

May 7, 2024

I have participated in many public hearings, both state and local, concerning the Villages at Swan Point for almost 20 years. I would like to use my time tonight to point out that there are still some misunderstandings about public access to, and ownership of, the restored shoreline along the Potomac River.

As part of the approval process in 2007, the Critical Area Commission determined that the location of the 100' Critical Area Buffer along the restored shoreline needed to be *quote* "clarified to ensure that it is clear that no additional "upland" acreage can be "created" by the alteration of the shoreline and bank that may have the effect of moving the high water line." And *quote* "The 100' Buffer **shall be delineated landward** of the mean high waterline that MDE certifies in the field ..." *end quote*. MDE certified the location of the Mean High Water Line in 2007. The Critical Area Buffer extends inland from this line for 100'.

In Maryland, the law provides that title to private property along tidal or navigable waters extends *only* to the Mean High Water line. At Swan Point the water ward edge of the Buffer is the 2007 Mean High Water Line. When the Swan Point Development Company brought in the sand to stabilize and create the beach, (a good thing) that sand was deposited *below* that 2007 Mean High Waterline. Swan Point holds the title to the Buffer. Title to land below the 2007 MHWL is vested in the State of Maryland, held in trust for the benefit of the residents of the State.

The shoreline protection plan revised in 2021 shows the location of the Buffer, with the water ward edge identified as the 2007 existing MHWL. The Buffer is shown in the same location on the site development plans approved in 2019. The restored shoreline water ward of the Buffer is also clearly drawn.

You will soon be voting on proposed amendments to Docket 250. All mentions of the Buffer in this document must include text that describes the location of the Buffer consistent with the drawings.

One of the reasons the Critical Area Commission was so insistent that Swan Point provide access through the buffer to the shoreline was because the beach is held in trust by the State for the benefit of the public

Swan Point fought against that requirement for several years, before finally entering a memorandum of agreement with the County in 2015. That agreement states *Access to the Shoreline will be provided to the general public **at the same time** it is opened and provided to the Swan Point Community and to the visitors and patrons of the Swan Point Resort or within 2 years of "substantial completion" approval of Potomac Breeze Drive.* The conjunction used is OR, not AND. The Swan Point Club has sponsored several private events on this beach over the last 2 years. Why haven't the rest of us been given access?

Submitted by:  
Nancy Schertler