

**From:** [Charles County Government](#)  
**To:** [Public Record](#)  
**Subject:** \*NEW SUBMISSION\* 5/14/2024 - Proposed Amendment to Indenture - Docket 250, Villages at Swan Point  
**Date:** Friday, May 10, 2024 7:36:01 PM

---

**[External Content Warning] This message is from an external sender. Please exercise caution when opening attachments and hover over any links before clicking.**

**5/14/2024 - Proposed Amendment to Indenture - Docket 250, Villages at Swan Point**

**Submission #:** 3196592  
**IP Address:** 73.132.34.184  
**Submission Date:** 05/10/2024 7:35  
**Survey Time:** 6 minutes, 29 seconds

You have a new online form submission.

Note: all answers displaying "\*\*\*\*\*" are marked as sensitive and must be viewed after your login.

**Public Hearing Comment Form**

**Questions or More Information 240-776-6709**

**Name**

Nancy Schertler

**Address**

14725 Banks O'Dee Rd  
Newburg, Md 20664

**Phone**

(202) 255-2324

**Email**

nschertler@gmail.com

**Are you:**

Neutral

**Comment**

Please see 2 uploaded files: 5-10-2024 Docket 250 testimony and March 7, 2007 Critical Area Commission Supplemental Panel Report

**Upload File(s)**

[5-10-2024 Docket 250 testimony.docx](#)

[3-07-2007 Critical Area Staff Report Final.pdf](#)

Thank you,

**Charles County, MD**

---

**This is an automated message generated by Granicus. Please do not reply directly to this email.**

**CRITICAL AREA COMMISSION  
SUPPLEMENTAL PANEL REPORT  
FINAL  
March 7, 2007**

**JURISDICTION:** Charles County

**PROPOSAL:** Amendment – Villages at Swan Point Growth Allocation

**COMMISSION ACTION:** Vote

**PANEL MEMBERS:** Gary Setzer (Chair), Judith Evans, Frank Dawson, Louise Lawrence, Pete Gutwald

**PANEL RECOMMENDATION:** Partial Approval with Conditions  
Send Back for Changes – Horse Farm Parcel

**STAFF:** Kerrie Gallo

**APPLICABLE LAW/  
REGULATIONS:** Natural Resources Article §8-1808.1 and COMAR  
27.01.02.06

**SUMMARY OF PANEL DISCUSSIONS:**

The panel held a public hearing on the proposed growth allocation on January 24, 2007. The panel met again on February 2, February 7, March 2, and is meeting on March 7 to discuss pertinent issues, review supplemental information requested by the panel and provided (by Nancy Slepicka on behalf on Swan Point Development Company, LLC,) on behalf of the County as outlined in the letter from the County Attorney, Roger Fink, dated February 22, 2007. The panel received copies of this correspondence on February 23, 2007. As requested by the panel, this memo summarizes the panel's discussions on specific areas of concern and proposes conditions for the panel to consider as recommendations to the full Commission.

**General Conditions**

On February 13, 2007, Commission staff sent a letter to the County requesting clarification on particular outstanding items. On February 22, 2007, Commission staff received a letter from the developer's attorney, Nancy Slepicka, followed by a letter from the Charles County Attorney, Roger Fink. The County Attorney's letter endorsed the entire contents of the letter from the developer, including without limitation, the five conditions of growth allocation approval proposed by the developer. The panel reviewed this information and while some of the proposed conditions may have adequately addressed some of the outstanding issues and concerns, the panel preferred to develop their own specific conditions as set forth in this supplemental panel report.

***The panel's review and approval with conditions of portions of this growth allocation request are based on the General Development Plan and the Growth Allocation Map identified as Exhibit C dated May 2006 and Exhibit B dated May 2006. The panel acknowledges that these plans are conceptual in nature; however, any changes to the plans that increase or decrease the growth allocation acreage or substantively alter the configuration of the development envelopes as shown on the plans shall be submitted to the full Commission for review and approval.***

### **Growth Allocation Envelope for the "Horse Farm Parcel"**

The panel discussed the multiple development envelopes and the configuration of the development envelopes. The panel concluded that the number of development envelopes in the proposal as submitted was consistent with the County's Critical Area Program, State law and Criteria, and the Commission's policies regarding development envelopes because the property consisted of four distinct parcels. The panel identified an inconsistency in the configuration of the development envelope on the "Horse Farm Parcel" because the project leaves a 5-acre residue of RCA lands that are not contiguous to other RCA lands. Commission staff requested that the County amend the "Horse Farm Parcel" envelope, and provide a revised growth allocation request; however, this action has not been taken. The Commission's legal counsel, Marianne Dise, has advised the panel that the acreage should be officially adjusted by the County prior to Commission approval.

***The request for growth allocation for the "Horse Farm Parcel" will be sent back to the County so that the acreage and configuration of the development envelope can be modified to eliminate the 5-acre residue of RCA that is not contiguous to other RCA lands for a total of 20 acres.***

### **300-Foot Setback for the "Horse Farm Parcel"**

The panel discussed that the provisions regarding the location of growth allocation at least 300-feet from tidal waters and tidal wetlands is only applicable when lands are proposed to be changed from RCA to LDA or IDA. There is only one part of the project that is currently RCA and proposed to be changed to IDA, and this is the "Horse Farm Parcel." The General Development Plan includes a 300-foot setback on this parcel. The panel discussed that it was not clear how this area was to be maintained, and that this should be addressed. The Commission's policy for growth allocation states that a 300-foot "naturally vegetated Buffer" is strongly encouraged. The 100-foot Buffer is required to be established in forest; however, for the landward 200 feet, the Commission can consider site conditions and wildlife habitat objectives. The panel discussed the presence of eagles, a heron rookery, and Forest Interior Dwelling Birds (FIDS) on the site and the use of forested areas by these species. They also discussed that the Buffer Management Plan should be expanded to include this area on the "Horse Farm Parcel." The panel is recommending that the growth allocation request on the "Horse Farm Parcel" be sent back to the County so that the acreage and configuration of the development envelope can

be modified to eliminate the 5-acre residue of RCA, and the panel is also recommending the following:

***The 300-foot setback on the "Horse Farm Parcel" shall be established in forest vegetation like the 100-foot Buffer in order to provide appropriate riparian forest cover for wildlife that are currently using the site. The establishment and maintenance of this area shall be included within the Buffer Management Plan for the project. This area shall also be bonded to ensure effective implementation.***

#### **Additional Development Envelope Issues**

The panel also discussed that portions of the site are proposed to remain LDA and requested that Commission staff verify that the proposed development in these areas will comply with the impervious surface limits in the County Program and State law. Additional detailed information based on the General Development Plan was provided to the panel and was reviewed by Commission staff, and the panel believes that these requirements can be met.

After reviewing the General Development Plan and other site plans provided to the panel as part of their review of the project, the panel expressed concern about the location of stormwater management facilities. Development envelopes should be configured to include all stormwater management facilities that serve development within the envelope. The panel also raised concerns about the location of all roads, associated grading, and necessary right-of-ways within the development envelopes. Because of the scale of the General Development Plan, which is basically a conceptual design, it was difficult to determine that all of these development activities associated with the proposed IDAs were to be located within the development envelopes. Pursuant to the panel's discussion the following conditions are proposed as part of the Commission's approval of the Swan Point growth allocation, excluding the "Horse Farm Parcel":

***All stormwater management facilities serving development located in the IDA shall be located within the IDA development envelopes. Commission staff will be responsible for ensuring that this condition is met as detailed plans are submitted during the "preliminary plan" stage of design.***

***All roads, associated grading, and necessary right-of-ways serving development located in the IDA shall be located within the IDA development envelopes. Commission staff will be responsible for ensuring that this condition is met as detailed plans are submitted during the "preliminary plan" stage of design.***

#### **Marinas**

The growth allocation proposal originally included an excavated boat basin and a large marina located on Cuckold Creek and serving the entire project. Following many, many months of discussion and negotiations with the developer, the County, and resource agency staff, and in response to these concerns and others raised during several public hearings on the project, the

marina proposal has been substantially revised. The current proposal includes an approximately 135-slip marina on Cuckold Creek to primarily serve the residents of the Villages at Swan Point. The proposal also includes a second approximately 110-slip marina to be located on the Potomac River, at the Weir Creek Peninsula to primarily serve transients and guests of the hotel. Neither proposed marina would include any "boat-yard" type functions such as engine maintenance, painting, or hull repair. The panel discussed both marinas and the conceptual plans that have been prepared, and the County has indicated that the developer proposes to locate all parking, bathrooms, showers, and boat storage associated with the proposed marinas within the IDA development envelopes.

The proposal to include a second marina facility at the Weir Creek Peninsula was suggested by MDE staff as a result of concerns regarding the impact of a single, larger facility on Cuckold Creek. This portion of the property is not a designated Buffer Exemption Area, and the Buffer is forested. The County, on behalf of the developers, has indicated that a 100-foot Buffer will be provided and that all disturbance and development activities that are not water-dependent will be located outside of the Buffer. MDE staff has coordinated closely with Commission staff on the review of the proposed marina facilities to date and have indicated their intention to continue to do so as the designs for the marinas are finalized and State and federal authorizations and permits are issued. The following conditions are proposed as part of the Commission's approval of the Swan Point growth allocation, excluding the "Horse Farm Parcel":

***All marina facilities associated with the Cuckold Creek Marina will be located within the IDA development envelope and will comply with all of the requirements of the County's Buffer Exemption Area Program.***

***All marina facilities associated with the Weir Creek Peninsula Marina will be located within the IDA development envelope, and unless they are water-dependent, the facilities will be located outside the 100-foot Buffer.***

***Critical Area Commission staff will participate in MDE's review and authorization process regarding the proposed marinas to ensure that these conditions and all applicable requirements of the Charles County Critical Area Program, the Critical Area law and Criteria are satisfied.***

### **Buffer Management**

During the panel's meetings, there was extensive discussion about all aspects of the 100-foot Buffer on the project site because significant portions of the Buffer are fully forested and provide significant habitat and water quality benefits. Concerns of the panel included shore erosion control measures and how they will be installed, including how much grading and tree removal will be necessary. The panel also discussed the proposed trails, some of which are shown within the Buffer. The County informed the panel that the trails are private amenities; therefore, the panel confirmed they must be located outside of the Buffer. Permissible impacts to the Buffer for non-public amenities are perpendicular trails that provide direct access to proposed piers. At this

time, the trail network is very conceptual, and the panel indicated that the proposed trails should be included in the Buffer Management Plan.

Staff also described for the panel that the preliminary Buffer Management Plan outlines a design for establishment and maintenance of the Buffer and includes the concept of "view corridors." The panel concluded that more detailed information is necessary to ensure that the Buffer will be properly established and maintained. The panel agreed that detailed Buffer Management Plans are usually submitted at a later stage in the design process.

During this discussion, Commission Counsel advised staff that specific details regarding how the 100-foot Buffer will be delineated must be clarified as a component of the Buffer Management Plan because shore erosion control measures that will alter the existing shoreline are proposed. The panel agreed that the methodology for measuring the Buffer should be 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 mean high water line. Pursuant to the panel's discussion of the Buffer, the following conditions are proposed as part of the Commission's approval of the Swan Point growth allocation, excluding the "Horse Farm Parcel":

***Prior to the issuance of any permits or final approvals by the County, a detailed Buffer Management Plan at an appropriate scale shall be prepared and submitted to the full Commission for review and approval. Trails or portions of trails must be public amenities, provide direct access to water-dependent facilities, or be located outside the 100-foot Buffer. The Buffer Management Plan shall include, but is not limited to, the proposed shore erosion control measures and all related grading and tree removal; all trails or portions of trails located within the 100-foot Buffer or within 100-feet of the landward edge of the Buffer; the location of the recreational beach and related amenities; proposed management measures related to views, access to piers, and removal of exotic or invasive species; the proposed calculations and mitigation for impacts to the Buffer in the Buffer Exemption Area; and a landscaping plan showing all removal of existing vegetation and proposed supplemental planting as required to establish the Buffer. In addition, the Buffer Management Plan shall include provisions for maintenance, survival, monitoring, and replanting for five years, and provisions for the collection of a bond by the County in an adequate amount to ensure effective implementation for the full five- year period.***

***The 100-Buffer shall be delineated landward from the mean high water line that MDE certifies in the field and is shown on an application, accepted by MDE, for shore erosion control measures as long as implementation is initiated within the time frame specified in the original license or authorization. Any requests for extensions will require re-certification of the mean high water line as of the date that the request for an extension is accepted by MDE.***

#### **Other Habitat Protection Areas**

The project site includes several Habitat Protection Areas besides the 100-foot Buffer and FIDS habitat which are specifically addressed. These include a bald eagle nest, a blue heron colony,

and the habitat of the Purple Hairstreak Butterfly. Temporary construction conservation measures and permanent protection measures for these areas have been discussed and negotiated with the DNR and are included in a habitat management plan; however, the habitat management plan has not been finalized pending the final resolution of the FIDS mitigation. The following condition is proposed as part of the Commission's approval of the Swan Point growth allocation, excluding the "Horse Farm Parcel":

***Prior to approval of the first preliminary plan by the County, the final habitat management plan shall be submitted to the full Commission for review and approval.***

The panel discussed that it is likely that build out of this project may take place over a lengthy period of time, possibly more than 10 years. It is possible that additional Habitat Protection Areas may be identified in the future and that additional protection or conservation measures may be warranted: therefore, the panel recommends the following condition:

***Prior to approval of each preliminary plan, the plan will be reviewed by the Heritage Division of the DNR to determine if any additional Habitat Protection Area requirements are necessary based on species migration or new information identified since the time of Preliminary Habitat Protection Area Plan approval. The developer will be required to address new habitat concerns in coordination with Charles County Planning staff, Commission staff, and DNR staff.***

#### **Forest Interior Dwelling Bird (FIDS) Habitat Impacts**

Commission staff has been working with the County, the developer, the developer's consultants, and the Nature Conservancy for the last year to identify potential properties for planting and preservation to meet the FIDS mitigation requirements. The panel expressed significant concerns about the loss of FIDS habitat on the Swan Point property. Commission staff explained that in early discussions with the County and the developer, inherent problems with conserving FIDS habitat on the project site were identified. These included the understanding that the site was proposed for intense development prior to implementation of the Critical Area Program, the project is served by public water and sewer in order to accommodate growth in a central location, the County has no mixed use waterfront communities to attract visitors, and even if some FIDS habitat were able to be conserved on the project site, it is likely to be adversely impacted by the population growth and development otherwise associated with the project.

For these reasons and as specifically provided for in the Commission's formal Policy Document, "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area" dated June 2000, Commission staff encouraged the use of off-site mitigation areas. Charles County has adopted this Policy Document by reference in the County's Critical Area Program. In part, Commission staff's recommendation was based on the significant amount of high quality forested lands that exist in southwest Charles County and are already protected by various government agencies. Identifying off-site mitigation areas was viewed as an opportunity to expand these already protected areas, and based on input from the DNR, provide protection for other significant habitat areas as well. Ultimately, it also provided an opportunity for the



Commission to work with a non-government organization, The Nature Conservancy, to hopefully address mitigation for this project and possibly others, in a broader and more regionally significant manner. The working partnership that has evolved over the last year was viewed as a significant component in the rapidly evolving overall habitat conservation and protection strategy of the Critical Area Program.

Commission staff has received relatively detailed information about the specific properties that are proposed to be used to meet the FIDS mitigation requirements and believes that appropriate properties with willing sellers and sufficient acreage have been identified. Unfortunately, due to the sensitive nature of the negotiations, specific information regarding the properties has not been presented to the panel until March 7, 2007. At this time, the panel believes that it is possible that the FIDS mitigation requirements can be satisfied through the fee simple acquisition of, or the acquisition of easements on, one or more properties identified by the Nature Conservancy with funds provided by the developer. The County Commissioners' conditions of local growth allocation approval include a provision stating that the 404 acres of required FIDS mitigation shall be addressed within a revised management plan, prior to final approval of growth allocation, and that any and all conservation easements needed to meet FIDS mitigation requirements be reviewed and recorded prior to approval of the first preliminary subdivision plan. In order to ensure that the final FIDS mitigation plan is satisfactory and demonstrates compliance with the Commission's Policy Document, the following condition is proposed as part of the Commission's approval of the Swan Point growth allocation, excluding the "Horse Farm Parcel":

***Prior to approval of the first preliminary subdivision plan or preliminary site plan by the County for any portion of the Villages at Swan Point, the required 404 acres of FIDS mitigation shall be addressed within a revised habitat management plan. The plan shall clearly indicate all on-site areas that are proposed to be planted and provide a planting plan and maintenance program necessary to ensure the establishment of FIDS habitat at maturity. The final habitat management plan shall be submitted to the Commission for review and approval. In addition, all conservation easements for both on-site and off-site areas shall be reviewed by Commission counsel and recorded prior to any local approvals of preliminary subdivision and site plans.***

May 10, 2024

It is unfortunate that during their work session following the Planning Commission's public hearing on Docket 250, the P.C. never addressed public concerns with raising the height of Swan Point Blvd to over 6'. The BoCC must be sure that these concerns are addressed, before you approve the amended and restated Docket 250. These concerns include:

- Potential flooding in the Holy Ghost cemetery
- Issues of ingress and egress for the residents of Swan Point, Mathews Manor, and Woodland Point during storm events.
- Removing the requirement that in an emergency, the 10' shoulders along Swan Point Blvd. can be used to carry traffic, exacerbating the problem that there is only one way in and out of the Swan Point Peninsula.
- Potential flooding of property along Neal Sound and Cuckhold Creek.

There are additional edits and amendments that must be included in this document before you approve it. With the exception of the suggested edits concerning view corridors, it is the intent of the proposed edits that should be included, not necessarily the exact text provided.

### **100' Critical Area Buffer:**

- All references to the 100' Critical Area Buffer along the Potomac River must include text that clearly describes the location of the Buffer, and the waterward edge of the Buffer, which is the Mean High-Water Line certified by MDE in 2007.
- Docket 250 must note that the Swan Point Development Company holds the title to the 100' Critical Area Buffer, and the 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.

### **Public Access:**

While it is true that public access is has been described in two documents separate from the subject Docket 250 Zoning Indenture, the fact that SPDC is not in compliance with the 2015 Memorandum of Agreement, suggests

that the language from the 2015 MOA between SPDC and the County should also appear in Docket 250 including:

*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.*

### **View Corridors:**

There is nothing in the criteria of the Critical Area Laws that permits the construction of *View Corridors*. The CAC allows some flexibility when an applicant is establishing a Buffer *where one does not exist*, by permitting the applicant to provide a fully forested Buffer with a few areas of lower-lying vegetation or understory cover to provide some view of the water. **However, no understory clearing for a view is permitted.** The first sentence of Docket 250 §4 Buffer B. iv. Must be amended to end after the word vegetation. *Docket 250 §4 Buffer B. iv. No clearing of undergrowth, other than the removal of dead and decaying vegetation. , shall be allowed except selected tree limb trimming and limited understory clearing of view corridors, subject to site plan approval.* Indigenous ground cover is to be preserved and enhanced in all areas except for the provision of a limited number of community pedestrian trails constructed on crushed stone, oyster shell, or other similar pervious surfaces.

Submitted as a part of this testimony is a copy of the March 7, 2007 Critical Area Commission Supplemental Panel Report. This document notes (page 5) the location of the Buffer and the need for trails through the buffer be open to the public.

Submitted by:  
Nancy Schertler