

Montgomery Coalition to Stop Sewer Sprawl

The Honorable Isiah Leggett, County Executive
101 Monroe Street, 2nd Floor
Rockville, MD 20850

February 1, 2018

SUBJECT: Request for pause in “septic surveys”

Dear County Executive Leggett,

We are writing to you regarding your Administration’s “septic survey” process. Our coalition is comprised of groups organized to support the rural Montgomery County Agricultural Reserve and its low-density gateway communities through advocacy for sanitation policies that protect watersheds, including those supplying clean drinking water for 4.3 million Washington, DC area residents. Montgomery County’s sanitation policy is based on septic systems in rural and low-density areas, and centralized sewer systems for suburban and urban areas. With our sanitation policy now under review in the update to the Ten-Year Water and Sewer Plan, we have the chance to clarify and apply course corrections in order to fulfill our clean water, Master Plan, and Smart Growth goals. We are glad to have had the opportunity to collaborate with the Council and DEP staff during this endeavor, and we appreciate the time that DEP staff took to meet with some of us in early December, and their invitation to the North Potomac Highlands Septic Survey public meeting on January 10. However, we are alarmed that DEP continues to work on “septic surveys” that result in sewer conversion recommendations, without public confidence that such surveys are being conducted with transparency in the County’s methodology and a clear commitment to supporting Master Plan goals via a presumption for septic in low-density and rural areas.

Where septic systems are in fact failing, we support immediate and prudent action to remedy the problem. In some places, this means sewer conversion, and we have supported such conversions in Takoma Park and Historic Clarksburg. But, the public lacks confidence in the current decision-making process for sanitation category changes due to several factors including a lack of information and public notification about available on-site remedies, site-specific data, and costs. Where County officials decide to recommend conversion to sewer pipes for a given site and neighborhood, then full disclosure of the costs - which can range from tens of thousands to over a hundred thousand dollars per property - must happen. Yet, residence-by-residence disclosure of sewer conversion costs is not currently done. Furthermore, the cumulative effect of sewer conversions in low-density areas on our remaining clean streams and DEP’s stormwater management, watershed protection and restoration efforts, has not been studied.

Because of the need for transparency in the County’s methodology, a clear commitment to supporting Master Plan goals via a presumption for septic in low-density and rural areas, and the need to notify homeowners now on septic service of best maintenance practices and the cost of recommended sewer conversions, we write today to request that you impose a temporary pause in implementation of the septic surveys.

Letter to County Executive requesting pause in septic surveys 2.01.2018

(We sent a letter with this same request to DEP Acting Director Bubar on January 18, 2018, asking for a one-week response, but have not yet received a reply.) We request this pause, so that the presumption in favor of continued use of on-site systems for rural and low-density areas can be clarified, survey methodology and decision criteria can be reviewed, and so that transparency, Master Plan consistency, and homeowner education and notification can be provided before more neighborhoods are surveyed. Because of the rapid pace of the current North Potomac Highlands Septic Survey, we ask for a response to this request within a week – by no later than COB February 8.

The highest quality streams on DEP's Stream Conditions map are in areas served by septic systems - this is not a coincidence. On-site sanitation allows rural and low-density communities to remain so; in contrast, where sewer pipes go, increased development follows. Unnecessary sewer line extensions imperil our clean drinking water. To fulfill our Master Plans and our clean water and Smart Growth commitments, we must focus development in already-urbanized areas of the County, and we must actively support, with education and technical assistance, those homeowners who are served with septic systems.

Therefore, we request that you issue an immediate order for a common sense pause in current and future surveys, until public confidence in this process can be restored. This lack of confidence in septic surveys and resultant sewer conversion recommendations is due to the following:

1. There is a lack of consistency, transparency and support of Master Plans and clean water and Smart Growth commitments in how DPS and DEP conduct the septic surveys.
2. The County is not currently operating under the "presumption for septic in rural and low-density areas" policy. For example, DPS and DEP recommended sewer category changes for properties with still-functioning septic systems in the South Overlea Drive Septic Survey Area, and are apparently planning to do the same in the North Potomac Highlands Septic Survey Area.
3. The current undocumented methodology and decision process to recommend sewer category changes ignore the need for lot-by-lot soil testing, as explicitly stated in the DEP/AMT Glen Hills Area Sanitary Study. Instead, category changes are partially based on a planning-level, theoretical analysis contained in the Glen Hills Area Sanitary Study.
4. Properties with functioning septic systems that are in "proximity to properties of owners requesting a survey" are added to survey areas. The public perception is that this is done for the sole purpose of trying to make sewer line extensions more plausible by lowering the cost per resident for sewer service. If this is indeed the case, this is in direct contradiction to the "presumption for septic" policy.
5. Property owners, who object to inclusion in a septic area survey, and to being recommended for sewer conversion, need to be afforded a formal appeals process.

Letter to County Executive requesting pause in septic surveys 2.01.2018

At present, the only recourse for such property owners is an ill-defined, informal process directed at the County Council.

Please see the attachment for more detailed information on these points.

For the above reasons, we request a common sense pause in the DEP/DPS North Potomac Highlands Septic Survey and future septic surveys until such time that the public and Council can vet the survey methodology and process to ensure that they support and fulfill the policy presumption for septic service, and have the opportunity to provide feedback, and until public education, training, and notification is provided about septic system maintenance and sewer conversion costs, and who will bear them.

We appreciate your consideration of our request, and respectfully ask for a response within a week – by no later than COB February 8. We would be happy to meet with you to further discuss and present our detailed information on clean water and sanitation policy in Montgomery County.

Sincerely,

Audubon Naturalist Society
Eliza Cava, Director of Conservation

Potomac Conservancy
Caitlin Wall, Policy Director

Conservation Montgomery
Caren Madsen, Chair
Diane Cameron, Board Member

Seneca Creek Watershed Partners
Ann Smith, Board of Directors

Friends of Ten Mile Creek & Little Seneca Reservoir
Sylvia Tognetti, President

Sugarloaf Citizens Association
Lauren Greenberger, President

Maryland Native Plant Society
Kirsten Johnston, President

Watts Branch Watershed Alliance
Annita Seckinger, President
Ken Bawer, Vice President

Maryland Sierra Club, Montgomery County Group
Michal Freedman, Vice Chair

West Montgomery County Citizens Association
Ginny Barnes, President
Susanne Lee, Board of Directors

Montgomery Countryside Alliance
Caroline Taylor, Executive Director

Letter to County Executive requesting pause in septic surveys 2.01.2018

Cc:

Joy Nurmi, Special Assistant to the County Executive
Patrice Bubar, Acting Director, Department of Environmental Protection
Diane Schwartz Jones, Director, Department of Permitting Services
Stan Edwards, Department of Environmental Protection
Alan Soukup, Department of Environmental Protection

Council President Hans Riemer
Councilmember Roger Berliner, Chair, Transportation, Infrastructure, Energy &
Environment Committee
Councilmember Tom Hucker
Councilmember Nancy Floreen
Councilmember Marc Elrich
Councilmember Sidney Katz
Councilmember George Leventhal
Councilmember Nancy Navarro
Councilmember Craig Rice
Keith Levchenko, Sr. Legislative Analyst, Council Central Staff - Environment

Casey Anderson, Chair, Montgomery County Planning Board

Attachment

Detailed information about the five points of public no-confidence
in septic surveys

1. **There is a lack of consistency, transparency and support of Master Plans and clean water and Smart Growth commitments in how DPS and DEP conduct the septic surveys.** At the County Council's T&E Committee meeting of November 9, 2017, on the draft Montgomery County Comprehensive Water Supply and Sewerage Systems Plan 2017-2026 Update (Water and Sewer Plan), Chairman Berliner explicitly asked DEP to provide edits to the Water and Sewer Plan clarifying the presumptive policy for septic service for low-density and rural areas. (The term "*presumptive policy for septic service*" - in short, "*presumption for septic*" - refers to the goals and directives in these and similar Master Plans.) And, Chairman Berliner also asked DEP to share their documented methodology for conducting these surveys and their decision protocol ("decision tree") used in making recommendations for sites to remain on septic or convert to sewer service. We met with DEP staff (Alan Soukup and Dave Lake) one month later, on December 8, 2017, and we appreciate that staff took the time to meet with us. As of the date of this letter, we have shared with DEP staff our own edits to the Water and Sewer Plan, Chapter One, that clarify the presumption for septic for rural and low-density areas, and we await DEP's response to the T&E Committee's request.

The 2016 Memorandum from the Council's Office of Legislative Oversight, entitled: *Life-Cycle Regulation of On-site Wastewater Treatment Systems*, (OLO Memorandum Report 2017-5) highlighted five management models aimed at improving the maintenance and performance of on-site sanitation systems. Selection and implementation in Montgomery County of one of these management models would reduce the number of septic system problems and failures, and thus would support the policy presumption for septic systems in rural and low-density areas. To our knowledge, the County has yet to fully review and consider applying the options highlighted in this OLO Memorandum.

Current septic surveys as in Glen Hills have not attempted to implement a proactive septic system maintenance approach, such as one of the options outlined in OLO Memorandum 2017-5; nor have they sought to delineate where actual septic system failures have occurred based on field data of soil and water samples. The upshot is that with the septic survey/"Special Sewer Service Area" approach, the focus shifts from helping homeowners maintain existing septic systems, to its opposite: a rush to convert to sewer pipes. Along with the increased density that sewer pipes bring, come increased costs of service to residents and businesses, with initial costs of sewer conversion - ranging from the tens of thousands, to over a hundred thousand dollars per residence - borne by individual private landowners, and later costs of system maintenance borne by ratepayers. At present, homeowners now on septic systems that are part of these septic surveys are not notified of the best estimated per-property costs that they will have to bear as a

result of the recommended sewer conversions resulting from the current policy, survey methodology and decision tree.

WSSC has already proposed an \$83 million move of the Potomac Water Filtration Plant's water intake to avoid stormwater-borne contaminants caused by sewer-enabled high-density development. Under State law, the Water and Sewer Plan is supposed to guide the County's water and sanitation policies in harmony with our General Plan and Master Plans. Our Master Plans direct that medium-density and higher-density developments be served with sewer lines, and that low-density residential and rural areas be served with on-site waste treatment systems including septic systems. These include the Master Plans for Potomac, Olney, Cloverly, and Upper Rock Creek, along with that of the Ag Reserve itself.

2. **The County is not currently operating under the “presumption for septic in rural and low-density areas” policy.** Current “septic survey” methodology and related de-facto policy appears to be based on a presumption for sewer system conversions for low-density areas now on septic. Our review has included discussions with DEP and Council staff about the “septic survey” methodology and decision criteria by which the Administration recommends switching a given low-density neighborhood from septic to sewer service. We are concerned that the presumption for septic service in low-density areas is not being implemented by County staff – in fact, the opposite appears to be the de-facto policy: a presumption in favor of sewer conversion for these areas.

A presumptive policy in favor of septic service, in support of Master Plan goals and clean stream commitments, means the following: where a septic system is shown to be failing (based on site-specific field data), the first County response, consistent with the on-site system management approach outlined in the OLO Memorandum 2017-5, should be to support remedies that maintain the existing system, such as stepped-up maintenance and replacement septic systems – not conversion to sewer. In addition to the need to be focused on actual septic failure, the “septic survey” process must be coupled with an effort to support on-site remedies to respond to failed or failing systems. DEP's septic survey process must coordinate with the existing DPS process that responds to reports of failure - and that supports property owners' effective septic system maintenance in order to prevent and reduce the chance of failure. As a case in point, DPS and DEP recommended sewer category changes for properties with still-functioning septic systems in the South Overlea Drive Septic Survey area, and are apparently planning to do the same for properties in the North Potomac Highlands Septic Survey area.

Where the County recommends that a given residence or a whole neighborhood be switched from septic to sewer service, each resident should be notified of the estimated cost that they – not the County or WSSC - will bear for this conversion. But, such notification is not currently done. Instead, public comments made by County officials (to the effect that the more neighbors are convinced to help pay for a sewer line, the lower the cost per resident will be) have the effect of

Letter to County Executive requesting pause in septic surveys 2.01.2018

encouraging homeowners to request a survey and even to request conversion to sewer service, but the costs and who will bear them are not disclosed in writing.

As noted above, at the County Council's T&E Committee meeting of November 9, 2017, Chairman Berliner directed DEP staff to include language in the draft Plan that clarifies the presumption of septic in rural and low-density areas. Based on DEP's South Overlea Drive Septic Survey report, it is clear that DEP is not currently operating under this policy. Of the 16 properties recommended for inclusion in the Special Sewer Service Area, 14 properties had no septic system failures and were not documented to be public health problems; for the other 2 properties, one is already approved for public sewer service, and one is already served by public sewer. Rather than support continued on-site service of these functioning systems, through stepped-up maintenance or use of available replacement septic fields, staff recommended sewer category changes for these properties; for some, the stated reason was that they would have to cut down trees to install a replacement septic system.

Regarding the use of stepped-up maintenance and other on-site remedies: U.S. EPA technical manuals describe a range of on-site remedies for failed or failing septic systems. These include alternately using two drain fields in order to give each one a "resting period" that enables the soil to regenerate; and, graywater separation, to reduce the volume of water that a septic system (including its drain field) must treat. To our knowledge, the current survey methodology does not include site-by-site consideration of these on-site remedial options. (Current codes do not allow graywater separation; MDE has issued guidance on waterless systems which entail graywater separation; we recommend that County officials seek to change the codes in order to allow these practices.)

3. The current undocumented methodology and decision process to recommend sewer category changes ignores the need for lot-by-lot soil testing as explicitly stated in the DEP/AMT Glen Hills Area Sanitary Study.

The undocumented methodology and decision process to recommend sewer category changes is invalid, since we at least know that it is partially based on potential constraints extracted from the theoretical analysis contained in the DEP/AMT Glen Hills Area Sanitary Study. There was no lot-by-lot soil testing as the study authors themselves recommended:

Phase 1 Report, p. 46, states, "To validate the USDA soils information on a property-by-property basis, proper field testing should be done. Only with actual field testing can there be certainty regarding the suitability of soil conditions for deep trench septic systems."

Phase 2 Report, p. 2, states, "On-site septic systems replacements or expansions will require proper soil testing and evaluations to determine their suitability. With more detailed field soil testing some of the areas within the

Letter to County Executive requesting pause in septic surveys 2.01.2018

[Review Areas] RAs may reveal better soil conditions than the preliminary data that the Phase 1 report based its delineation of the RAs.

Phase 2 Report, p. 4, states, “Due to the preliminary nature of the report and available funds, the report did not include the lot-by-lot field soil testing that is normally required when designing, permitting, and constructing sanitary systems. Only with this type of soil testing can there be certainty regarding the long-term sustainability of septic service on individual properties.”

These recommendations were not implemented; instead, DEP assigned percent constraints for each property, partially based on the theoretical AMT analysis. This means that staff’s assessment of properties, such as the ones in the South Overlea Drive Septic Survey report, is not based on actual site-specific field data; without this site-specific soil testing, combined with a lack of support for use of stepped-up maintenance and other on-site remedies, the public has little or no basis for confidence in sewer conversion recommendations.

4. **Properties with functioning septic systems that are in “proximity to properties of owners requesting a survey” (South Overlea Drive Septic Survey Report, p. R-1) are added to survey areas.** The public perception is that this is done for the sole purpose of trying to make sewer line extensions more plausible by lowering the cost per resident for sewer service. If this is the case, this is in direct contradiction to the “presumption for septic” policy.
5. **Property owners, who object to inclusion in a septic area survey, and to being recommended for sewer conversion, need to be afforded a formal appeals process.** At present, the only recourse for such property owners is an ill-defined, informal process directed at the County Council.