



Testimony of Nancy Oliver
On Behalf of the Advocates for Herring Bay
Regarding: MICHAEL BOOTH & INTERNATIONAL RENAISSANCE FESTIVALS, Ltd.-
2014-0061-S & 2014-0128-V (AD 8, CD 7)
June 12, 2014

The Advocates for Herring Bay (AHB) submits this opposition to the application by Michael Booth & International Renaissance Festivals, Ltd. (Booth Application) for a special exception and variance. AHB is comprised of a group of individuals from the Herring Bay area in Southern Anne Arundel County (South County) who are committed to protecting and enhancing the quality of the Chesapeake Bay. AHB's interest in the Booth Application is multi-faceted.

First, the Booth Application threatens AHB's overall mission to preserve the Chesapeake Watershed, and Herring Bay particularly, by potentially creating a damaging precedent for altering land use in areas designated for conservation and along scenic and historic roads. As set forth in more detail below, an approval of the Booth Application disregards the express language and spirit of the law governing approval of special exceptions and variances. Moreover, the resulting negative impact on the Jug Bay Wetlands Sanctuary will undermine the protection of other sensitive resources, including Herring Bay. Finally, AHB's members are residents of South County who personally will be adversely affected by approval of the application in a number of ways, including loss of the "essential bucolic character" of this area of South County; the aggravation of concomitant increased traffic congestion; and decreased access to an important local resource - the Jug Bay Wetlands Sanctuary.

The Booth Application fails to meet statutory standards on several counts, but AHB focuses only on the following five shortcomings. First, under Article 18 (Zoning), Section 16-304(a)(2), one of the standards for granting a special exception use is, in part, that "the location, size, nature, and intensity of each phase of the use and its access roads will be compatible with the appropriate and orderly development of the district in which it is located."

The intensity of the proposed use is inconsistent with state and county land-use plans, in violation of this section. The property is next to a designated Green Infrastructure Hub and is entirely within a Targeted Ecological Area as defined by Maryland DNR. If the property had a conservation easement—as recommended by DNR—recreational activities would be limited to passive activities proportionate to the number of residents on a property. At more than 300,000 visitors annually, this use would far exceed that guideline. Further, the festival's onsite septic system would be one of the largest single sources of nitrogen in South County, contrary to the GDP's goal of reducing nitrogen loads from septic systems. See Exhibits 1-3 for further information.

Second, the standard for granting a special exception use under Article 18, Section 16-304(a)(2) requires that “operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in other uses allowed under this article.” As noted in the Findings and Recommendations of Planning and Zoning, dated on or about June 10, 2014, the proposed use will be far more disruptive to South County’s predominantly rural lands than the current location of the festival and “significantly detract from the essential bucolic character of this portion of South County.”

Next, under Article 18, Section 16-304(a)(3) a special exception use may not “conflict with an existing or programmed public facility, public service, school, or road.” The proposed use would degrade public assets and services at the Jug Bay Wetlands Sanctuary, contrary to this provision. As shown in Exhibit 4, the festival site is closely connected to Jug Bay through stream and forest corridors. Degradation effects would be both immediate, in terms of reduced access to the Sanctuary resulting from severe traffic congestion, and long-term, resulting from impacts to wildlife and environmental quality. For example,

- Food smells and garbage would attract rats and other invasive species, disturbing native wildlife;
- Noise and traffic would disrupt the serenity of the sanctuary’s hiking trails;
- In-coming festival traffic would impede access to Wrighton Road, the main road to Jug Bay; and
- Pollution from vehicles and other activities would impair Jug Bay’s wetlands, streams, and air quality.

Further, this use would break faith with taxpayers who have spent millions of dollars to acquire Jug Bay and enjoy its natural beauty on weekends throughout the fall and also may violate the county’s contractual obligations to preserve Jug Bay for educational, conservation, and research purposes. (See Exhibit 5).

Finally, the proposed use does not have direct access to an arterial highway and the proposed facility, which is in an RA district, would be located on a scenic and/or historic rural road. Both circumstances are contrary to Article 18, Sections 11-125(2) and (4), which provide conditions for Special Exception uses particular to the Renaissance Festival.

As noted by the Planning and Zoning Findings and Recommendations, subsection 4 is meant to “prevent a festival from detracting from the use and enjoyment of scenic and historic rural roads.” These quintessential byways are what give South County its rural flavor and are key to the area’s tourist economy. Granting this variance would unravel the regulatory fabric for protecting the county’s historic and scenic assets, here and elsewhere in the county. As previously noted, the proposed variance would adversely alter the essential character of this part

of South County. Article 18, Section 16—305(c)(2)(i) precludes such an effect by specifically stating that granting of the variance may not “alter the essential character of the neighborhood or district in which the lot is located.”

The impact on the collector roads would result in an undue burden on the community to the detriment of the public welfare in further violation of Article 18, Section 16—305(c)(2)(v) and should be denied. The applicant anticipates channeling more than 1,300 cars per hour onto a narrow, 4,000 foot stretch of road that is not directly accessible from Route 4. (See Exhibit 6). Those not attending the festival would be denied safe and reasonable access to properties on the collector road, Wrighton Road, and probably Route 4—and potentially emergency services.

Given the above conflicts with law, we urge you to deny the Booth Application. A project of this scale must be viewed holistically, not on a piecemeal basis without regard to its cumulative impact. This is particularly true when the essential character of a locality, its use and enjoyment, ***and the longevity of*** a unique natural resource like Jug Bay are at stake. Both are unrenewable resources. The decision here will affect the future of other unique Anne Arundel gems.

Attachments:

Exhibit 1: Proposal is inconsistent with DNR land use plans

Exhibit 2: Intensity of use is inconsistent with recreational uses in conservation areas

Exhibit 3: Septic load is inconsistent with county land use plan

Exhibit 4: Proposed site is connected to Jug Bay

Exhibit 5: County is contractually obligated to protect Jug Bay

Exhibit 6: Collector road would not provide direct access to the site from Route 4

Exhibit 1

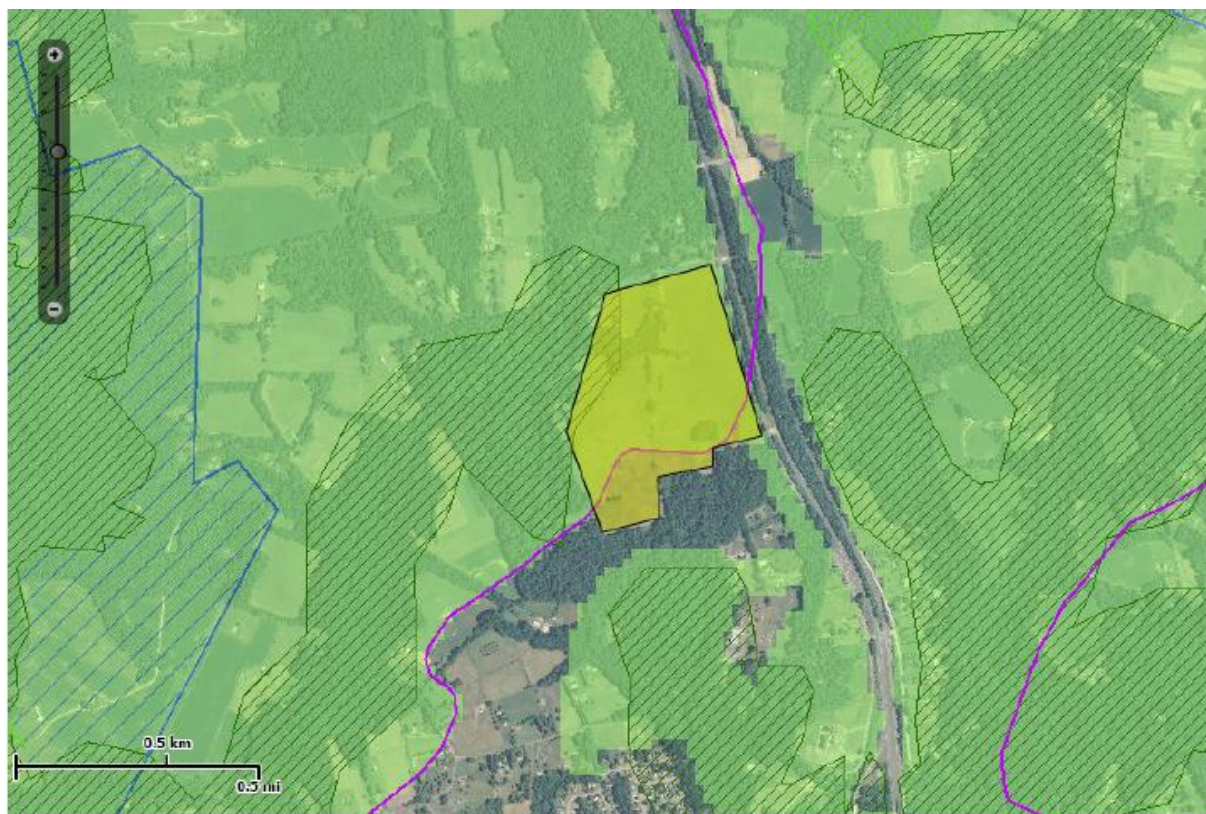
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- The application is inconsistent with the Maryland Department of Natural Resources' (DNR) designation of this location as a conservation target.

This proposed location is next to a designated Green Infrastructure Hub and is entirely within a Targeted Ecological Area as defined by Maryland Department of Natural Resources (Figure 1). “Targeted Ecological Areas are lands and watersheds of high ecological value that have been identified as conservation priorities by the Maryland DNR. These areas represent the most ecologically valuable areas in the State: they are the “best of the best”. These lands include large blocks of forests and wetlands, rare species habitats, aquatic biodiversity hotspots and areas important for protecting water quality. DNR mapped where these high priority lands are using a variety of methods developed by agency ecologists. These ecologically important areas have been designated as conservation targets for Program Open Space Stateside.”¹

Figure 1. Maryland DNR Green Infrastructure



¹ <http://www.greenprint.maryland.gov/faq.asp>

Exhibit 2

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- According to the Office of Planning and Zoning, “this property is within the county’s Priority Preservation Area (PPA) as identified in the 2009 General Development Plan. The goal of the PPA is to preserve land through protective easements....”

Protective easements typically are enforced by the Maryland Environmental Trust (MET). As shown in Figure 2, MET easements limit recreational activities in such conservation areas to passive activities and are proportionate to the number of residents on the property.

Figure 2. Excerpt from Maryland Environmental Trust Conservation Easement for Property on Old Colony Cove Farm in South County.

A. Activities other than Agriculture (as that term is defined below) and residential and Private Passive Recreational uses are prohibited on the Property, except (1) for small-scale activities within structures used as residences (for example, a professional office and an at-home day care); and (2) for small-scale activities related to Agriculture within structures used for Agriculture (for example, a farm machine repair shop and a seed and mineral shop). The Property may not be leased to or used by private clubs or organizations for Passive Recreational or active recreational purposes or for activities conducted for a fee, other than for leases for deer hunting.

“Agriculture” (or “Agricultural” as the context requires), means all methods of production and management of livestock, crops, trees and other vegetation, as well as aquaculture. This includes the related activities of tillage, fertilization, pest control, and harvesting as well as the feeding, housing, training and maintaining of animals such as cows, sheep, goats, hogs, horses and poultry.

“Private” means the intensity of activity that could reasonably be expected in proportion to the number of residents that would typically occupy the permitted primary and accessory residences on the Property.

“Passive Recreation,” or “Passive Recreational” as the context may require, means low-impact activities conducted outdoors, including, by way of example and not by way of limitation, nature study, orienteering, hunting, fishing, hiking, kayaking, canoeing, sailing, boating, horseback riding, camping, and cross country skiing. “Passive Recreation” does not include athletic fields, tennis courts, trail riding facility, motorized recreation or golf courses, all of which are prohibited on the Property.

, p. 0348, MSA_CE59_23168. Date available 11/17/2010. Printed 11

Exhibit 3, first of two pages

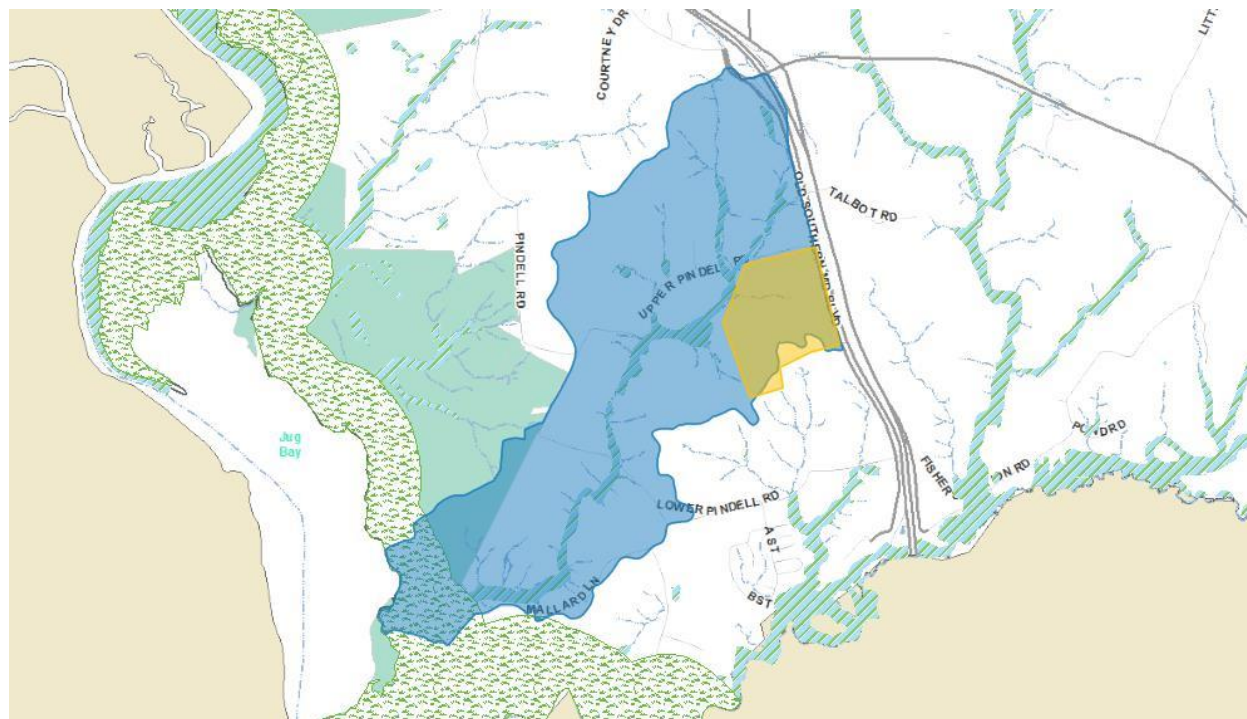
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- The proposed activity is inconsistent with the county's goal of reducing nutrient loads from septic systems.

The proposed location sits entirely within the Hardwick Branch Sub-Watershed (figure 3). This watershed drains directly into the southern part of Jug Bay approximately 2 miles downriver. The proposed construction of an onsite septic system will place a significant additional nitrogen load on this sub-watershed effectively making it one of the largest single nutrient contributors in South County (see figures 4-5). Such a development is inconstant with the County's 2009 General Development Plan which explicitly states the goal to "reduce nutrient loads from onsite septic systems county wide"²

Figure 3. Map of Hardwick Branch (also labeled as Deep Creek) Sub-Watershed



² Anne Arundel County General Development Plan – Table 7.2 P.127

Exhibit 3, continued

Figure 4. Approximation of Nitrogen Load from Festival Operations

Acres	225
Avg. lb. nitrogen/person/year*	4.75
Delivery ratio for location	50%
Avg. lb. nitrogen delivered/person/year	2.4
Days per year	365
Avg. lb. nitrogen delivered/person/day	0.007
Average daily attendance	17,000
Avg. lb. nitrogen delivered/day in operation	111
Total number of days in operation	23
Total lb. nitrogen for operation/year	2,544
Annual lb. nitrogen delivered/year/acre	11
Planned avg. lb nitrogen/acre for site in Middle Patuxent	1

*Assumes use of denitrifying system.

Figure 5. Map of Nitrogen Loads from On-Site Septic Systems Under County Plan

http://www.aacounty.org/DPW/Resources/OSDS_Contents.pdf

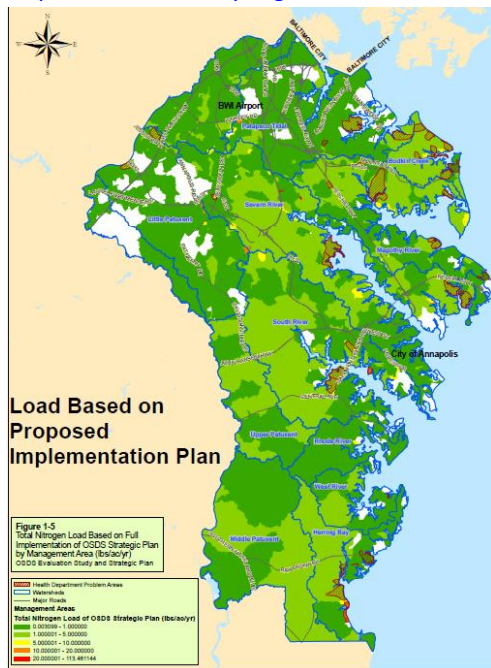


Exhibit 4

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- The proposed use is less than one mile from the Jug Bay Wetlands Sanctuary, which is part of the Chesapeake Bay National Estuarine Research Reserve. As shown in Figure 6 and 1, the site is closely connected to the sanctuary by stream and forest corridors.

Figure 6. Map of area showing stream (Hartwick Branch) connected to Jug Bay

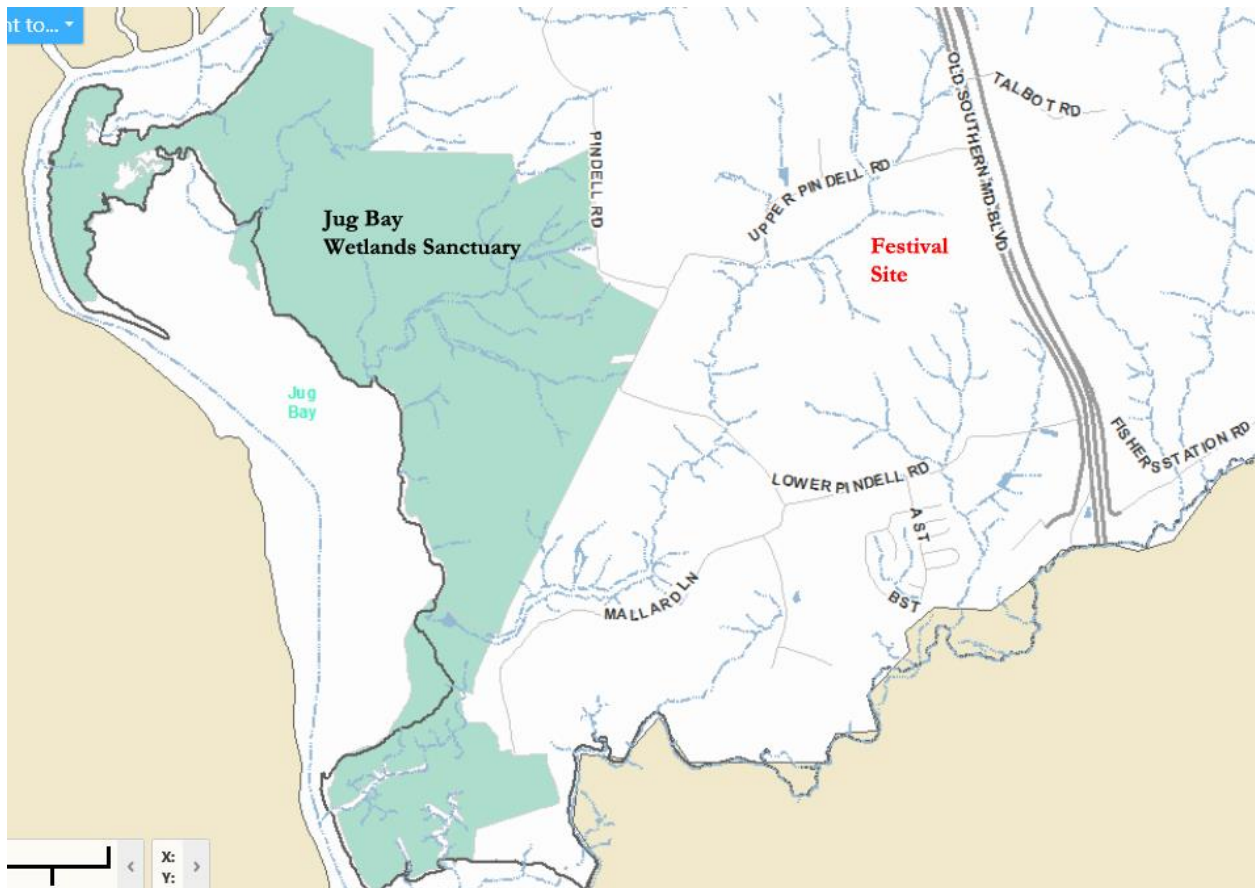


Exhibit 5

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- Anne Arundel County is **contractually** obligated to protect and preserve the Jug Bay Wetlands Sanctuary, as shown in excerpts from its 1990 Memorandum of Understanding with the State of Maryland (Figure 7) and 2006 Declaration of Covenants (Figure 8).

Figure 7: 1990 MOU

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") made this 19th day of July, 1990 by and between the Maryland Department of Natural Resources ("Department"), having an address at 580 Taylor Avenue, Tawes State Office Building, Annapolis, Maryland 21401 and Anne Arundel County, Maryland, ("County") having an address at the Arundel Center, Post Office Box 2700, Annapolis, Maryland 21401.

RECITALS

WHEREAS, the County owns and administers the Jug Bay Wetlands Sanctuary ("JBWS"), located in Anne Arundel County, Maryland, which is comprised of valuable nontidal and tidal freshwater wetlands and uplands along the Patuxent River and is in need of long-term protection; and

WHEREAS, JBWS has in place research, monitoring, educational, and interpretive programs that contribute to a better understanding of estuarine processes; and

WHEREAS, the Department, through its Tidewater Administration, is the lead agency for the Chesapeake Bay National Estuarine Research Reserve in Maryland (the "Reserve"); and

WHEREAS, the federally mandated goals of the National Estuarine Research Reserve System ("NERRS") are to:

- (1) Ensure a stable environment for research through long-term protection of estuarine reserve resources;
- (2) Address coastal management issues identified as significant through coordinated estuarine research within NERRS;
- (3) Enhance public awareness and understanding of the estuarine environment and provide suitable opportunities for public education and interpretation;
- (4) Promote federal, state, public and private use of one or more reserves within NERRS when such entities conduct estuarine research; and
- (5) Conduct and coordinate estuarine research within NERRS, gathering and making available information necessary for improved understanding and management of estuarine areas; and

WHEREAS, JBWS has been proposed for designation (along with a portion of the Maryland National Capital Parks and Planning

CONFIRMATORY DEED AND DECLARATION OF COVENANTS

THIS CONFIRMATORY DEED, made this 26 day of March, 2006, by and between ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic, Grantor, and ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic, Grantee.

WHEREAS, Anne Arundel County, Maryland is the fee simple owner of property situate, lying, and being in the Eighth Assessment District of Anne Arundel County, more particularly described in Exhibit A, attached to and made a part of this Confirmatory Deed and Declaration of Covenants, said described property collectively known as the Jug Bay Wetlands Sanctuary and referenced herein as "the Property" or "the Sanctuary"; and

WHEREAS, the County acquired all of the Property for the purpose of establishing and expanding the Jug Bay Wetlands Sanctuary, a part of the Chesapeake Bay National Estuarine Research Reserve; and

WHEREAS, the County recognizes the conservation value of the Sanctuary in its present state, as a natural and rural area that has not been subject to development; and

WHEREAS, the County's purpose is to conserve the dominant scenic, cultural, rural, historical, archaeological, woodland, and wetland character of the Sanctuary and to prevent the use or development of the Sanctuary for any purpose or in any manner that would conflict with the maintenance of the Sanctuary in its natural condition; and

WHEREAS, the County's purpose in executing this Confirmatory Deed and Declaration of Covenants is to preserve and protect the environment of the Sanctuary, particularly the tidal and non-tidal wetlands and forested buffer, extensive forested upland and wetland habitat, and rare species habitat, in its present state and except as hereinafter provided, to prevent activities that might damage, compromise, or interfere with the Sanctuary's ecological diversity and natural landscape, and to maintain permanently the open-space values of the Sanctuary and dominant scenic, cultural, rural, archaeological, woodland, and wetland character of the Sanctuary; and

WHEREAS, the County desires and intends to place on the Property perpetual covenants running with the land as set forth in this Confirmatory Deed and Declaration of Covenants.

WITNESSETH, for No Consideration (\$0.00), Anne Arundel County, Maryland, Grantor, a body corporate and politic of the State of Maryland, hereby grants and conveys unto Anne Arundel County, Maryland, Grantee, a body corporate and politic of the State of Maryland, in fee simple, all the Property situate, lying and being in the Eighth

Exhibit 6

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- The proposed variance to allow ingress and egress to the site from a collector would not provide direct access to the site. As shown in figure 9, in-coming traffic coming from Maryland Route 4 would need to make a 90-degree right turn onto Wrighton Road from the exit ramp before making a 90-degree left turn onto the collector road.

Figure 9. Map showing complexity of ingress to the collector road.

