

***Shadow Hills Subdivision Homeowners Association, Inc.***

8533 Shadow Lane  
Delmar, Maryland 21875

VIA CERTIFIED MAIL and E-MAIL

March 6, 2024

Julie M. Giordano  
County Executive  
County of Wicomico  
Government Office Building  
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Room 303  
Salisbury, Maryland 21803-4801  
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Re: *Connelly Mill Sand Quarry Off-Road Vehicle Events*

Madam Executive:

In regard to the referenced, the Shadow Hills Subdivision Homeowners Association, Inc. (“Shadow Hills”), respectfully wishes to express its opposition to the off-road events (the “events”) to be held at the Connelly Mill Rd. sand quarry site (the “event site”) pursuant to the Memorandum of Understanding dated September 2, 2023 (the “MOU” or “Contract” interchangeably) by and between Wicomico County (the “County”) and Live Wire LLC (“Live Wire” or “Event Organizer” interchangeably). As will be further examined herein, Shadow Hills' objections are based in the failure of the Wicomico County Executive (the “County Executive”) to engage in the appropriate level of due diligence prior to unilaterally executing a contract for staging of the events, disadvantageous contractual terms that may expose Wicomico County taxpayers to significant financial and civil liabilities, failure of the County Executive to notify affected stakeholders of intent to enter into a contract or seek public comment prior to the execution thereof, and potential for property devaluation and diminished quality of life residents of Shadow Hills and other adjacent residential communities will suffer in consequence of the events.

1. **Due Diligence**

No evidence has been provided indicating that the County Executive engaged in the appropriate level of due diligence prior to executing the Contract. Considering the financial, quality of life, and public safety concerns pertaining to the events, it is reasonable that a high standard of due diligence should have first been undertaken, including, without limitation, the following:

- i. **Proforma**: There is no indication that a proforma with supporting documentation and stated underlying financial assumptions was either submitted to or reviewed by the County prior to

executing the Contract. Absent a proforma, there is no basis upon which the County can determine feasibility, probable gross receipts and profitability (if any).

- ii. Economic Impact Statement: There is no indication that the County prepared an Economic Impact Statement prior to entering into the Contract as necessary to estimate probable County expenditures, business revenues (e.g., lodging, F&B, entertainment, etc.) and probable tax revenues. The County's expenses are likely to be significant and may encompass Sheriff's Dept. traffic control services, marketing expenses, and site improvements, many of which have already been undertaken, including, vegetation clearing, creation of new trails, construction of earthen berms, obstacles and barriers, and installation of safety fencing, etc.
- iii. Community Impact Statement: There is no indication that a Community Impact Statement ("CIS") was prepared by the County prior to executing the contract as would be necessary to determine the impacts to neighboring residential communities and businesses. A CIS would involve a study of such issues as noise levels generated, traffic disruptions and potential impacts to property values in adjacent residential communities in consequence of the events, which should be of paramount importance.
- iv. Conceptual Site Plan: There is no indication that Live Wire submitted a conceptual site plan for the County's review and approval prior to entering into the Contract. The conceptual site plan should depict the alignments of existing or to-be-constructed trails, in addition to locations and descriptions of permanent or temporary barriers to be installed for event site security and safety, event site boundaries, directional signage, and protection of any environmentally sensitive areas. The conceptual site plan should also address the adequacy of onsite staging areas necessary to accommodate the number of vehicles anticipated to participate in or observe the events.
- v. Maintenance of Traffic Plan: There is no indication that Live Wire submitted or the County reviewed a Maintenance of Traffic (MOT) plan addressing onsite and offsite vehicular traffic flow during events. Connelly Mill Rd. poses particular challenges to traffic management insofar as it is only a 2-lane thoroughfare carrying a large volume of commercial vehicles between the Salisbury Bypass (U.S. 50) and U.S. 13, and lacks on-street parking. Furthermore, the event site's highway entrance from Connelly Mill Rd. is adjacent to a Delmarva Central Railroad crossing and switching facility, which will create significant traffic impediments on Connelly Mill Rd. and accessibility issues to Shadow Hills and other neighboring residential communities and businesses during events. Moreover, Sheriff Lewis has indicated that since being initially informed several months ago that the first event would take place on a then undetermined date, the County has failed to provide him with any further information necessary for planning and allocation of Sheriff's Dept. resources for traffic control and emergency management, nor has it requested an estimate of associated costs. Likewise, the Town of Delmar advised that the County Executive has failed to provide any details with regard to the events, thus limiting their ability to develop an effective contingency plan to ensure EMS access to neighborhoods

adjacent to the event site and the planned Kylan's Barn after events, or a traffic control plan as may be necessary to supplement Sheriff's Dept. resources.

- vi. Environmental Investigations: No environmental investigations are known to have been undertaken to date, which would typically encompass onsite reconnaissance to ascertain if non-tidal or seasonal wetlands are present, as well as hazardous materials, either of which could create liabilities for the County if discovered. Shadow Hills contacted the Maryland Dept. of the Environment ("MDE"), which has determined that there is sufficient cause to initiate a wetlands investigation. To this end, MDE has advised that it will conduct onsite reconnaissance on March 8, 2024. The event site is known to have several locations where debris has been dumped, however, it remains unknown if any hazardous materials are present that may pose danger to event participants. The County either is, or should have been aware of the potential for such hazards and environmental sensitivity, and investigated accordingly to mitigate its exposure to liability.
  
- vii. Live Wire Financial Statement: There is no indication that Live Wire's financial statement was submitted to or reviewed by the County prior to contract execution, despite the essential nature of the financial statement to calculating net profitability. Pursuant to the terms of the Contract, the County is to receive a 10% share of **net profits**. By definition, **net profit** is calculated by subtracting the cost of goods sold (COGS) *and* indirect costs (corporate liabilities) from income. This is simply expressed as: *Net Profit = Revenue – COGS – Indirect Costs*. This differs from **gross profit** wherein indirect costs are excluded from the calculation. *Indirect costs* may include, but are not limited to, a pro rata share of Live Wire's corporate federal and state income tax liabilities, asset depreciation, interest on loans, marketing costs, and general overhead and administrative expenses, etc. Absent Live Wire's financial statement and careful analysis thereof, probable indirect costs are entirely unknown and cannot be estimated on an historical basis. It is, therefore, impossible to estimate net profitability (if any) or the County's 10% share thereof. As such, it is foreseeable that the County's event-related expenses will exceed its share of net profits, thus yielding little or no financial benefit to the County or resulting in a net loss. Essentially, the County Executive appears to have chosen to use the "kick-off" event as an experiment at significant taxpayer risk, in lieu of performing the due diligence necessary to determine economic feasibility prior to committing financial or other resources.

It must also be noted that Shadow Hills has obtained a copy of the Private Event Permit issued by the Town of Ocean City, MD to Live Wire for a Jeep event to be held August 22-25, 2004, wherein the town is to receive an up-front, lump sum payment of \$8,455 for private event fees, and asset and support fees to cover the town's expenses, rather than distribution of net profits, thus reducing taxpayer risk.

- viii. Legal Review of the Contract: Considering the Contract's disadvantageous structure, terms, omissions and multitude of other deficiencies, it was poorly drafted, fails to meet professional

legal standards, and does not appear to have been subjected to an appropriate level of scrutiny by the County's attorneys prior to execution as detailed in **Attachment I** (Abstract of MOU) described and summarized in Section 2 below.

- ix. Review of County's Insurance Coverage: Insofar as the Contract may later be determined to be a public/private or venture partnership agreement, and in further consideration of the relatively high risk of motor sports events, the County's general liability insurer may require coverage to be elevated to a higher risk category. As such, the existing insurance policy may require modification or endorsement, as well as payment of additional premiums to remain in force with respect to the events. It is presently unknown whether the County investigated the adequacy of coverage before entering into the Contract.

## 2. Contract

As discussed in detail in **Attachment I - Abstract Of Memorandum of Understanding (MOU) Between Wicomico County And Live Wire, LLC, Dated September 2, 2023** (the "Abstract") attached hereto, the Contract contains multiple ambiguities, omissions, inequitable terms and other deficiencies that are disadvantageous to the County and render the Contract vulnerable to unfavorable judicial interpretation. Although labeled "Memorandum of Understanding," the structure, terms and conditions thereof indicate that it is instead a binding contract and de facto partnership agreement, which may expose the County to unforeseen and unintended obligations, expenditures and even civil liabilities. Highlights of the contractual deficiencies detailed in the attached Abstract are briefly summarized below but is by no means all inclusive.

- i. Distribution of 10% of net profits to the County is likely to result in a net loss to the County, whereas, the County has little control over Live Wire's direct expenditures and no control over its indirect corporate expenses. Furthermore, the distribution of profits renders the Contract a de facto public/private venture partnership agreement. Furthermore, the Contract is silent as to what point in time net profits will be distributed. ***The County should not be in the risk business—particularly without first engaging in the requisite due diligence.***
- ii. Undefined terms are frequently substituted for defined terms thus creating contractual ambiguities.
- iii. There is uncertainty as to upon which party certain stated obligations are imposed, such as traffic control, installation of fencing, and site security, etc.
- iv. No deadlines are established for submission of an event schedule or notification of nearby property owners regarding upcoming events, submission of post-event financial information. Furthermore, no deadline is established regarding distribution of the County's share of net profits.

- v. Post-event financial reporting requirements are ambiguous.
- vi. No controls are in place enabling the County to monitor Live Wire's expenditures or supporting documentation preceding an event, or to reject any such expenditures that the County in its discretion determines to be excessive or inappropriate.
- vii. Indemnification and insurance requirements are inadequate.
- viii. The Contract's terms respecting reimbursement for expenses should an event be canceled are inequitable in favor of Live Wire.
- ix. The Contract does not adequately protect the County against liabilities related to hazardous materials spills or mishaps related to driver intoxication.

### 3. **Rebuttals to County Executive/Live Wire Assertions**

Certain assertions and statements made by County officials and the principal/spokesperson for Live Wire, Brad Hoffman, during the **County Council Legislative Session held on December 5, 2023** are contradictory, are unsupported by or conflict with the Contract's terms, or are unenforceable verbal agreements as further addressed below.

- i. The County Executive, Julie Giordano, stated , “...*I wanted this event and for the five people that shared their concern...we have 500 that are really excited...*” Considering that no public hearings or opportunities for public comment were held prior to Ms. Giordano's unilateral decision to enter into the Contract, her assertion is implausible and entirely unsupported by evidence. Undoubtedly, off-road motor sports enthusiasts will support the events, but this raises the question as to how many supporters are Wicomico County residents and taxpayers who will bear the costs, disturbances and other consequences. It must be noted that neither the County Council, Shadow Hills property owners, nor residents of Wicomico County at large were consulted or informed about the planned events prior to execution of the Contract. In fact, unless one is an off-road enthusiast who viewed Live Wire's Facebook page or website promoting the events, they would have no knowledge that such events were planned and were, therefore, provided with no opportunity to proffer objections. It is clear, that because she “*..wanted this event...*,” Ms. Giordano acted without appropriate transparency, used a loophole in the County Charter to bypass the legislative process, and intentionally failed to inform affected stakeholders knowing that opposition would be strong, while also disregarding the deleterious impacts that will be borne by Shadow Hills and other nearby residential communities.
- ii. Brad Hoffman repeatedly asserted that events would be limited to Jeep rallies only. The Wicomico County Administration Director, Bunky Luffman further added that the

planned May 4-5, 2023 event would be a, “*singular event*” and that from a marketing perspective, it does not make sense to regularly stage Jeep events. However, these claims are contradicted by the terms of the Contract, as well as Live Wire's responses to questions posted on its “Safari at the Quarry” webpage (<https://www.safariatthequarry.com/>) and Facebook page, which explicitly state that other types of events are, in fact, being planned or supported, including events for open-wheel vehicles, quads, Toyota Tacomas, Toyota FJ Cruisers, other 4x4 tagged/licensed vehicles. Additionally, the Contract specifically references and permits quad, open wheeling, and Bronco events, while failing to exclude motorcycles or any other type of motorized vehicle. It is, therefore, clear that despite Mr. Hoffman's and Mr. Luffman's denials, the intent is to stage events for multiple types of off-road vehicles and with great frequency.

- iii. Ms. Giordano repeatedly asserted that the events will be, “*low impact,*” insofar as they will last for only two days and the event site would be returned to its original condition following the events. It must be noted, however that, although the duration of an event may only be two days, multiple events involving a variety of vehicle types are being planned by Live Wire, which will extend impacts and disturbances for many days over the course of a year. With respect to Ms. Giordano's assertion that the event site would be returned to its original condition following the events, the site alterations presently underway or already completed are permanent or semi-permanent and cannot readily be restored to preexisting condition. The site alterations include, site clearing, excavation, earth moving, construction of new trails, modifications to existing trails, and construction of various earthen structures.

Of even greater concern is the impounded area, which encompasses approximately 22-acres, and is of sufficient depth (perhaps 25-ft. or more) to retain a large volume of water. The impoundment, which is presently flooded almost to its rim, was recently created by pumping water from an adjacent sand pit into the previously excavated 22-acre basin—apparently for the purpose of forming a portion of the off-road course in the adjacent sand pit. Review of historical satellite imagery going back to 1985 (39 years ago) indicates that the impoundment basin had never previously been flooded and only became filled at some point in time after July 2020. *This begs the questions as to whether the County performed engineering studies to determine whether the impoundment's banks and bottom are structurally capable of retaining such a large volume of water without failure, and if impacts to water table hydrology are likely.* Additionally, before the impoundment was flooded, it likely supported regulated non-tidal wetlands that are now immersed and destroyed. Furthermore, no impoundment outfall has been identified, and as water continues to be pumped into the impoundment and stormwater runoff continues to collect, the pool level and rate of discharge cannot be controlled. As such, should the impoundment overflow, the hydrological characteristics of downstream receiving waterways could be significantly altered, as well as downstream habitats. Should bank failure or sinkhole development occur, the downstream impacts may be even more

consequential.

Noise impacts will also be significant despite Mr. Hoffman's contention at the 12/5 Legislative Session that the audible output from any individual vehicle would not exceed 35 dBA. Mr. Hoffman has produced no acoustical data supporting this assertion. In fact, various studies indicate that the average mid-size automobile equipped with a stock exhaust system generates between 40 and 50 dBA (anterior) at idle speed (approx. 700 rpm), and will exceed 55 dBA at 2500 rpm—all significantly greater than Mr. Hoffman's contentions. Audible output per vehicle will be greater when traveling at the 8-15 mph asserted by Mr. Hoffman. Furthermore, some participating vehicles are likely to be equipped with custom exhausts, which can emit up to 80 dBA at idle speed while still remaining within state standards. Future planned events for vehicle types other than Jeeps may emit even greater noise levels. Compounded by up to 200 vehicles participating simultaneously, noise emissions impacting surrounding residential communities will be significant. Notably, Shadow Hills is situated less than 300-linear feet from the nearest point from where the events are to be held.

Additionally, it appears that impacts to wildlife have not been considered. The event site provides natural habitat for many species, including, but not limited to, bald eagles, foxes, turkeys, white tail deer and a variety of migratory waterfowl. Each of these species will be impacted by noise and habitat destruction (particularly within the impounded area), and in some cases will likely be displaced.

The aggregate of these impacts, in conjunction with the previously described traffic impediments and potential impacts to property values in nearby residential neighborhoods, will have profound affects on both the event site and adjacent communities. Therefore, to describe the events as “low impact” is simply inaccurate.

- iv. Mr. Hoffman asserted that he has worked with the County's team to secure the event site better than it had been previously. Observations of the event site's perimeter revealed that security measures are limited to a recently installed gated entrance on the access driveway, and a recently constructed small earthen berm on the east boundary adjacent to the Delmarva Central Railroad's access road. Although these limited measures may prevent SUV and truck access, numerous points remain that can be easily breached by ATVs, motorcycles, and pedestrians, etc. Furthermore, no posted signage prohibiting trespass has been observed anywhere around the property boundaries except for a single sign situated at the gated entrance. The event site cannot be secured without installing a continuous fence around the property boundaries, the cost of which would likely be prohibitive. It should also be noted that the event site has a long history of continuous use by neighborhood residents, as well as individuals who reside out of county or out of state, including pedestrians and operators of a variety of motor vehicles. Observations, furthermore, indicate that the frequency of such use has increased since the County took

possession of the event site in 2018. It is of deepest concern that the County has failed to implement adequate measures to secure the event site, thus leaving the County exposed to civil and financial liabilities.

- v. Mr. Hoffman asserted, “... *we did have some conversations with Conveyors and Plastics and they were in support of the event.*” This statement is not a full and accurate representation of Conveyors and Plastics' position as conveyed during a conversation held on 2/26/24 between Shadow Hills and Tim Reinert, the company's president. At that time, Mr. Reinert indicated that, among other factors, he would only support the events predicated on the condition that the site was adequately secured throughout the year when no events were taking place, but does not consider the security measures undertaken thus far to be sufficient, whereas, such measures cannot prevent ATVs, motorcycles or pedestrians from trespassing. Mr. Reinert further expressed his belief that only installation of permanent fencing around much, if not all of the event site would discourage trespass and related property crimes, and was concerned that the events may actually encourage continued trespassing, perhaps with even greater frequency. It should be noted that the Conveyors and Plastics property has frequently been subject to trespass, vandalism and property damage, thus necessitating repeated calls for service to the Sheriff's Dept.
- vi. Mr. Hoffman asserted that the events will take place at the event site between the hours of 8:00 am and 5:00 pm. However, the event schedule posted on Live Wire's *Safari at the Quarry* webpage indicates that the events will extend through 6:00 pm. Not only does this conflict with Mr. Hoffman's statement but also violates the terms of the Contract, which expressly stipulates that onsite activities are to end by 5:00 pm.
- vii. Mr. Hoffman asserted that at a meeting with Mikele Dahlen, president of the Shadow Hills HOA, she, “...*seemed to be in favor of the event because she had a better feeling...than she did before the conversation...*” This is a misrepresentation of the conversation. Let it be clear that Shadow Hills and its president remain adamantly opposed to staging of the events at the quarry under the present circumstances, and have never made any statements to the contrary.
- viii. Although Mr. Hoffman asserted that he would bear the costs of traffic control on Connelly Mill Rd. provided by the Sheriff's Dept., there is no contractual obligation to do so and thus, his overture is unenforceable.
- ix. Ms. Giordano asserted that the County will, “...*make a little bit of money.*” However, as previously noted, absent proforma financial projections and an economic impact study, and in further consideration of the unfavorable distribution of profits, there is no basis to Ms. Giordano's claim that the County will make any money after its direct expenses are calculated. In fact, the greater probability seems to be that the County will realize a net loss. Ms. Giordano further asserted that there is a “*need*” for the events. There may be a



*Julie Giordano, County Executive  
Connelly Mill Sand Quarry Off Road Events  
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desire to stage the events, but desire does not establish need, financial or otherwise.

In careful consideration of the many contractual deficiencies and consequences thereof described herein and in the attached Abstract resulting from the County Executive's failure to exercise adequate due diligence, unwillingness to proceed with appropriate transparency, and the likelihood of deleterious impacts to the Shadow Hills community with respect to property values and quiet enjoyment of our homes, it is our demand that the forthcoming May 4-5, 2024 events be immediately terminated for convenience and the Contract abandoned in its entirety. We would further admonish the County Executive to remain cognizant that ours is a representative form of government and thus, actions of such significant consequence should not be undertaken without the advice and consent of the legislative branch of the Wicomico County government or without the knowledge of affected stakeholders.

Respectfully,  
Shadow Hills Homeowner's Association, Inc.

Michael Goldberg  
Public Information Officer

cc: Wicomico County Council (AllCountyCouncilUsers@wicomocounty.org)  
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