Comments of the Friends of Accotink Creek

regarding 4104 Woodlark Drivee

- **Resource Protection Area Encroachment Exception #2582-WRPA-006-1**
- **Water Quality Impact Assessment #2582-WQ-003-1**

Addressed to the Fairfax County Attorney and members of the Board of Supervisors March 29, 2019

The Board of Supervisors will soon be asked to consider the appeal of the applicant in this case, following denial by the Chesapeake Bay Preservation Ordinance Exception Review Committee.

Fairfax County is being asked to consider and decide between two conflicting restrictions on the use of this property. One restriction is the Resource Protection Area, based on science and the unquestionable need to preserve the health of our streams and the Chesapeake Bay. The other restriction is the setback requirement of the covenant, an arbitrary limitation intended to provide subjective benefits, conceived at a time when all the harms befalling the Chesapeake Bay were little understood.

Article 5 of the Fairfax Hills covenant prohibits sale or rental to non-whites, an approach whose enforcement is no longer justifiable. Likewise, setback covenants are no longer justifiable when RPA's are violated. The covenant's setback provision must yield to the duty to preserve our natural heritage, just as its whites-only provision long ago yielded to the demands of social justice.

The covenant's setback provision is an artifact of the past which must give way to the duty to preserve our natural heritage, just as the covenant's whites-only provision has made way for society's duty to ensure equal justice.

No actual (as opposed to theoretical) injury to anyone will occur if the covenant is waived. In contrast, very real and everlasting damage will be caused by encroachment upon the Resource Protection Area.

Fairfax County's duty is to deny the application and direct the applicant to seek legal remedies to lift the covenant. Furthermore, Fairfax County should itself argue before the courts in favor of lifting the covenant.

Sincerely,

Friends of Accotink Creek : : www.accotink.org : :

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