



William Morgante, PWS
Wetlands Administrator

State of Maryland
Board of Public Works

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April 3, 2015

TO: Swan Point Development Co. LLC and
Persons Interested in Application for
State Tidal Wetlands License 13-0704

You are receiving this package because you are either a party to, or an interested person in, the request of Swan Point Development Co. LLC to create a mixed-use commercial, residential and marina development. The project was begun under Wetlands License 05-1266, issued by the Board of Public Works on May 21, 2008. Potomac River shoreline stabilization was the only project completed before the license expired. Swan Point Development Co. LLC is seeking to complete projects authorized but not completed under WL 05-1266 and a number of new projects.

The Maryland Department of Environment [MDE] held a public informational hearing on the new application on February 27, 2014. MDE has now issued its Report and Recommendation to the Board of Public Works concerning Swan Point Development Co. LLC's request. Enclosed is a copy of the Report and Recommendation. The report states that the company seeks "to provide the required infrastructure, including roads, utilities, stormwater management, and shoreline stabilization to create a mixed-use commercial, residential and marina development." MDE recommends a number of special conditions and concludes that, with those conditions, the "application represents a reasonable exercise of riparian rights."

The Board of Public Works will determine whether to approve the license. Therefore, **we are asking you to state any continued exceptions to MDE's recommendations** before the matter is presented to the Board for determination. Please let us know – in writing – of any unresolved concerns by close of business on **May 18, 2015**. The purpose of asking you to submit written exceptions is so that I, as the Board's Wetlands Administrator, may attempt to work with you, the licensee, and MDE to resolve your concerns.

The Board of Public Works anticipates considering State Tidal Wetlands License 13-0704 **at its regularly-scheduled meeting on July 1, 2015**. If you seek to oppose the license at the Board's meeting, you may request to personally appear before the Board. Your request to appear must be in writing and you must "specify the items of contention, any wetlands-related concerns, and reason for opposing the issuance of a license."¹ **Your request to appear at the Board meeting must be submitted by close of business on June 9, 2015.**

Sincerely,

William Morgante
Wetlands Administrator

Enclosure: MDE Report and Recommendation and three attachments

¹ COMAR 23.02.04.09B

**WATER MANAGEMENT ADMINISTRATION
TIDAL WETLANDS DIVISION**

Wetland Report and Recommendation

STATE WETLANDS CASE NUMBER 13-WL-0704



Applicant: Swan Point Development Co. LLC
Attn: Mr. David Carro
8500 Executive Park Avenue
Fairfax, VA 22031

Agent: McCarthy and Associates, Inc.
Attn: Mr. Milton McCarthy
14458 Old Mill Road, Suite 201
Upper Marlboro, MD 20772
Phone: 301-627-7505

Date Application Received: July 12, 2013

Public Notice Required? Yes

Public Hearing Held: 02/27/14
Hearing Comment Period Closed: 03/31/14
2nd Public Comment Period: 04/15-05/15/14
Revised Plans Dated: 01/09/14

Project Location: **Basin Code:** 02-14-10-10
Maryland Coordinates: 69,378 N X 407,288 E
Book Map Coordinates: Charles County 36 D-10 Edition 16

Location of Proposed Work:

The Villages at Swan Point is located in Issue, Charles County, Maryland, approximately 7 miles southeast of the U.S. Route 301 Harry Nice Bridge. The community is situated on a peninsula that is waterfront to the Potomac River on the southern and western boundaries and Cuckold Creek along the northern boundary. Additional waterfront resources associated with the site include Weir Creek, which drains to the Potomac, and Matthews Cove, which drains to Cuckold Creek.

Project Purpose:

The project purpose is to provide the required infrastructure, including roads, utilities, stormwater management, and shoreline stabilization to create a mixed-use commercial, residential and marina development. The proposed waterfront planned unit community will consist of single-family residential units, condominiums, community recreation amenities, including five observation piers; a hotel and conference center; restaurants, office and retail space; and a commercial marina with 143 boat slips.

Background:

The proposed Swan Point project site is approximately 900 acres in size and located in a relatively rural area of Charles County. The United States Steel Corporation (USSC) has owned the Swan Point property since the late 1960's. Zoning approval was obtained from Charles County in 1986 for a Waterfront Planned Community. Construction was begun in the mid-1990's for single family homes and a golf course on the peninsula. Presently there are several hundred single family homes on the site surrounding the golf course, and most are on the western end of the peninsula. Many of the homes on the Potomac have water access and piers. There is a small community marina on Cuckold Creek with a boat ramp and a pier with capacity for less than 50 boats.

In 2004, USSC partnered with Brookfield Homes Corporation to form the Swan Point Development Company (SPDC), a limited liability corporation. SPDC has received zoning approval from Charles County to develop a mixed use development consisting of 852 single family homes and 678 condominiums, as well as a hotel conference center, retail and office space, restaurants, a commercial marina, and other services. SPDC also has approvals for the construction of public water and wastewater facilities, roads, and a stormwater conveyance system.

On May 21, 2008, the Board of Public Works issued State Wetlands License 05-WL-1266 for regulated activities at Swan Point. During the time that the license was active, the Licensee completed a portion of the authorized work – shoreline stabilization along the Potomac River shown on the approved plans as “Reach 4.” No other authorized work was completed prior to the expiration of the License on May 21, 2014. In addition to the State Wetlands License issued by the Board, MDE issued Private Wetlands Permit 09-WP-0016 on December 9, 2008 for regulated activities in private wetlands. The Department also issued a Nontidal Wetlands and Waterways Permit, which expires on December 9, 2018, for regulated activities in nontidal wetlands. Similarly, the USACE issued a corresponding Individual Permit (2005-62503) on May 14, 2010 for regulated activities in both tidal and nontidal wetlands. The federal authorization expires on August 30, 2018.

Natural Resources

The project site is located adjacent to two natural oyster bars: #20-12 and #20-14. Together these bars comprise the Swan Point Natural Oyster Bar, which is approximately 600 acres in size and located to the west and north of the project in the Potomac River. A natural oyster bar (NOB) is designated by Maryland Department of Natural Resources and is specifically established, reserved, and protected from activities and impacts considered detrimental to oyster populations or destruction of the river bottom. Oysters spawn and subsequently set their spat during the period from June to September in tidal sections of rivers and the Chesapeake Bay.

Other Site Considerations

The project site is located adjacent to the Potomac River Test Range (PRTR) which is currently used by the Naval Surface Warfare Center Dahlgren Division (NSWCDD). The area surrounding Swan Point has been used for munitions testing by the military since 1918.

Description of Proposed Work:

SPDC has applied for reauthorization of work that was not completed under the previous State Wetlands License. The proposed work will be conducted in accordance with revised plans dated January 9, 2014 and includes the following activities, which have been separated into categories based on the type of work or location on the site.

Note: The application submitted by SPDC also included activities in private wetlands, including soil borings, the construction of a bridge across Weir Creek to access upland development, the construction of a temporary causeway to facilitate bridge construction, and two stormwater outfalls. These activities will be authorized by the Department under a private Wetlands Permit (13-WP-0705) as established by law.

Weir Creek Marina

- Removal of existing pier remnants and construction a 10-foot wide x 1,088-foot long marina access pier with two 25-foot wide x 25-foot long platforms;

- Construction of a 10-foot wide x 1,426-foot long pier with a 1,210 square foot observation platform all over a 50-foot wide x 1500-foot long stone breakwater within an average of 842 feet and a maximum 1,050 feet channelward of the mean high water line;
- Mechanical or hydraulic dredging of 5,430 cubic yards of sand, silt and clay to the 6.0 foot depth at mean low water and transporting the dredged material to the Charles County's previously authorized Swan Point Dredged Material Placement site located on the property and off Swan Point Boulevard; and
- Construction of six pier systems for 143 boat slips and the installation of 203 mooring piles, eleven navigational piles with warning signage, four navigational markers and a system of dry fire hydrants as described below:
 - Dock "A": Construction of a 10-foot wide x 214-foot long pier with a 23-foot wide x 85-foot long "T" head platform and eleven fingers piers measuring 3-feet wide x 20-feet long.
 - Dock "B": Construction of an 8-foot wide x 227-foot long pier with a 10-foot wide x 96-foot long "T" head platform, and eleven finger piers measuring 3-feet wide x 20-feet long.
 - Dock "C": Construction of an 8-foot wide x 229-foot long pier with an 8-foot wide x 58-foot long "L" head platform and five finger piers measuring 3-feet wide x 20-feet long.
 - Dock "D": Construction of a 10-foot wide x 363-foot long pier with a 10-foot wide x 105-foot long "T" head platform and eighteen finger piers measuring 3-feet wide x 20-feet long.
 - Dock "E": Construction of an 8-foot wide x 314-foot long pier with an 10-foot wide x 96 foot long "T" head platform and sixteen finger piers measuring 3-feet wide by 20-feet long.
 - Dock "F": Construction of an 8-foot wide x 226-foot long pier with an 8-foot wide x 58-foot long "L" head platform and five finger piers measuring 3-feet wide x 20-feet long.

Observation Piers

- Observation Pier #1: Construction of a 10-foot wide x 260-foot long perpendicular pier on the Potomac River, within a maximum of 260 feet channelward of the mean high water line and 10 feet above the mean low water elevation.
- Observation Pier #2: Construction of a 10-foot wide x 440-foot long perpendicular pier on the Potomac River with one 20-foot wide x 30-foot long bump-out platform and a 40-foot long by 20-foot wide "T" head platform, within a maximum of 440 feet channelward of the mean high water line and 10 feet above the mean low water elevation.
- Observation Pier #3: Construction of an 8-foot wide x 170-foot long pier on the Potomac River within a maximum of 170 feet channelward of the mean high water line and 10 feet above the mean low water elevation.
- Observation Pier #5: Construction of an 8-foot wide x 346-foot long walkway/pier with a 20-foot wide x 10-foot long "L" head platform on Cuckold Creek within a maximum of 356 feet channelward of the mean high water line and 6.0 feet above the mean low water elevation.
- Observation Pier #6: Construction of an 8-foot wide by 300-foot long walkway/pier on Cuckold Creek within a maximum of 162 feet channelward of the mean high water line elevation. The pier would be a minimum of 4.5 feet above the marsh substrate terminating at the open water-marsh interface.

Shoreline Stabilization Measures on the Potomac River

In order to protect the shoreline from erosion, the SPDC has proposed the construction of 7,050 linear feet of shoreline stabilization measures, with both temporary and permanent construction impacts, along the Potomac River as described below:

- Temporary Impacts
 - Construction of 1,650 linear feet of temporary access road using timber mats along the shoreline, landward of proposed stone sills and breakwaters and all within a maximum of 25 feet channelward of the mean high water line; and
 - Construction of a temporary 240-foot long by 10-foot wide sectional barge bridge, held in place with spuds or mooring chains, to cross Weir Creek.
- Permanent Impacts
 - Emplacement of 1,990 feet of stone revetment within a maximum of 25 feet channelward of the mean high water line;
 - Emplacement of 500 feet of stone revetment 20 feet channelward of an existing bulkhead;
 - Construction of various lengths of stone breakwaters, stone groins and stone sills with numerous windows of varying widths along 4,560 linear feet of shoreline channelward of sandy fill and all within a maximum of 25 feet channelward of the mean high water line; and
 - Creation of tidal marsh habitat at various locations landward of the stone structures by filling open water with 3,988 cubic yards of clean sandy material and planting low tidal marsh, high tidal marsh, and dune habitat.

Shoreline Stabilization Measures on Cuba Island

- Emplacement of 167 feet of stone revetment within a maximum of 12 feet channelward of the mean high water line;
- Filling and grading along 190 feet of eroding shoreline with 140 cubic yards of clean sand emplaced within a maximum of 14 feet channelward of the mean high water line and planting marsh vegetation; and
- Emplacement of a 190-foot long by 8-foot wide low profile stone containment sill within a maximum of 22 feet channelward of the mean high water line.

Requires Water Quality Certification (WQC)? Yes. A Water Quality Certification was issued to the USACE on December 9, 2008 and has been extended to coincide with the expiration date of the federal authorization, August 30, 2018.

Qualifies for Maryland State Programmatic General Permit (MDSPGP)? No. The USACE issued an Individual Permit on October 12, 2012 with an expiration date of August 30, 2018.

Area of Vegetated Wetland Impacts: 0 square feet.

Area of Wetlands Created: 84,410 square feet.

Was the Applicant's Original Project Modified? Yes, the bulkhead originally proposed for Cuba Island was eliminated and replaced by a combination of stone revetment and living shoreline using a stone containment sill, sand backfill and emergent grass plantings.

Incorporation of Previous Report and Recommendation:

The previous Report and Recommendation submitted by the Maryland Department of the Environment for State Wetlands License Number 05-WL-1266 (Attachment #1) on April 29, 2008 is incorporated by reference into this Report and Recommendation. This Report provides a comprehensive overview of the project, as well as additional background on the upland land use and development; water and wastewater infrastructure; Critical Area Growth Allocation; and the Kings Grant for the site.

Comments by Local, State or Federal Agencies and Elected Officials

Maryland Department of Natural Resources (DNR)

DNR's Integrated Policy and Review Unit reviewed the project for ecological impacts. Acknowledging that the application is a reauthorization request, DNR also reviewed the special and general conditions of the previous license. DNR is fully supportive of the conditions with reference to ecological resource protection, but suggested updates based on the current knowledge of the resources. Consequently, DNR has recommended a time-of-year restrictions prohibiting dredging or marina breakwater construction from December 15 through March 15 (breakwater and mechanical/hydraulic dredging) and June 1 through September 30 (hydraulic dredging) of any year to protect oyster resources. The Department concurs with DNR's recommendations, which are addressed in Special Condition "Q". DNR also addressed possible impacts related to the proximity of the Weir Creek marina to the Swan Point Natural Oyster Bar. These comments are included under the Potomac River Fisheries Commission section of this Report.

Potomac River Fisheries Commission (PRFC)

Mr. Martin Gary, Executive Secretary of the PRFC provided comments at the February 27, 2014 Public Informational Hearing. Mr. Gary stated that the PRFC was a bi-state commission made up of eight commissioners representing both Maryland and Virginia and that the Commission's core mission was to conserve and enhance the fishery resources of the tidal Potomac River. Subsequent to the Hearing, Mr. Gary submitted formal written comments on the application.

In a letter dated March 31, 2014, Mr. Gary stated that the PRFC opposed the project and requested an extension of the public comment period beyond the March 31, 2014 deadline to provide more detailed comments. The PRFC also requested the Department to perform an environmental assessment of the project with an emphasis on the Swan Point Oyster Bar and related aquatic resources, including the existing oyster population; crabs; fish; mussels; and other organisms. Of particular concern to the PRFC, was the location of the Weir Creek Marina and its potential to adversely impact aquatic resources.

In response to the PRFC's request, the Department extended the public comment to May 15, 2014. The Department also requested the SPDC to perform an environmental assessment of the project as it related to the oyster bar and aquatic resources. In response to MDE's request, SPDC submitted a report on May 15, 2014 addressing water quality, marina operations and hydrology. The report found that the Marina would not adversely affect the oyster bar or any plans PRFC may have to revitalize the Swan Point NOB. In addition to the SPDC, MDE also requested DNR to evaluate the Marina's impact on the oyster bar. DNR reported that the Marina would not detrimentally affect the oyster bar and that any revitalization efforts by the PRFC should be focused on the upper portion of the oyster bar, which would place the restoration efforts well removed from the

Marina's proposed location. A subsequent letter dated September 2, 2014 from the PRFC to SPDC's legal counsel advised that, after receiving guidance from oyster experts in Virginia and Maryland, the Commission had made the decision to no longer oppose the project.

Maryland Historical Trust (MHT)

MHT reviewed the project for impacts to historical and archeological resources and advised that the 2009 Memorandum of Agreement (MOA) between the USACE, MHT and SPDC expired in February 2014. MHT recommended that a renegotiated MOA be included as a condition of the License. Although a renegotiated MOA was signed on March 9, 2015, MDE has recommended a special condition (Special Condition C) to ensure that SPDC satisfies all MOA requirements.

Department of the Navy, Dahlgren, Virginia

The Navy performs research, development and testing operations at the Naval Support Facility Dahlgren. In support of its mission, the Navy performs testing on the Potomac River adjacent to the Swan Point project site. During the comment period, the Navy offered three comments: (1) The Weir Creek Marina would increase boat traffic in the area of the Potomac River test site; (2) The dredging activity could result in potential discovery of unexploded ordnance as testing has been conducted in the river since 1918; and (3) The noise from the Navy testing operations may negatively affect the new property owners at Swan Point. The Navy recommended coordination between it and SPDC to ensure boater safety and proper disclosure to the potential buyers. The Department has forwarded a copy of the Navy's comments to SPDC and is recommending two special conditions to address the Navy's comments: (1) The Licensee take special measures if unexploded ordnance is discovered during dredging operations (Special Condition P) and (2) The Licensee post signage advising users of the marina of the test range boating restrictions (Special Condition Z). The Department is not recommending a special condition on upland real estate transactions, since the issue is beyond the jurisdiction of tidal wetlands.

Charles County Government

The Charles County Commissioners submitted a letter dated July 21, 2014 indicating the Commissioners support of the Swan Point project and requesting MDE to complete its review of the project as quickly as possible. The Commissioners letter went on to say that it has placed Swan Point into the Waterfront Planned Community Zone, which is included in its General Development Plan.

Critical Area Commission (CAC)

The CAC conditionally approved a growth allocation request by Charles County for the Villages at Swan Point in 2008. According to a letter from the CAC to the Board of Public Works dated March 18, 2014, however there were two important outstanding issues related to the Growth Allocation: (1) Public to access the shoreline amenities of the development and (2) Mitigation for the loss of Forest Interior Dwelling Birds (FIDs) habitat.

The access issue relates to the Buffer Management Plan (BMP) for the site, which was approved by the CAC in 2008. The outstanding access issue required the CAC to place conditions on the approval of the BMP. The BMP required SPDC formulate a plan for public beach and waterfront access. According to the CAC, there have been infrequent discussions concerning access and the issue has not been resolved by SPDC to date. SPDC advised MDE that it has recently presented a plan to Charles County to allow public access to shoreline areas of Swan Point and that the plan is currently under review by the County.

The CAC also noted in its March 18, 2014 letter that Special Condition Q of the previous Tidal Wetlands License required SPDC to place a conservation easement on the "Living Shoreline" along the Potomac River.

A draft easement document was submitted to MDE, the USACE, and the CAC in 2012. The CAC reviewed the document and determined that there were inconsistencies between the draft easement document and the CAC's conditions related to public access. Since SPDC has not rectified these inconsistencies, MDE has recommended a special condition (Special Condition I) requiring the Licensee to submit an executed easement to the Department.

The FIDs issue relates to the 2008 CAC approved Habitat Protection Plan. This plan required mitigation for impacts to 400 acres of existing forested habitat on the Swan Point property and provided for all mitigation sites to be placed under easement prior to the start of construction on the upland portion of the property. Subsequent to the 2008 approval of the Habitat Protection Plan, SPDC worked with the County and CAC staff to revise the approved Habitat Protection Plan to provide for phasing of the mitigation to match the construction schedule of the property. Due to the unresolved public access issue, however, CAC has taken no action on the Habitat Protection Plan.

Public Participation

As required by § 5-204(b) of the Environment Article, the Department drafted and issued a public notice by posting the notice on its website from February 1, 2014 to February 28, 2014 and by publishing the notice for the proposed project in the February 6, 2014 edition of the Washington Post and the February 5, 2014 edition of the Maryland Independent. In addition, the public notice was provided to adjacent property owners, Charles County elected officials, and individuals on the Department's interested persons list.

A Public Informational Hearing was held on Thursday, February 27, 2014 from 6:30 PM to 9 PM at the Charles County Government Building, Commissioner's Meeting Room, 200 Baltimore Street, LaPlata, Maryland. A copy of the Hearing transcript is attached as Attachment #2. The Public Informational Hearing record remained open until March 31, 2014, providing interested persons additional time to comment on the application. Finally, in response to comments received by the Department, the Hearing record was extended to May 15, 2014. (The interested persons list and the attendance sheets for the Public Informational Hearing were provided to the Board under separate cover.)

Oral and written comments were received during the Public Informational Hearing, and additional written comments were received during the period the hearing record remained open. The comments received by MDE were both in support of and in opposition to the proposed project. Individuals commenting in support of the project focused on the economic and social benefits. They described SPDC as a positive force in the community and a good steward of the environment, mentioning as an example the completed portion of the shoreline stabilization. Many of the supporters of the project live in the Swan Point community and favor the project to increase property values and to bring additional amenities to the community. The Charles County Chamber of Commerce stated that the project would be an invaluable economic asset that will attract visitors and businesses to the County.

On the other hand, individuals opposing the project focused on the environmental impacts associated with construction of the marina and with potential problems with dredging, polluted stormwater discharge, unresolved issues with public access to the waterfront, mitigation of the loss of the forest and bird populations, oyster bar damage, flooding issues related to the Weir Creek Bridge, and increased traffic. While some of the comments received by MDE during the application review process did not specifically relate to SPDC's application for a Tidal Wetlands License, relevant concerns considered by the Department included:

- Potential water pollution from the Weir Creek Marina;
- Concerns about development of Swan Point relative to the operations of the Navy Dahlgren facility;
- Potential effects of the Marina and the upland development on the Swan Point Oyster Bar;

- Stormwater issues related to upland infrastructure and housing construction; and
- Issues related to the Critical Area Commission and the requirement for public access.

It is important to note that the Department's recommendation is confined to issues relevant to the tidal wetlands statute and regulations. These issues and recommended actions are discussed further below. Other issues raised during the public participation process are not directly within the scope of the MDE's review, but are being analyzed and evaluated under other State statutes and County ordinances (See the transcript of the Public Informational Hearing, Attachment #2). For example, public access to tidal wetlands, Critical Area Buffer management issues, and mitigation for loss of FIDs habitat fall under the purview of the Charles County Department of Planning and Growth Management and the State Critical Area Commission. Similarly, issues concerning zoning approval and growth allocation must be reviewed and approved by the Charles County Government. Consequently, while recognizing that approval of the Tidal Wetlands License plays an integral role in the entire development, this Report and Recommendation focuses on the proposed project – the construction of structures in State tidal wetlands on the Swan Point peninsula and the how those structures will affect these resources.

Findings of the Maryland Department of the Environment

Alternatives Analysis

A comprehensive alternatives analysis was provided during the review of the initial application (See Attachment #1). Consequently, the Department did not require an alternatives analysis since the application is a request for reauthorization of previously approved project with a valid federal authorization. It is important to note, however, that MDE conducted a comprehensive review of the application to ensure that the proposed work is consistent with current regulatory requirements.

Evaluation Criteria

In reviewing the proposed State Wetland Application, the Department has determined that:

- The proposed has minimized dredging activities. As required by Code of Maryland Regulations (COMAR) 26.24.04.03 (Marina Siting Guidelines), the proposed Marina has been sited in water that has a natural depth greater than 4.5 feet mean low water to avoid impacts to shallow water habitat. In addition, dredging activities are limited to depth a depth of minus 6 feet mean low water. Similarly, the proposed project has minimized filling activities, which are limited to the Marina breakwater and piers, and shoreline stabilization measures that will create a significant area of marsh;
- All aspects of the proposed project are water-dependent;
- The proposed project will not alter or destroy tidal wetlands.
- The proposed project will not affect potential habitat areas such as historic spawning and nursery grounds for anadromous and semi-anadromous fisheries species;
- The proposed project will not affect shallow water areas suitable to support populations of submerged aquatic vegetation;
- The proposed project will not eliminate or substantially reduce marine commerce, recreation, and aesthetic enjoyment; in fact, the marina will increase recreation and the observation piers will increase aesthetic enjoyment;
- The proposed project will not affect the natural ability of vegetated tidal wetlands to reduce flood damage and adversely affect the public health and welfare;
- The proposed project will not reduce the capacity of tidal wetlands to trap sediment or increase silting of channel and harbor areas to the detriment of free navigation;

- The proposed project will have only minor impacts on the natural water flow, water temperature, water quality, and natural tidal circulation regimes;
- The proposed project will have only minor effects on littoral drift;
- The proposed project enhances the aquatic environment by creating vegetated tidal wetlands;
- The proposed project will have a favorable impact on local, regional, and State economic conditions;
- The proposed project is consistent with State and federal laws and the Charles County Critical Area Program;
- The proposed project has explored alternatives for the disposal of dredged material;
- The proposed project will provide facilities for the proper handling of stormwater runoff and sanitary wastes;
- The project will not affect navigational safety;
- The proposed project will control shore erosion;
- The proposed project will provide benefits to the public by enhancing access to State tidal wetlands;
- Maintenance and operation of the proposed project is assured;
- The proposed project will provide recreational and navigational access to beaches and waters of the State;
- The proposed project will not alter the scenic and wild qualities of a designated State scenic and wild river.
- The proposed project will not impact historic waterfowl staging areas and colonial bird-nesting sites.

Discussion of Significant Issues

Swan Point Natural Oyster Bar

Recent data shows that the Swan Point NOB oyster harvest is declining precipitously. A report by the PRFC of 68 oyster bars located in the Potomac River from 1963 to 2010 found that the harvest of the Swan Point NOB from 1966-67 was 165,010 bushels, 2005-06 was 1,408 bushels, and from 2009 to 2010 was 11 bushels. Consequently, the PRFC, the Maryland Waterman's Association and the public expressed concern during the application review process that the Swan Point NOB may be directly impacted by the construction of the Weir Creek Marina and stormwater outfalls.

In response to these concerns, MDE requested SPDC to address the potential for the Marina to adversely affect the oyster bar. The Department also consulted with DNR and the Public Health Section of MDE's Science Services Administration. The findings of SPDC's study, as well as the comments from the various agencies highlighted that neither the Marina nor the project in general would have a significant impact on the Swan Point NOB or the restoration efforts being contemplated by the PRFC. In fact, DNR stated that the Marina's stone breakwater may actually have oyster habitat value. As indicated by the proposed plans, the Marina is to be sited a minimum of 200 feet from the downstream end of the oyster bar. Based on DNR's evaluation and recommendations, as well as the conditions of the previous license, MDE recommends inclusion of time of year restrictions to avoid impacts to oyster habitat related to dredging activities and the construction of the Marina's stone breakwater. One time-of-year restriction would prohibit Marina breakwater construction or mechanical/hydraulic dredging operations between December 15 and March 15 to avoid sedimentation that could harm dormant oysters; the other time-of-year restriction would prohibit hydraulic dredging between June 1 and September 30 to avoid possible damage to or dislocation of young oyster (spat) populations. These restrictions are included as a special condition (Special Condition Q) in MDE's recommendation. The Department is also recommending that a special condition be included to require the Licensee to field delineate the NOB and the NOB buffer and for MDE to verify the delineation prior to any marina construction (Special Condition N).

Critical Area Commission Issues

The March 18, 2014 letter from the CAC to the Board of Public Works highlighted outstanding issues regarding public access to waterfront amenities and mitigation for the destruction of FIDs habitat. Numerous citizens commented that SPDC needs to provide public access per the 1986 zoning approval.

Since the receipt of CAC's letter, there has been some movement on resolving the public access issue. SPDC recently presented a plan to Charles County to allow public access to shoreline areas of Swan Point and that plan is currently under review by the County. It is also important to note that public recreational piers (e.g. Observation Pier #2) are generally supported by MDE and recognized as an important vehicle to promote access to the State's water resources, which is held in trust by the Board of Public Works for all Maryland citizens. Consequently, although public access was a component of the Growth Allocation approved by the CAC, MDE used the public access requirement to determine the appropriate dimensions of Observation Pier #2. Finally, the Department understands that once the public access issue is resolved, the CAC will take action on a Habitat Protection Plan that will provide for phasing of the mitigation to match the construction schedule of the property.

Cuba Island Shore Erosion Control Methods

Several citizens raised concerns about the proposed replacement of a severely damaged and non-functional bulkhead on Cuba Island. During the application review process, the Department discussed both the regulatory requirement (i.e., a replacement bulkhead is only approvable if the existing structure is considered to be functional) and the citizen's concern with SPDC. As a result, SPDC eliminated the bulkhead and proposed a shoreline stabilization design that incorporated both a stone revetment and living shoreline to protect Cuba Island. The revised design is not only considered to be less of an impact, but also consistent with MDE's shore erosion regulations.

Dahlgren Naval Support Facility Potomac River Test Range

Concerns were raised about the proximity of the project to the Dahlgren Naval Support Facility range on the Potomac River. The Navy submitted comments to the Department advising that SPDC and the Navy need to coordinate activities due to the proximity of the Naval test range, the potential to discover unexploded ordnance during dredging operations, and the developer's need to disclose to purchasers the potential negative impacts associated with noise from the test range. It is recommended that a special condition be included to require the Licensee to notify the proper authorities if unexploded ordnance is discovered (Special Condition P) and to post signs notifying boaters of Navy test range restrictions (Special Condition Z).

Weir Creek Marina Location and Operation

The location of the Weir Creek Marina proposed for the Potomac River complies with the State's marina siting guidelines. The proposed Marina and its breakwater system are located in an area where the natural water depths are greater than 4.5 feet at mean low water. The Marina also avoids impacts to oyster bars by employing a design that incorporates a 200-foot buffer between the Swan Point NOB and the breakwater system, which will provide an additional safety zone. In addition, based on recent surveys along the Potomac River shoreline, the proposed Marina will not impact any submerged aquatic vegetation. While the Lower Potomac River is on the Maryland (303)(d) list as an impaired waterway for nutrients, toxics, bacteria, sediments and biological impairments, the strong flushing characteristics of the River will help to dissipate any pollutants that may occur. Furthermore, the Marina will be required to meet strict operational standards imposed by both DNR and MDE. The Department has recommended special conditions to address marina operations (Special Conditions R, S, T, U and V).

SPDC has proposed to dredge the Marina basin to a depth of minus 6 feet at mean low water by either mechanical or hydraulic dredging methods. At this time, SPDC has not committed to a particular dredging method. The proposed dredged material placement (DMP) site is located on the Swan Point peninsula just west of the golf course. The facility was previously authorized (03-WL-0874) by the Board of Public Works and used by Charles County for the hydraulically dredged channel in Cuckold Creek. The Department is recommending a special condition requiring SPDC to submit a comprehensive dredged material transport and placement plan to MDE for review and approval prior to dredging (Special Condition J).

Shoreline Stabilization

The shoreline stabilization portion of the project incorporates living shoreline construction (completed under 05-WL-1266) into the design, which will not only protect the shoreline from erosion, but also increase marsh area in the Potomac River Watershed. Additionally, the other methods of shore erosion control proposed by SPDC, including stone revetment, breakwaters, and pocket beaches, will also control erosion at the project site and decrease the discharge of sediment into the river.

Stormwater Discharge to Tidal Waters

The Department reviewed information and proposed plans submitted by SPDC (see chart below) regarding ten stormwater discharges to determine whether the discharge was new; located within 1,000 feet of tidal wetlands; and designed to convey discharges directly to tidal wetlands. COMAR 26.24.02.04(8) requires authorization through a tidal wetlands license for all new stormwater discharges within 1,000 feet of the tidal wetlands boundary if the drainage system directly discharges to tidal waters.

Location of Stormwater Outfall Plan Designation		Plan Sheet Number
1	Air Vacuum Pump Station Swale Outfall	Plan: PGM #VR07-0114 Sheet SWM-2
2	Potomac Breeze Drive End wall 6-B	Plan: PGM #VR07-0087 Sheet GD-2
3	Potomac Breeze Drive End wall 13, Discharge Pond 1	Plan: PGM#VR 07-0087 Sheet GD-3
4	Potomac Breeze Drive Pond 6 SWM-3, Grass Channel	Plan: PGM#VR 07-0087 Sheet GD-4
5	Potomac Breeze Drive Pond 2, SWM-2, Grass Channel	Plan: PGM#VR 07-0087 Sheet GD-3
6	Coscoroba Place Level Spreader, SWM-5	Plan: PGM#VR 13-0030 Sheet SD-3
7	Towhee Place Grass Swale, SWM-1	Plan: PGM#VR 13-0031 Sheet GD-1
8	Towhee Place Outfall SWM-3	Plan: PGM#VR 13-0031 Sheet GD-1
9	Towhee Place Outfall SWM-2 and SWM-4	Plan: PGM#VR 13-0031 Sheet GD-1
10	Towhee Place Outfall SWM- 5	Plan: PGM#VR 13-0031 Sheet GD-1

The Department determined that there are no new direct or increased discharges to tidal wetlands as shown on the plans submitted by SPDC. It is important to note, however, that Charles County has final authority over the design and approval of the best management practices used to control the volume and quality of stormwater runoff. Since it is likely that the stormwater management plan will be modified as phases of the development move through the local review process, MDE is recommending a special condition that any new stormwater discharge be addressed through a General Tidal Wetlands License (Special Condition E).

Conclusion and Recommendation

The Department's evaluation of this project has taken into account ecological, economic, recreational, developmental, and aesthetic considerations appropriate for this proposal, as well as other requirements set forth in the Code of Maryland Regulations. To ensure that impacts to resources are avoided and minimized to the maximum extent possible and to ensure that all work is performed in accordance with critical area and local regulations, the Department has recommended a number of special conditions. Provided all general and special conditions are adhered to, the work proposed will not cause significant deleterious impacts to marsh vegetation, submerged aquatic vegetation, finfish, shellfish, or navigation. In consideration of the site characteristics and the nature of the proposed work, the Department concludes that the application represents a reasonable exercise of riparian rights.

Recommended Special Conditions

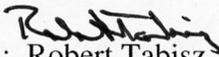
- A. Issuance of this Tidal Wetlands License constitutes the State's determination that the authorized activities are consistent with the Maryland Coastal Zone Management Program, as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. Accordingly, the State concurs with the Licensee's certification that the project complies with, and will be conducted in a manner consistent with the Maryland CZMP.
- B. This License incorporates the conditions of the Water Quality Certification issued by Maryland Department of the Environment. The Licensee shall comply with all conditions of that Certification.
- C. The Licensee shall fulfill the requirements of Section 106 of the National Historic Preservation Act of 1996 by complying with all requirements of the Memorandum of Agreement dated March 9, 2015 between the Licensee, the Maryland Historical Trust, and the U.S. Army Corps of Engineers.
- D. The Licensee shall perform all work in accordance with the required Soil Erosion and Sediment Control Plan approved by the Charles County Soil Conservation District.
- E. The Licensee shall not directly discharge stormwater runoff to State wetlands. The Licensee shall submit any new or modified best management practice installed within 1,000 feet landward of a tidal wetlands boundary that directly discharges stormwater to State wetlands to the Water Management Administration, Tidal Wetlands Division for review and approval through a General Tidal Wetlands License prior to construction.
- F. The Licensee shall not fill, dredge, or otherwise alter or destroy marsh vegetation unless specifically authorized by this License or Private Tidal Wetlands Permit 13-WP-705 issued by the Maryland Department of the Environment.
- G. Marsh Establishment:
 - 1. The Licensee shall use clean substrate fill material, no more than 10% of which shall pass through a standard number 100 sieve.
 - 2. The marsh establishment area shall be planted within one year following completion of the filling operation.
 - 3. The marsh establishment project shall be maintained as a wetland, with non-nuisance species aerial coverage of at least 85% of three consecutive years. If 85% coverage is not attained, the reasons for failure shall be determined, corrective measures shall be taken, and the area shall be replanted.
 - 4. If the fill is graded hydraulically, the licensee shall use a turbidity curtain around the perimeter of the in-stream work.

5. If the existing bank is to be cleared or graded, the licensee shall obtain any required approvals of an erosion and sediment control plan from the applicable sediment and erosion control agency.
- H. The Licensee shall not stockpile any material in tidal or non-tidal wetlands.
- I. The Licensee shall place a perpetual conservation easement on the "Living Shoreline" along the Potomac River. The easement shall be approved by the Water Management Administration, Tidal Wetland Division and filed as a restrictive covenant within the property land records for the Villages at Swan Point prior to construction of the "Living Shoreline."
- J. Prior to dredging and/or marina construction, the Licensee shall submit a detailed dredged material transport and placement plan to the Water Management Administration, Tidal Wetland Division for review and approval. Dredging shall not commence prior to the approval of the plan. Failure to comply with this condition will result in automatic suspension of the License.
- K. The Licensee shall submit a pre-construction depth survey to the Water Management Administration, Tidal Wetland Division prior to the start of dredging and a post-construction survey within one month after completion of dredging.
- L. Dredged material shall be deposited in the previously utilized disposal site located off of Swan Point Boulevard as depicted on plan sheet 9 of 39. Disposal at any other location must be approved by the Water Management Administration, Tidal Wetland Division.
- M. If hydraulic dredging is performed, the dredged material placement site (DMP) shall be constructed to limit turbidity in the discharge to waters of the State. A turbidity sample of the discharge water shall be performed every hour of active pumping to the DMP or when there is an observed change in the clarity of the water. Turbidity in the discharge may not exceed 150 units at any time or 50 units as a monthly average. Units shall be measured in Nephelometer Turbidity Units. A logbook of all turbidity monitoring shall be kept on site. The dredger shall have a person at the discharge point of the DMP in constant radio communication. If a problem is incurred, the dredging operation shall be immediately shut down until the reason for the problem can be ascertained and rectified.
- N. Prior to commencement of marina construction (including breakwater construction and dredging), the Licensee shall field delineate the Natural Oyster Bar and the Natural Oyster Bar Buffer for verification by the Water Management Administration, Tidal Wetland Division.
- O. All mechanically dredged material shall be transported in water-tight trucks. No dredged material shall be discharged onto roadways.
- P. During dredging and breakwater construction, the Licensee shall monitor for possible unexploded ordnance. If any suspect materials are found, the construction or dredging work shall cease and the Charles County Sheriff's Department shall be notified immediately by telephone at 301-609-6400.
- Q. The Licensee shall not perform marina breakwater construction or dredging work within 500 yards of any natural oyster bar from December 15 through March 15 (breakwater and mechanical and hydraulic dredging) and from June 1 through September 30 (hydraulic dredging) of any year.
- R. There shall be no discharge of sanitary wastewater from any boat or vessel moored, berthed, or docked at this mooring or docking facility, except as prescribed by federal or State regulations.
- S. The Licensee shall provide onshore sanitary facilities in accordance with the requirements of the Charles County Health Department.

- T. Prior to any boat being moored at the facility, the Licensee shall certify to the Water Management Administration, Tidal Wetlands Division that dockside sewage pumpout facilities to accommodate sewage from vessels using the Licensee's marina are installed, operated and maintained. The facilities shall be connected to a public sewage treatment system serving the area or to an on-site sewage disposal system sized, installed and operated in compliance with the requirements of the Charles County Health Department.
- U. The storage and handling of petroleum products shall be in strict accordance with the Oil Pollution Regulations of the Maryland Department of the Environment. An oil spill contingency plan signed by the Licensee or responsible party and approved by the Maryland Department of the Environment shall be implemented prior to construction of the marina.
- V. Trash and garbage containers shall be conveniently located and the marina owner/operator shall be responsible for adequate disposal of collected materials. Such waste shall not be discharged to the waterway.
- W. There shall be no shellfish harvesting or storage within the waters of the marina.
- X. As directed by the U.S. Coast Guard, the Licensee shall mark the upstream and downstream ends of the marina breakwater with a slow flashing amber (yellow) light with a minimum candela setting of 15. Three weeks prior to the beginning of the project, the Licensee shall notify the U.S. Coast Guard Fifth Coast Guard District Office by email, letter, or fax so that details of the proposed project can be included in the Local Notice to Mariners.
- Y. Prior to commencement of construction of the marina or piers, the Licensee shall provide a recorded copy of the following restrictive covenants file within the land records to the Water Management Administration, Tidal Wetlands Division:
 - 1. There shall be no mooring of boats on the marina access piers or observation piers.
 - 2. There shall be no construction or installation of private piers or mooring piles.
 - 3. There shall be no permanent or temporary structures placed on any piers or platforms in the marina or on any observation pier unless otherwise approved.
- Z. In the interest of safety and improved awareness of the Potomac River Test Range (PRTR), the Licensee shall conspicuously post and maintain signs in multiple areas of the marina:
 - 1. Advising watercraft operators of the PRTR and its boundaries;
 - 2. Informing watercraft operators of the potential for restrictions on river traffic during testing operations; and
 - 3. Providing the phone number and internet address for watercraft operators to obtain weekly testing schedules.

DEPARTMENT OF THE ENVIRONMENT PLANNER: Thomas Blair

DATE: March 27, 2015

DEPARTMENT OF THE ENVIRONMENT APPROVAL:  Robert Tabisz

DATE: March 27, 2015

WETLANDS ADMINISTRATION CONCURRENCE:

DATE:

Attachment #1

**WETLANDS REPORT AND RECOMMENDATION
MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION
TIDAL WETLANDS DIVISION**

STATE WETLANDS CASE NUMBER 05-WL-1266

Report and Recommendation to the Board of Public Works on an Application to Dredge or Fill State Wetlands Pursuant to Title 16, Environment Article, Annotated Code of Maryland.

- I. NAME OF APPLICANT:** Swan Point Development Corporation, LLC
600 Grant Street, Room 1683
Pittsburgh, PA 15219-2794
- II. DEPARTMENT OF THE ENVIRONMENT REVIEWER:** Robert Tabisz
- III. APPLICATION STATUS:**

APPLICATION RECEIVED:	02/25/05
PUBLIC NOTICE REQUIRED:	Yes
JOINT EVALUATION MEETING DATES:	03/30/05, 08/31/05, 11/29/06
1ST PUBLIC HEARING HELD:	01/10/07
1ST HEARING COMMENT PERIOD CLOSED:	02/09/07
REVISED PLANS SUBMITTED:	03/01/07
2ND PUBLIC HEARING HELD:	10/01/07
2ND HEARING COMMENT PERIOD CLOSED:	10/30/07
REVISED PLANS SUBMITTED:	02/19/08

IV. PROJECT LOCATION:

Basin Code: 02-14-10-10
Maryland Coordinates: 69,468 N X 407,042 E
Book Map Coordinates: Charles County 36 D-10

The Villages at Swan Point, located in Issue, Charles County, Maryland, is situated on a peninsula that is waterfront to the Potomac River on the southern and western boundaries and Cuckold Creek along the northern boundary. Additional waterfront resources associated with the site include Weir Creek, which drains to the Potomac, and Matthews Cove, which drains to Cuckold Creek.

V. PROJECT PURPOSE:

The project purpose is to provide the required infrastructure, including roads, utilities, stormwater management, and shoreline stabilization to create a mixed-use commercial, residential and marina development. The proposed 897-acre waterfront planned unit community will consist of approximately 852 single-family residential units; 678 condominiums; community recreation amenities, including five observation piers; a hotel

and conference center; restaurants, office and retail space; and two commercial marinas with a combined total of 256 boat slips.

VI. LAND USE:

United States Steel Corporation (USSC) has owned the Swan Point property since the late 1960's and obtained zoning approval from Charles County in 1986, making it the only property in the County zoned Waterfront Planned Community. In 2004, USSC partnered with homebuilder Brookfield Homes Corporation to create the Swan Point Development Corporation, LLC (SPDC), a limited liability corporation.

As discussed below, the following land use requirements/designations have been addressed for the proposed development:

Land Use Designation	Yes	No
Critical Area Growth Allocation	✓	
Water and Sewerage Plan	✓	
Priority Funding Area	✓	

Wastewater Treatment System: The first phase of a new 600,000 gallons per day (gpd) wastewater treatment plant (WWTP) has been constructed on a 220-acre parcel of land owned by Charles County, adjacent to the Cobb Island WWTP. In addition to Swan Point, the new WWTP will provide future service to the communities of Cobb Island and Matthews Manor. The design/build project was funded entirely by USSC subject to a 1977 agreement with Charles County that relates to the funding and administration of water and sewer infrastructure to be constructed at Swan Point. The WWTP is in the process of being turned over to Charles County, which will own and operate the facility. Phase I of the new plant provides a sewage treatment capacity of 300,000 gpd; however, the capacity of the plant could potentially be increased to 600,000 gpd.

The new WWTP meets stringent nutrient removal requirements with a Total Nitrogen effluent concentration limit of 10 milligrams/liter (mg/l) at 300,000 gpd, 5 mg/l at 600,000 gpd, and a performance goal, regardless of the flow, of 3.0 mg/l and a Total Phosphorus concentration of 0.3 mg/l. The new WWTP will continue to discharge into the existing outfall line to Cuckold Creek.

Water Supply System: The water system that will support the Villages at Swan Point consists of two wells in the Patapsco Formation and a 400,000-gallon water storage tank. Charles County and SPDC received a revised groundwater appropriation and use permit in May 2007 that increased the withdrawal from 60,000 gpd to 500,000 gpd. Projected demand at full build-out of the community is estimated to be 455,040 gpd. It is anticipated that a third well will be added to the system as demand increases.

Critical Area Growth Allocation: The Critical Area Commission (CAC) approved a growth allocation request by Charles County for the majority of the Swan Point subdivision on March 7, 2007. The approval changed the critical area designation on 138.12 acres from Limited Development Area (LDA) to Intensely Developed Area

(IDA). The remainder of the subdivision was approved on April 4, 2007, when the critical area designation for the 20.86-acre "Horse Farm" parcel was changed from Resource Conservation Area (RCA) to IDA.

Water and Sewerage Plan: The Maryland Department of the Environment (MDE) received an amendment (The Villages at Swan Point) to the Charles County 2005 Water and Sewerage Plan on June 13, 2007. The amendment represented changes to the water and sewer service area maps, expanding water and sewer service to an adjacent parcel, known as the "Horse Farm" parcel, which was rezoned by Charles County for residential development. MDE approved the amendment on December 10, 2007.

Priority Funding Area: In March 2007, the Charles County Commissioners requested the Maryland Department of Planning (MDP) to certify Swan Point as a Priority Funding Area (PFA) and to include the property on the County PFA maps. MDP conducted an analysis of the County certified PFA's consistent with the requirements of §5-7B of the Finance and Procurement Article, Annotated Code of Maryland. MDP first determined that the certification was not consistent with the criteria for PFA's because the property was not shown as a planned service area within the County's Water and Sewerage Plan. Subsequently, the County resubmitted the request for PFA certification with documentation that MDE approved an amendment to the County Water and Sewerage Plan, including the Villages at Swan Point. MDP conducted a second analysis and found the amendment to be consistent with the statute and the Comprehensive Plan.

King's Grant: SPDC provided a copy of a 1641 King's grant from Lord Baltimore conferring 2,000-acres of land to James Neale. A King's grant usually means a patent issued by the English Crown (or, between 1776 and 1862, the State) that specifically encompasses lands submerged beneath the navigable waters. Ordinarily, submerged lands are owned by the Sovereign (now, the State) and, since legislation in 1862, have not been transferable into private ownership. The owner of a pre-1862 patent, however, would own the submerged lands in fee, instead of, like other riparian owners, merely having the right to use the submerged lands to protect their shoreline, access the water, and build structures to facilitate that access.

The Tidal Wetlands Act acknowledges the private nature of these patented lands by including them within the definition of "private wetlands," instead of "State wetlands". However, the difference in ownership does not mean much in terms of regulation. Activities on private tidal wetlands are regulated in much the same manner as those within State wetlands, although at the end of the application review process, MDE makes the regulatory decision on the application and not the Board of Public Works. During the application review process, SPDC was directed to Dr. Edward Papenfuse, State Archivist and Commissioner of Land Patents, for verification of the land patent. Since the applicant decided not to pursue verification of the patent, all jurisdictional areas are being regulated as State wetlands under the authority of the Board of Public Works.

VII. ORIGINAL DESCRIPTION OF PROPOSED WORK:

SPDC's original plans included an excavated upland basin on Cuckold Creek for a 300-slip marina. Construction of the marina basin required the dredging of 51,000 cubic

yards of tidal open water/submerged aquatic vegetation and the excavation of 110,000 cubic yards of upland. The plans also included the construction of an 880-foot long bridge over Weir Creek, shoreline stabilization, two boardwalk piers measuring 30-feet wide by 600-feet long and 30-feet wide by 440-feet long, and four observation piers.

VIII. REVISED DESCRIPTION OF PROPOSED WORK:

SPDC revised its plans in response to comments from State and federal resource agencies and remarks offered during two public informational hearings. The revised work entails the construction of a smaller 113-slip marina on Cuckold Creek, a second 143-slip marina on the Potomac River, and a reduction in the size and location of the observation piers. The revisions reduced the total number of boat slips from 300 to 256, the amount of dredging from 51,000 cubic yards to 13,030 cubic yards, the channelward encroachment into tidal waters, and impacts to vegetated tidal wetlands. The revised project also included the creation of 14.1 acres of marsh and dune habitat for shoreline stabilization. The following is a detailed description of the current proposal.

Cuckold Creek Marina: The scope of work for the Cuckold Creek Marina includes (1) removal of an existing pier remnant and the construction of a 10-foot wide by 419-foot long access pier to Cuba Island, including an 18-foot horizontal opening with a 3-foot vertical clearance at mean high water to allow for small boat navigation; (2) construction of 326 linear feet of replacement bulkhead within a maximum of 1.5 feet channelward of an existing dilapidated structure and the placement of fill behind the bulkhead; (3) construction of 212 linear feet of timber breakwater off Cuba Island; (4) mechanical or hydraulic dredging of 7,600 cubic yards of sand, silt and clay to the 6.0 foot depth at mean low water; and (5) construction of five pier systems for 113 boat slips and installation of 169 mooring piles and a system of dry fire hydrants. The following activities comprise the Cuckold Creek marina pier system:

Dock "A": To construct a 10-foot wide by 224-foot long pier with an 8-foot wide by 60-foot long "L" head platform, including 60 feet of gapped timber wave screen.

Dock "B": To construct a 10-foot wide by 410-foot long pier with an 8-foot wide by 60-foot long "L" head platform, including 322 feet of gapped timber wave screen; three finger piers measuring 3-feet wide by 20 feet long; and one 297 square foot platform.

Dock "C": To construct an 8-foot wide by 538-foot long pier with an 8-foot wide by 49-foot long "L" head platform, including 586 feet of gapped timber wave screen; and sixteen finger piers measuring 3-feet wide by 20-feet long.

Dock "D": To construct an 8-foot wide by 462-foot long pier with an 8-foot wide by 69-foot long "T" head platform, including 68 feet of gapped timber wave screen; and twenty seven finger piers measuring 3-feet wide by 20-feet long.

Dock "E": To construct an 8-foot wide by 429-foot long pier with an 8-foot wide by 30-foot long "L" head platform, including 161 feet of timber gapped wave screen; eight finger piers measuring 3-foot wide by 20-foot long.

Weir Creek Marina on the Potomac River: The scope of work for the Weir Creek Marina includes (1) the removal of existing pier remnants and the construction of a 10-foot wide by 1,088-foot long marina access pier with two 25-foot wide by 25-foot long platforms; (2) the construction of a 10-foot wide by 1,426-foot long pier with a 1,210 square foot observation platform all over a 50-foot wide by 1500-foot long stone breakwater within an average of 842 feet and a maximum 1,050 feet channelward of the mean high water line; (3) the mechanical or hydraulic dredging of 5,430 cubic yards of sand, silt and clay to the 6.0 foot depth at mean low water; (4) the construction of six pier systems for 143 boat slips; and (5) the installation of 203 mooring piles, eleven navigational piles with warning signage, four navigational markers and a system of dry fire hydrants. The following is a detailed description of the current proposal.

Dock "A": To construct a 10-foot wide by 214-foot long pier with a 23-foot wide by 85-foot long "T" head platform and eleven finger piers measuring 3-feet wide by 20-feet long.

Dock "B": To construct an 8-foot wide by 227-foot long pier with a 10-foot wide by 96-foot long "T" head platform, and eleven finger piers measuring 3-feet wide by 20-feet long.

Dock "C": To construct an 8-foot wide by 229-foot long pier with an 8-foot wide by 58-foot long "L" head platform and five finger piers measuring 3-feet wide by 20-feet long.

Dock "D": To construct a 10-foot wide by 363-foot long pier with a 10-foot wide by 105-foot long "T" head platform and eighteen finger piers measuring 3-feet wide by 20-feet long.

Dock "E": To construct an 8-foot wide by 314-foot long pier with a 10-foot wide by 96-foot long "T" head platform and sixteen finger piers measuring 3-feet wide by 20-feet long.

Dock "F": To construct an 8-foot wide by 226-foot long pier with an 8-foot wide by 58-foot long "L" head platform and five finger piers measuring 3-feet wide by 20-feet long.

Observation Piers: The scope of work for the Villages of Swan Point includes strategically located observation piers to help achieve an interactive waterfront destination resort. The following is a detailed description of the current proposal.

Observation Pier #1: To construct a 15-foot wide by 260-foot long perpendicular pier on the Potomac River, within a maximum of 260 feet channelward of the mean high water line and 10 feet above the mean low water elevation. This pier is located on the Potomac River off the "Horse Farm" parcel southeast of Matthews Manor Road.

Observation Pier #2: To construct a 12-foot wide by 440-foot long perpendicular pier on the Potomac River with two 20-foot wide by 50-foot long bump-out platforms and a 40-foot wide by 50-foot long "T" head platform, within a maximum of 440 feet channelward of the mean high water line and 10 feet above the mean low water elevation. This pier is located on the Potomac River immediately east of Weir Creek.

Observation Pier #3: To construct an 8-foot wide by 170-foot long pier within a maximum of 170 feet channelward of the mean high water line and 10 feet above the mean low water elevation. This pier is located on the Potomac River north of the proposed Weir Creek Marina.

Observation Pier #4 has been eliminated by SPDC to reduce impacts to submerged aquatic vegetation in Matthews Cove located off of Cuckold Creek.

Observation Pier #5: To construct an 8-foot wide by 356-foot long walkway/pier with a 20-foot wide by 10-foot long "L" head platform within a maximum of 256 feet channelward of the mean high water line and 6.0 feet above the mean low water elevation. This pier is located on Cuckold Creek.

Observation Pier #6: To construct an 8-foot wide by 310-foot long walkway/pier with a 20-foot wide by 10-foot long "L" head platform within a maximum of 172 feet channelward of the mean high water line elevation. The pier would be a minimum of 4.5 feet above the marsh substrate and the "L" head platform would be 10 feet channelward of the open water-marsh interface. This pier is located on Cuckold Creek between Matthews Cove and Woodland Point.

Shoreline Stabilization: Twelve thousand linear feet of shoreline stabilization, with both temporary and permanent construction impacts, is proposed along the Potomac River.

Temporary Impacts: To construct 1,650 linear feet of temporary construction access road using timber mats along the shoreline, landward of proposed stone sills and breakwaters and all within a maximum of 25 feet channelward of the mean high water line; and to construct a 240-foot long by 10-foot wide sectional barge bridge, held in place with spuds or mooring chains, to cross Weir Creek.

Permanent Impacts: To construct 1,990 feet of stone revetment within a maximum of 25 feet channelward of the mean high water line; to create 1.59 acres of low tidal marsh and 12.82 acres of high tidal marsh and dune habitat by filling open water with 48,747 cubic yards of clean sandy material; to construct various lengths of stone breakwaters, stone groins and stone sills with numerous windows of varying widths along 9,300 linear feet of shoreline channelward of the sandy fill and all within a maximum of 400 feet channelward of the mean high water line; to emplace 500 feet of stone revetment 20 feet channelward of an existing bulkhead.

Weir Creek Bridge Crossing: A road that follows the remnants of an old farm roadbed will provide vehicle and pedestrian access to the Weir Creek peninsula, the site of the hotel and conference center, as well as residential homes. Construction of the proposed bridge crossing Weir Creek, which is located at confluence of Weir Creek and the Potomac River, will result in both temporary and permanent impacts to open water and vegetated tidal wetlands.

Temporary Construction Impacts: To obtain twenty 3.5-inch diameter soil borings 100 feet below tidal marsh/open water for geotechnical analysis of the bridge foundation;

to construct 950-linear feet of 30-foot wide temporary causeway and a 170-foot long trestle over open water parallel to the proposed bridge alignment. The construction of the causeway and trestle will temporarily impact 48,000 square feet of vegetated tidal wetlands and open water.

Permanent Construction Impacts: To construct a 45-foot wide by 880-foot long open pile supported concrete bridge of which 810 feet would be over vegetated tidal wetlands and open water, nine feet above the mean high water elevation. The bridge will permanently impact 39,435 square feet of vegetated tidal wetlands, primarily by shading.

Utilities: Sewer, water, electric and cable utilities will be cross Weir Creek by being suspended on the underside of the Weir Creek Bridge. There will be no direct impact to vegetated or open water tidal wetlands as a result of the utility placement. However, because the utilities will be crossing State tidal wetlands, the Department recommends that compensation be assessed in and amount to be determined by the Board of Public Works.

IX. COMMENTS BY LOCAL, STATE OR FEDERAL AGENCIES AND ELECTED OFFICIALS:

U.S. Army Corps of Engineers (USACE): The USACE is reviewing this application as an Individual Permit. However, the application review process has been conducted in close coordination with the USACE to insure consistent State and federal regulatory decisions.

National Marine Fisheries Service (NMFS): NMFS expressed concerns about impacts to essential fish habitat, anadromous fish spawning, and submerged aquatic vegetation (SAV). To insure that potential impacts to these resources are properly evaluated, NMFS recommended that the SPDC perform an Essential Fish Habitat Assessment, and a spring and summer SAV survey of the Potomac River shoreline. Additionally, NMFS requested a map of SAV resources identified through the survey.

NMFS also made specific recommendations on certain aspects of the project. The agency recommended that (1) the discharge from the dredged material placement site meet State water quality standards for particulates and turbidity; (2) the proposed Cuckold Creek marina access pier be constructed a minimum of 7 feet above MLW, to minimize shading of SAV; (3) the shoreline stabilization avoid any SAV beds identified by the survey by reducing the structure's channelward encroachment; and (4) the observation pier's bump-outs not exceed 700 square feet in area, including the decking of the primary pier. Finally, NMFS recommended that any authorization issued for the proposed project include a time-of-year restriction for both SAV and spawning anadromous fish.

Maryland Department of Natural Resources (DNR): DNR's Environmental Review Unit reported that anadromous fish have been documented to spawn in the main stem of the Potomac River several miles upstream of the project site, as well as the freshwater reaches of nearby Perry Branch. In addition, juvenile anadromous fish have been documented in the immediate vicinity of Swan Point and in the shallow water areas of

Cuckold Creek and the Potomac River. The SAV and shallow water found in the area serve as excellent habitat for juvenile fish. In order to protect these resources, DNR recommended that any authorization issued for the proposed project impose a time-of-year restriction for SAV and anadromous fish.

DNR also identified a number of important natural resources that have been reported on or in the vicinity of the project site and that could potentially be impacted by the construction of the proposed development. These resources, which include Waterfowl Staging and Concentration Areas, Colonial Water Bird Nesting Sites, and State-listed threatened or endangered species, are discussed below.

- A waterfowl staging area is located along the southern portion of the Potomac River. In order to protect this resource, DNR recommended that any authorization issued for the proposed project impose a time-of-year work restriction.
- A total of eight Great Blue Heron nests are located on the Swan Point property – two isolated nests and two sub-colonies of three nests each. SPDC has proposed the removal of a sub-colony located at the dredged material placement site. To offset this loss, SPDC has proposed that the habitat surrounding the second sub-colony, located on the 15th tee of the existing Swan Point Golf Course, be protected in perpetuity by a conservation easement. DNR has reviewed and approved this proposal.
- There are two Bald Eagle nesting sites within ¼ mile of the proposed project. One nest, which has been active since 1988, is located in a loblolly pine tree on the 8th hole of the golf course. This nest will be protected by a series of buffer restrictions developed in cooperation with DNR. The second nest is located across Shaw's Branch on a parcel of property owned by Charles County. Since construction activities will be within prescribed protection buffers, DNR advises that appropriate time-of-year restrictions be included in any authorization issued for the proposed project.
- The Great Purple Hairstreak Butterfly, a state-listed threatened species, was found within the marsh area of the Weir Creek peninsula on the southwest portion of the property in 1987. In order to protect this habitat, two proposed road alternatives to access the peninsula, which would have reduced construction impacts to tidal wetlands, were eliminated from consideration. Additionally, SPDC has proposed a 100-foot buffer along the marsh in the vicinity of the butterfly siting.

DNR's Boating Administration assisted MDE during the application review process by performing a bathymetric survey of Cuckold Creek in the vicinity of the proposed marina. The October 5, 2005 survey found depths to be consistent with those reported by the applicant. In addition, the survey showed water depths west of Cuba Island, which is the location of the existing marina, to be deeper than the depths south of Cuba Island, which is the location of the proposed marina.

Critical Area Commission (CAC): As previously mentioned, the CAC conditionally approved a growth allocation request by Charles County for the Villages at Swan Point. The approval changed the critical area designation from LDA to IDA on 138.12 acres and

from RCA to IDA on 20.86 acres. In addition to the growth allocation other important considerations emerged during the Commission's review of the project. One outstanding issue is the approval of a Buffer Management Plan, which must be submitted and approved by the Commission prior to any grading or clearing landward of mean high water, including any disturbance necessary for, or associated with, proposed shore erosion control measures. Other potential areas of concern in regard to Buffer management include road crossings, the establishment of the 100-foot Critical Area Buffer, public recreation and waterfront access, and buffer exemption areas. Another area of concern is the identification and protection of Habitat Protection Areas. In addition to Bald Eagles, Colonial Water Bird Nesting Sites, the Great Purple Hairstreak Butterfly, and nontidal wetlands, which are discussed elsewhere in this Report, the Commission highlighted Forest Interior Dwelling Birds (FIDS) habitat.

The total acreage of existing FIDS habitat on the Swan Point property is 425.70 acres, with 311 acres within the Critical Area. The development proposal includes cutting 109.68 acres of FIDS habitat and isolating an additional 93.28 acres in a manner that will no longer support FIDS. Consequently, the total impact to FIDS habitat is 202.96 acres, which requires 404.40 acres of mitigation. In order to satisfy this mitigation requirement, SPDC must plant approximately 110 acres for direct impacts. The remaining 294 acres of mitigation must be fulfilled by direct planting or by preservation of existing habitat within Charles County.

Maryland Historical Trust (MHT): According to MHT, construction of the proposed development and associated improvements has the potential to adversely affect numerous historic properties including historical buildings, archeological sites and submerged cultural resources. Resources identified to date represent the properties long span of human occupation and use throughout prehistoric and historic time periods. MHT requested a Phase I and Phase II evaluation of eight archeological sites potentially eligible for the National Register of Historical Places that will be disturbed by the proposed project. Based on these evaluations, two of the sites were considered to be significant and required a Phase III evaluation.

Potomac River Fisheries Commission (PRFC): PRFC objects to the revetment and marina in the Potomac River. The Commission believes these structures will not only have a direct impact on the chartered Swan Point Natural Oyster Bar (NOB #20), but also require a mandatory closure of all waters within the marina and the buffer zones around the marina. To the extent possible, MDE worked with SPDC to address the concerns expressed by PRFC. The project will have no direct impacts to natural oyster bars and will maintain a 200-foot buffer between the marina and the NOB. In addition a time-of-year restriction will prohibit construction activities during the critical periods of the oyster's life cycle.

Charles County Government: The Charles County Commissioners support the proposed development and have unanimously approved the project. The County held a public hearing for the growth allocation required to develop the property in November 2005 and approved the proposal in June 2006. Subsequently, the County submitted a request for growth allocation to the CAC. Growth allocation was granted on March 7, 2007 to change 138.12 acres from LDA to IDA and on April 4, 2007 to change 20.86

acres from RCA to IDA. The 2007 Midyear Charles County Economic Report highlighted Swan Point as an important location for a luxury hotel/spa conference center and marina.

During the permit application review process, Charles County expressed concerns about the wooden bridge proposed by SPDC to cross Weir Creek and ultimately rejected the proposal due to anticipated high maintenance costs. Charles County also expressed concerns about the loss of its dredged material placement site. The County had dredged portions of Cuckold Creek twice and placed the dredged material at the Swan Point site. The recently revised Master Plan for Swan Point, however, allows the current site to be developed by SPDC, leaving the County without a site to deposit future dredged material.

MDE has also received letters from Senator Thomas M. Middleton and Delegate Sally Y. Jameson. Senator Middleton expressed his support for the Villages at Swan Point stating, "Charles County has focused on this property as a critical element of its waterfront economic development for over 20 years." The Senator described the development as an upscale, comprehensively planned community that incorporated environmentally sensitive development techniques into its design. He urged quick approval of the project so the County and the State could benefit from the tax revenues and economic development opportunities that would flow from the project. Delegate Jameson also expressed support for the project, commenting on its environmentally sensitive design. She stated that the development would bring a waterfront hotel/conference center to Charles County, which was "an important element of the County's Economic Development Plan."

X. COMMENTS FROM OTHER INTERESTED PARTIES:

A joint MDE/USACE public hearing was held on January 10, 2007 at the Charles County Government Auditorium in La Plata. Additionally, due to project modifications, a second joint public hearing was conducted on October 1, 2007 at the same location. Comments received at the hearings, which were well attended, focused on Cuckold Creek and the proposed marina, the Weir Creek peninsula and the proposed marina, shore erosion control, visual impacts on historic properties, and traffic congestion.

Persons currently living along or recreating on Cuckold Creek spoke about deteriorating water quality, which was attributed to the wastewater treatment plant, and the potential for the proposed marina to further exacerbate conditions. Specifically, hearing participants identified the following concerns related to Cuckold Creek.

- Construction of a marina is not necessary because existing, full service marinas in the area are under capacity.
- Construction of the marina, which includes a breakwater and wave screens, will restrict the natural flow of the Creek, degrade water quality, and add trash to the waterway.
- Construction and operation of the marina, including the required dredging, will have a negative affect on aquatic resources such as submerged aquatic vegetation, essential fish habitat, and crabs.

- The channelward encroachment of both the marina and the observation piers is excessive and will negatively impact navigation.
- The marina and observation piers will change the current use of the Creek by requiring the creation of “no wake zones” and other speed restrictions, and eliminating public access to the shoreline.
- Increased boat traffic and the addition of larger boats will increase shoreline erosion.
- Cuba Island should be preserved and not incorporated into the design of the marina.
- Design of the marina does not include adequate parking facilities.

While the majority of the comments related to Cuckold Creek, there were also comments offered on phases of the development along the Potomac River. Specifically, hearing participants identified the following concerns.

- The Weir Creek peninsula should be preserved by eliminating the residential units and relocating the hotel/conference facility so it is segregated from the residential community.
- Construction and operation of the Potomac River marina, including the required dredging, will adversely affect natural oyster bars and negatively impact other aquatic resources such as SAV, essential fish habitat, and crabs.
- Since USSC has owned the property for many years, why is it now necessary to construct shore erosion control structures?

XI. FINDINGS OF THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

Background: USSC has owned the Swan Point property since the late 1960’s. The northwestern portion of the property is a part of the original waterfront development plan that was zoned R-M (Medium Density Residential) and developed with 545 subdivided, residential lots on approximately 209 acres. In 1986, USSC obtained zoning approval from Charles County to create the County’s only Waterfront Planned Community. In 2004, USSC partnered with homebuilder Brookfield Homes Corporation to create the Swan Point Development Corporation, a limited liability corporation, responsible for the development of the Villages at Swan Point. The project is located within a Priority Funding Area, is consistent with the County’s Water and Sewerage Plan, and has received the necessary growth allocation from the Critical Area Commission.

Shoreline Erosion: The Potomac River shoreline is subject to wind-driven waves that cause moderate to severe erosion. A review of the State’s Tidal Wetland Boundary Maps, historical aerial photographs, and recent shoreline measurements revealed that significant erosion has occurred at the site since 1971. No vegetated tidal wetlands are present along this portion of the shoreline and the proposed shoreline stabilization methodology will be non-intrusive to natural surroundings while providing an effective long-term solution that will create stable coastal habitats. The shoreline of Cuckold Creek, on the other hand, is currently stable and does not require any stabilization.

Submerged Aquatic Vegetation: SAV is found in a large continuous bed beginning at the mouth of Cuckold Creek and extending eastward along the shoreline into Matthews

Cove. According to annual surveys performed by the Virginia Institute of Marine Science (VIMS), SAV has been present in this area since 1991. Proposed SAV impacts in Cuckold Creek are associated with two proposed observation piers (#5 and #6) and the access pier to Cuba Island. Each of these structures will be elevated to minimize shading impacts to SAV. The Cuckold Creek marina is located outside of SAV beds.

Since the VIMS survey did not record any SAV in the Potomac River, SPDC was requested to conduct both a spring and summer survey. An aerial SAV survey was conducted in May 2007 and a ground survey on August 31, 2007. Neither survey yielded evidence of SAV along the Potomac shoreline.

Cuckold Creek Water Quality and Flushing Characteristics: Cuckold Creek, a tributary to the Potomac River, is considered a component of the tidal portion of the Lower Potomac, which is on the 2002 303(d) list of impaired waterways. The Department uses the 303(d) list to identify and classify waterbodies in the State that have impaired water quality. Maryland's list of impaired waters identifies the Lower Potomac River and its major tributaries (St. Mary's River, Breton Bay, St. Clements River, Wicomico River, Port Tobacco Creek, Nanjemoy Creek, Piscataway Creek, and Mattawoman Creek) as impaired based on excessive chlorophyll and low dissolved oxygen conditions. All tributaries to the Lower Potomac River not otherwise explicitly listed were considered waters of the Lower Potomac River segment, and thus impaired.

In the 2008 draft 303(d) list of impaired waters, MDE adopted the new Bay segmentation for listing purposes. The Lower Potomac River is now segmented into three sub-segments (tidal fresh, oligohaline, and mesohaline). Each sub-segment now includes all tributaries in its reach. Cuckold Creek, a tidal tributary of the Lower Potomac River marshaling sub-segment, continues to be listed as impaired. While the consultant for the SPDC, Environmental Resources Management, Inc. (ERM) correctly stated that Cuckold Creek is not specifically listed as an impaired waterway, its inclusion within the Lower Potomac and the water quality data collected by the Department, clearly depicts the creek as impaired.

Cuckold Creek is characterized by sluggish flows, poor flushing, and low dissolved oxygen levels. The creek has an average tidal range of 1.7 feet. ERM states that the average inflow of water into the creek is about one half of one percent of the average tidal flux, which means that only a very small fraction of water moves in and out of Cuckold Creek during each tidal cycle. Overall, ERM concludes that Cuckold Creek does not flush efficiently under natural conditions. Specifically, approximately 90% of the water volume of Cuckold Creek flushes out of the system in one month. By comparison, a waterbody with strong flushing characteristics would flush in four to five days. Dissolved oxygen (DO) is vital to all organisms living in the creek. DO levels below 5 mg/l, which have been experienced in the creek, are lethal to fish and other aquatic organisms. MDE concurs with the applicant's characterization based on investigations performed during its evaluation of the wastewater treatment plant, as well as the water quality sampling conducted in support of its modeling program.

Natural Oyster Bar: According to DNR Natural Oyster Bar (NOB) Chart No. 20, there are two oyster bars present in the Potomac River in the vicinity of Swan Point. One

NOB, known as the Swan Point Natural Oyster Bar, consists of 675 acres and is located near the proposed Weir Creek Marina and stone breakwater. To avoid any encroachment on the NOB, SPDC incorporated a 200-foot buffer into the design of the marina. The other NOB consists of 280 acres located parallel to the shoreline along the entire southern length of the property. No construction is proposed near this NOB.

Non-Tidal Wetland Impacts: SPDC filed a Nontidal Wetlands and Waterways Permit Application requesting to permanently impact 40,383 square feet of nontidal wetlands (10,265 square feet of isolated wetlands and 30,118 square feet of adjacent wetlands) and 66,120 square feet of nontidal wetland buffer. The impacts are associated with the construction of eight road crossings. Mitigation proposed for these unavoidable impacts is the on-site creation of 88,458 square feet (2.03 acres) of palustrine, forested wetlands. The mitigation site is an agricultural field on the "Horse Farm" parcel of the Swan Point property.

Tidal Wetlands Mitigation: Mitigation will be required for the direct impacts associated with the construction of the Weir Creek Bridge, as well as the bridge's shading effect on vegetated tidal wetlands. The applicant proposes to mitigate for these unavoidable impacts by eradicating *Phragmites* at a 4:1 ratio. At this time, SPDC has a Toxic Materials Permit from MDE to spray 25 acres of *Phragmites* with an herbicide application at six locations. The area of application will remain otherwise undisturbed and be allowed to re-vegetate naturally or through planting of native species. In the event that the Board of Public Works approves the proposed project, the authorization should include a special condition requiring the submission of a *Phragmites* Control Plan to MDE for review and approval.

Stormwater Management: Treatment and discharge of stormwater is proposed in conjunction with best management practices through new ponds and existing ponds with conveyances on the golf course. There are no direct stormwater discharges to State tidal wetlands. Treatment techniques include wet ponds, sheet flow to buffers, grass swales, grass pavers, rooftop disconnects and rain gardens. According to SPDC, its comprehensive stormwater management plan will incorporate the tenets of the Stormwater Management Act of 2007 and comply with the Critical Area Commission's 10% pollutant reduction policy.

County Maintained Channel: Charles County maintains a 2,150-foot long by 75-foot wide navigation channel located at the entrance of Cuckold Creek. The channel, which was authorized under Tidal Wetlands License 03-WL-0874 (R), was dredged to a depth of 6.0 feet at mean low water and the dredged material was placed in an existing site located on the Swan Point property. SPDC has proposed to use the same dredged material placement site for the material dredged during the construction of the Cuckold Creek and Potomac River marinas.

Regional Market Analysis of Marinas in the Swan Point Vicinity: The market analysis performed by Brandy Marine International found that the local regional marinas lacked modern features and amenities required in today's marketplace. In addition, many of the facilities were found to be in disrepair and substandard for the type of vessel that SPDC is trying to attract to its marinas. However, despite the reported conditions of

these marinas, the occupancy rate was found to be 90+ percent. Consequently, the analysis supported the need for additional slips and, in particular, for slips in the 40-foot to 65-foot range.

Bathymetric Survey and Marina Locations: The Cuckold Creek and Potomac River marinas are located in areas where the minimum natural water depth is 4.5 feet below mean low water. Additionally, the channelward encroachment of the piers associated with the Cuckold Creek Marina is limited to the first 25% of the waterway.

Cuckold Creek Marina: During the application review process, SPDC reduced the size and scope of the Cuckold Creek Marina. The marina has been relocated so that it is outside of SAV beds and in water with depths greater than 4.5 feet below mean low water, which has also reduced the amount of dredging necessary. The marina is designed to accommodate 113 slips and has been reconfigured so that it remains within the first 25% of the waterway. It is also important to note that the existing 40-slip commercial/community marina located on the west side of Cuba Island is not associated with SPDC and will continue to be used and maintained by the original Swan Point Community.

Potomac River Marina: When the Cuckold Creek Marina was reduced in size to 113 slips, SPDC proposed a 143-slip marina on the Potomac River to meet the maritime demands of the development. The Weir Creek Marina, which is proposed for an area where the minimum natural water depth is 4.5 feet below mean low water, will be dredged to minus 6.0 feet at mean low water. In addition, the proposed marina will be protected by an extensive stone breakwater system in order to provide a sheltered harbor and protect the facility from an expansive open water fetch and wind generated waves. Although the marina is located in the vicinity of the Swan Point NOB, the breakwater is designed to provide a 200-foot buffer between the Bar and the marina.

Observation Piers: The original development plan for the Villages at Swan Point called for the construction of six residential observation piers – three in the Potomac River and three in Cuckold Creek – all of sufficient height to prohibit the mooring of boats. During the permit application review process, SPDC worked with State and federal resource agencies to reduce the impacts associated with these structures. SPDC eliminated Observation Pier #4, which was located over the extensive SAV beds in Matthews Cove, a tributary of Cuckold Creek. SPDC also minimized impacts by embracing other modifications to the remaining Cuckold Creek observation piers. First, pier widths were reduced from 12 feet to 8 feet and pier heights were established at six feet above mean low water, which reduced impacts to both SAV and vegetated tidal marsh. Second, pier lengths were shortened to reduce their channelward encroachment, which reduced impacts to SAV and diminished navigation concerns expressed by recreational boaters. Finally, SPDC further reduced impacts to vegetated tidal wetlands, including SAV, by reducing the size of one platform and relocating it channelward of SAV beds, while eliminating the other platform.

SPDC also worked with the resource agencies to reduce the impacts associated with the Potomac River observation piers. The proposed width of these structures in the original application was 30 feet. As currently proposed, Observation Pier #1, located near the

"Horse Farm" parcel, faces due west and measures 15-feet wide by 260-feet long. The proposed dimensions for Observation Pier #2, known as "Beach Club" Pier, are 12-feet wide by 440-feet long with two 20-foot wide by 50-foot long platforms off the main pier and a 40-foot wide by 50-foot long (2,000 square feet) "T" head platform. While MDE considers the width of these piers and the size of the "Beach Club" Pier platform to be excessive, SPDC believes that any further reductions will adversely affect the design and functionality of its development plan.

X. DISCUSSION:

As required by the Tidal Wetlands Act, the evaluation of the proposed project has taken in account the evaluation criteria set forth in the Code of Maryland Regulations 26.24.02.03B. The considerations discussed below provide the rationale for the Department's recommendation.

Background: USSC has owned the Swan Point property since the late 1960's and obtained zoning approval from Charles County to develop a Waterfront Planned Community in 1986. The property is the only area in the County to benefit from this particular zoning classification. USSC partnered with homebuilder Brookfield Homes Corporation in 2004 to create Swan Point Development Corporation (SPDC), a limited liability corporation and launched the development known as the Villages at Swan Point. The proposed 897-acre waterfront planned unit community will consist of approximately 1,530 residential units, community recreation and educational amenities, including five observation piers; a hotel and conference center; restaurants, office and retail space; and two commercial marinas with a combined total of 256 boat slips. The proposed development is expected to result in significant beneficial impacts to both the regional and State economy. The project will benefit community residents by increasing accessibility and recreational opportunities and providing a safe boating harbor.

The proposed development is located within a Priority Funding Area, is consistent with the County's Water and Sewer Plan, and has obtained the necessary growth allocation from the Critical Area Commission. In addition, the water and sewer infrastructure has been upgraded to support the proposed development. Charles County and the SPDC have revised the community's Water Appropriation and Use Permit, increasing the permitted withdrawal from 60,000 gpd to 500,000 gpd in order to support the projected growth. The water system, which currently consists of two wells in the Patapsco Formation and a 400,000-gallon water storage tank, expects to add a third well as demand increases. Similarly, a new 300,000 gpd wastewater treatment plant with enhanced nutrient removal capabilities and stringent nutrient removal requirements has been constructed and is currently being turned over to the County, which will own and operate it. Furthermore, permits have been issued that will allow the capacity of the new plant to be increased to 600,000 gpd in order to support the projected growth.

Shore Erosion Control: The Swan Point property is experiencing severe erosion along the Potomac River. The tidal wetland boundary line shown on the 1972 Tidal Wetland Boundary Map is 125 feet from the current mean high water line. Based on this information, it is estimated that the property has lost approximately 34.5 acres of land along 12,000 linear feet of shoreline since 1972. Currently, there are no vegetated tidal

wetlands along the Potomac River shoreline due to the open water fetch and high-energy conditions.

SPDC has proposed to stabilize the shoreline by creating 14.1 acres of soft shoreline using an integrated ecosystem involving sand dunes, high marsh, low marsh and beach habitats protected by segmented stone breakwaters. The proposed "Living Shoreline" is expected to improve water quality and habitat, and dissipate wave energy, while reducing sediment input to tidal waters. Once construction is complete, the area will be placed in a perpetual conservation easement and maintained by SPDC. Considering testimony at the public hearings, most people agree that the shoreline must be stabilized, but in a fashion that will still allow community access. The "Living Shoreline" created west of Observation Pier #1 will have signage identifying the shoreline as a protected area under the terms of a conservation easement. On the east side of Observation Pier #2, a beach will be created in the same configuration as the rest of the shoreline as a recreational amenity for the Clubhouse and community residents. Finally, it is important to note that MDE has reviewed the proposed "Living Shoreline" as a shore erosion control project. Consequently, no mitigation credit was provided to offset the impacts associated with the construction of the Weir Creek Bridge.

Weir Creek Bridge: The proposed bridge crossing Weir Creek would be the only access point for the Weir Creek Village community and emergency vehicles. The proposed bridge would be constructed on the remnants of an old farm roadbed, which was used to access agricultural fields once located on the peninsula. The proposed location for the bridge was chosen over two other alternatives, both of which would have negative impacts to a known site for a threatened species, the Great Purple Hairstreak Butterfly. Construction of the proposed bridge involves the filling of vegetated tidal wetlands, which represents the only direct filling of vegetated tidal wetlands resulting from the project. In addition to these permanent impacts, bridge construction will also involve temporary impacts, which will be restored at the end of construction. SPDC proposes to mitigate for unavoidable impacts by eradicating *Phragmites* at a minimum 4:1 ratio. At this time, SPDC has a Toxic Materials Permit from MDE to spray 25 acres of *Phragmites* with an herbicide application at six locations. The current proposal is to allow the treated area to re-vegetate naturally from the seed stock that exists in the marsh. If the area does not re-vegetate naturally, SPDC will be required to plant the area with approved marsh species. In any event, SPDC will be required to maintain the area free of *Phragmites*.

Stormwater Management: Since there are no direct stormwater discharges to State tidal wetlands, authorization from the Board of Public Works is not necessary for stormwater discharges associated with the Villages at Swan Point. The proposed treatment and discharge of stormwater would be in conjunction with best management practices through new ponds and existing ponds with conveyances on the golf course. Treatment techniques would include wet ponds, sheet flow to buffers, grass swales, grass pavers, rooftop disconnects and rain gardens. According to SPDC, its comprehensive stormwater management plan will incorporate the tenets of the Stormwater Management Act of 2007 and comply with the Critical Area Commission's 10% pollutant reduction policy.

Observation Piers: The original development plan for the Villages at Swan Point called for the construction of six residential observation piers – three in the Potomac River and three in Cuckold Creek – all of sufficient height to prohibit the mooring of boats. During the permit application review process, SPDC worked with State and federal resource agencies to reduce the impacts associated with these structures. SPDC eliminated Observation Pier #4, which was located over the extensive SAV beds in Matthews Cove, a tributary of Cuckold Creek. SPDC also minimized impacts by embracing other modifications to the remaining Cuckold Creek observation piers. First, pier widths were reduced from 12 feet to 8 feet and pier heights were established at 6 feet above mean low water, which reduced impacts to both SAV and vegetated tidal marsh. Second, pier lengths were shortened to reduce their channelward encroachment, which reduced impacts to SAV and diminished navigation concerns expressed by recreational boaters. Finally, SPDC relocated or eliminated pier platforms to avoid vegetated tidal wetlands, including SAV.

The dimensions of the Potomac River observation piers, however, remain a concern for the Department. Since the proposed width of these structures in the original application was 30 feet, it is important to note that MDE has had some success persuading SPDC to reduce the size of these structures. However, since these are private, recreational piers, MDE believes that their size continues to be excessive.

In general, private residential piers are viewed as water-dependent structures that provide riparian property owners with reasonable access to the water. In most instances, the access is related to boating activities, and pier width is limited to six feet, pier length is dependent on a specific water depth identified by the applicant, and the pier platform is limited to 200 square feet. On occasion, MDE has adjusted these dimensions, when a private community applies for a recreational pier as part of a trail system or to support fishing, crabbing or other water related activities. The adjustments, however, are usually modest with piers widths seldom exceeding eight feet.

Public recreational piers, on the other hand, are generally supported by MDE and recognized as an important vehicle to promote access to the State's water resources, which is held in trust by the Board of Public Works for all Maryland citizens. MDE would like to cite two public recreational piers to illustrate this point.

The Downs Park Public Fishing Pier is a wheel chair accessible structure located in Pasadena, Anne Arundel County, Maryland. The fishing pier serves a local population of 12,093 (According to the U.S. Census Bureau 2000 population estimate for Pasadena, Maryland). However, since this is a public park in close proximity to Baltimore City and other parts of Anne Arundel County, it likely serves a much broader portion of the general public than the immediate Pasadena area. The dimensions of the fishing pier are 14-feet wide by 300 feet long with a 30-foot long by 60-foot wide (1,800 square feet) "T" head platform.

The North Beach Public Fishing Pier is a wheel chair accessible structure located in the Town of North Beach, Calvert County, Maryland. The fishing pier and the adjacent ½ mile long boardwalk along the Chesapeake

Bay serves a local population of approximately 8,748 (According to the U.S. Census Bureau 2000 population estimates for the Town of North Beach, the Town of Chesapeake Beach and the neighboring communities of Owings and Dunkirk, Maryland). However, since North Beach offers one of the few Chesapeake Bay public beaches it is likely that it also serves a broader population. The dimensions of the fishing pier are 20-foot wide by approximately 450-foot long with a 50-foot long by 100-foot wide (5,000 square feet) "T" head platform. It is also important to note that the fishing pier was constructed prior to the enactment of the Tidal Wetlands Act in 1970 and has been reduced in size from the original structure.

In order to compare the population that will be served by the private Potomac River observation piers with the public piers discussed above, the proposed and existing residential units for Swan Point were multiplied by 2.86, the average household size for Charles County as reported in 2000 by the U.S. Census Bureau. Using this formula, the estimated Swan Creek population will be approximately 5,935 (545 existing, subdivided residential lots + 1,530 proposed residential units x 2.86 persons/household = 5,935). Based on this population estimate, MDE believes that there is insufficient justification to treat the Potomac River observation piers as public recreational facilities.

SPDC believes that any further reductions will adversely affect the design and functionality of its development plan. Consequently, MDE requested SPDC to submit a justification for the proposed size of the Potomac River observation piers. SPDC provided the following response.

The Villages at Swan Point ("Community") is designed to be an interactive educational community with the surrounding natural environment. The Community land plan was originally developed by the Thompson Design Group and revised in 2005 to reflect a more sustainable, environmentally friendly, waterfront resort community. In order to achieve this purpose, the land plan was revised from the older typical Euclidian designed community to an ecologically friendly and interactive land plan that reflects today's planning knowledge versus yesterday's planning practices. The new land plan encompasses a 300 room hotel and conference center, two marinas, four strategically located observation piers and reduced density for the 1500 units to be built and 400 existing lots.

In order to achieve an interactive waterfront destination resort, water dependent amenities must be created. The Community proposes to have multiple piers, a beach club and two marinas. Two crucial components of the destination resort are the Potomac River piers. Pier One (furthest to the west) has been designed to be the anchor pier at the common terminus of an extensive on-site hiking biker trail located within the Community and the Charles County proposed public trail system. The width of the pier is designed at 12 feet. Its length extends just pass the breakwater system being installed for the shoreline protection. This will allow a

person to have unobstructed views of the Potomac River while also providing the necessary room for the nonprofit educational venues to commence on the pier at the same time. The width further allows people sufficient room and buffer for fishing. This pier is located in the heart of the future environmental educational center of Swan Point.

Pier Two commonly known as the "Beach Club Pier" was designed to be one of the major focal points for the residential community and the hotel resort guests. It is anticipated that this pier will be one of the memorable moments of the Hotel Resorts guests. The pier was designed with ergonomics in mind. The pier was designed with strategically placed "bumpouts" for families and couples to gather with some privacy to converse and enjoy their natural surrounding. The bumpouts and pier width (15 feet) allow just enough room for sitting areas and trash collection for the resort guest. The lookout at the end of the pier has been designed to allow sufficient room for fisherman to cast into the Potomac River without endangering curious on-looking observers and provide staging areas for their tackle and wet wells.

As currently proposed, Observation Pier #1, located near the "Horse Farm" parcel, faces due west and measures 15-foot wide by 260-foot long (3,900 square feet). The proposed dimensions for Observation Pier #2, known as "Beach Club" Pier, are 12-foot wide by 440-foot long (5,280) with two 20-foot wide by 50-foot long (2,000 square feet) platforms off the main pier and a 40-foot wide by 50-foot long (2,000 square feet) "T" head platform.

MDE recommends that the Potomac River observation piers be reduced in size. There are two reasons for this recommendation. First, MDE believes that there is an environmental benefit to reducing the size of these structures. Larger piers and platforms have a greater impact on the aquatic environment. Shading associated with pier construction minimizes light penetration. Sunlight is necessary for photosynthesis to occur. Without sunlight, phytoplankton, microscopic algae, and other organisms directly dependent on sunlight for their existence would be diminished. Because these organisms provide the foundation and basic building blocks of the aquatic ecosystem, all other organisms higher in the foodchain, such as finfish would be impacted. SPDC has stated that Pier #1 would play an important role in the community's environmental education program. MDE suggests that one element of the curriculum could highlight the minimization techniques that were used to reduce the impacts of non-water dependent activities on the Potomac River and Cuckold Creek.

Second, based on the demographic comparison for public versus private recreational use and the fact that the Swan Point Community will have access to five separate observation piers, MDE believes that the size of the piers is excessive for the proposed use and may ultimately encourage the construction of non-water dependent structures and other non-water dependent uses on the piers. Historically, MDE has discouraged the construction of large non-water dependent structures over State wetlands and is concerned about establishing a precedent for this type of activity. Consequently, MDE recommends that the width of Observation Pier #1 be reduced to 10 feet. Similarly, the width of

Observation Pier #2 should be reduced to 10 feet, with one 20-foot wide by 30-foot long (600 sq. ft) platform, located channelward of the "Living Shoreline" to avoid any shading impacts, and a 20-foot wide by 40-foot long (800 sq. ft) "T" head platform.

Marinas: The Villages at Swan Point is zoned as a waterfront planned community. However, SPDC has restricted water access to a Potomac River beach, five observation piers, and two commercial marinas. Consequently, the development's shoreline will not be fragmented by a myriad of individual, private piers, but preserved and enhanced under a buffer management plan approved by the Critical Area Commission. The upshot of this strategy, however, is a heightened need for adequately sized marinas. While the proposed marinas are currently sited in areas that avoid and minimize impacts to tidal wetlands and other aquatic resources, their locations are the result of years of compromise and cooperation.

During the application review process, the Cuckold Creek Marina underwent three separate designs. The original design accommodated 300 slips in a marina basin excavated from upland with a dredged channel to Cuckold Creek. The presence of dense SAV beds in the area of the entrance channel, impacts to the Critical Area 100-foot Buffer, and concerns about poor flushing in the excavated basin, however, resulted in a complete revision of the proposal. The second proposal placed the marina in Cuckold Creek beyond the minus 4.5 mean low water contour and outside all identified SAV beds. The marina covered approximately 50% of the waterway, and did not meet the requirements of the Code of Maryland Regulation (COMAR) 26.24.04.02, which states that a pier may not extend more than 25% across a waterway. The proposal was also not acceptable to local users of the waterway. The design currently under consideration reduces the number of slips to 113 and reconfigures the marina so that it only covers 25% of the waterway.

To offset the reduction in the number of slips in the Cuckold Creek Marina, a second marina site was proposed on the Potomac River. The proposed location of the Weir Creek Marina, however, proved to be a challenge. Due to the open water fetch and high wave energy, the design of the marina incorporated a stone breakwater to provide a safe harbor for 143 boats. Furthermore, due to the cost of construction and the uncertainty about the area's market conditions, it was important that the Weir Creek Marina approach capacity before the Cuckold Creek Marina was brought on line.

Code of Maryland Regulations provides detailed siting guidelines for new marinas. Specifically, COMAR states that new marina development shall be located to avoid and minimize impacts to tidal wetlands and other aquatic resources; and be located on waterways with strong flushing characteristics. The guidelines also prohibit marina construction in areas with a natural depth less than 4.5 feet at mean low water, and where their presence would adversely impact submerged aquatic vegetation, and other beneficial biological resources.

The Weir Creek Marina proposed for the Potomac River complies with the State's marina siting guidelines. The proposed marina and its breakwater system are located in an area where the natural water depth is greater than 4.5 feet at mean low water. The marina not only avoids impacts to two Natural Oyster Bars (NOB's) found in the vicinity, but the

design incorporates a 200-foot buffer from the breakwater system to provide an additional zone of safety. In addition, the proposed marina will not impact any SAV, based on surveys performed along the entire Potomac River shoreline in 2007. While the Lower Potomac River is on the Maryland (303)(d) list for nutrients, toxics, bacteria, sediments and biological impairments, they are rated a low priority except for bacteria and toxics. Furthermore, the strong flushing characteristics of the River will help to dissipate any pollutants that may surface.

The Cuckold Creek Marina, on the other hand, does not meet the State's marina siting guidelines. While the proposed marina is located in an area where the natural water depth is greater than at 4.5 feet mean low water and avoids any direct impact to SAV, it is not located on a waterway with strong flushing characteristics as required by COMAR. At MDE's request, SPDC performed a flushing study for Cuckold Creek. The study indicated that Cuckold Creek does not flush efficiently even under existing conditions.

Cuckold Creek is characterized by sluggish flows, poor flushing, and low dissolved oxygen levels. The creek has an average tidal range of 1.7 feet. SPDC's consultant states that the average inflow of water into the creek is about one half of one percent of the average tidal flux, which means that only a very small fraction of water moves in and out of Cuckold Creek during each tidal cycle. Overall, ERM concludes that Cuckold Creek does not flush efficiently under natural conditions. The Department has also characterized flushing within the creek and has confirmed that it has poor flushing characteristics. While the consultant claims that construction of the marina would not significantly change the flushing characteristics of the creek or degrade its water quality, MDE disagrees based on the fact that the Marina reduces the cross sectional area of the creek by at least 25%. Another important consideration is dissolved oxygen (DO), which is vital to all organisms living in the creek. DO levels below 5 mg/l as found in the creek, are lethal to fish and other aquatic organisms. The results of the dye study used in the flushing model did not take into account, the biodegradable solids associated with the wastewater discharge. The degradation of these solids will further worsen the DO deficit within the creek, thereby significantly impacting water quality.

Another interesting finding of the Flushing Study was that the flushing characteristics of Cuckold Creek insignificantly improved as freshwater inflow from impervious surfaces and the WWTP increased. MDE does not believe that basing flushing characteristics of a natural water body on anthropogenic activities such as stormwater management and wastewater treatment plant flows is a prudent practice. While flows from a wastewater treatment plant may increase flushing, it does not address more serious water quality concerns. For example, treated discharges will contain biodegradable solids. The degradation of these solids will further worsen the DO deficit within the creek, thereby significantly impacting water quality. Also, increasing the depth of the waterway would not function to increase flushing as suggested by the report, and finally increasing the WWTP flows by as much as 400% at full build out, is not expected to provide any improvement in overall water quality.

In summary, MDE's siting guidelines require a new marina to be located on a waterway with strong flushing characteristics. SPDC's consultant and MDE have both

characterized Cuckold Creek as a water body with poor flushing characteristics. Consequently, the marina fails to meet one of the Department's threshold requirements. Furthermore, MDE believes that there is sufficient information to conclude that construction of a marina at the proposed location on Cuckold Creek will exacerbate water quality problems. Based on the fact that the proposal will result in the degradation of Maryland waters and that the project is contrary to State regulatory requirements, the Department recommends that the Board of Public Works eliminate the proposed Cuckold Creek Marina from consideration.

XI. CONCLUSION AND RECOMMENDATION:

The Villages at Swan Point is a waterfront-planned community that is located in a Priority Funding Area, is consistent with the Charles County Water and Sewerage Plan, and has been awarded the necessary growth allocation from the Chesapeake Bay Critical Area Commission to be constructed as envisioned by the Charles County Planning Commission and approved by the Board of County Commissioners. However, before construction can begin, the Maryland Board of Public Works must approve a number of activities that will be constructed on State tidal wetlands, which are held in trust by the State for the citizens of Maryland. These activities and MDE's recommendation are presented in the table below.

PROPOSED ACTIVITY BASED ON PLANS DATED 04/29/08	MDE RECOMMENDATION
Shoreline Stabilization	Approve as proposed by the Applicant
Weir Creek Bridge Crossing	Approve as proposed by the Applicant
Weir Creek Marina	Approve as proposed by the Applicant
Cuckold Creek Marina	Eliminate from consideration due to the location of the proposed marina and the poor flushing characteristics of Cuckold Creek.
Cuckold Creek Observation Piers	Approve as revised by MDE. Revision eliminates platform from Observation Pier #6.
Potomac River Observation Pier #1	Approve as revised by MDE. Revision reduces pier width to ten feet.
Potomac River Observation Pier #2	Approve as revised by MDE. Revision reduces pier width to 10 feet, with one 20-foot wide by 30-foot long platform and a 20-foot wide by 40-foot long "T" head platform.
Potomac River Observation Pier #3	Approve as proposed by the Applicant

XII. PROJECT JUSTIFICATION:

In consideration of the site characteristics and the nature of the proposed work, the Maryland Department of the Environment concludes that the application, as modified by the Department, represents a reasonable exercise of riparian rights. The review of this project has taken into account ecological, economic, recreational, developmental, and aesthetic considerations appropriate for this proposal as well as other criteria set forth in the Code of Maryland Regulations. The Department recommends that the Board of

Public Works issue a Tidal Wetlands License for the following work as depicted on the revised plans dated 4/29/08.

Weir Creek Marina on the Potomac River

- 1) Remove existing pier remnants and construct a 10-foot wide by 1,088-foot long marina access pier with two 25-foot wide by 25-foot long platforms.
- 2) Construct a 10-foot wide by 1,426-foot long pier with a 1,210 square foot observation platform all over a 50-foot wide by 1500-foot long stone breakwater within an average of 842 feet and a maximum 1,050 feet channelward of the mean high water line.
- 3) To mechanically or hydraulically dredge 5,430 cubic yards of sand, silt and clay to 6.0 feet below mean low water.
- 4) To construct six pier systems for 143 boat slips.
- 5) To install 203 mooring piles, eleven navigational piles with warning signage, four navigational markers and a system of dry fire hydrants.

The following is a detailed description of the marina dock system:

Dock "A": To construct a 10-foot wide by 214-foot long pier with a 23-foot wide by 85-foot long "T" head platform and eleven fingers piers measuring 3-feet wide by 20-feet long.

Dock "B": To construct an 8-foot wide by 227-foot long pier with a 10-foot wide by 96-foot long "T" head platform, and eleven finger piers measuring 3-feet wide by 20-feet long.

Dock "C": To construct an 8-foot wide by 229-foot long pier with an 8-foot wide by 58-foot long "L" head platform and five finger piers measuring 3-feet wide by 20-feet long.

Dock "D": To construct a 10-foot wide by 363-foot long pier with a 10-foot wide by 105-foot long "T" head platform and eighteen finger piers measuring 3-feet wide by 20-feet long.

Dock "E": To construct an 8-foot wide by 314-foot long pier with an 10-foot wide by 96 foot long "T" head platform and sixteen finger piers measuring 3-feet wide by 20-feet long.

Dock "F": To construct an 8-foot wide by 226-foot long pier with an 8-foot wide by 58-foot long "L" head platform and five finger piers measuring 3-feet wide by 20-feet long.

Weir Creek Bridge Crossing

Temporary Construction Impacts:

- 1) To obtain twenty 3.5-inch diameter soil borings 100 feet below tidal marsh/open water for geotechnical analysis of the bridge foundation.
- 2) To construct 950-linear feet of 30-foot wide temporary causeway and a 170-foot long trestle over open water parallel to the proposed bridge alignment. The construction of the causeway and trestle will temporarily impact 48,000 square feet of vegetated tidal wetlands and open water.

Permanent Construction Impacts:

- 1) To construct a 45-foot wide by 880-foot long open pile supported concrete bridge of which 810 feet would be over vegetated tidal wetlands and open water, nine feet above the mean high water elevation. The bridge will permanently impact 39,435 square feet of vegetated tidal wetlands primarily by shading.
- 2) To suspend water, sanitary sewer, cable, telephone, fiber optic and electric utilities beneath the Weir Creek Bridge and over 810-linear feet of open water and vegetated tidal wetlands.

Shoreline Stabilization

Temporary Impacts:

- 1) To construct 1,650 linear feet of temporary construction access road using timber mats along the shoreline, landward of proposed stone sills and breakwaters and all within a maximum of 25 feet channelward of the mean high water line.
- 2) To construct a 240-foot long by 10-foot wide sectional barge bridge, held in place with spuds or mooring chains, to cross Weir Creek.

Permanent Impacts:

- 1) To construct 1,990 feet of stone revetment within a maximum of 25 feet channelward of the mean high water line.
- 2) To create 1.59 acres of low tidal marsh and 12.82 acres of high tidal marsh and dune habitat by filling open water with 48,747 cubic yards of clean sandy material.
- 3) To construct various lengths of stone breakwaters, stone groins and stone sills with numerous windows of varying widths along 9,300 linear feet of shoreline channelward of the sandy fill and all within a maximum of 400 feet channelward of the mean high water line.
- 4) To emplace 500 feet of stone revetment 20 feet channelward of an existing bulkhead.

Observation Piers

- 1) Observation Pier #1: To construct a 10-foot wide by 260-foot long perpendicular pier on the Potomac River, within a maximum of 260 feet channelward of the mean high water line and 10 feet above the mean low water elevation.
- 2) Observation Pier #2: To construct a 10-foot wide by 440-foot long perpendicular pier on the Potomac River with one 20-foot wide by 30-foot long bump-out platform and a 20-foot wide by 40-foot long "T" head platform, within a maximum of 440 feet channelward of the mean high water line and 10 feet above the mean low water elevation.
- 3) Observation Pier #3: To construct an 8-foot wide by 170-foot long pier within a maximum of 170 feet channelward of the mean high water line and 10 feet above the mean low water elevation.
- 4) Observation Pier #5: To construct an 8-foot wide by 356-foot long walkway/pier with a 20-foot wide by 10-foot long "L" head platform within a maximum of 256 feet channelward of the mean high water line and 6.0 feet above the mean low water elevation.

- 5) Observation Pier #6: To construct an 8-foot wide by 300-foot long walkway/pier within a maximum of 162 feet channelward of the mean high water line elevation. The pier would be a minimum of 4.5 feet above the marsh substrate terminating at the open water-marsh interface.

Cuba Island

- 1) To construct and backfill 326 feet of replacement bulkhead within a maximum of 18 inches channelward of a deteriorated bulkhead.

SPECIAL CONDITIONS:

- A. Compensation for placement of 810 linear feet of utility line crossing State waters and wetlands shall be assessed in an amount to be determined by the Board of Public Works. The compensation shall be remitted to the Tidal Wetlands Compensation Fund, Water Management Administration prior to project commencement.
- B. The Licensee shall perform all work in accordance with the Certification of Water Quality issued by the Maryland Department of the Environment.
- C. The Licensee shall perform all work in accordance with the Critical Area requirements of Charles County. This authorization does not constitute authorization for disturbance in the 100-foot Critical Area Buffer. "Disturbance" in the Buffer means clearing, grading, construction activities, or removal of any size tree or vegetation. Any anticipated Buffer disturbance requires prior written approval, before commencement of land-disturbing activities from the local jurisdiction in the form of a Buffer Management Plan.
- D. The Licensee shall schedule a pre-construction meeting with the Tidal Wetland Division and the Compliance Program of the Water Management Administration at least 10 days prior to project commencement to review conditions of the License and phasing of project construction.
- E. The Licensee shall not stockpile any material in tidal or nontidal wetlands.
- F. There shall be no direct discharge of stormwater into tidal wetlands.
- G. The Licensee shall restore and re-vegetate all disturbed wetlands to original contours and species immediately upon project completion.
- H. The Licensee shall perform all work in accordance with the required Soil Erosion and Sediment Control Plan as approved by Charles Soil Conservation District.
- I. To protect historical waterfowl resting and staging areas, the Licensee shall perform no in water work between November 15 and April 30 of any year.
- J. To protect anadromous fish spawning, the Licensee shall perform no in water work between March 1 and June 15 of any year.

- K. To protect natural oyster bars, the Licensee shall perform no in water work between December 15 and March 11, and June 1 and September 30 of any year.
- L. In accordance with the Bald Eagle Management Plan approved by the Maryland Department of Natural Resources for nest #1 located on golf course hole #8, the Licensee shall perform no development activities within a 1,320 foot radius between December 15 and June 15 of any year.
- M. Marsh establishment
1. The Licensee shall use clean sandy substrate material, no more than 10% of which shall pass through a standard number 100 sieve.
 2. The Licensee shall plant marsh establishment project within one year following completion of the filling operation.
 3. The Licensee shall maintain the marsh establishment project as a wetland, with non-nuisance species aerial coverage of at least 85% for three consecutive years. If 85% coverage is not attained, the reasons for failure shall be determined, corrective measures shall be taken, and the area shall be replanted by the Licensee.
 4. If the fill is graded hydraulically, the Licensee shall use a turbidity curtain around the perimeter of the in-stream work.
 5. If the existing bank is to be cleared or graded, the Licensee shall obtain approval to impact the 100-foot Critical Area Buffer from Charles County and erosion and sediment control approval from the Charles Soil Conservation District.
 6. Prior to any project commencement, the Licensee shall submit a detailed marsh maintenance plan to the Water Management Administration, Tidal Wetland Division for review and approval.
- N. Prior to project commencement, the Licensee shall provide the Water Management Administration, Tidal Wetland Division, a mitigation plan for the spraying of 25 acres of *Phragmites* for review and approval. The plan shall be implemented prior to the start of construction for the Weir Creek Bridge. The Plan shall show: 1) Location and size of areas to be treated; 2) Yearly monitoring; 3) Species, size and density of vegetation present after one year of treatment. If the 25 acres of *Phragmites* to be controlled by spraying does not re-vegetate naturally with native non-nuisance wetlands species within one year, the area shall be planted with tidal marsh vegetation and be maintained in at least 85% coverage for five years. Low marsh shall be planted with *Spartina alterniflora* and the high marsh areas shall be planted with *Spartina patens*.
- O. The Licensee shall monitor the mitigation site for a period of five years and shall submit an annual report to the Water Management Administration, Tidal Wetland Division justifying that the mitigation site has been successful. A successful mitigation project shall result in the elimination of *Phragmites* and the establishment of native wetlands species, for a period of five years. If native species fail to appear within one year, the Licensee shall plant the area treated with native tidal marsh vegetation.

- P. The Licensee shall post a performance bond in an amount determined by the Board of Public Works to provide for establishment and maintenance of the marsh mitigation project.
- Q. The Licensee shall place a perpetual conservation easement on the "Living Shoreline" along the Potomac River. This easement shall be filed as a restrictive covenant within the property land records for the Villages at Swan Point. The easement shall be approved by the Tidal Wetland Division, Water Management Administration prior to construction of the "Living Shoreline."
- R. Prior to project commencement, the Licensee shall submit a detailed dredged material placement plan to the Water Management Administration, Tidal Wetlands Division for review and approval. Failure to comply with this condition will result in automatic suspension of the License.
- S. The Licensee shall submit a pre-construction depth survey to the Water Management Administration, Tidal Wetland Division prior to the start of dredging and a post construction survey within one month after completion of dredging.
- T. All mechanically dredged material shall be transported in water-tight trucks. No dredged material shall be discharged onto roadways.
- U. The suspended solids content in the discharge from any hydraulically dredged material placement site shall not exceed four hundred parts per million.
- V. There shall be no discharge of sanitary wastewater from any boat or vessel moored, berthed, or docked at this marina facility, except as prescribed by federal or State regulations.
- W. The Licensee shall provide on shore sanitary facilities in accordance with the requirements of the Charles County Health Department.
- X. Prior to any boat moored at the marina facility, the Licensee shall certify to the Water Management Administration, Tidal Wetland Division that dockside sewage pump-out facilities to accommodate sewage from vessels using the Licensee's marina are installed and operational. The facilities shall be connected to a public sewage treatment system serving the area or an on-site sewage disposal system sized, installed and operated in compliance with the requirements of the Charles County Health Department. Failure to install, operate or maintain the required pump-out facilities will result in automatic suspension of the License.
- Y. The Licensee shall store and handle petroleum products in strict accordance with the Oil Pollution Regulations of the Maryland Department of the Environment. The Licensee shall employ measures to prevent and control spills of fuels or lubricants from entering the State waters.
- Z. Boat maintenance areas on dry land shall be designed and operated so that residues from bottom scraping, painting, or other discharges and spills associated with

required boat maintenance do not enter State waters. Toxic materials shall be properly handled and stored.

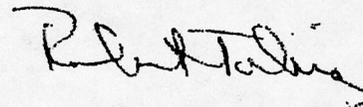
- AA. Boat maintenance at individual slips shall be restricted to those activities that can be performed without materials entering the waterway.
- BB. Trash and garbage containers shall be conveniently located and the marina's owner/operator shall be responsible for adequate disposal of collected materials. Such waste shall not be discharged to the waterway.
- CC. There shall be no shellfish harvesting or storage within the waters of the marina.
- DD. Prior to commencement of project construction, the Licensee shall provide a recorded copy of the following restrictive covenants to the Water Management Administration, Tidal Wetland Division:
 - 1. There shall be no mooring of boats on the marina access piers or observation piers.
 - 2. There shall be no construction or installation of private piers or mooring piles.
 - 3. There shall be no permanent or temporary structures placed on any piers or platforms in the marina or on any observation pier.
- EE. An oil spill contingency plan signed by the Licensee or responsible party and approved by the Maryland Department of the Environment shall be implemented prior to construction of the marina.
- FF. Prior to commencement of marina construction, the Licensee shall field delineate the Natural Oyster Bar and the Natural Oyster Bar Buffer for verification by the Water Management Administration, Tidal Wetland Division.
- GG. The Licensee shall install navigational markers at the end of the timber breakwater, stone revetment, and observation piers as approved by the U.S. Coast Guard.
- HH. The Licensee shall remove all temporary causeway materials and tressle bridge structures from tidal wetlands surrounding the Weir Creek Bridge crossing and remediate the marsh by restoring the site to its original elevation and planting it with native marsh plants prior to opening the bridge up to traffic. The restored marsh shall be maintained at a vegetated coverage of 85% for a minimum of five years.
- II. The Maryland Department of the Environment has determined that the proposed activity complies with, and will be conducted in a manner consistent with the State's Coastal Zone Management Program as required by Section 307 of the federal Coastal Zone Management Act of 1972, as amended.

DEPARTMENT OF THE ENVIRONMENT PLANNER:

Robert Tabisz

DATE:

04/29/08

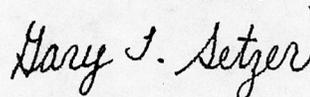


DEPARTMENT OF THE ENVIRONMENT APPROVAL:

Gary T. Setzer

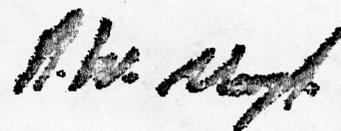
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04/29/08



WETLANDS ADMINISTRATION CONCURRENCE:

DATE:



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MARYLAND DEPARTMENT OF THE ENVIRONMENT

SWAN POINT PUBLIC HEARING

FEBRUARY 27, 2014

Charles County Government Building
200 Baltimore Street
LaPlata, Maryland

dd

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1 Nontidal Wetlands; and
2 Title 16, which is entitled Wetlands
3 and Riparian Rights.

4 At that time, the project purpose was
5 to provide the required infrastructure,
6 including roads, utilities, stormwater
7 management and shoreline stabilization for a
8 mixed-use commercial, residential and marina
9 development.

10 The proposed 897-acre waterfront
11 planned unit community consisted of
12 approximately 852 single-family residential
13 units, 678 condominiums, community recreation
14 amenities, including five observation piers; a
15 hotel and conference center; restaurants,
16 office and retail space; and a commercial
17 marina with 143 boat slips.

18 As some of you may recall, the
19 Maryland Department of the Environment and the
20 U.S. Army Corps of Engineers conducted a joint
21 public hearing on January 10, 2007 and due to
22 changes in the scope of the project, conducted
23 a second public hearing on October 1st, 2007.

1 At the conclusion of the application
2 review process, the Maryland Department of the
3 Environment issued the following
4 authorizations on December 9, 2008:

5 Nontidal Wetlands and Waterways
6 Permit 05-NT-0059 was issued with an
7 expiration date of December 9, 2011. The
8 Nontidal Wetlands and Waterways Permit was
9 subsequent modified and extended until
10 December 9, 2018. Because that Nontidal
11 Wetlands and Waterways Permit is still in
12 effect, the upland activities that are
13 necessary to develop Swan Point and the
14 impacts to nontidal wetlands and waterways are
15 not under consideration tonight.

16 The Department also issued Private
17 Wetlands Permit Number 09-WP-0016 with an
18 expiration date of December 9, 2011. The
19 Private Wetland Permit was subsequently
20 extended until May 21, 2014.

21 At the conclusion of the first
22 application review process, the Department
23 submitted a favorable Report and

1 Recommendation to the Board of Public Works,
2 and the Board of Public Works ultimately
3 issued State Tidal Wetlands License 05-WL-1266
4 on May 21, 2008 with an expiration date of May
5 21, 2011.

6 The Board subsequently extended the
7 State Tidal Wetlands License for an additional
8 three years to May 21, 2014.

9 It is also important to note that the
10 individual Section 404 permit issued by the
11 U.S. Army Corps of Engineers remains valid.
12 The federal authorization does not expire
13 until October 30, 2018.

14 So with that explanation as
15 background, I'm certain you are wondering why
16 are we here tonight. Well, neither the
17 Private Wetlands Permit issued by the Maryland
18 Department of the Environment nor the State
19 Wetlands Permit or license issued by the board
20 of Public Works can be extended again.

21 Consequently, any regulated
22 activities impacting tidal waters and tidal
23 wetlands that were not completed under th e

1 previous tidal wetlands authorizations issued
2 by the State required a new application and a
3 complete review based on current law and
4 regulations.

5 Tonight, the Maryland Department of
6 the Environment is conducting a public
7 information hearing pursuant to Section 5-204
8 of the Environment Article for Private
9 Wetlands Application 13-WP-0705/201361255 and
10 the State Wetlands Application 13-WL-
11 0704/201361255 submitted by the Swan Point
12 Development Company, LLC.

13 It is important to note that this
14 hearing is not a contested case hearing under
15 Maryland's Administrative Procedure Act or a
16 public hearing for water quality certification
17 pursuant to Code of Maryland Regulations
18 26.08.02.10.

19 A State Tidal Wetlands License is
20 issued by the Board of Public Works, which is
21 comprised of Governor O'Malley, Comptroller
22 Franchot and State Treasurer Kopp.

23 The statutory authority for the

Sheet 3 Page 9

1 issuance of a Tidal Wetlands License is Title
2 16 of the Environment Article, Annotated Code
3 of Maryland, which is entitled Wetlands and
4 Riparian Rights.

5 Other regulatory requirements
6 governing the review and issuance of tidal
7 wetlands licenses can be found in COMAR
8 23.02.04, promulgated by the Board of Public
9 Works, and COMAR 26.24 promulgated by the
10 Maryland Department of the Environment.

11 In accordance with Title 16 and the
12 Maryland Constitution, the Board of Public
13 Works is the sole body with authority over
14 State property. In this particular case, this
15 property includes tidal wetlands, submerged
16 lands and aquatic resources.

17 In its proprietary authority, the
18 Board has the right to grant a third party the
19 use or right to construct or conduct an
20 activity in tidal wetlands via a Tidal
21 Wetlands License.

22 According to Section 16-202 of the
23 Environment Article, the Secretary of the

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1 Private Tidal Wetlands Permit for activities
2 in private wetlands.

3 The statutory authority for the
4 issuance of a Tidal Wetlands Permit is Title
5 16 of the Environment Article, Annotated Code
6 of Maryland, which is entitled again, Wetlands
7 and Riparian Rights, and the implementing
8 regulations found in 26.24 of the Code of
9 Maryland Regulations.

10 So tonight, the Swan Point
11 Development Company, LLC is proposing to
12 construct a residential and recreational
13 development and has applied to construct the
14 following regulated activities in tidal waters
15 and tidal wetlands:

16 A commercial marina on the Potomac
17 River with a total of 143 boat slips;

18 Five observation piers of which three
19 are on the Potomac River and two are on
20 Cuckold Creek;

21 Shoreline stabilization measures on
22 the Potomac River;

23 A replacement bulkhead on Cuba

Page 10

1 Maryland Department of the Environment shall
2 assist the Board in determining whether to
3 issue a license to dredge or fill State
4 wetlands.

5 The Secretary shall submit a report
6 indicating whether the license should be
7 granted, and if so, the terms, conditions and
8 consideration required after consultation with
9 any interested federal, state and local unit,
10 and after issuing public notice, holding any
11 requested hearing and taking any evidence the
12 Secretary thinks advisable.

13 In making its decision, the Board of
14 Public Works is guided by the public policy of
15 the State, taking into account the varying
16 ecological, economic, developmental,
17 recreational and aesthetic values to preserve
18 tidal wetlands and to prevent their
19 despoliation and destruction.

20 In contrast to the State Tidal
21 Wetlands License issued by the Board of Public
22 Works for activities conducted in State
23 wetlands, the Department ultimately issues the

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1 Island;

2 A bridge over Weir Creek;

3 And stormwater management system with
4 possible direct discharges to tidal wetlands.

5 The Swan Point Development Company
6 previously applied for and obtained tidal
7 wetlands authorizations 05-WL-1266 and 09-WP-
8 0016 for the same or similar regulated
9 activities.

10 Because those authorizations will
11 expire before the applicant can construct many
12 of the authorized activities, the Swan Point
13 Development Company was required to submit a
14 new application.

15 I apologize for putting you through
16 all that, but that got all of the information
17 that we need on the record, so we will start
18 getting into the meat of the hearing.

19 You all had an opportunity to sign in
20 when you came. It is important that if you
21 didn't sign in, you do so. They are right
22 outside this door.

23 We use this list to notify people of

Sheet 4 Page 13

1 the final decision made by the Department. It
2 is also the order of the individuals who would
3 like to make remarks on the application.

4 I guess before we get started, are
5 there any public officials attending the
6 hearing tonight that would like to be
7 recognized?

8 (Pause)

9 Okay. I'd like to emphasize that the
10 purpose of the hearing is to consider the
11 tidal wetlands applications pending before the
12 Department of the Environment.

13 There may be a number of additional
14 concerns that are related to issues that are
15 beyond the scope of this particular hearing.
16 I'd like to as much as possible have this
17 hearing remain focused on issues associated
18 with the applications for the private wetlands
19 permit and the state wetlands license.

20 Any questions on how we are going to
21 proceed?

22 (Pause)

23 Okay. Well, we will get started with

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1 representatives from the Swan Point
2 Development Company, asking them to come
3 forward. State your name for the record and
4 begin your presentation.

5 MR. SCHALLER:

6 Good evening. My name is Charles
7 Schaller. I'm a partner with the Law Firm of
8 Linowes and Blocher in Annapolis, Maryland and
9 I represent the Swan Point Development
10 Company, LLC that I'll refer to as the
11 applicant here.

12 Some of this may be redundant for
13 many of you. For those that have not heard or
14 seen, it will be enlightening hopefully for
15 you.

16 I think Mr. Setzer did a good job
17 providing a lot of the background that we have
18 been through here.

19 As many of you know, you live in the
20 area, you have seen the property, you have
21 seen that there has been approximately a mile
22 of the beach has been restored under the prior
23 wetland license that exists today to stop the

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1 extensive erosion.

2 Swan Point is here for a tidal
3 wetland license and a tidal wetland permit.
4 As Mr. Setzer pointed out, they were
5 previously issued so that we could conduct the
6 regulated activities for the project.

7 I know many of you have issues that
8 may relate to land use items. As Mr. Setzer
9 pointed out, that's not what we are here for.
10 There is a definitive scope that we're here
11 for and that relates to the activities in the
12 tidal waters.

13 Let's go to the first slide. All
14 right. This is a current aerial of Swan
15 Point. As many of you know, you gain access
16 down MD 257 from 301. It fronts on the
17 Potomac and it fronts on Cuckold Creek.

18 Right now it contains an existing
19 residential development, a golf course, a swim
20 center and a community pier with approximately
21 40 slips.

22 The project or the property
23 development exists today under Docket 250 back

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1 in 1986. The zoning is waterfront planned
2 community.

3 That under the county code allows a
4 mixed use waterfront oriented project such as
5 Swan Point proposes today and is consistent
6 with what was originally envisioned here.

7 As many of you know, the county
8 approved the master plan in 2006. It also
9 approved the general development plan. In
10 2006 the county also approved growth
11 allocation for the development that you see
12 before you.

13 Those that don't recall, the new
14 design keeps 50 percent of the property in
15 open space.

16 Over 30 percent of that is treed, so
17 when you look at it, while the property itself
18 consists of two parcels, this is commonly
19 referred to as the horse farm, it is
20 approximately 202 acres, and then you have
21 Swan Point proper which makes up the balance
22 697, plus or minus out there.

23 What is envisioned is to make a

1 project that everybody can be proud of, that
2 the county can look to as a jewel. It is
3 intended to be an environmentally sensitive
4 and sustainable community that will include a
5 golf course, tennis, marina, beach club and
6 residences. It is designed to be a
7 destination location.

8 Currently this was June, 2006. This
9 was the approved general development plan.
10 You had a component here on the horse farm,
11 you had a load that came down along the water
12 and you had residential development, the golf
13 course.

14 Here is Weir Creek Peninsula, the
15 marina would be located off of here. Next
16 slide.

17 This was the land plan at that time
18 where you can kind of see a little better of
19 where the cluster residences are going to be.
20 It really was designed to be as
21 environmentally sensitive as possible,
22 reducing the footprint.

23 There is the marina, there is the

1 went forward and invested \$5 million to stop
2 the erosion on a major portion along the
3 Potomac.

4 This is one phase that has changed in
5 the land plan now. We call it Phase A where
6 we have taken the former road here that is no
7 longer applicable and we have reduced the
8 footprint along this area and that is pending
9 with the county today.

10 So as Mr. Setzer identified what the
11 tidal wetland permitting program is looking at
12 today is a marina, Weir Creek with 143 slips,
13 there are some observation piers, three of
14 them are on the Potomac River, two of them are
15 on Cuckold Creek, we have shoreline protection
16 measures, and then we have the Weir Creek
17 bridge.

18 Here is the marina. One thing I want
19 to emphasize, and again, this may be
20 repetitive, so I apologize. When this project
21 started out, it was much larger and what was
22 proposed if those with longer memories, we
23 wanted to actually have an amphitheater down

1 bridge that Mr. Setzer referred to. What you
2 see along here is the shoreline stabilization
3 where you had a fair amount of the work done
4 over the past year at a cost of over \$5
5 million. Those are hard dollars that Swan
6 Point has put in to stop the erosion.

7 Some of the other approvals, you have
8 the Critical Area Commission approve the
9 buffer management plan in 2008 and you had the
10 Critical Area Commission also approve the
11 county's growth allocation in March of 2007.

12 I won't repeat the approvals that Mr.
13 Setzer went through, but all of those
14 approvals coupled together allowed the project
15 to move forward. That was in 2007/2008. We
16 all know what happened in the economic climate
17 there, so we have been through a hiatus. It
18 hasn't been easy for anybody, including the
19 applicant here.

20 Things didn't move as fast as we
21 wanted them to do, but the applicant in a
22 commitment to stopping erosive conditions out
23 there that was creating water quality issues

1 on the water for outdoor concerts and venues.

2 We wanted to have a larger marina on
3 Cuckold Creek. There were six observation
4 piers proposed and a waterfront park. There
5 was also some lot fill for residential
6 development.

7 Obviously that was scaled way back
8 based on the first hearings that we went
9 through, and so what you have today is the
10 land plan.

11 So to the marina, it is located off
12 of the Weir Creek Peninsula, it is going to
13 require some dredging. All of the dredging is
14 greater than 4.5 feet in the water. That's
15 the 4.5 line right there.

16 The dredging will occur in this gray
17 shaded area to a depth of 6 feet in the water.
18 There is a revetment that is part of it,
19 attached here, to dissipate the wave energy
20 for the vessels.

21 143 slips are proposed. The slips
22 range from 30 feet to 50 feet and it is going
23 to be approximately 5,430 cubic yards.

1 Again, here is a little better
2 pictorial of it with the Weir Creek Peninsula
3 aerial. It will be a pier that comes out and
4 you'll have your various piers inside of the
5 basin itself.

6 The purple is the proposed dredge
7 area. These are just some of the facts and
8 figures as it lines up today, approximately 73
9 30-foot slips and then 70 40/50 slips. The
10 breakwater is 10 feet wide and it measures
11 about 1,400 feet in length and that's the
12 dredging factor quantity I provided you before
13 in cubic yards as well as 60 in the water.

14 Now we get to the observation piers.
15 As I pointed out, you have observation piers.
16 We identified them as OBS1, OBS2. There is
17 your marina, OBS3, and then you have 4 and 5.

18 There is the existing boat ramp for
19 the marina that exists today on Cuckold Creek
20 right there.

21 So what you see, these are the piers
22 on the Potomac. There are two large ones.
23 They are approximately 10 feet in width. One

1 is 440 feet, the other one is a little
2 shorter. I think we are at 220 feet plus or
3 minus.

4 Here is the third one that comes off
5 of the Weir Creek Peninsula. Then these are
6 the two that are in Cuckold Creek.

7 As you can see, we go out over this
8 crosshatched area is SAV. Go ahead.

9 So what you look at for these piers
10 for dimensions is pointed out. Observation
11 Pier 1 is 10 x 260, 2 is 10 x 440 with a
12 couple of bump outs, observation 3 is 8 x 170,
13 that's the one on the Weir Creek Peninsula, 4
14 was removed, that was in Matthew's Cove, 5 is
15 8 x 356, it has an L at the end of it, and 6
16 is 8 x 300, again with an L head at the end.

17 Now let's talk about the shoreline.
18 We will walk through some of the pictures, but
19 this is what the shoreline used to look like.
20 These pictures are primarily the area that has
21 been improved today. It is approximately a
22 mile in length.

23 Obviously an unprotected shoreline

1 with the boat traffic going up and down the
2 Potomac and mother nature have wreaked havoc
3 on the shoreline. Swan Point has lost
4 approximately 125 feet of shoreline since
5 1970.

6 What you saw beforehand are tress
7 just walking in and mother nature chewing it
8 up. This bank was approximately 6 feet at
9 that time. What wound up happening is with
10 the design by Scott Haraway and Jim Guns, two
11 quality professionals with lots of experience
12 in the State of Maryland on shoreline
13 protection, their design is what you see out
14 there today and it has worked in numerous
15 locations throughout the bay.

16 So here is what you have. This is
17 what we commonly refer to as Reach 4, 1, 2 and
18 3 are here, 5 is here. The \$5 million
19 invested as along Reach 4 and that is what you
20 have seen and some of you have walked out
21 there and seen it.

22 It is planted with marsh grass.
23 These formations along the little segment

1 breakwaters here have really worked very well
2 to date.

3 Under consideration for this license
4 is to complete this work. So certainly that
5 is something that I think we all want to do
6 regardless of how you feel about the
7 development component. Everybody has their
8 own opinion on that. Those are local issues.

9 But from a shoreline stabilization
10 protection, I don't think anybody would have
11 any argument that it needs to be done in order
12 to improve water quality and to protect the
13 shoreline.

14 This is just a typical formation.
15 This would be the segmented stone that you see
16 today and then sand was brought in to backfill
17 behind it. Marsh grasses, native marsh
18 grasses are planted there to keep the material
19 in place.

20 The theory is over time, mother
21 nature will find its equilibrium and
22 ultimately stabilize itself.

23 There is Reach 4 today. As you can

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1 see, you can see the golf course here, you can
2 see exactly what was done, how much was done.
3 It certainly worked out very well.

4 I think most people that have been
5 down there don't have any objection from a
6 shoreline stabilization perspective.

7 What you have under the license is
8 almost 2 miles of shoreline that needs
9 protection. Ultimately at the end of the day
10 you'll have about 14 acres of marsh creation
11 and habitat re-establishment behind the
12 breakwaters.

13 Under the existing authorizations
14 there is going to be a covenant such that it
15 can't be addressed, I mean, used, and so when
16 you think back to the concept, this will be
17 where the hotel conference center beach club
18 is and there is an area that is carved out
19 that can be accessed, but the vast majority is
20 going to be under a conservation easement.

21 Here is another aerial viewpoint as
22 to what you have, two different views. Again,
23 you can see the amount of sand that was

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1 brought in to re-establish.

2 Here is some of the marsh grasses
3 that have been planted and here is, if you can
4 see the marsh grasses here, and you can see
5 you have some higher tidal events and then you
6 have where we are today.

7 So here is just some facts and
8 figures on it. You're looking at a length of
9 7,170 feet. The volume below, mean high
10 water, you're looking at 12,320 cubic yards
11 total area. That's what you're looking at is
12 3.1 acres more or less, then the amount of
13 sand for the system, cubic yards and the total
14 area below, 14.7.

15 So here is what is created. You get
16 2.14 acres of low marsh and 13.8 acres of high
17 marsh.

18 When you think back to the pictures
19 that you saw earlier with the six foot, there
20 was none of that.

21 Weir Creek Bridge. This bridge
22 connects, as you can see, this is Reach 4
23 right here. This is the Weir Creek Peninsula

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1 right here. There is proposed a bridge to
2 connect the two.

3 It is approximately 880 feet long, 45
4 feet wide, 810 feet of it go over vegetative
5 wetlands. It impacts approximately 39,000
6 square feet. Everybody should realize that
7 this area, and why there is a distinction
8 between the tidal wetland license and a tidal
9 wetland permit is that this area is private,
10 it is subject to a land patent that was
11 granted back in 1641 and it just is reviewed a
12 little differently and gets a different
13 authorization.

14 Here is an aerial photograph of the
15 Weir Creek Peninsula back in the 80s. You can
16 see it was harvested and timbered out there.
17 You look again, the bridge would be in this
18 approximate location right here.

19 This is just a cross-section of what
20 you would be seeing. Again, here is some
21 facts and figures. 810 across the wetlands,
22 50 feet, and it is at least 9 feet above mean
23 high water and variance was obtained in 2006

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1 for the location.

2 The one thing that I want to address
3 that isn't ultimately on this slide
4 presentation, Mr. Setzer mentioned it, is
5 stormwater. Obviously this is a large phase
6 project, many years to complete.

7 But as committed in the beginning of
8 this process, the applicant is looking to do
9 stormwater management in compliance with the
10 law, ESD to the MEP, Environmental Site Design
11 to the Maximum Extent Practical, that was
12 mandated under the Stormwater Management Act
13 of 2007.

14 What the applicant has done for water
15 quality purposes has used open swails where
16 possible infiltration ponds, rain gardens,
17 reduced the paving width where possible where
18 the county would allow it, avoided curb and
19 gutter, clustered the housing.

20 So I want everybody to keep that in
21 mind, while it is not a central component
22 here, it is referenced so that everybody
23 understands the stormwater issue.

1 The last piece is for those that
2 know, in Cuckold Creek there is a small little
3 island that's called Cuba Island. It has an
4 existing structure on it, it has a bulkhead on
5 it and we're looking to simply replace the
6 bulkhead. It is approximately 326 linear
7 feet.

8 So that is the proposal that is
9 before the Maryland Department of the
10 Environment and the Board of Public Works
11 today and I think at the end of the day what
12 the applicant has proposed is reasonable
13 within the law.

14 The applicant has addressed what was
15 required to be addressed and then go above and
16 beyond what would be required for its
17 application.

18 I think when anybody looks at it with
19 a fair, objective viewpoint, you will see that
20 it has been designed with the environment in
21 mind from all good, sound, engineering
22 practices.

23 I thank you for your time.

1 MR. SETZER:

2 So now you all have the background,
3 regulatory history from 2007 and Mr. Schaller
4 has now laid out the application that's before
5 the Department.

6 So now it is your turn to give us
7 your comments. So that my good friend here
8 can get your comments on the record, I'm going
9 to ask that you come up here, use the
10 microphone because this is the one that's
11 wired into his system and provide us your
12 comments on the application.

13 I'm going to read off a couple names.
14 If you all can say line up over here or have a
15 seat here, so that we can keep things flowing.

16 We have got the room until I think
17 about 9:30. Generally I don't like to limit
18 people in terms of the time that they have
19 available to make comments. I ask that you're
20 not repetitious.

21 If someone gives similar viewpoints,
22 just me too, and that will suffice. But you
23 all have invested your time this evening and

1 the Department has invested its time, the
2 applicant the same. I'd like to make sure
3 everybody has an opportunity to get their
4 concerns on the record.

5 So with that said, just in case,
6 because the last time we did this people got a
7 little concerned because they thought the deck
8 was stacked in terms of those in favor of the
9 project versus those opposed to the project.

10 The sheets that you all signed in on
11 were numbered, so I'm just taking them as the
12 order that they came up to the desk to sign
13 in. If you have to sit through 15 --

14 SPEAKER:

15 (Inaudible)

16 MR. SETZER:

17 I'll give you a sheet and you can
18 sign up. So we've got Julie Simpson, David
19 Cadenhead and Robert Kite. Do you want to
20 make a statement? You have a blank here.

21 SPEAKER:

22 (Inaudible)

23 MR. SETZER:

1 Okay. So Jim Demet.

2 MS. SIMPSON:

3 My name is Julie Simpson, J-U-L-I-E,
4 S-I-M-P-S-O-N.

5 I am President of Citizens for a
6 Better Charles County and I am speaking
7 tonight on their behalf.

8 CBCC was founded in 1977 to promote a
9 better life for the citizens of Charles
10 County. We support the Maryland Critical
11 Areas Commission in its goal to secure public
12 access to the beach at Swan Point.

13 Charles County residents have few
14 options to access an uninterrupted stretch of
15 shoreline. We urge MDE to withhold the
16 approval of any permits until they issue
17 public access to the beach at Swan Point has
18 been resolved.

19 Since 2007 when the Critical Area
20 Commission awarded the growth allocation to
21 the Villages at Swan Point, the developer of
22 the property has been on notice that a
23 requirement of its buffer management plan was

1 that trails or portions of trails must be
2 public amenities, provide direct access to
3 water dependent facilities or be located
4 outside the 100 foot buffer.

5 The Commission's 2008 staff report
6 noted but did not accept the developer's
7 approach of keeping these areas open to
8 members of the Swan Point community but not
9 the general public and again stated its
10 recommendation that all pedestrian trails and
11 paths or walkways to piers and beach areas
12 requiring access through or disturbance to the
13 buffer be expressly required to remain open to
14 the general public or they be removed from the
15 VMP and future development plans.

16 The report further recommended that
17 the county and the developer be required to
18 report back to the Commission within six
19 months of approval of the VMP detailing a
20 method by which public access to these
21 amenities be provided for and regulated.

22 Again, in its staff report dated
23 December 5, 2012, the Critical Area Commission

1 restated its requirement for public access.
2 The report went on to recommend a public
3 access plan for recordation in Charles County
4 that would ensure compliance and said that the
5 plan should be submitted to the Critical Area
6 Commission for approval before recordation.

7 The plans before you do not include a
8 method for providing public access to the
9 shoreline and beach areas. The initial phases
10 of the development are clustered around the
11 beach and therefore it is this phase where
12 public access needs to be located.

13 It will be difficult and expensive to
14 insert the easements needed if the developer
15 moves forward with the plans as currently
16 documented.

17 The Swan Point Development Company
18 agreed to the condition of public access to
19 the beach when they accepted the growth
20 allocations from the state in 2008.

21 Once again, we ask you not to approve
22 any permits or permit extensions until the
23 matter of public access has been resolved.

1 Thank you for your efforts on behalf
2 of the citizens of Maryland.

3 MR. CADENHEAD:

4 Good evening. My name is David
5 Cadenhead, that's D-A-V-I-D, C-A-D-E-N-H-E-A-
6 D.

7 I have lived in Swan Point since
8 October of 2001 and as a homeowner, I support
9 the reauthorization of the required tidal
10 wetlands permit which is critical to the
11 development of the Villages at Swan Point
12 because I think it's the right thing to do.

13 It is the right thing for the
14 homeowners at Swan Point and it's the right
15 thing for Charles County. Now let me explain.

16 It is the right thing because
17 disapproval could result in an unintended
18 consequence that would be catastrophic for the
19 Swan Point homeowners and a tax revenue and a
20 resource loss for Charles County. Now this is
21 my logic.

22 Without the required permit, the risk
23 that Swan Point could survive as a golf course

1 community would increase. Without approval,
2 my fear is that the developer could just cut
3 his losses, simply walk away. This would be
4 catastrophic.

5 I would like to remind you that the
6 golf course is the centerpiece of our
7 neighborhood. Without it, the community will
8 die.

9 For any golf course to survive and
10 thrive, the number of rounds needed to support
11 it must increase each year. Therefore, that
12 play requires more people. More people
13 requires community growth and development.

14 If a developer walks one unintended
15 consequence, support for the golf course may
16 not make sense as maintenance costs and
17 expenses increase. If anyone here believes
18 that a golf course cannot close for economic
19 reasons, I just point to the following
20 courses.

21 Marlton, Cannon Ridge, Indian Head
22 and Robindale. I'm sure that White Plains that
23 Charles County manages is going to be fine

1 because of all the new development that
2 surrounds it.

3 I will tell you this, it's a sad
4 sight to see a golf community where a golf
5 course is closed, leaving the homeowners
6 devastated when they home values plunge.

7 Also Charles County will be poor for
8 the loss of this important resource. For
9 example, Swan Point is recognized statewide as
10 the top course. The course is open to the
11 public, draws in tax revenue, Charles County,
12 from all over Maryland and Northern Virginia.

13 Many charity events raising a lot of
14 money are played on this court. The LaPlata
15 golf team practices at Swan Point and the
16 course holds statewide high school tournaments
17 that are second to none.

18 Finally, I support reauthorization of
19 the permit. Once homeowners at Swan Point
20 come to understand what's at stake here and
21 the potential negative impact on their home
22 values, I'm sure that they will agree that
23 authorization is the right thing to do.

1 As a homeowner, your decision here is
2 going to impact me directly. I'm not going to
3 be afraid, I'm not going to panic and I'm not
4 going to worry about it because I think you're
5 going to do the right thing and you're going
6 to reauthorize this permit.

7 Thank you for the opportunity I had
8 to share my opinion.

9 MS. DEMENT:

10 Good evening. I'm Florence Dement,
11 D-E-M-E-N-T, F-L-O-R-E-N-C-E.

12 My husband and I have lived in Swan
13 Point for 23 years. We moved here because it
14 was such a beautiful area, a wonderful
15 community filled with very interesting
16 neighbors.

17 We also liked the community concept
18 and the amenities that were offered for the
19 future. 23 years later, we are still waiting
20 for most of the amenities.

21 We were very excited when Swan Point
22 Development Company purchased the property and
23 presented their conceptual plans for the

1 development and their proposed amenities.

2 We had high hopes until the economy
3 tanked and virtually all construction stopped.
4 However, SPDC did not stop. They proceeded to
5 obtain all the necessary approvals and permits
6 required for development so they would be
7 ready to begin construction when the economy
8 turned around.

9 Over time, permits expired, and
10 that's why we're here tonight, for the
11 reauthorization of the tidal wetland permits.

12 There is opposition to reissuing this
13 permit because there are claims of no public
14 access to the shoreline and the Potomac River
15 as required by Docket 250.

16 I'd like to approach this permit
17 reauthorization from a different perspective.
18 If Docket 250 did not specify public access to
19 the Potomac River as one of the requirements
20 for approval and instead Swan Point
21 Development Company decided we have a
22 beautiful piece of property here, let's open
23 up a portion of the shoreline and river to the

1 public access, SPDC would hire the engineering
2 firm that would design a wonderful concept
3 plan for public access area along the
4 waterfront.

5 SPDC would apply for the county and
6 state permits to construct this area. At the
7 Planning Commission meeting and public hearing
8 on the access project, the same group of
9 people here tonight pushing for public access
10 would be out in force trying to stop this
11 project, citing environmental concerns.

12 If it were open to the public, who
13 would maintain the area? Will county tax
14 dollars be used for funding? They would pull
15 out all the stops to try and derail the
16 project.

17 The group opposing the renewal of
18 this permit could care less about public
19 access to the shoreline and river at Swan
20 Point. This is another tool, another tactic
21 to try and delay or stop development. Thank
22 you.

23 MR. SETZER:

1 We have Diane and Porter Lyon,
 2 Antoinette Torain and Porter Kier.
 3 MR. LYON:
 4 First name is Porter, P-O-R-T-E-R,
 5 last name is Lyon, L-Y-O-N.
 6 I live at 11340 Easton Court in Swan
 7 Point and I have been a property owner at Swan
 8 Point for the past 18 years and a full time
 9 resident for the past 11 years.
 10 We at Swan Point are fortunate to
 11 have a developer who is willing to put
 12 millions of dollars up front to restore and
 13 secure thousands of feet of shoreline along
 14 the Potomac River.
 15 I want to speak briefly about the
 16 importance for this shoreline protection.
 17 Living on the waterfront property
 18 gives me firsthand knowledge of the impact of
 19 storms on the river. Soon after buying our
 20 property, we experienced several storms which
 21 battered the wooden bulkhead which had been
 22 installed by the original property developer.
 23 A neighboring property had

1 approximately 1/3 of the bulkhead destroyed,
 2 resulting in severe erosion of their property.
 3 It soon became obvious that we would need to
 4 add additional protection to our property in
 5 the form of several hundred tons of rip rap.
 6 Most of our neighbors along the river
 7 came to the same conclusion. The living
 8 shoreline, which has been completed by the
 9 developer, is an example of the state of our
 10 solution to the erosion problem created by the
 11 frequent storms on the river.
 12 In addition, a wildlife habitat is
 13 created by the grasses which are planted in
 14 the buffer along the shoreline.
 15 We have seen ground level views of
 16 the pre and post restoration project and
 17 aerial views were presented by the developer.
 18 A further example of how the Potomac
 19 can erode the shoreline, consider St. Clemens
 20 Island. It consisted of approximately 400
 21 acres when the first settlers arrived in 1634.
 22 Today it is 40 acres. That's about equivalent
 23 to an acre every year lost.

1 So I strongly urge reauthorization of
 2 the tidal wetlands permit so the developer can
 3 proceed with planned areas of shoreline
 4 protection and other additional improvements.
 5 Failure to do so will surely result
 6 in further uncontrolled erosion and may lead
 7 the developer to abandon the project
 8 altogether and withdrawing support for the
 9 amenities that people from all over the region
 10 currently enjoy. Thank you.
 11 MS. TORAIN:
 12 Antoinette Torain, A-N-T-O-I-N-E-T-T-
 13 E, T-O-R-A-I-N.
 14 I want to express a concern. Our
 15 waterfront property is right there at
 16 Cuckold's Creek. My concern is the impact
 17 that this development will have on not only
 18 our property taxes but on the shoreline there
 19 as well as the waterfront property that we own
 20 there. I'm very concerned about that.
 21 It says that I think it is
 22 observation 5 and 6 are right there at
 23 Cuckold's Creek. So I need more information

1 on that and I'm hoping that any needed
 2 adjustments that will not impact my family's
 3 property will be made. Thank you.
 4 MR. KIER:
 5 My name is also Porter, P-O-R-T-E-R,
 6 last name Kier, K-I-E-R.
 7 I will make my remarks brief because
 8 a number of people have made some comments on
 9 the same subject that I planned to talk about.
 10 Other residents have spoken to the
 11 many benefits to Swan Point that the Swan
 12 Point Development Company has brought to our
 13 community, including those which have
 14 benefitted our community environment and
 15 quality of life.
 16 Certainly the investments made to the
 17 new sewage treatment facility and the Potomac
 18 River shoreline are examples.
 19 SPDC is a first class, quality
 20 developer and in my opinion we are fortunate
 21 to have an organization who truly cares about
 22 Swan Point and about Charles County and the
 23 Potomac River, Cuckold Creek area.

1 Consider as Dave Cadenhead said a few
2 minutes ago, consider for a moment where we
3 would be if a group wetlands permit that is
4 about to expire is not followed by a new
5 permit, that its approval could be held up
6 indefinitely over the issue of beach access
7 for all.

8 After a long economic downturn
9 delayed developer's plans, now they get
10 delayed again with no permit approved in sight
11 for the foreseeable future.

12 SPDC is a business and as such will
13 ultimately make decisions regarding Swan Point
14 from that perspective. That could possibly
15 mean they give up investing money into Swan
16 Point while facing an uncertain approval
17 climate.

18 They could close the clubhouse, the
19 golf course, the marina and put the entire
20 package of property and facilities up for
21 sale. Maybe they would be bought and maybe
22 they wouldn't. But if they were, it would not
23 likely be a developer with the same standards

1 as SPDC.

2 For the current residents of Swan
3 Point are leaving, SPDC leaving would be a
4 disaster. With no club dining or sponsored
5 events, no golf, no boating, no place for
6 resident groups to have club meetings or to
7 play cards or whatever, our community would
8 quickly atrophy.

9 We are over 20 miles from
10 supermarkets, large hardware stores and high
11 schools. Why would prospective new residents
12 even consider moving here? Why would current
13 residents want to stay?

14 The value of our houses created and
15 maintained under the strong covenants prepared
16 by the developer would likely plummet. It is
17 a lose/lose for us, for Charles County and for
18 the State of Maryland.

19 Please consider approving the new
20 permit without qualifications and allow the
21 developer to proceed with these plans for the
22 Villages at Swan Point. Thank you.

23 MR. SETZER:

1 Next up we have Ken Hastings, Tara
2 Carlson and Cathy Warfield.

3 MR. HASTINGS:

4 Good evening, my name is Ken
5 Hastings. K-E-N, H-A-S-T-I-N-G-S.
6 I'll make this fairly short. While
7 one of my first comments had to do with the
8 lack of resolution of the public access
9 requirements and I would like to mirror Ms.
10 Julie Simpson's in that respect and I'll get
11 off of that.

12 I heard some talk here tonight about
13 stormwater management. I didn't hear the
14 words that I was hoping to hear. I heard in
15 the explanation that it was going to be ESD
16 MEP but it didn't show up that way in the
17 public notice.

18 The Swan Point Development Company
19 has proposed to construct a stormwater
20 management system that goes without saying
21 that they'd have to have one, including
22 outfalls located within 1,000 feet of tidal
23 waters, critical areas or vegetated tidal

1 wetlands or other new direct discharges to
2 tidal waters or vegetated tidal wetlands.

3 That doesn't sound like ESD to the
4 MEP to me and I would like to see MDE hold
5 title on that. Thank you.

6 MS. CARLSON:

7 My name is Tara Carlson, T-A-R-A, C-
8 A-R-L-S-O-N.

9 I want to say I do not approve any
10 permits or licenses for Swan Point until the
11 developer provides a public access plan for
12 the beach. A lot of what I said has already
13 been said by the citizens for the Better
14 Charles County, so if I could just turn in my
15 written. Thank you.

16 MS. WARFIELD:

17 Hi, my name is Cathy Warfield. C-A-
18 T-H-Y, W-A-R-F-I-E-L-D.

19 My husband and I have lived in Swan
20 Point for over 15 years. We are also lucky
21 enough to have both our children, their
22 spouses and our grandchildren also live in the
23 community.

1 Living in Swan Point is wonderful,
2 but our community has amenities that are
3 supported by the developer. For example, our
4 golf course, tennis courts, et cetera.

5 They will continue to be available to
6 us as long as the remainder of the land is
7 developed into other residences that will
8 provide the income needed to support what we
9 love here in Swan Point.

10 The developer has been subsidizing
11 the community for many years. How much longer
12 will they continue to do this if unreasonable
13 blocks are put in their way?

14 They have tried to comply with
15 everything requested of them. We should be
16 enticing this kind of development of quality
17 homes in our county.

18 These companies need to count on
19 consistent treatment as it relates to
20 continuing their development as already
21 approved. It is very expensive to get to this
22 point and even though the economy tanked, the
23 developer is still willing to continue after a

1 short pause, their goals.

2 This shows a commitment that should
3 be encouraged, not discouraged. We all have
4 an investment and bought into this planned
5 community with the knowledge of this growth.
6 If you take that away, everyone loses.

7 Environmentally, the state of the art
8 wastewater treatment plant and the shoreline
9 restoration was brought about by the first
10 approval of these wetland permits.

11 They needed to be extended so that the other
12 four phases of shoreline restoration can
13 continue. This is a win/win. These are not
14 new permits we are asking for.

15 They are the same ones that have been
16 in place for six years. All we are asking for
17 is a reauthorization of these same permits.

18 Please help this to move along and
19 let Swan become the premiere location it can
20 be. Thank you for your time.

21 MR. SETZER:

22 Next up, Norm Chlosta, Hal Delaplaine
23 and Patricia Murray.

1 MR. CHLOSTA:

2 My name is Norman Chlosta, O-R-M-A-
3 N, C-H-L-O-S-T-A.

4 I'm providing the following comments
5 at the hearing for the reapplication of the
6 wetland permits.

7 To frame my comments in the context
8 of my background, please consider the
9 following.

10 My wife and I have lived in Charles
11 County for over 50 years, 14 of which have
12 been in Swan Point. Also I have served as the
13 Board President of the Swan Point Property
14 Owners Association, our local homeowners
15 association, going on five years now.

16 In my professional career, I have
17 served as a manager for 18 years at the U.S.
18 Environmental Protection Agency in Washington,
19 DC.

20 Based upon my observations of the
21 past 14 years, the Swan Point Development
22 Company has been an excellent environmental
23 steward in Charles County since Swan Point's

1 development, contributing to environmental
2 improvements and benefits in the southern part
3 of the county.

4 One example of this is SPDC's
5 construction of a 300,000 gallon per day sewer
6 treatment facility at the cost of \$15 million.

7 The treatment plan has been
8 beneficial to the improved water quality in
9 Cuckold Creek and the Potomac River by
10 significantly reducing nitrogen and other
11 effluents flowing into the Cuckold Creek.

12 This is contrasted with septic based
13 sewer treatment facilities that as Governor
14 O'Malley has pointed out, contribute to the
15 continuing pollution problems in the
16 Chesapeake Bay watershed.

17 In addition, when we first moved into
18 Swan Point back in 2000, while walking the
19 Potomac shoreline, one of the things I noticed
20 is that there was a continuous problem with
21 shoreline erosion.

22 I have to differ with Mr. Schaller.

23 He said it's only 6 feet those cliffs. When I

1 walked them, I'm 6 feet tall and those cliffs
2 were above my head, so they're 8 to 10 feet.
3 However, subsequently Swan Point
4 Development company invested millions of
5 dollars in erosion control which in effect
6 produced a living shoreline that so far has
7 withstood storms and result in storm damage to
8 the Potomac River shoreline.

9 From the examples that I have
10 provided, SPDC has clearly demonstrated a
11 continuing involvement in the areas of
12 environment and do not just pay lip service to
13 concerns for the county's environmental
14 protection.

15 Consequently, I strongly recommend
16 that the developer, Swan Point Development
17 Company, be allowed to continue that
18 environmental stewardship to the planned
19 Villages at Swan Point expansion and the
20 reissuance of the requested tidal wetlands
21 permits related to that expansion.

22 MR. DELAPLANE:

23 Good evening. My name is Hal

1 approval, a plan that will ensure compliance
2 with this condition and record it in the
3 county land records.

4 The conservancy for Charles County
5 urges MDE to require this be done prior to
6 issuing the wetlands permit.

7 The second issue that is of great
8 concern to us is the CAC's requirement of a
9 revised habitat management plan that addresses
10 the mitigation of 406 acres of forest interior
11 song birds habitat.

12 While the developer has worked with
13 the county and CAC to produce a plan, the
14 suitability of specific identified offsite
15 mitigation is problematic which has
16 contributed to further project delays.

17 The developer asked to be allowed to
18 accomplish FIS mitigation in phases. This
19 ultimately was approved by the County
20 Commissioners in June, 2012.

21 The Conservancy for Charles County
22 takes issue with certain aspects of the plan
23 that could render it ineffective.

1 Delaplane, spelled H-A-L, D-E-L-A-P-L-A-N-E.
2 I live at 10645 Village Drive in
3 LaPlata and I am representing the Conservancy
4 for Charles County.

5 We are a private, all volunteer,
6 nonprofit charitable 501C3 land trust
7 dedicated to preserving the rural character
8 and natural assets of the county for the
9 benefit of the general public.

10 The history of the Planned Villages
11 at Swan Point is long and torturous for all
12 involved. Because of its size, complexity and
13 the fact that 2/3 of the project is within a
14 highly sensitive critical area, there were
15 numerous conditions attached to the critical
16 area commission's approval in 2007.

17 Among these was a buffer management
18 plan that required public access to the beach,
19 observation piers and trails. To date, the
20 developer's public access proposal is at odds
21 with that requirement.

22 Critical Area Commission staff
23 recommended that the developer prepare for CAC

1 First, the fragmentation of 406
2 mitigation acres among an untold number of
3 parcels of undefined size is counted to the
4 concept of forest interior, the minimum size
5 of contiguous forest habitat that FIS need.

6 Second, allowing phase planting of
7 currently cleared land essentially mandates
8 sacrificing the existing populations of forest
9 interior species possibly forever.

10 Notwithstanding the fact that this
11 approach was approved 2 years ago, it begs to
12 be revisited under a new permit process.

13 Thank you.

14 MS. MURRAY:

15 Good evening. I'm Patricia Murray,
16 P-A-T-R-I-C-I-A, M-U-R-R-A-Y.

17 I have only lived in Swan Point for 2
18 years. However, when I bought my property, I
19 walked Swan Point. Some of the things that
20 impressed me were the grasses and the reeds
21 that were placed out in the buffer zones and
22 the wildlife. Then I noticed all the rip rap
23 along the shoreline, protecting the shoreline.

1 For me, these were signs of good
2 stewardship. For that reason, I ask that the
3 MDE approve the permit that they have
4 requested.

5 Swan Point will continue to be a
6 wonderful place to live and welcome all.
7 Thank you.

8 MR. SETZER:

9 I think I'm going to butcher this
10 name. Bill Bartelt. It has to do with his
11 handwriting, it has nothing to do with my
12 ability to read. Howard Dent and Angela
13 Sherard.

14 MR. BARTELT:

15 As you can probably note, I happen to
16 be on oxygen. I don't know whether I -- oh,
17 yeah, Bill Bartelt, that's it. B-A-R-T-E-L-T,
18 Bill.

19 As you know, I'm on oxygen. I don't
20 know whether I have the lung capacity to talk
21 for the amount of time that I have prepared
22 comments, so I'm going to give these to you,
23 but there are a couple of things that I'd like

1 courses, bowling centers, restaurants, things
2 of that nature.

3 Unless you can quantify demand, you
4 can't develop scope, you can't figure out
5 cost, you can't do any of that stuff, okay?

6 The fact that the development company
7 has been asked to provide a plan and they
8 haven't documented the need or the quantified
9 the demand, how can they do that?

10 What I would suggest in terms of all
11 this stuff here is let's take that requirement
12 out of this. Let's go right for the approval
13 process.

14 I know for a fact that right now the
15 development company is in discussion with the
16 county over public access. But what is the
17 demand actually? Is it one person a day? Is
18 it 1,000 people a weekend?

19 Can it be satisfied by boats coming
20 in from the water? They don't know, no one
21 can say.

22 I suggest what they do, and this is,
23 and I'm not going to tell these people how to

1 to say.

2 Regarding the amenities at Swan
3 Point, I'm at the position in life I'm not
4 going to be able to take advantage of those.
5 I'm not going to be able to walk on the beach,
6 I'm not going to be able to play golf, I'm not
7 going to the swimming pool, okay?

8 But I tell you what. I live there
9 and if the development company pulls out, the
10 financial devastation to me and a number of
11 other people at Swan Point is what you can
12 imagine.

13 There aren't the rich and famous
14 living at Swan Point by any stretch of the
15 imagination. These are policemen, firemen,
16 teachers, retired people, handicapped people
17 like myself, okay?

18 They pull out, we are really under
19 water. That's one thing I'd like to say.

20 The other thing I'd like to say is I
21 spent 40 some odd years doing project
22 validation assessments to determine and
23 document need for recreation projects, golf

1 suck eggs because they are pretty smart
2 themselves, but what I would do is I would
3 take a point in time, there is places where
4 you can have access to the water.

5 But down a couple loads of chips or
6 what have you, let people have access to the
7 water and sit down and quantify. Is this
8 demand such that we have to invest millions of
9 dollars or is there no demand at all.

10 That is the only thing I'd say about
11 that.

12 The other thing I'd say is let's stop
13 messing around here. For goodness sakes, this
14 thing has been going on for years.

15 Do you realize what the economic
16 impact would be to Charles County in terms of,
17 we are looking at 1,500 homes coming in here
18 over probably a build out period of close to
19 10 years.

20 Look at the jobs. You know,
21 everybody is talking today about we have got
22 to have more jobs, you know, on and on and on.
23 The jobs that would be available with this

1 particular project, the economic impact on the
2 county, the ability for small businesses to
3 come down there and the tax base.

4 I mean, with all those things, and
5 I'm losing my lungs, you have got to bear with
6 me, I think you get my point.

7 The tax base, the good to the
8 economy, I mean, we've got to quit piddling
9 around and we've got to start moving on.

10 So what I would do is I move directly
11 for an approval of the developer's request. I
12 pardon myself for running out of air here.

13 MR. DENT:

14 Good evening. My name is Howard
15 Dent, H-O-W-A-R-D, D-E-N-T.

16 My wife and I have owned a home in
17 Newburg for 15 years. I thank you for the
18 opportunity for me to speak.

19 I was here six years ago to testify
20 about permits that you were considering then.
21 Much has changed since then and much stays the
22 same.

23 When I was here six years ago, I

1 not new, and neither is the developer's
2 insistence that that beach remain private.

3 Please do not grant any permits until
4 public access to the beach has been documented
5 and approved by the Critical Area Commission.

6 Another thing that has not changed in
7 six years is the drawings for Cuba Island.

8 They look to be about the same as in 2007.

9 But what has changed is the degradation and
10 erosion to that island since the last hearing.

11 I have a series of photos which I
12 turned in that were taken on February 14th of
13 this year that shows the current state of the
14 island. The application asks for a bulkhead
15 to be replaced 18 inches from the current
16 bulkhead.

17 But if you look at the photos, you
18 will see that most of the bulkhead is gone.
19 Much of the soil as well. The drawing for the
20 permit should reflect the current state of
21 Cuba Island, not what it looked like six years
22 ago.

23 The applicant has had the permits to

1 bought two live oysters from the ones that I
2 was raising for the Chesapeake Bay Foundation.
3 That has not changed.

4 While I don't have oysters here
5 tonight, I do, we still do grow oysters for
6 CBF in Cuckold Creek.

7 Now one thing that has changed is the
8 beautiful beach at Swan Point, that Swan Point
9 Development Company has built on the Potomac.

10 I thank them for that beach and I
11 thank you for the permit to build it. But
12 what has not changed is that the developer is
13 still adamant about denying public access to
14 that beach.

15 Mr. Schaller talked about the growth
16 allocations. But with those growth
17 allocations, they were conditional. Those
18 conditions have not been met.

19 Now this is six years later and they
20 still have not met those conditions. One of
21 them was public access to the water at Swan
22 Point, and that has been in the documents
23 since the original agreement in 1986. This is

1 stabilize the island since 2008 but has done
2 nothing but let large sections of the bulkhead
3 wash into Cuckold Creek.

4 U.S. Steel should be held to the same
5 standards as any property owner who applies
6 for a permit to replace a bulkhead.

7 Cuba Island is at most 120 feet wide,
8 according to their drawings which I say are
9 not accurate. They are too big. The whole
10 island therefore is within the 100 foot
11 buffer, and this is not part of the buffer
12 exemption area that was found last time.

13 The buildings on it are falling down.
14 They have not been occupied or maintained in
15 the 15 years that we have lived in the area.
16 Please do not permit any building to occur on
17 Cuba Island.

18 As to Ms. Wakefield's comment,
19 another change since 2007 is the code of laws
20 that protect our environment. The State of
21 Maryland knows more now about what is needed
22 to protect our resources.

23 I hope that you will hold U.S. Steel,

1 the owner of the property, to the new
2 regulations. Please look closely at their
3 drawings, most of which are very much like the
4 old drawings of 2007.

5 It is not simply an extension. It is
6 for a new permit.

7 One of the residences, what I have
8 down here, and we know that is Mr. Bartelt who
9 preceded me, he asked on a blog if there was a
10 need for public access to the beach at Swan
11 Point.

12 Need for water access was identified
13 in the Charles County LPPRP in 2012 which
14 specifically mentioned Swan Point for water
15 access.

16 Now, I question whether there is a
17 need for the marina planned on the Potomac.
18 Has a needs analysis for that marina been done
19 for this particular permit? I know there was
20 one done six years ago whenever it was, but I
21 have not seen one for this permit.

22 Is there an environmental risk for
23 dredging 5,430 cubic yards from the river

1 must balance the needs to protect the
2 environment and the need to look out for the
3 residents of the county with Swan Point
4 Development Corporation's riparian rights.

5 I urge you to take into consideration
6 the latest laws and findings when you make
7 your decision. I urge you to look closely at
8 the stormwater outfalls.

9 The Chesapeake Bay cannot speak for
10 itself. It is up to us to protect it. I
11 thank you for your time.

12 MS. SHERARD:

13 Good evening. My name is Angela
14 Sherard, that's A-N-G-E-L-A, S-H-E-R-A-R-D.

15 I thank MDE for giving me an
16 opportunity to speak tonight. It is a tough
17 act to follow Howard Dent. He was very
18 thorough on expressing some of the things that
19 I was thinking, particularly the public
20 access.

21 I am a resident of Waldorf. I have
22 not lived on waterfront property, but I am a
23 Floridian. When you say Florida, you think

1 bottom downstream from the power plant? In
2 the event of a hurricane, what will happen to
3 the boats moored in the marina? There is not
4 going to be a ramp.

5 There are five marinas on Cobb Island
6 less than five miles away. These include a
7 gas dock, storage yard facilities. None of
8 these marinas are full. One was rebuilt last
9 year.

10 Unless there is a proven need for
11 that marina in the Potomac, I urge you to deny
12 that permit.

13 We have heard several things from the
14 Swan Point residents. What concerns me is
15 their fear. Somehow they have gotten the idea
16 that if we insist on public access, that the
17 Swan Point Development Corporation is going to
18 pull out and leave them high and dry.

19 Now, I don't know where they came
20 from, but I would certainly hate to live in a
21 community that thrives on fear like that. It
22 just doesn't make sense to me.

23 The task before you is great. You

1 beaches. So I'm very much aware of beachfront
2 property and the fun and the excitement of
3 being on the water.

4 It is in my blood, I have to be there
5 and dangle my feet in it.

6 It disturbs me to learn that there is
7 the possibility of no public access on Swan
8 Point. I hope that this is not going to
9 remain the issue with the developers.

10 As I have said before, most of the
11 points have been made about public access, I
12 won't belabor that. But what I am hearing
13 that disturbs me is that there is an issue of
14 integrity.

15 I grew up knowing that when you give
16 your word, you keep your word. So I ask that
17 the developers keep their words, that you
18 honor what was approved in the past and move
19 forward with what has been planned. Thank
20 you.

21 MR. SETZER:

22 Nancy Schertler, Bruce Gilmore and
23 William Mayer.

1 MS. SCHERTLER:

2 Good evening. My name is Nancy
3 Schertler, A-N-C-Y, S-C-H-E-R-T-L-E-R.

4 Thank you very much for this
5 opportunity to speak tonight. For the record,
6 and I am on the record, I have long supported
7 the shoreline stabilization that created that
8 beach. You can look at the BPW testimony back
9 in 2008.

10 I think there are some wonderful
11 parts of this development and I think there
12 are some issues that should be addressed.

13 I have been a vocal advocate for the
14 public's right to access the Swan Point
15 shoreline for many years now.

16 Each time it looks like the state has
17 assured our right to access the beach by land,
18 the developer is pushed back. From pretending
19 that providing hotel guests access to the
20 beach is the same as public access, to claims
21 that the Critical Area Commission's actions
22 run contrary to law and are taking a real
23 property.

1 MDE should not approve any permits or
2 licenses until the Critical Area Commission
3 approves a public access plan, easement or
4 other instrument of recordation in Charles
5 County prepared by the developer to comply
6 with this condition of approval of the growth
7 allocation for this project.

8 I understand that the details are to
9 be worked out between the developer and the
10 county. The problem is the Swan Point
11 Development Company does not have a public
12 access plan as a part of the approved
13 preliminary subdivision plans and Charles
14 County does not have the laws to enforce the
15 condition.

16 So we depend on you, our state, our
17 state agencies to ensure that the public has
18 the full and free use and enjoyment of the
19 tidal waters of the state, and that phrase
20 comes from COMAR 23.02.04.01.

21 The growth allocation. This is a new
22 application made in 2014. MDE must review
23 these wetlands applications in compliance with

1 current law governing development in the flood
2 plain and stormwater management.

3 The state's commitment to preserve
4 tidal wetlands has resulted in more
5 restrictive laws than existed in 2007 when the
6 Critical Area conditionally granted the growth
7 allocations for the Villages at Swan Point.

8 My question, since the developer is
9 not in compliance with the condition of
10 approval, has a growth allocation really been
11 approved? Shouldn't the developer meet the
12 conditions before the approval goes into
13 effect?

14 The developer's refusal to meet the
15 condition of public access should disallow any
16 claims of grandfathering.

17 The state must review this
18 application under the most current laws.
19 Stepping onto another one of the issues, the
20 Weir Creek Bridge. Building the Weir Creek
21 Bridge is contrary to the state's policy to
22 preserve wetlands because of the permanent,
23 negative impact due to the shading of 39,435

1 feet of tidal wetlands.

2 The purpose of this bridge is to
3 enable the development of the Weir Creek
4 Peninsula. It is not in the state's interest
5 to encourage development of this fraction of
6 the whole property because the economic
7 benefit does not outweigh the environmental
8 cost.

9 I'm talking about that one section, 7
10 percent. In 2008, Secretary Wilson testified
11 before the Board of Public Works that in a
12 Category 2 storm event, the development will
13 be inundated.

14 The Weir Creek Peninsula is entirely
15 within the critical area, it is a forested FIS
16 habitat, it is almost entirely within the
17 flood plain and is less than 7 percent of the
18 total land of this development.

19 MDE's regulations for flood plain
20 development called for the avoidance of
21 development in the flood plain whenever
22 possible.

23 The bridge is the only access point

1 to the Weir Peninsula and marina, raising
 2 concerns about public safety.
 3 In the fall of 2013, the Board of
 4 Public Works delayed action on the Four
 5 Seasons of Kent Island project after state
 6 officials discovered a "business relationship"
 7 between the then wetlands administrator and a
 8 lawyer representing the Four Seasons.
 9 This conflict of interest triggered
 10 an evaluation by BPBW staff of the record in
 11 the Four Seasons matter to ensure that the
 12 Board's review of the application was
 13 consistent with state tidal wetlands law.
 14 The two individuals involved in this
 15 conflict of interest for the Four Seasons
 16 application played identical roles with
 17 respect to the Villages of Swan Point wetlands
 18 application.
 19 If it has not done so, the state must
 20 conduct a thorough evaluation of the Swan
 21 Point record as well.
 22 I respectfully request that the state
 23 review the last minute change of status of

1 Weir Creek from that of a state tidal wetland
 2 to private tidal wetland effectively removing
 3 the Weir Creek Bridge from the Board of Public
 4 Works jurisdiction and the marina.
 5 The scope of the work this morning as
 6 it has been said includes dredging an awful
 7 lot of the bottom of the Potomac River. The
 8 marina is located about 4.5 nautical miles
 9 directly down river from Morgantown, a coal
 10 fired power plant that has been emitting
 11 noxious things into the air and presumably
 12 into the water as well.
 13 Have there been any studies conducted
 14 to determine if there are any heavy metals or
 15 other pollutants buried in the river bottom?
 16 What steps will be taken to prevent the re-
 17 introduction of these materials into the water
 18 column during the dredging and construction of
 19 the marina?
 20 Has Nancy weighed in on the location
 21 of the marina given the proximity of the --
 22 marking a middle danger zone?
 23 Is there any danger that dredging in

1 this area will unearth any unexploded
 2 ordinances from the Dalgren Range?
 3 Finally, Cuba Island as Mr. Dent
 4 mentioned, the developer's drawing should
 5 reflect the current condition and size of Cuba
 6 Island.
 7 The drawings submitted in this
 8 application appear to be the same drawings
 9 submitted in 2008 and do not reflect the
 10 substantial erosion that has occurred in the
 11 last six years.
 12 As Governor O'Malley said when he
 13 voted to deny this license in 2008, we must
 14 make every effort that construction of our
 15 tidal wetlands occurs only when it is in the
 16 state's best interest.
 17 This application does not meet that
 18 standard. That was the Governor in 2008. It
 19 didn't meet the standard in 2008 and it
 20 certainly does not in 2014.
 21 Thank you.
 22 MR. GILMORE:
 23 My name is Bruce Gilmore, B-R-U-C-E,

1 G-I-L-M-O-R-E.
 2 I am a stormwater consultant to
 3 several citizens groups and advocacy
 4 organizations throughout the state and I have
 5 been asked to be here tonight to sort of take
 6 a look at the stormwater aspects of this
 7 project.
 8 Those aspects are not the point of
 9 this specific public meeting nor are they the
 10 point of the specific, nor are they entirely
 11 the point of the specific tidal wetlands
 12 licenses and permits that are in question.
 13 However, what bothers me is that in
 14 the description of this project, there has
 15 been very little said except a very brief
 16 mention about the stormwater, the possible
 17 stormwater discharge into the tidal waters of
 18 Cuckold Creek and subsequently the Potomac
 19 River.
 20 What concerns me is the following, if
 21 you can just bear with me as I take you
 22 through the nexus between the State of
 23 Maryland very strong stormwater law and this

1 permit.

2 Now the stormwater law does not
3 affect any filling of a tidal wetland. In
4 other words, once the tidal wetlands license
5 is granted, then the stormwater law comes into
6 play when actual construction begins.

7 So stormwater itself cannot be used
8 as a land use reason for not doing this
9 development. However, the stormwater law in
10 Maryland as of 2007 is very clear about how
11 stormwater is to be handled.

12 Today I had a conversation with the
13 person who was identified to me as Charles
14 County's engineer in charge of stormwater
15 planning.

16 I was alarmed that the gentleman did
17 not quite understand what the scope of this
18 project was and could not answer for me
19 whether there had been in existence an
20 approved stormwater plan under the 2007 law
21 and regulations, under Charles County's own
22 ordinance, stormwater ordinance, and therefore
23 the nexus between how stormwater is to be

1 consideration.

2 Second, that when I make a firm
3 inquiry to the county or to MDE and you have
4 to understand that both -- that MDE itself has
5 an umbrella over the license, the permit and
6 whether or not there is sufficient adherence
7 to the 2007 stormwater law.

8 All of that is under their roof, so I
9 expect that when I call Mr. Setzer for
10 information about that impact that I will get
11 some responses or from the project manager and
12 I also hope that if there are any -- if there
13 is anybody here from the county that I will
14 get responses relating to whether or not there
15 has been an approved stormwater management
16 plan for the development, whether there was a
17 concept plan, an intermediate plan and a final
18 plan as to what is required by state law and
19 by the stormwater ordinance for Charles
20 County, whether those documents are available
21 for review, the plan submission or any final
22 iteration.

23 So that is going to be my role in the

1 handled in the land development side of this
2 project and how that bears upon the granting
3 of a license to discharge into the tidal
4 waters, that nexus has to be made and
5 understood by the public so that whether or
6 not damage is being done to the surrounding
7 tidal or nontidal waters is either a fact or
8 has been taken into account and thoroughly
9 mitigated.

10 So I know that when one speaks about
11 stormwater management, the phenomenon of eye
12 glazing occurs and that phenomenon I see
13 practically every day because my bride of 40
14 years experiences it.

15 I see as I look around here tonight,
16 there is in some of you, not all, in some, a
17 well appreciated glazing of your eyes.

18 But believe me, stormwater protection
19 is critical to the effects of any development
20 on Maryland's shoreline.

21 So I make this request to both MDE
22 and to the county. First, that those, the
23 nexus that I sketched out be taken into

1 future and I appreciate the opportunity to be
2 here this evening. Thank you.

3 MR. MAYER:

4 Good evening. My name is William
5 Daniel Mayer, W-I-L-L-I-A-M, M-A-Y-E-R.

6 I sincerely appreciate MDE being here
7 tonight. A little bit of my background, I was
8 a three term County Commissioner here in
9 Charles County, I was a member of the Maryland
10 House of Delegates and I was also a member of
11 the Chesapeake Bay Critical Areas Commission.

12 I come here tonight to support the
13 permitting and the re-permitting of the
14 wetlands permit for the Swan Point Development
15 Company.

16 I would like to address several
17 areas. The proposal for a public beach or
18 public access of what has been stated, I think
19 it boils down to this.

20 State agencies, with all due respect,
21 like MDE or the Critical Areas Commission
22 mandates things to become public.

23 The public is us. They mandate it

1 and we have to take ownership of it, I'm
 2 talking about Charles County. Charles County
 3 then has to maintain it.
 4 They have to sustain the viability,
 5 they have to take care of all the things that
 6 go with maintaining property.
 7 If it is to become a beach and if it
 8 is swimming is to occur, even if the Swan
 9 Point Development Company was to construct all
 10 the facilities that would be necessary to
 11 sustain a beach, who is going to pay for the
 12 lifeguards, security, picking up the trash, et
 13 cetera, et cetera that goes along with this?
 14 And who in their right mind would want to swim
 15 in the Potomac River from the middle of May
 16 until September 1st?
 17 It would be inundated with sea
 18 nettles and with jellyfish, et cetera, et
 19 cetera.
 20 If you are going to swim there, it is
 21 going to be open to the public. I can
 22 envision a protective net being put around the
 23 swimming area, therefore curtailing commercial

1 we have two brand new piers down there and
 2 totally underused. Any given day you can go
 3 down there and you can count on one hand the
 4 number of the public that are down there using
 5 Southern Park.
 6 Within two and a half miles of Swan
 7 Point is Hatton Creek public boat facility,
 8 launch ramp, a 35 acre track of land that was
 9 donated to the county. We built the boat
 10 ramp, we sustained the boat ramp, we keep up
 11 the parking area.
 12 Now again, on any given day, the
 13 public is non-existent. But those two
 14 facilities are there and we are maintaining
 15 them now and in our budget, we have to
 16 maintain them.
 17 This year and last year our county
 18 Commissioners has raised our tax rate to
 19 historical levels -- probably since 1658 when
 20 this county was founded. With this winter
 21 that we're having, this harsh winter, I cannot
 22 see them not doing it again this coming year.
 23 Where is it for public access to a

1 fishermen and crabbing, et cetera.
 2 It is absolutely ludicrous. As a
 3 Commissioner for three terms, it was my
 4 responsibility along with the other members of
 5 the Board of Commissioners to fund three
 6 areas.
 7 One, a decent transportation system.
 8 A safe transportation system to maintain
 9 roads, et cetera.
 10 Public safety, to fund and sustain a
 11 Sheriff's department, a police department that
 12 would protect our citizens.
 13 The third was public education. To
 14 make sure that we grant every child in this
 15 county a quality public education.
 16 Under all three of those areas, I do
 17 not see anything about a public beach or
 18 public access. To use another example that
 19 has been given here tonight, within five miles
 20 of Swan Point, we have for the last 20 years
 21 been sustaining and maintaining Southern Park.
 22 It's an 80 acre park that has two
 23 ball fields, two tennis courts. Thanks to MDE

1 beach over trying to maintain roads and fix
 2 potholes?
 3 On a second subject, which is
 4 relative to this permitting but maybe a
 5 different side of the creek. We all want to
 6 sustain the quality of water in our
 7 tributaries that lead into the Chesapeake Bay.
 8 We all want to make sure that we try
 9 to eliminate those environmental ills that has
 10 created such a deterioration in some of these
 11 waterways.
 12 I thank MDE and DNR and the Swan
 13 Point Development Company and the county for
 14 constructing a new sewer plant that now has an
 15 outfall line in Cuckold's Creek.
 16 The viability of aquatic life in
 17 there has increased tenfold. I would ask,
 18 though, you all do periodic testing of the
 19 creek to make sure what is coming out of the
 20 sewer outfall line, those pollutants have been
 21 eliminated and they are living up to the
 22 standard of the law.
 23 I would suggest that you go on the

1 other side of the creek to Banks of the Dee
2 and do a sustained environmental study in that
3 area. If, and I stress the word if you find
4 failing septic systems over there in that
5 community, just like Cobb Island was two
6 decades ago, be forced to hook into the public
7 sewer plant that now exists at their own
8 personal course just like Cobb Island citizens
9 had to do two years ago.

10 That will ensure the quality of the
11 water going into the Chesapeake. I can't see
12 anybody being against that.

13 I thank you all for being here
14 tonight and I want to urge you again to
15 consent to this permit.

16 MR. SETZER:

17 Duane Kissick, Brendan Moon and
18 Martin Gary.

19 MR. KISSICK:

20 Thank you. My name is Duane Kissick,
21 D-U-A-N-E, K-I-S-S-I-C-K.

22 I'm an architect and planner and I
23 live at 11215 Keo Court in Swan Point. It is

1 Shore of the Potomac and it is being eroded, I
2 have a lot of concerns about that property,
3 but I would give up what is being proposed
4 there in order to protect that area if we
5 could protect the Weir's Creek environment.

6 I have concerns about the developer's
7 responsiveness and credibility. A number of
8 points have been raised today.

9 My property as I said is adjacent to
10 the marshland but next to a property which is
11 owned by Fred Davis, there is an area about
12 four or five feet above the water.

13 I approached the developer's
14 representative and asked if there was
15 something that we could do, meaning co-
16 investing, to deal with that highland area
17 which is being eroded by the scarring effect
18 of the waters passing by the bulkhead.

19 I visited the property, we had a
20 conversation. He said he's not aware of any
21 intentions to do anything there and in
22 addition to that, he has not returned repeated
23 phone calls for over more than a year.

1 an area that is if you continued around Weir's
2 Creek, you would come out on the Potomac
3 adjacent to my house.

4 I'm not in favor of granting the
5 permit, nor for the bridge, nor as to the
6 development on the island. I consider these
7 to be unique and fragile assets.

8 I'm a regular visitor up Weir's Creek
9 by kayak out around Swan Point. I've seen as
10 many as eight or nine bald eagles on my way
11 out to the marsh. The marsh is itself
12 extremely sensitive.

13 I cannot imagine with the development
14 that is being proposed that that fragile
15 ecosystem will survive, so I'm not in favor of
16 that.

17 I'm more concerned today quite
18 frankly after what was presented today in the
19 revised plan. There are a number of issues
20 that were raised about the marina, about the
21 development on the island, the pier and so
22 forth.

23 Since I live close to the Eastern

1 So it certainly raises my concerns
2 about responsiveness of the developer.

3 I'd like to thank the MDE for holding
4 this hearing and for what you do to protect
5 our environment, our wetlands and our bay.
6 Without your efforts, short term interests for
7 corporate and personal gain would always trump
8 long term, intergenerational and ecological
9 considerations. Thank you.

10 MR. MOON:

11 My name is Brendan Moon, B-R-E-N-D-A-
12 N, M-O-O-N.

13 I came here this evening more to hear
14 than to speak. I generally am a supporter of
15 what Swan Point Development Corporation has
16 done to the area. I think it is a good
17 example of how development can be done in a
18 generally responsible way.

19 I am most concerned though that there
20 were conditional approvals granted for this
21 type of development, but according to the
22 drawings that the Swan Point Development
23 Corporation showed us, they had made some

1 significant changes to those plans that not
2 only don't include beach access, but remove a
3 roadway that would have most easily provided
4 it.

5 The beach and the tidal areas are
6 state property. They are not owned by Swan
7 Point. It is right for the developer who
8 benefits financially from the development of
9 that area to provide back to the community
10 through beach access.

11 I'm not suggesting it be
12 commercialized or done for high profits, but
13 it certainly makes sense that the Maryland
14 Department of the Environment hold them
15 accountable to those conditional approvals and
16 deny this application until those conditions
17 have been met. Thank you.

18 MR. GARY:

19 Hi, my name is Martin Gary. I'm the
20 Executive Secretary for the Potomac River
21 Fisheries Commission. M-A-R-T-I-N, G-A-R-Y.

22 I'm here tonight to represent the
23 Commission. Before I go any further, could I

1 formed by a bi-state compact. It is a
2 Commission represented by Commissioners
3 appointed by Governor Martin O'Malley and
4 Governor Terry Macauliffe of Virginia.

5 Four Commissioners from each state.
6 Their core mission is to conserve and enhance
7 the fishery resources of the tidal Potomac
8 River. Our jurisdiction extends from the
9 Woodrow Wilson Bridge down to the mouth of the
10 river.

11 With that in mind and knowing now the
12 clarity of the comment period, I have not had
13 a chance to brief our Commission, so I am not
14 going to go on the record either supporting
15 the permit or opposing it, but I am going to
16 express concern tonight and I will also enter
17 into the record that our Commission is going
18 to meet on March 7th, a week from tomorrow.

19 I will be spending the next several
20 days to become as fluent as I can with this
21 project and I will bring it to their
22 attention. We'll have a discussion at our
23 meeting and I will come back with formal

1 ask a technical question? I don't know, Mr.
2 Setzer, does the public comment period extend
3 beyond tonight?

4 MR. SETZER:

5 Yes.

6 MR. GARY:

7 Do you know the deadline?

8 MR. SETZER:

9 It will be extended for 30 days
10 (inaudible)

11 MR. GARY:

12 Thank you. I have to tell you I came
13 on in my capacity as the Executive Secretary
14 of the Potomac River Fisheries Commission,
15 also known as PRFC on July 1st of last year.

16 I became aware of this project I
17 guess I may have been under a rock or two,
18 yesterday. So I literally knew nothing about
19 this project until yesterday about 24 hours
20 ago.

21 I represent the Commission as its
22 Executive Secretary. Our Commission for those
23 of you who don't know is a bi-state, it was

1 comment as to our Commission support or
2 opposition to awarding the permit.

3 I will tell you that the areas of
4 concern that we will be discussing focus on a
5 couple of areas. There are five targeted
6 oyster bars for restoration and enhancement in
7 the area around this project. Our meager
8 budget that we are working to restore and
9 enhance these oyster bars is focused there,
10 and so this has potential impact on that.

11 We also are concerned about impacts
12 to fish species, species that are potentially
13 endangered, threatened, short nose sturgeon,
14 Atlantic sturgeon, other fish species that use
15 the river.

16 We are also after hearing some of the
17 comments about access, I'd also like to
18 explore what is being done there because
19 recreational fisherman were supportive, PRFC
20 is supportive of enhancing wherever we can
21 opportunities for the public to enjoy fishery
22 resources of the Potomac River.

23 So we will be going back to them.

1 Just as a point of irony today, PRFC hosted a
2 number of different groups for a water quality
3 information exchange of the tidal Potomac
4 River.

5 Basically sharing information on what
6 the impacts are to the river and acquiring
7 feedback from the public and the fisherman
8 that used the resources and we talked about
9 things like nutrient enrichment, point source
10 discharges from sewage treatment plants, a lot
11 of the things that are being discussed here
12 and it will be interesting to see what the
13 Commission's reaction is when we discuss this
14 at next Friday's March 7th meeting.

15 So again for tonight, we thank you
16 for the opportunity to comment and we are
17 officially on the record as concerned about
18 this project and its potential impact to the
19 resources we manage and we will come back
20 before the comment period ends and provide a
21 formal position on this. Thank you.

22 MR. SETZER:
23 Thomas Gallemore.

1 area of the river.

2 Also the concerns are the legality of
3 fishing. As a farm owner who does, who are
4 boat owners in this area, how will fishing
5 affect the marine traffic and safety in the
6 area of Cuckold Creek?

7 To conclude, the family does approve
8 of smart development and again thanks Swan
9 Point for the ongoing stewardship that they
10 have shown in terms of environmental
11 protection of the area, but they do ask that
12 Swan Point tread lightly in offering a view to
13 the historic farm. Thank you very much.

14 MR. SETZER:

15 That is everybody that is signed up.
16 Is there anyone else that would like to make a
17 comment?

18 (Pause)

19 Okay. So as Mr. Gary asked and I
20 responded, in case you didn't hear, the
21 hearing record will remain open until 5 p.m.
22 on Monday, March 31st.

23 If you want to make additional

1 MR. GALLEMORE:

2 T-H-O-M-A-S, G-A-L-L-E-M-O-R-E. I'm
3 actually here on behalf of William Ross, R-O-
4 S-S, the owners of Main Point Farm located at
5 11900 Main Point Farm Road in Newburg.

6 So as I was just saying, I am here on
7 behalf of the Ross family who has owned Main
8 Point Farms for more than 100 years. We would
9 like to echo some of the same sentiments made
10 on either side both for and against the
11 proposed project.

12 But ultimately saying that they are
13 for the proposed project, still however
14 holding some concerns. Particularly their
15 concerns come regarding the proposed length of
16 the observation piers on Cuckold Creek which
17 from our understanding are currently at 200
18 feet.

19 While the proposed piers on the
20 Potomac River offer a view into a large open
21 body of water, there are concerns about
22 observation piers into Cuckold Creek citing
23 that it is a much more tranquil, more quieter

1 comments or send comments in, you can see Mr.
2 Tabisz or Mr. Blair and they will give you a
3 card where you can send your comments.

4 SPEAKER:

5 (Inaudible)

6 MR. SETZER:

7 Sure, that would be fine. You can
8 mail it to Thomas or Tom?

9 SPEAKER:

10 Thomas Blair.

11 MR. SETZER:

12 Okay. Thomas.blair.

13 SPEAKER:

14 The forms are out on the sign-in
15 desk.

16 MR. SETZER:

17 There you go. It would have been
18 nice to have known that and I wouldn't have
19 had to dance to the question.

20 After the hearing record closes, the
21 department will review and consider all the
22 comments received during the comment period.

23 If necessary, the department may

1 request additional information from the
2 applicant to address certain comments.

3 After then after all relevant issues
4 have been resolved will the department make
5 its decision regarding Swan Point's
6 application.

7 Once again, I want to thank you all
8 for participating in this evening's meeting
9 and I really appreciate your attentiveness and
10 your courtesy.

11 I think the hearing provided us a lot
12 of good information and a lot of things to
13 consider. Have a good evening.

14 (Whereupon, the hearing concluded.)

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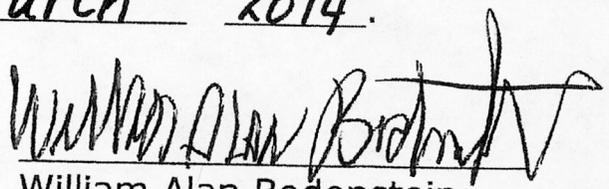
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STATE OF MARYLAND

I, the undersigned, a Notary Public and qualified Court Reporter in and for the State of Maryland, do hereby certify that the within transcript was recorded electronically and transcribed under my supervision as herein appears and is a true and accurate representation of what is recorded and audible on the recording.

I FURTHER CERTIFY that I am not of counsel to any of the parties, nor am I an employee of counsel, nor any relation to any of the parties, nor in any way interested in the outcome of this action.

AS WITNESS, my hand and Notarial Seal this 10th day of March 2014.



William Alan Bodenstein
Notary Public

My commission expires: 11/7/15

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