley; and Hal M. Fischer; all collectively referred to herein as "the Opponents." The appellees are the developer, K. Hovnanian's Four Seasons at Kent Island, LLC (referred to herein as "Hovnanian"); and the Maryland Board of Public Works ("the Board"), which approved the tidal wetlands license that is the subject of this appeal.

Because the proposed project borders several tributaries of the Chesapeake Bay, Hovnanian sought a State tidal wetlands license from the Maryland Board of Public Works, which is required for any proposed dredging or "filling" upon State-owned tidal wetlands. Maryland Code (1982), Environment Article ("Env."), § 16-202. Under Title 16 of the Environment Article, "filling" is defined to include "storm drain projects which flow directly into tidal waters of the State." Env. § 16-101(f)(1). Anticipating the discharge of stormwater from its project onto the State wetlands, Hovnanian first submitted an application for a tidal wetlands license in 1999, and, over the years, has revised its application several times in response to objections raised by the Opponents and others.

The project, in general, faced numerous legal challenges, and by 2015, Hovnanian had made no fewer than four trips to the Court of Appeals. *See Queen Anne's*

Conservation, Inc. v. County Comm'rs, 382 Md. 306 (2004) (addressing the validity of a 2002 DRRA); *Foley v. K. Hovnanian at Kent Island, LLC*, 410 Md. 128 (2009) (addressing a zoning issue); *Maryland Bd. of Public Works v. K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482 (2012) (referred to herein as "*Hovnanian I*") (addressing the application for a tidal wetlands license); and *Board of Public Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 443 Md. 199 (2015) (referred to herein as "*Hovnanian II*") (addressing further issues regarding the application for a tidal wetlands license). In 2015, the Court of Appeals observed in *Hovnanian II* that, "[d]espite significant opposition, administrative appeals, and several lawsuits over the years since the inception of this project, Hovnanian has obtained all of the necessary permits and approvals, except one." 443 Md. at 204. That one was a State tidal wetlands license, which was approved by the Board on November 18, 2015. After the Board approved the license, the Opponents filed a petition for judicial review in the Circuit Court for Queen Anne's County, and that court upheld the Board's approval of the license. The Opponents then noted this appeal, in which the Opponents present two questions:

> 1. Did the Board have the information required by law to grant the License?
>
> 2. Did the Board provide sufficient public participation when it granted the License?

Because we perceive neither any error of law nor any abuse of discretion on the part of the Board in granting Hovnanian's application for a tidal wetlands license, we

answer "yes" to both questions, and shall affirm the judgment of the Circuit Court for Queen Anne's County.

DISCUSSION

In *Hovnanian I*, the Court of Appeals reviewed in detail the relevant statutes and regulations pertaining to dredging and filling activities on State wetlands. *Hovnanian I*, 425 Md. 482, 485-94. The Court of Appeals concluded that, when the Board had denied Hovnanian's application for a tidal wetlands license in 2007, the Board had applied an incorrect legal standard of review. The Court explained that the decision of the Board to grant or deny a tidal wetlands license was to be based solely upon the impact of the proposed "filling" (or dredging, if any) upon the State's tidal wetlands, and not the Board's general views regarding the desirability of the proposed project. The Court of Appeals stated in *Hovnanian I*:

> [A]s we have observed, although seemingly recognizing that the Board's authority was limited to whether a wetlands license should be issued at the particular site and not whether the project as a whole should proceed, the Governor made absolutely clear in his remarks that his negative vote was based entirely on his "common sense" view that putting "1,350 units densely crammed into a critical area of the bay" would "do further damage to the wetlands and critical areas of the bay," not to mention the public safety problem of evacuating 1,350 senior citizens in the event of a hurricane. It is clear from that statement and others made during the course of the hearing that the Governor viewed the role of the Board in considering a wetlands license as extending beyond that of [the Maryland Department of the Environment ("DOE")] and the Wetlands Administrator and encompassing a broader mandate to protect the ecology of the Chesapeake Bay and its tributaries and the public safety of the residents of Kent Island and Queen Anne's County.
>
> We do not question whether the environmental concerns expressed by the Governor were genuine. The Treasurer and the Comptroller also

expressed reservations about the location of the project, as did the Secretaries of DOE and Planning and the Director for Emergency Services for Queen Anne's County, all of whom felt that current laws and regulations regarding the placement of large developments in the vicinity of the Chesapeake Bay needed to be changed.

The point, clearly explained by the two Secretaries, however, is that, **in deciding whether to issue a wetlands license, the Board does not act — is not authorized to act — as a super land use authority.** Its own regulation, COMAR 23.02.04.10, limits its focus to considering the recommendations of DOE and the Wetlands Administrator and taking into account the ecological, economic, developmental, recreational, and aesthetic values "to preserve the wetlands and prevent their despoliation and destruction," **not to determine whether the project as a whole is environmentally sound at its particular location**. That authority lies elsewhere.

The decision to allow a development to proceed within the Chesapeake Bay or Atlantic Coastal Bays Critical Area is specifically committed by law to the jurisdiction of the affected counties and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, created by Md. Code, § 8–1803 of the Natural Resources Article (NR). See Critical Area Commission v. Moreland, 418 Md. 111, 12 A.3d 1223 (2011); Smith v. Kent County, 418 Md. 692, 18 A.3d 16 (2011). . . .

* * *

The State agency given general supervisory authority over the development and implementation of the Resource Protection Program is the Chesapeake and Atlantic Coastal Bays Critical Area Commission, a unit within the Department of Natural Resources. See NR §§ 8–1803 and 8–1806. Nowhere in that entire subtitle that creates and governs the program is the Board of Public Works even mentioned, much less given any authority to control development. . . .

The language of ENV § 16–202(c)(1) [now § 16–202(g)(1)] cannot reasonably be read to broaden the jurisdiction of the Board in such a manner as to trump the clear commitment of land use policy to the local governments and, in part, to the Critical Area Commission and other State agencies. The requirement that the Board consider the ecological, economic, developmental, recreational, and aesthetic values presented in the application in determining whether issuance of the license is in the

> State's interest has reference to the impact of the proposed dredging or filling on the affected wetlands. Section 16–102(b), which declares the public policy behind the Wetlands Law, makes abundantly clear that those considerations are tied to the desire "to preserve the wetlands and prevent their despoliation and destruction," not to control all development near the Chesapeake Bay, and the Board's own regulation confirms that narrower focus.
>
> That same limitation dooms the Board's reliance on COMAR 23.02.04.01B as a basis for considering the environmental impact of the entire project, rather than just the effect of the four elements on the 9,939 square feet of wetlands directly impacted by those elements.

425 Md. at 516-19 (emphasis added). Consequently, the Court of Appeals remanded the case to the Board of Appeals for it to reconsider Hovnanian's application. *Id*. at 522.

Before the application was again considered by the Board, however, Hovnanian made further revisions to the proposed development plans. Hovnanian describes the revisions it made as follows in its brief:

> After remand, Hovnanian requested the Board to delay further proceedings while Hovnanian considered "alternatives" to the scope of its application (E.592). On May 3, 2013, Hovnanian advised the Board that Hovnanian anticipated conveying Phase 5 of Four Seasons ("**Tanner Property**") to Queen Anne's County "for open space and/or other public use," thereby reducing the scope of the Project by 131 acres and 271 units, eliminating need for the bridge over Cox Creek designed to access Phase 5. (E. 579).
>
> Further, Hovnanian "redesigned all of its stormwater management systems [outfalls] to avoid concentrated and direct discharge of stormwater" utilizing "vegetated swales and level spreaders to slow down and spread out the stormwater flow . . . . This technique allows for grading activities to be pulled back away from the wetland resources, both non-tidal and tidal, thereby avoiding all associated impacts." (E. 579-580). In Hovnanian's view, the redesigned stormwater outfalls avoided "concentrated releases" of stormwater, and thus did not require a license. The remaining elements were the community pier and the directionally drilled sewer line. (E. 582-583).

> After Hovnanian redesigned the elements in its application, in the spring and summer of 2013, [the Department] conducted a site visit to the Four Seasons property, and reviewed Hovnanian's revised stormwater management plans. A public information meeting was arranged by the Board's Wetlands Administrator on June 28, 2013. (E. 261 and 572). [The Department] and the Wetlands Administrator recommended approval of the modified application.

After a detour to the courts to argue about the procedure the Board should follow on remand, *see Hovnanian II*, 443 Md. 199, consideration of the application resumed. On July 9, 2015, the Executive Secretary of the Board wrote to the then Wetlands Administrator, William Morgante, pursuant to COMAR 23.02.04.08, and to the Secretary of the Maryland Department of the Environment ("the Department"), pursuant to Env. § 16-202(f), asking each to respond with a recommendation as to whether or not the tidal wetlands license should be issued.[1]

[1] COMAR 23.02.04.08B(1) provides: "The [Wetlands] Administrator shall receive the report and recommendation of the Department involving extraordinary cases and shall prepare a written recommendation to the Board indicating whether a license should be granted and specifying the appropriate terms and conditions."

Env. §16-202(f) provides:

> The Secretary [of the Department of the Environment] shall assist the Board in determining whether to issue a license to dredge or fill State wetlands. The Secretary shall submit a report indicating whether the license should be granted and, if so, the terms, conditions, and consideration required after consultation with any interested federal, State, and local unit, and after issuing public notice, holding any requested hearing, and taking any evidence the Secretary thinks advisable.

On October 19, 2015, the Wetlands Administrator replied by letter, recommending that the license be granted by the Board. Mr. Morgante's letter reflected that he had considered a number of materials and undertaken a number of steps in making his recommendation, including reviewing: the permit drawings; stormwater outfall designs; the Buffer Management Plan that had been approved by the Critical Area Commission in 2004; and the Department's report and recommendation from 2006.[2] Mr. Morgante had also made an August 11, 2015, site visit to view locations where the proposed horizontal directional drilling would occur for the sewer line under Cox Creek, and where the community pier and three of the 22 stormwater management features would be located; he had a meeting on September 23, 2015, with Hovnanian's engineer "to discuss [the] stormwater management system"; and he had held discussions with stormwater management experts. Mr. Morgante's report confirmed that the revised proposal reduced the potential impact upon tidal wetlands:

> My review of applicant's plan and my site visit where I observed three of the outfall areas confirmed that the modified proposal does remove the outfall pipes away from the tidal wetlands – a significant change from the original design plans when at least one outfall was proposed to be in State tidal wetlands. **This change contributes to the fact that the 2013 proposal eliminates all permanent impacts to the tidal wetlands. The**

[2] *Hovnanian I* reflects that this 2006 Report and Recommendation "recommended that a wetland license be granted for the four elements, subject to any general conditions imposed by the Board and ten special conditions intended to address the few problems noted." 425 Md. at 498. Additionally, the Court noted in *Hovnanian I* that the Department's Report and Recommendation "was received by the Wetlands Administrator on June 12, 2006. It was released for public comment, but no comments were received by the Administrator." Id.

> **redesigned stormwater management outfalls eliminate all the permanent wetlands impacts associated with the original proposal.**

(Emphasis added.)

Mr. Morgante's report also included a chart comparing the "Proposed State Tidal Wetlands Impacts" of the 2006 plans to the 2013 revised plans. The chart indicated that the 2006 plans (which were recommended for approval by both the then Wetlands Administrator and the Department) would have resulted in permanent impacts to 9,939 square feet of wetlands, and temporary impacts to 17,089 square feet, whereas the 2013 revised plans would result in permanent impacts to zero State wetlands, and temporary impacts to 800 square feet.

The Department submitted a letter dated October 19, 2015, in which stated that it had conducted another site visit and met with Hovnanian representatives "to discuss the components of the revised plans for the development," and that it reaffirmed its recommendation that Hovnanian's application be granted, stating: "[T]he Department reaffirms its June 2006 recommendation that State Tidal Wetlands License 00-WL-0706 be issued to K. Hovnanian for the stormwater management system discharges into State wetlands, the sewer force main under Cox Creek, and the pier and associated structures in the Chester River." But the letter also noted:

> . . . [T]he Department recognizes that Queen Anne's County, and not the Department or the Board, will have the final approval over K. Hovnanian's stormwater management plans. The State wetlands license simply provides approval for filling State wetlands, as a result of the construction of the stormwater management system. Accordingly, the Department recommends that the license include a Special Condition requiring K.

> Hovnanian to obtain approved stormwater management plans from Queen Anne's County.

On November 18, 2015, Hovnanian's application for a State Tidal Wetlands license was on the Board's agenda. Mr. Morgante and Ms. Mary Beth Tung (the Deputy Secretary of the Department) both appeared and explained their recommendations. Mr. Morgante corrected some incorrect factual information he had included in his October 19 letter, pertaining to the stormwater management ponds proposed for the site, and clarifying that nine of the ponds did have "emergent pond vegetation" which was "linked to effective removal of the undesirable stormwater elements."[3] Mr. Morgante indicated that his "support is due in large part to recognizing the developer's incorporation of environmental site design . . . practices for the project."[4] He testified that the design

[3] The Administrator filed a Revised Report on November 18, 2015, making these changes.

[4] Environmental Site Design to the Maximum Extent Practicable, or "ESD to the MEP," was explained by the Court of Appeals in *Maryland Dep't of Env't v. Anacostia Riverkeeper,* 447 Md. 88, 112 (2016):

> Another stormwater management phase began when the General Assembly required MDE to mandate the use of environmental site design ("ESD") in 2007. H.B. 786, Gen. Assemb. Reg. Sess. (Md.2007). ESD is best understood as those practices, such as "small-scale stormwater management practices, nonstructural techniques, and better site planning," that "mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources." EN § 4-201.1(b); *see, e.g.,* note 9 (green roofs). MDE implemented regulations to this effect and explained that "[t]he goal of the regulations is to maintain after development as nearly as possible, the predevelopment runoff characteristics of the site being developed using ESD to the MEP." 35 Md. Reg. 2191 (Dec. 5, 2008) (to be codified at COMAR 26.17.02).

modifications Hovnanian had made to the plans for the stormwater management system removed the direct impact on the wetlands that would have occurred under the 2006 plans:

> [BY MORGANTE]: My understanding of the former [2006] stormwater management system is that the outfall pipes primarily, the outfall pipes from the 16 ponds had actually been rather than being pulled back from the wetlands themselves, which they now are, I think the closest one is 81 feet and they actually extend back further, originally those pipes were actually into the edge of the wetlands. So there was direct wetland impact there which was quantified before and [the revised plans] removed those impacts.
>
> As well as my understanding is that the ponds, that nine of the 16 present ponds incorporating this vegetated shelf, originally they were all [designed as] deep ponds not incorporating this shelf which are less effective in removing pollutants from the stormwater.

Deputy Secretary Tung made a similar point during her testimony:

> [BY TUNG]: The plans that were before this Board in 2006, as the Wetlands Administrator had mentioned, included outfalls that dumped directly into the wetlands. And as he pointed out, all the outfalls are now upland. They are not dumping directly into the wetlands area. There have been swales added, which are grassy areas that anything coming out of the outfalls would go into the swales. There are spreaders that would slow down the velocity of the water. And those are probably the major changes between the 2007 [sic] and the 2013 plans. The 2013 plans, in the opinion of MDE [the Department], are considerably narrower and [have] less impact on the wetlands than the 2007, than was presented at the 2007 meeting.[5]

The Comptroller then asked if the revised plans had "been through the public input process that is set forth in Maryland statute" (although no statute was cited). Deputy

[5] The "2006 plans" were the plans presented at the Board meeting on May 23, 2007, and the Board's 2-1 rejection of the application at that meeting was the vote that was reversed by the Court of Appeals in *Hovnanian I.*

Secretary Tung replied that no specific public input process is required by statute or regulation when the Board considers an application upon remand from the Court of Appeals. She explained that the only *required* public informational meeting regarding Hovnanian's application had been held on March 6, 2003, and that there was no provision under any statute or regulation mandating additional hearings:

> [BY TUNG]: That [the 2003 public informational meeting] was a public hearing on the [Report and Recommendation] that was issued. You know, the report and recommendation was issued based on the public hearing and the review of the plans.
>
> At that point there is no additional public hearing needed because we did not reissue a[] [Report and Recommendation]. The plans, the revised plans that were submitted to MDE considerably narrowed the original plans that were submitted, deleted an entire piece of property on the western which is called the Tanner property, completely deleted all the development there, took out a bridge that was going across Cox Creek. And so those were two of the other big changes between the 2013 and the 2006 plans. And because of that there was less of an impact on the wetlands and it did not impact any of the neighbors because the changes were within the property, Hovnanian's property itself.
>
> MDE will not ask for additional public hearings if there is a narrower scope and there is no impact on the neighbors. Because what happens, the public policy reason behind that is we want to encourage folks to narrow the plans and to lessen the impact on the wetlands. And if there's going to be continuous process that every time they narrow their plans we are going to take it out to public comment, then nobody is going to want to narrow their plans.

The Deputy Secretary further explained that the Department's position in this regard had been supported by the Department's Assistant Attorney General, who was not present at the meeting, but of whom Deputy Secretary Tung had inquired whether additional public informational meetings were required:

> [BY TUNG]: [The Assistant Attorney General] stated there is no statutory or regulatory requirement for MDE to conduct a second public participation process. There are a number of factors that may have gone into that decision on whether to put the project back out on notice. For example, whether there are additional wetland impacts that were not put out on public notice for the first time, or whether there are any new property owners impacted by the revised project that were not notified the first time. In this project the changes, the only part of the project that has been altered since the initial public notice period are the changes to the stormwater management system and those changes have resulted in a reduction, not an addition, to the wetland impacts. And there are no new impacted property owners, as I discussed, because all the changes were within the Hovnanian property itself.
>
> The system itself, the stormwater system itself, is exactly the same, ponds, outfalls, discharges to tidal wetlands. The difference is a reconfiguration of the outfalls, adding the level spreaders, pulling it away from the wetlands, and so forth. The stormwater management system changes alone would not trigger a second public participation process. And this is the public policy part. Part of the policy reasons behind this have to do with the sequential nature of the process. Once an applicant has minimized impacts to a regulated resource it does not make sense to penalize them by requiring them to put a reduced project back out on public notice. An applicant may never minimize impacts if they are required to go back out on public notice again and again and there would be no end to the process.

Mr. Morgante also discussed Hovnanian's current commitment to incorporating "ESD to the MEP" on the project which was a change that reduced the impact upon the tidal wetlands compared to the impact of the original plan:

> [BY MORGANTE]: So my recommendation toward the license really takes into account that the Four Seasons project is not itself a pristine forested area, but it's currently half in agriculture.
>
> I just want to mention that the developers incorporate environmental site design practices into the project, and these really include disconnecting all the roof drain down spouts and really putting them into rain barrels to really, so that that stormwater actually bypasses the stormwater system. It's harvested. You know as well they are really incorporating bioswales,

> they are incorporating grass swales. And they are, and nine out of the 16 stormwater management ponds on the site actually incorporate a shallow area that will have emergent vegetation. And emergent vegetation has been proven to be very effective in terms of pollutant removal.
>
> So again, I'm recommending a license to the site that is now almost half in, that is now half in agriculture. And the proposed stormwater management system will not, without stormwater impacts, you know, because it is incorporating environmental site design, will likely have limited water quality impacts.
>
> The proposed license would have special conditions which will require final approval of the stormwater system by Queen Anne's County. So it's my opinion that the stormwater management system is not sufficiently averse to really deny the license.

Through counsel, Hovnanian represented to the Board that it would be employing "ESD to the MEP," noting that "ESD was assured to this Board" and "this project is probably one of the best projects out there, employing environmental site design to the maximum extent practicable." Furthermore, Hovnanian's counsel noted, Hovnanian was contractually bound to apply ESD to the MEP:

> [BY COUNSEL]: There is an agreement entered into between Queen Anne's County and the applicant dated October 8th, 2013 and it specifically requires [ESD to the MEP] . . . [a]nd so they will be incorporated. The county, it's in the written agreement, and that has been provided to the Board. . . . Signed by the county and the applicant. So once we receive our final building permit the Tanner property gets transferred [to the County]. It has a conservation easement for it to remain as a park out there. **And we are going to employ ESD to the MEP.**

(Emphasis added.)

The final vote was 2-1 in favor of Hovnanian's application, and the State tidal wetlands license was granted, with the conditions recommended by the Wetlands Administrator and the Department. Of particular relevance to this appeal is Paragraph P:

> P. Licensee shall construct, operate, and maintain the stormwater management system in accordance with Queen Anne's County approved stormwater management plans. (Queen Anne's County Department of Public Works File #04-0-03-0002-C: Phase I conceptual approval granted (7/22/15)/Attached as Attachment D).

In this appeal, the Opponents contend that the promises made in Paragraph P are "illusory," suggesting that Hovnanian could get around Paragraph P by invoking an administrative waiver. The Opponents also argue that, although the October 8, 2013, contract between Hovnanian and the County regarding the Tanner Property ("the Tanner Contract") states in paragraph 20(b) that "K. Hovnanian agrees to implement ESD practices throughout the Four Seasons development," the contract does not say "to the maximum extent practicable" after those words. The Opponents further contend that, without County approval of "complete stormwater management plans," the Board lacked the necessary information to grant the license.

Hovnanian responds that there is no statutory or regulatory requirement that mandates that the Board's approval of an application for a State tidal wetlands license be deferred until after the final approval of complete stormwater management plans by the pertinent county. The Opponents cited no statute or regulation in support of their argument for deferral, and we located none.

Hovnanian also points out that the Opponents' complaints about the condition in paragraph P are nothing more than speculation that Hovnanian could breach a contract it has with the County (the Tanner Contract) at some point in the future; Hovnanian notes that, if it were to fail to abide by its assurances to the Board, it would be subject to a

range of penalties, including the loss of its long-sought State tidal wetlands permit. Hovnanian further states that any concerns the Opponents might have about Hovnanian's (future) compliance with Queen Anne's County current stormwater standards in general are not matters to be resolved by the Maryland Board of Public Works, which, as the Court of Appeals pointedly observed in *Hovnanian I*, is not supposed to act "as a super land use authority." 425 Md. at 517.

We agree with Hovnanian's assertion that the Board was not required to defer its approval until the County issued its final approval of the stormwater management plans. Env. § 4-202 requires each County and municipality to have adopted, by July 1, 1984, "ordinances necessary to implement a stormwater management program," which, *inter alia*, must "meet the requirements established by the Department under § 4-203 of this subtitle, and [ ] be consistent with the purposes of this subtitle." The "purposes of this subtitle" were articulated by the General Assembly in Env. § 4-201: "The General Assembly intends, by enactment of this subtitle, to reduce as nearly as possible the adverse effects of stormwater runoff and to safeguard life, limb, property, and public welfare." Section 4-203 outlines, at length, the Department's responsibilities with regard to stormwater regulation. The Department is required to "[s]pecify the minimum content of the local ordinances," Env. § 4-203(b)(5)(i), and adopt "rules and regulations which establish criteria and procedures for stormwater management in Maryland." Those rules and regulations have required, since 2007, that "ESD to the MEP" practices be utilized. Env. § 4-203(b)(5)(ii)(1). Pursuant to Env. § 4-203(d), the Department is also required to

assist, by providing "technical assistance, training, research, and coordination in stormwater management technology" to local governments in implementing their stormwater ordinances.

For its part, Queen Anne's County enacted Chapter 14, Section 4 of its County Code (Code, 14:4). Titled "Stormwater Management," it begins by noting, at Ch. 14:4-2, that its purpose "is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures that control the impacts associated with increased stormwater runoff." It requires that ESD to the MEP be utilized to meet these goals, and expressly provides that it has been "adopted under the authority of" Env., Title 4, Subtitle 2, quoted above. Its provisions are "the minimum stormwater management requirements." Chapter 14, Section 4 incorporated, by reference, the 2000 Maryland Stormwater Design Manual, Volumes I & II, "and all subsequent revisions," as "the official guide for stormwater management principles, methods, and practices."

Hovnanian has also represented on several occasions, most recently at oral argument in this Court, through counsel, that it will be employing ESD to the MEP on all phases of the Four Seasons development. After recapping the promises Hovnanian had made to the Board regarding implementing ESD to the MEP, Hovnanian's counsel told this Court at oral argument:

> [BY COUNSEL]: These are representations to the Board, made by Hovnanian, which we will repeat, emphasize, and readopt today. I am authorized by K. Hovnanian to state to this Court that the Four Seasons development, all four phases, will be developed in accordance with the

> stormwater regulations that were in effect concerning ESD to the MEP in 2010. This is what we told the Board in 2013. This is what we told the Board in 2015. If indeed the Board accepts these statements as the true representations to the issue of the license, and K. Hovnanian agrees it may, then the COMAR citations . . . indicate, without doubt, that any misrepresentation to the Board concerning a license is grounds for suspension or revocation, not only by the Board but by the Maryland Department of the Environment. K. Hovnanian does not intend to jeopardize this license. It is going to comply, it is going to follow the representations that it made to the Board, that I reiterate to the Board and to this Court today.

In sum, it appears that there is no law or regulation that requires an applicant for a State tidal wetlands license to secure final approval by the County of complete stormwater management plans in advance of the Board issuing the tidal wetlands license. And we see no basis in this record to conclude that the Board lacked the information it needed to issue the license.

Opponents also complain that "the approval process for the license did not provide adequate public participation," asserting that there should have been "a further public informational hearing to supplement the administrative record," in addition to the public informational hearing that was held on March 6, 2003. But Opponents have identified no statute or regulation that required the Board to provide for an additional public hearing. Accordingly, we find no merit in the Opponents' argument that the lack of additional public hearings is a reason to overturn the Board's approval of the license.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.