

**From:** [Charles County Government](#)  
**To:** [Public Record](#)  
**Subject:** \*NEW SUBMISSION\* 5/14/2024 - Proposed Amendment to Indenture - Docket 250, Villages at Swan Point  
**Date:** Tuesday, May 14, 2024 3:58:10 PM

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

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**Public Hearing Comment Form**

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

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**Are you:**

Neutral

**Comment**

See attached comment letter from Potomac Riverkeeper Network.

**Upload File(s)**

[PRKN Swan Point comments 5-14-24.pdf](#)

Thank you,

**Charles County, MD**

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May 14, 2024

Commissioner President Reuben Collins II, Esq.  
Commissioner Gilbert "BJ" Bowling III  
Commissioner Thomasina Coates, MS  
Commissioner Amanda Stewart, M.Ed  
Commissioner Ralph Patterson II, M.A

Re: Proposed Amendment to Indenture-Docket 250, Villages at Swan Point

Commissioners:

The Potomac Riverkeeper Network (PRKN) submits the following comments on the Proposed Amendment to Docket 250 for the Villages at Swan Point. PRKN's mission is to protect the right to clean water for all communities and all those who live in and rely upon the Potomac and Shenandoah watersheds by stopping pollution, making drinking water safe, protecting healthy river habitats, and enhancing use and enjoyment for all. Our members use and enjoy the Potomac River and publicly owned lands along the river, including State-owned tidal wetlands.

We believe that Docket 250 needs additional edits that correct and clarify the definition of the Buffer along the restored shoreline of the Potomac River, access to the waterfront, and the fact that lands below the mean high-water line (MHWL) are by definition State tidal wetlands, which are covered by the public trust doctrine.

1. Clarification of location of mean high-water line. Prior to approving the Growth Allocation for the Villages at Swan Point, the Critical Area Commission determined that the methodology for measuring the Buffer along the restored Potomac River shoreline needed to 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. The 100'-Buffer was delineated landward from the mean high-water line that MDE certified in the field in 2007. (CAC staff report May 7, 2007). The 2007 MHWL and the landward edge of the Critical Area Buffer is shown in the relevant State Wetlands licenses. The landward edge of the Buffer is depicted on relevant Site Development Plans.

In the proposed amended Docket 250 the description of the Critical Area Buffer must clarify where the waterward edge of the 100' buffer along the restored shoreline is located. As written, it is not clear that the majority of the restored shoreline is below the 2007 MHWL and, by definition, is State tidal wetlands, not the property of the Swan Point Development



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Company (SPDC). We ask that the text in italics be added to 4. Buffer on page 4 (and the preceding sentence be deleted):

4. Buffer. A natural buffer of 100 feet shall be maintained along all wetlands and shorelines of the Subject Property as required by the Charles County Critical Area Ordinance (the “100-foot Critical Area Buffer”). The natural buffer shall be established in the form of conservation easements with restrictive covenants, as depicted on the General Development Plan (GDP) and incorporated by reference in the 2006 Docket 250 Order. These easements and dedicated open space buffers consist of approximately 2,000 linear feet of area maintained 100 feet inland from the mean high water line of the Potomac River and Cuckold Creek, and 6,700 linear feet of area maintained 100 feet inland from the mean high water line of Weir Creek, Matthews Cove, and Cuckold Creek wetlands as defined by the Maryland Department of Natural Resources. The 2,500 linear feet of the Buffer Exempt Area/Buffer Modification Area and existing Phase 1 golf course are not included in this buffer. ~~The limits of the 100-foot Critical Area Buffer are shown on the GDP. The limits of the 100’ Critical Area Buffer are shown on the Swan Point Shoreline Protection Plan. The location of MHWL of the Potomac River was measured and documented by MDE in 2007. The waterward edge of the Buffer along the restored shoreline is the location of the 2007 MHWL. The restored shoreline below the 2007 MHWL is by definition state tidal wetlands and subject to the Public Trust Doctrine.~~

2. Public Access to the Waterfront. The County and SPDC have a recorded agreement that provides for public access to the restored shoreline along the Potomac. However, since the restored shoreline is below the 2007 MHWL, and subject to the Public Trust Doctrine, we believe that Docket 250 should include the language from the 2015 Memorandum of Agreement. It must be made clear that everyone has the right to recreate on the designated areas of the shoreline, and that privatization of the shoreline for exclusive events is inconsistent with the Public Trust Doctrine. We ask that the text in italics be added to #18 on page 10:

18. Public Access to the Waterfront. The Petitioner shall make provisions for public access to the Potomac River from the site in a manner acceptable to the Charles County Planning Commission and to the Petitioner. *Consistent with the 2015 Memorandum of Agreement between the County and the Swan Point Development Company, access to the restored shoreline along the Potomac will be provided to the general public at the same time it is opened and provided to the Swan Point community and visitors and patrons of the Swan Point Resort.*

3. The sections of Docket 250 that discuss Environmental Conditions also include a definition of the 100' buffer. As above, Section 27. *Conditions of the 2006 Docket 250 Order- Environmental conditions. A. Critical area Buffer Exemptions/Buffer Modification Areas and 100-foot Habitat Corridor Buffer* needs to include language similar to that added above:

A. Critical Area Buffer, Buffer Exemption/ Buffer Modification Areas, and 100-foot Habitat Corridor Buffer

- i. The Critical Area Buffer shall be delineated according to the Charles County Zoning Ordinance, extending 100 feet landward of tidal waters, tributary streams, and tidal wetlands, and expanded accordingly to include soils with hydric properties, highly erodible soils, steep slopes, and non-tidal wetlands. *The location of MHWL of the Potomac River was measured and documented by MDE in 2007. The waterward edge of the Buffer along the restored shoreline is the location of the 2007 MHWL. The restored shoreline below the 2007 MHWL is by definition state tidal wetlands subject to the Public Trust Doctrine.* The issue of whether the presence of hydric soils warrant expansion of the Buffer beyond what is shown on the General Development Plan shall be resolved by the Petitioner, County staff, and Critical Area Commission staff prior to the request for Growth Allocation approval being presented to the Critical Area Commission for approval.

PRKN believes that maintaining the rights of the public to use the Potomac River and public lands along the river, including State owned tidal wetlands, is critically important. Thank you for the opportunity to provide these comments.

Sincerely,

/s/

Dean Naujoks  
Potomac Riverkeeper