

Worksession

MEMORANDUM

September 7, 2018

TO: County Council

FROM: *KL* Keith Levchenko, Legislative Analyst

SUBJECT: **Worksession:** Ten-Year Comprehensive Water Supply and Sewerage Systems Plan 2017-2026

PURPOSE: To review the T&E Committee's and Council Staff's policy recommendations related to Water and Sewer Plan criteria for addressing existing and anticipated onsite system failures within special service areas

T&E Committee Recommendation: Add language in the Plan Update noting that for the initiation of a special service area survey by DEP, confirmation by DPS of at least one on-site failure or major problem, which cannot reasonably be addressed with on-site solutions, is required.

Council Staff Recommendations: Add language in the Plan Update to:

- Affirm that property owners can choose to opt out of special service area surveys
- Prohibit subdivision of properties approved for public water/sewer via special service areas and/or through the individual public health problems criterion
- Clarify which individual public health cases can be addressed administratively through DEP versus through the regular Council review process.

NOTE: Assume that the current special service area survey under review by DEP (North Potomac Highlands) can continue. However, Council Staff assumes that the Executive and Council will review this pending survey consistent with any new policy framework approved by the Council.

For additional background on the Council's previous reviews of the Water and Sewer Plan Update, please see the following Council review packets available for download at:

February 27: http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=14632&meta_id=149752

March 6: http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=14681&meta_id=150260

March 20: http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=14739&meta_id=151122

April 17: http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=14887&meta_id=153831.

Both the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan 2017-2026 (County Executive Recommended Plan – March 2017) and the Current Approved 2003-12 Plan are available for download at: <https://www.montgomerycountymd.gov/water/supply/county-water-plan.html>.

Attachments to this Memorandum Include:

- Draft Resolution (©1-2) as presented to the Council on April 17, 2018
- Resolution Attachment A: Summary of Changes to the County Executive's Plan Update as presented to the Council on April 17, 2018 (©3-6)
- Memorandum dated April 12, 2018 from the County Executive to Council President Hans Riemer (©7-8)
- Summary of preliminary Council actions to date (©9-17)
- Current policy regarding Community Service to Relieve Public Health Problems (©18)
- Draft policy language regarding Public Health Problems (as included in the April 17, 2018 Council Staff packet) (©19-21)
- Executive's Recommended Plan Update (Excerpts)
 - "Community Service to Relieve Public Health Problems" (©22-23)
 - "Individual Water and Sewerage Systems Problems" (©24-25)
- Memorandum dated July 12, 2018 from Councilmember Elrich with follow-up amendments to the Ten-Year Water & Sewer Plan (©26-31)
- Area-Wide Public Health Problem Areas/Special Service Areas Background Information and Policy Discussion (©32-35)
- Draft Plan Policy Language regarding Public Health Problems (based on T&E Committee recommendations from July 16, 2018) (©36-39)
- Cover Letter dated September 4, 2018 from Montgomery Coalition to Stop Sewer Sprawl (©40-46)

Meeting Participants Include:

- Stan Edwards, Chief, Environmental Policy and Compliance, Department of Environmental Protection (DEP)
- Alan Soukup, Senior Planner, Water & Wastewater Policy Group, DEP

NOTE: Council Staff suggests that for the Council worksession on September 11, the Council focus on the general policy issues associated with public health problems (such as the T&E Committee's suggested alternative that came out of its July 16 meeting). Based on the outcome of the Council worksession, Council Staff will work with DEP staff to finalize all changes to the Plan Update text in advance of formal Council action on the Plan Update.

Status of Council Review of the Ten-Year Water and Sewer Plan

The Council held worksessions on February 27, March 6, March 20, and April 17, 2018 on the Ten-Year Water and Sewer Plan. A summary of the Council's preliminary actions to date is attached on ©9-17. Councilmembers should refer to the Council packets from those worksessions (see links on the cover page of this memorandum) for more details on each issue discussed.

On March 20, the Council preliminarily supported all but one of the T&E Committee's recommendations regarding changes to the Ten-Year Water and Sewer Plan Update transmitted by the Executive (see list on ©9). The one change involved a 5-4 straw vote in support of an amendment proposed by Councilmember Elrich to revise the policy regarding Area-Wide Public Health Problems/Special Service Areas. This amendment limited consideration for sewer category changes via the areawide survey process to properties with documented on-site system failures with

no feasible on-site remedy and adjacent and confronting properties also with documented failures with on-site remedy. Revised text developed by Council and Executive staff to implement this amendment is included on ©19-21. *NOTE: Council Staff later suggested consistent language for addressing individual cases outside the sewer envelope.*

On April 12, the Executive transmitted a memorandum (see ©7-8) requesting that the Council reconsider its support for Councilmember Elrich's amendment and suggested some alternative approaches the Council should discuss.

At the Council's April 17 meeting, the Council President asked the T&E Committee to revisit the issue of special service areas for failed systems and anticipated failures for properties outside the planned water/sewer envelope.

On July 12, Councilmember Elrich sent a memorandum (©26-31) to Councilmembers with a revised amendment. The revised amendment, as noted, "retains the underlying principles of the original amendment", while including a definition for "imminent failures." The memorandum also questions the distinction Council Staff developed for properties included within versus outside the planned service envelopes, and the revised amendment language does not distinguish between areas inside versus outside the planned service envelopes.

The T&E Committee (joined by Councilmembers Elrich and Katz) met on July 16. At that meeting, Council Staff laid out a number of policy alternatives for consideration (consistent with the Executive's request and the Council President's direction).

Committee Chair Berliner supported an alternative that the initiation of a special service area survey by DEP should require confirmation by DPS of at least one on-site failure or major problem. After a substantial amount of discussion, the Committee agreed to have Council Staff draft Water and Sewer Plan text reflecting this approach. The latest draft language reflecting this approach is attached on ©37-38.

This approach is more restrictive than current policy (which does not require a documented failure for a survey to be initiated). However, this approach is less restrictive than Councilmember Elrich's amendment, which requires that all properties ultimately included within the survey area have documented failures.

The latest draft language distinguishes between properties inside and outside the planned water/sewer service envelopes. Councilmember Elrich's amendment does not make this distinction. This point is discussed in more detail later in this memorandum.

On September 4, 2018, the Montgomery Coalition to Stop Sewer Sprawl (which includes four organizations – Watts Branch Watershed Alliance; Montgomery Countryside Alliance; West Montgomery County Citizens Association; and Conservation Montgomery) submitted recommendations and proposed Water and Sewer Plan text revisions in support of Councilmember Elrich's amendment (see cover letter and explanations on ©40-46). Council and DEP staff have preliminarily reviewed the group's recommended text revisions and Council Staff will consider incorporating those recommendations that are consistent with the Council's general policy direction.

Other Issues

Distinguishing Between Properties Inside versus Outside the Planned Water/Sewer Envelopes

Councilmember Elrich's latest amendment language (see ©26-31) treats areas within the planned service envelopes the same as properties outside the planned service envelopes. The Montgomery Coalition to Stop Sewer Sprawl also supports being equally restrictive within the sewer envelope, arguing that there are negative environmental impacts from extending sewer within the planned envelope as well and that special service area surveys should only be considered if there is no on-site remedy.

However, under current Water and Sewer Plan policies, property owners within the planned water/sewer envelope can already seek a category change at any time based on the fact that public water and/or sewer service for these properties would be consistent with existing Master Plan language. The planned water and sewer envelopes are based on recommendations in Master Plans approved by the Council that involved comprehensive review processes taking into account environmental and other policy considerations. The establishment of planned service envelopes is a key outcome of the Master Plan review process. **Given this, Council Staff believes it is appropriate to treat properties inside the planned service envelopes differently from properties outside the planned service envelopes. The draft language prepared by Council Staff to implement the T&E Committee's suggested approach includes this distinction.**

Opting out of special service area surveys

The Council heard concerns from some property owners that inclusion in a special service area could require them to connect to public water/sewer in the future when their current system fails, even if their property can support a new on-site system. In areas where public water/sewer is available or will be programmed for construction in the future (i.e., categories S-1/S-3 and W-1/W-3), State law requires a property owner replacing their septic system to get an interim permit. The interim permit requires the property to connect to public water/sewer within one year of the public water/sewer becoming available.

For properties outside the planned water/sewer envelope, Council Staff believes property owners who wish to remain on well and/or septic systems for the long term should be allowed to do so (assuming their property can support these systems).

DEP has noted that, under its current process, property owners are allowed to opt out of special service area surveys. **Council Staff suggests that DEP's operating procedures include sufficient notification requirements for all affected property owners in a survey area regarding their ability to opt out of a survey. If a property owner opts out and a special service area is ultimately approved by the Council, that property will not be part of any category change approval.** Since the property's category would remain S-6/W-6, the property would be assumed to remain on well and/or septic, even if public water/sewer were to become available in the area. No interim permit would be required for any future on-site system for that property.

Draft language is included in Section II.G.2.c: "Onsite Systems Surveys" (see ©38-39) which notes this opt-out capability.

DEP staff have noted that more details regarding the opt-out process will be included in DEP's operating policies for these surveys.

Individual public health cases

In light of the debate regarding special service areas, Council and Executive staff have also discussed possible changes to individual public health cases outside the planned service envelopes, including:

- Anticipated Failures: The Plan Update text notes that existing and anticipated failures documented by DPS can be approved administratively under this policy. Executive staff has suggested the text clarify that recommendations addressing anticipated failures must go through the Council approval process. **Council Staff concurs with this change.**
- Existing Failures: Council Staff supports the administrative delegation approach for failures with no on-site remedy (as determined by DPS) and for failures which may have a remedy but which have water or sewer available or in close proximity (see next bullet below regarding service availability).
- Council Staff believes the term "available or in close proximity" with regard to public water or sewer should be clarified to mean service that **involves an abutting or non-abutting connection or an extension that does not open up service to other properties not otherwise eligible for such service.**

Section II.G.2.a. "Single Property Health Problems" includes draft text (see ©36-37) consistent with the above recommendations.

Prohibition on subdivision of properties approved for public water/sewer via special service areas or through the individual public health problems criterion

Properties outside of the planned water/sewer envelopes that are approved because of existing or anticipated public health problems (whether individual or through special service areas) or through the abutting mains policy are approved for single hookups. Single hookups preclude the possibility of a property subdividing with multiple lots served on public water/sewer.

However, a property could still theoretically subdivide into two or more lots, with one lot utilizing public water/sewer and the other lot(s) utilizing on-site systems. **Council Staff recommends adding language to the Plan Update to clarify that the approval of single hookups for public health cases (in areas outside the planned services areas) cannot be used to support subdivision of a property into more than one lot.** Similar language is already included in Resolution 18-423 (see ©37) for the Glen Hills Study Area and in the current Water and Sewer Plan for the Piney Branch Restricted Sewer Service Area (regarding abutting main connections).

Draft language explicitly noting this prohibition is provided in Sections II.G.2.a. "Single Property Health Problems" and II.G.2.b. "Area-Wide Public Health Problems" (see ©37 and ©38).

Special sewer service area survey currently under review by DEP

DEP staff asked Council Staff for clarification as to whether a current survey now under review (North Potomac Highlands) should be evaluated under the Current Plan criteria in place when the survey was initiated or under revised criteria the Council ultimately adopts under the Plan Update.

Council Staff recommends that DEP continue with the current survey, but that any Executive recommendations to the Council wait until the Council acts on the Plan Update. Council Staff's assumption is that the Executive and the Council will review any pending and future requests under the new policy framework.

Next Steps

Assuming the Council concludes its discussion of the public health problems issue on September 11, Council Staff will coordinate with Councilmembers and DEP staff to finalize the approval resolution and Plan Update language for final Council action. After Council action, the Executive has 10 days to review and provide comments to the Council. After that, the approval resolution will be forwarded to MDE for its review.

attachments

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Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Ten-Year Comprehensive Water Supply and Sewerage Systems Plan, 2017-2026

Background

1. Section 9-501 et seq. of the Health-Environmental Article of the Maryland Code requires the governing body of each county to adopt and submit to the State Department of the Environment a comprehensive County Plan, and on a triennial basis comprehensively review its Plan.
2. In accordance with the State law on December 30, 1969, by Resolution No. 6-2563, the County Council adopted a Comprehensive Ten-Year Water Supply and Sewerage Systems Plan, which was approved by the State Department of the Environment.
3. The County Council has from time to time amended the Plan.
4. On March 13, 2017, the County Executive submitted the Recommended Montgomery County 2017-2026 Comprehensive Water Supply and Sewerage Systems Plan.
5. Recommendations on these amendments were solicited from the Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission staff, and affected municipalities.
6. A public hearing was held on June 13, 2017.
7. The Transportation, Infrastructure, Energy and Environment Committee discussed these amendments on June 22, July 20, October 5, and November 9, 2018 and made recommendations to the Council.
8. The County Council held worksessions on February 27, March 6, March 20, and April 17, 2018.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Executive's March 2017 Recommended Montgomery County 2017-2026 Comprehensive Water Supply and Sewerage Systems Plan is approved with the following changes as shown in the attachments to this resolution.

This is a correct copy of Council action.

Megan Davey Limarzi, Esq.
Clerk of the Council

Approved 2017 - 2026 Water and Sewer Plan: Summary of Text Policy Revisions

In preparing the final version of the Approved 2017 - 2026 Water and Sewer Plan, the Montgomery County Department of Environmental Protection (DEP) made numerous revisions and updates to the March 2017 draft Plan text. Many of these changes were minor in nature, including editing corrections and minor wording revisions. In addition, DEP updated several of the GIS-generated maps appearing throughout the text. The following table provides a summary of the policy and other major revisions to the draft text:

APPROVED 2017 - 2026 WATER AND SEWER PLAN		
Policy Revisions for the County Executive Recommended March 2016 Draft		
Section/Figure/Table Revised*	Initiated By	Revision
Executive Summary		
(pgs. ES-2 to ES-3, ES-4 & ES-7)	DEP	Revised the Executive Summary, as needed, to reflect other changes in the Plan text (as identified below).
Chapter 1: OBJECTIVES AND POLICIES		
Section I.A.: Plan Goals and Objectives (pg. 1-7)	public input	Added text to better address the use of and reasoning for individual onsite systems in lower-density residential and agricultural areas.
Section II.A.: County Water and Sewer Systems & Figure 1-F5 (pgs. 1-19 to 1-20)	T&E Committee	Added language regarding abutting mains and clarified the language for non-abutting service connections. Also revised Figure 1-F5 to include more detail concerning abutting and non-abutting service connections.
Section II.A.: County Water and Sewer Systems (pg. 1-19)	public input	Added text addressing and comparing planned community service envelopes and existing community service areas.
Section II.E.1.: Development Plan Review (pg. 1-24)	T&E Committee	Added language noting the Development Review Committee's role in reviewing concept plans for PIF-based category change requests.
Section II.F.: General Policies for Water and Sewer Service (pg. 1-25) & Section II.F.1.: Consistency with Comprehensive Planning Policy (pg. 1-26)	public input	Revised text to note that some rural areas with moderate-density residential, employment, or industrial zoning do not receive community service because they area outside the planned community service envelopes.
Section II.F.2.b.: Low-Density Residential Estate Development (pg. 1-27)	public input	Added text addressing the presumption of onsite system service for properties on these zones and how they serve as buffers for lower-density development.
Section II.F.3.a.: Rural Neighborhood Cluster (RNC) Zone (pg. 1-28)	public input	Added text addressing the presumption of onsite system service for projects developing under the RNC standard cluster method.
Section II.F.5.: Service Policies for Employment and Industrial Development (pg. 1-29)	public input	Added text to note that development of this type, if located in rural areas are presumed to use onsite systems service, not community service because they area outside the planned community service envelopes.
Section II.F.6.: Service Policies for Agricultural Development (pg. 1-29)	public input	Revised text to clarify the use of onsite systems service in areas zoned for agricultural use.
Section II.G.1: Master Plan Recommended Exceptions (pg. 1-33)	public input	Added a reference to Council Resolution No. 18-423 that established sewer service policies for the Glen Hills study area.

* Page references refer to the Executive's draft Plan text.

Approved 2017 - 2026 Water and Sewer Plan: Summary of Text Policy Revisions

APPROVED 2017 - 2026 WATER AND SEWER PLAN Policy Revisions for the County Executive Recommended March 2016 Draft		
Section/Figure/Table Revised*	Initiated By	Revision
Section II.G.2.: Community Service for the Relief of Public Health Problems (pgs. 1-34 to 1-35)	County Council	Revised the section (and subsections) to address a text amendment approved by the Council affecting the consideration of area-wide health problems in areas outside the planned community sewer envelope. The amendment limits septic survey areas and the designation of special sewer service areas to those properties with known septic system failures, with no reasonable onsite mitigation, as documented by DPS. The section was restructured to address separately properties within and outside planned community service areas.
Section II.G.3.and II G 3 a.: Community Service for Properties Abutting Community Service Mains (pg. 1-35 through 1-38)	DEP	Clarified DEP's current practice for consideration for approval of non-abutting connections in some limited circumstances under this policy.
Section II.G.4.: Community Service for Private Institutional Facilities (pgs. 1-38 to 1-41).	T&E Committee M-NCPPC	Added text clarifying current practice that the PIF Policy cannot be utilized in cases where a Master Plan specifically recommends against the use of public water/sewer for PIF uses or any use.
Section II.G.4.b.: PIF Sites Outside the Planned Community Service Envelopes (pg. 1-39)	T&E Committee	Clarified the Council's options for granting conditional approvals for PIF-based category change requests.
Section II.G.4.e.: PIF Policy Application Requirements (pg. 1-40)	T&E Committee M-NCPPC	Added text revising the application process to require the PIF applicant to submit a concept plan to M-NCPPC for review by the Development Review Committee (DRC) prior to submission of the category change request to DEP. The category change application must include a copy of the concept plan and DRC comments on the plan.
Section II.G.4.f.: County Council Reconsideration of PIF Concept Plan Changes	T&E Committee	Added text noting that if a PIF applicant makes any significant concept plan changes, as determined by M-NCPPC, from the concept plan considered by the Council at the time of the Council's action, reconsideration of the PIF approval action by the County Council is required.
Section II.G.11.b.: Piney Branch Restricted Sewer Service Policy (pg. 1-43).	DEP	Removed the text regarding the conditions required for the consideration of sewer service and text that instead refers to the same conditions noted in Appendix C, Section II. L.
Section III.A.5 b.: Interagency Coordination (pgs. 1-48 to 1-49).	DEP	Added language noting the County's participation in the facility planning process for WSSC's capital improvements program.
Section III.C.2.: Individual Sewerage Systems (pg. 1-53)	DEP	Revised the text concerning the use of Best Available Technology (BAT) systems to clarify the conditions for requiring BAT systems outside of Bay Critical areas.
Section III.C.4.a.: Individual Systems Failures (pg. 1-53)	public input	Expanded the information provided about possible mitigation actions to address a failing septic system.

* Page references refer to the Executive's draft Plan text.

Approved 2017 - 2026 Water and Sewer Plan: Summary of Text Policy Revisions

APPROVED 2017 - 2026 WATER AND SEWER PLAN Policy Revisions for the County Executive Recommended March 2016 Draft		
Section/Figure/Table Revised*	Initiated By	Revision
Section III.C.4.b.: Aging Individual Systems (pg. 1-55)	public input	Revised to better reflect the County's priority to repair or replace failed septic systems, if possible, rather than the further extension better explain alternatives for the mitigation of septic of public sewer service.
Section III.C.4 d.: Rural Sanitation Planning Program (pg. 1-56 to 1-57)	T&E Committee	Revised the recommendations in this section to focus on the development of a functioning onsite systems database that will inventory and maintain ongoing records of the existing wells and septic systems throughout the County and the development of an initial education and outreach effort to property owners.
Section III.G.3.a: Community Service for Properties Abutting Community System Mains: General Requirements (pg. 1-36)	T&E Committee	Added language regarding abutting mains and clarified the language for non-abutting service connections.
Section V.B.: Triennial Water and Sewer Plan Comprehensive Update Process (pg. 1-67)	DEP	Updated the MDE initial review period requirements from 90 to 60 days and its review extension period from 60 to 45 days consistent with the enactment of SB1040 during the 2017 State legislative session.
Section V.D 3.: State Consideration of Interim Amendments (pg. 1-73)	DEP	See revision comments for Section V.B., preceding. Also added text noting the County's 180-day period in which to appeal an amendment disallowed by MDE.
Section V.E.3.: Deferred Amendments (pg. 1-75)	T&E Committee	Revised the timeframe which triggers the Council providing notice of a meeting on a deferred request with no significant changes from 120 days (as recommended by the County Executive) to 90 days.
Chapter 2: GENERAL BACKGROUND		
Note: No policy revisions for the County Executive's Recommended Draft		
Chapter 3: WATER SUPPLY SYSTEMS		
Section II.F.2.a - Projected Source Water and Treatment Facility Needs (pgs. 1-32 to 1-33)	public input	Revised in partial response to community group requests for projected facility needs for the Potomac Water Filtration Plant, specifically for the submerged channel raw water intake and drought management.
Chapter 4: SEWERAGE SYSTEMS		
Note: No policy revisions for the County Executive's Recommended Draft		
APPENDIX A: GLOSSARY		
Best Available Technology (BAT) System (pg. A-1)	DEP	Revised text to correctly reflect regulation changes for BAT systems outside of Critical Areas made by MDE.
Community Service Envelopes and Service Areas (pg. A-1)	public input	Added text addressing and comparing planned community service envelopes and existing community service areas.

* Page references refer to the Executive's draft Plan text.

Approved 2017 - 2026 Water and Sewer Plan: Summary of Text Policy Revisions

APPROVED 2017 - 2026 WATER AND SEWER PLAN		
Policy Revisions for the County Executive Recommended March 2016 Draft		
Section/Figure/Table Revised*	Initiated By	Revision
Public Health Problems – Existing and Anticipated (pg. A-2)	DEP	Added text to address the terms existing and anticipated health problems (similar to that in Chapter 1, Section II.C.4.c.)
Special Water or Sewer Service Area (pg. A-4)	DEP	Added text to address the designations of special water or sewer service areas as related to the relief of area-wide public health problems.
Water/Sewer Service Connection (pgs. A-3 to A-4)	DEP	Added and relocated text to clarify abutting service connections versus non-abutting service connections.
APPENDIX B		
Note: No policy revisions for the County Executive's Recommended Draft		
APPENDIX C: EXCEPTIONAL SERVICE POLICIES AND RECOMMENDATIONS		
Section II.E: Glen Hills Study Area (pgs. C-4 to C-6.)	T&E Committee & County Council	Added: <ul style="list-style-type: none"> Text concerning the revised sewer policies for the Glen Hills Study per Council Resolution 18-423 and concerning subsequent revisions to the consideration of area-wide public health problems as adopted by the approval of this Plan update. Information about the special sewer service area approved for the South Overlea Drive survey area, summarized changes to the area-wide health problems policy as approved by the Council. Text allowing for the use of the Potomac peripheral sewer service policy with the Glen Hills area, but still excluding that properties within the Piney Branch Special Protection Area.
Section II.L: Piney Branch Watershed (pg. C-13)	DEP	Added text clarifying the public health problems provision of the Piney Branch sewer service policy to allow community sewer service for properties within a Council-designated special sewer service area.
Section II.M: Potomac Area RE-1 and RE-2-Zoned Properties & Figure C-F13 (Pgs. C-14 to C-16)	T&E Committee	Revised this section to remove the Glen Hills Study area from being excluded from the Peripheral Sewer Policy. NOTE: The areas within the Glen Hills study area which is also within the Piney Branch Watershed is still excluded from consideration under the Peripheral Sewer Policy.
APPENDIX D		
Note: No policy revisions for the County Executive's Recommended Draft		
APPENDIX E		
Note: No policy revisions for the County Executive's Recommended Draft		

Other revisions involving Water and Sewer Plan technical corrections as raised by the County Council, DEP, and other agencies, and from public input are not included here.

* Page references refer to the Executive's draft Plan text.



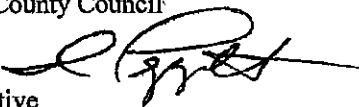
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 12, 2018

TO: Hans Riemer, President
Montgomery County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Changes to the County's Policy Addressing Area-Wide Public Health Problems
Associated with Failing Septic Systems

The County Council is currently considering the draft of the Comprehensive Water Supply and Sewerage Systems Plan (CWSP) transmitted from my office in March 2017. The policies that guide how the County resolves existing septic system failures and plans for the management of future failures have been the subject of much debate throughout the Council's review of the draft CWSP.

On March 20, 2018, the Council took a preliminary vote to substantially modify the CWSP policy that addresses area-wide public health problems resulting from existing and anticipated onsite system failures. The Council's vote to amend this policy, as proposed by Councilmember Marc Elrich, will limit the County's authority to consider and approve the provision of public sewer service to only those properties with existing septic system failures documented by the Department of Permitting Services (DPS). Note that the draft CWSP already has a policy that addresses individual cases involving health problems resulting from well and septic system failures.

The Council's preliminary decision regarding this policy diverts substantially from the direction taken in the March 2017 draft update to the CWSP, and from past versions of the Plan. In preparing the current draft update, the Department of Environmental Protection (DEP) based this language on policy direction from prior Plans and on decisions made by the Council regarding the use of septic system surveys in March 2016 under the Council's revision to the sewer service policies for the Glen Hills area. The Council's decision then, under Council Resolution (CR) No. 18-423, was to allow the use of septic system surveys to identify existing and anticipated health problems and, if needed, recommend properties eligible for public sewer service. This was part of the Council's direction to bring sewer service policies for the Glen Hills area into concurrence with policies addressing sewer service for other RE-1-zoned areas in the Potomac Subregion.

In March 2017 under CR 18-888, the Council subsequently voted to approve my recommendations for establishing a special sewer service area for the South Overlea Drive area in Glen Hills. The special sewer service area recommendations were based on the results of a septic system survey requested by local residents. That survey process and the resulting service

Hans Riemer, President
Montgomery County Council
April 12, 2018
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recommendations were also based on the direction provided by the Council's decisions under CR 18-423. This action also confirmed the importance of the Council's role in considering and acting on recommendations for special service areas based on survey results.

I understand concerns about unintended development resulting from the extension of public sewer service outside the planned public sewer envelope. The area-wide health problems policy functions to address onsite system concerns facing existing communities and seeks to avoid the provision of public sewer that could stimulate growth beyond identified special sewer service areas. Public sewer service granted to approved special sewer service areas is limited to a single sewer hookup for each existing property. Sewer extension alignments are sought that minimize the extension of new mains within environmentally sensitive areas, as well as outside Council-approved special service areas. The area-wide public health problems policy has served to address at least 15 separate survey areas since the 1980s, most related to septic systems problems. DEP provided Council staff with a listing of these cases during discussion of the CWSP. These cases, where approved by the Council, have resulted in few situations where public sewer service was provided beyond the limits of the approved and restricted service area.

I also understand concerns about the possible extension of public sewer service into the county's low-density residential and agricultural areas. However, in revising the policy contained in the draft CWSP, the Council failed to consider alternatives that could achieve similar agricultural protection goals without effectively abandoning the area-wide health problems policy:

- Restriction of the policy from use within the AR Zone, similar to the Council's 2005 decision to restrict the use of the private institutional facilities policy from the Agricultural Reserve.
- Additional zoning-based restrictions, possibly for the Rural and RC Zones.
- Requirement that any recommended special sewer service area include at least one or more documented septic system failures.
- Other limitations based on lot size, housing age, proximity to agricultural areas, extent of the survey area, etc.

I view the Council's proposed change to the CWSP's area-wide public health problems policy as a not just a step backwards, but as abandonment of the County's ability to consider potential well and septic problem areas in a proactive manner. The policy changes tentatively made by the Council will now allow the County to address these problems only in a reactive manner. They remove an important part of the planning function for onsite systems in the Water and Sewer Plan. I therefore request that the Council reconsider the proposed changes to the area-wide public health problems policy.

Thank you for your consideration of my request on this subject.

cc: Patty Bubar, Acting Director, DEP
Diane Jones, Director, DPS
Lee Currey, Director, Science and Water Administration, MDE

THE FOLLOWING SECTIONS PROVIDE A SUMMARY OF THE T&E COMMITTEE'S AND COUNCIL'S PRELIMINARY ACTIONS TO DATE ON THE TEN-YEAR WATER AND SEWER PLAN UPDATE.

List of Actions

- Area-Wide Public Health Problems/Special Sewer Service Areas*
- On-Site Systems Management
- Procedures for Adopting and Amending the Water and Sewer Plan
- Dry Public Systems
- Extension Costs
- Private Institutional Facilities (PIF)
- Potomac Subregion Master Plan Peripheral Sewer Policy and Glen Hills
- Abutting Mains Policy

NOTE: The page references noted below refer to the Current Ten Year Plan and/or the Executive's Recommended Plan Update available for download at:

<https://www.montgomerycountymd.gov/water/supply/county-water-plan.html>

Area-Wide Public Health Problem Areas

Area-Wide Public Health Problems

The current Ten-Year Plan includes some general language regarding area-wide public health problem areas in Chapter 1, Section 2E2 ("Community Service to relieve Public Health Problems") (see Page 1-20). Over the past few decades, according to DEP, the County has performed numerous area-wide sanitary studies and the Council has considered the creation of public health problem areas, including:

As implemented, the current policy provides for the case by case review by DEP and DPS of areas with a focus on identifying septic constraints. While septic failures can be addressed, identification of an actual failure is not required for consideration. Further details regarding the current policy and prior public health problem areas established can be found in the Council Staff packet of March 20 (Agenda Item #14).

The Plan Update transmitted by the County Executive last year includes clarifying language (similar to the Glen Hills Resolution 18-423 language approved by the Council in March 2016).

On March 6, the Council discussed a proposed amendment by Councilmember Elrich that would restrict the creation of Special Sewer Service Areas to properties with documented septic failures with no feasible on-site remedy. **On March 20, the Council continued this discussion and then preliminarily voted 5-4 (Floreen, Katz, Leventhal, Rice opposed) in support of Councilmember Elrich's amendment. On April 12, the Executive sent a memorandum to the Council asking it to consider alternatives to Mr. Elrich's amendment. At the Council session on April 17, after Councilmember discussion, Council President Riemer asked the T&E Committee to discuss this issue which it did on July 16, 2018.**

On-Site Systems Management

The OLO Report 2017-5, "Lifecycle Regulation of On-Site Wastewater Treatment Systems"¹ provides a summary of how Montgomery County regulates septic systems and included case studies of how other jurisdictions provide varying levels of oversight of private septic systems.

The County's regulatory oversight is generally limited to the initial permitting of a new system and/or replacement system. The Department of Permitting Services and DEP will also, upon request by the property owner, assist in the assessment of existing systems and the potential for connection to public sewer.

The Ten-Year Plan Update recommends that a work group be formed to consider the creation and implementation of programs to manage individual on-site systems.

However, at its June 22 Committee meeting, Committee members and Executive Branch staff agreed that establishing a comprehensive database of the universe of septic systems (and wells) in use now throughout the County is a critical first step to any enhanced governmental role. This database could then provide the County the means to better target future education and outreach (such as best practices for maintenance and repair of systems). The database could also provide better information going forward as to whether additional regulation is warranted.

Based on T&E Committee feedback, Council and DEP staff worked on revised recommendation language to focus next efforts on the creation of a database of on-site systems in the County and initial education and outreach to property owners, with the intent that startup and ongoing funding for these two efforts can be considered in the context of the FY19 Operating Budget. This work can then allow for a future consideration by the Council of more proactive maintenance and inspection programs.

On March 6 and March 20, the Council discussed additional language proposed by Councilmember Elrich to form a workgroup to create and implement programs to manage individual on-site septic programs as well as immediate steps to implement an education and outreach program and move towards pro-active maintenance and inspection programs (in addition to the creation of an onsite systems database). **The Council ultimately did not support this additional language.**

However, after the March 6 meeting, at the direction of the Council, Council Staff included more detailed language regarding some immediate education and outreach that could be implemented. **The Council supported the T&E Committee recommendation with this additional text.**

Procedures for Adopting and Amending the Water and Sewer Plan

Acting on an Amendment in an Election Year

The current plan prohibits the Council from holding a public hearing, deliberating, or acting on any amendment to the Ten-Year Plan after October 31 of a year when the Council is elected, until the new Council takes office. This prohibition is similar to what is in place for other land use-related decisions the Council makes.

¹ Available for download at:
https://www.montgomerycountymd.gov/OLO/Resources/Files/2017%20Reports/OLOReport2017_5.pdf

The Plan Update (see page 1-67) clarifies that this prohibition includes comprehensive updates and interim plan amendments. The administrative delegation process is not affected by this prohibition. **Council Staff supports this clarifying language. The T&E Committee concurred as well. No issues arose during the Council discussion.**

Administrative Delegation Process

The current plan includes a process for DEP approval of category change requests that meet specific Water and Sewer Plan policies (such as “consistent with existing plans” or “abutting mains”) AND are non-controversial. Requests can also be administratively denied if DEP determines the request is not consistent with Water and Sewer Plan policies. However, the applicant may appeal the denial to the County Council.

The DEP Director has the discretion to have any request go through the regular Council review process. For requests to be approved or denied through the administrative delegation process, the Planning Board must concur on the action and there must be no request from any Councilmember to “pull” the item for full Council review.

The Plan Update (see pages 1-70 through 1-73) clarifies the existing processes and also removes language providing for administrative denials. Since administrative denials can be appealed to the Council by the applicant, in practice DEP has chosen to send requests it would have denied through the Council process instead. **Council Staff supports removal of the administrative denial language. The T&E Committee concurred as well. No issues arose during the Council discussion.**

Informational Plan Text Amendments

The current plan allows DEP to approve text amendments that are informational updates to the Water and Sewer Plan.

The Plan Update (see page 1-73) clarifies that DEP can provide water and sewer map updates, map corrections, and revisions, as well as informational updates on a more frequent schedule than the State’s required triennial comprehensive updates. DEP has noted that it intends to do these types of updates on an annual basis administratively to ensure the Ten-Year Plan is as accurate as possible at any given time. **Council Staff supports this process. The T&E Committee concurred as well. No issues arose during the Council discussion.**

Conditional Approval Time Limits

The current plan does not include a time limit by which an applicant must meet conditions included in a category change approval. This has led to some conditional approvals remaining in place for many years, even as the subject property has been sold and/or the property owner’s intended use of the property has changed. When a revised development moves forward, this can lead to confusion as to whether the new project is consistent with the conditions approved under the old request.

A recent example is the Jesus House PIF case. A category change approval was originally approved in 1999 under the PIF Policy for the construction of a place of worship. A new property owner is now moving forward with a development plan for a different place of worship on the site. The original approval included a requirement for the set-aside of forested area, based on what would have

been required to build the original project on septic. When the new property owner came back to M-NCPPC to build on the site, DEP, Permitting Services (DPS), M-NCPPC, and the community went through a lengthy discussion about whether the new development proposal met the requirements of the original category change approval. Part of the difficulty in assessing this was the time lag that occurred.

The Plan Update (see page 1-74) includes new language that provides for a 5-year time limit for the applicant to meet all conditions included in an approval. The applicant may request from DEP up to a 5-year extension of time from the original five years. Once the time limit is hit, DEP will revert the property back to its original categories. Going forward, the property owner would need to seek a new category change. **Council Staff concurs with this new time limit for conditional approvals. The T&E Committee concurred as well. The Council discussed this issue and ultimately supported this recommendation.**

Process for deferred amendments

The Plan Update (see pages 1-74 through 1-75) includes more detailed language regarding the rationale for Council deferrals. Some examples of deferral rationales include: additional information is requested by the Council, a Master Plan revision is ongoing (which could impact the request), or other land use processes need to occur before consideration of the amendment request. **Council Staff concurs with this clarifying language. The T&E Committee concurred as well. No issues arose during the Council discussion.**

The Plan Update also clarifies that deferrals are intended not to last more than one year and that DEP will monitor deferred requests. When DEP finds that progress on a deferred request is no longer expected, the Executive may recommend that a deferred request be denied. **Council Staff concurs with this clarifying language. The T&E Committee concurred as well. No issues arose during the Council discussion.**

The Plan Update adds language noting that deferred requests can proceed through an administrative delegation process, where the resolution of the deferral has resulted in the request meeting the Water and Sewer Plan's administrative delegation criteria. **Council Staff concurs with this new language. The T&E Committee concurred as well. No issues arose during the Council discussion.**

For deferred amendments, the current plan includes language requiring the Council to hold a new public hearing for a deferred amendment request if the details of the proposed amendment have substantively changed. This language is maintained in the Plan Update (see page 1-75).

For deferred amendments that have not significantly changed, the Plan Update revises the time lag that triggers the meeting notice requirement (to the reviewing agencies, the applicant, and to all parties who submitted oral or written testimony on the amendment) for a new Council meeting on the request from 30 days to 120 days. This circumstance does not come up often, but Council Staff feels the 30-day trigger is too short, since the parties to be notified are still well-engaged in the issue after 30 days. However, Council Staff feels a 120-day timeframe may be too long a trigger period. **Council Staff recommends 90 days as a trigger for new notice requirements. The T&E Committee concurred with Council Staff's recommendation. The Council supported Council Staff's recommendation as well. Revised language reflecting this recommendation is attached on ©12.**

The Plan Update includes new language outlining the Council's "tabling" of amendments. A tabled amendment is one in which action by the Council (i.e., approval, denial, or deferral) is delayed. This delay most often occurs when the Council needs to schedule additional discussion and/or is expecting more information to be provided very soon. A tabling is expected to be a short delay and can help the Council avoid the longer process involved when items are deferred. **Council Staff concurs with this clarifying language. The T&E Committee concurs. No issues arose during the Council discussion.**

Maryland Department of the Environment (MDE) Review of Amendments

During the 2017 State Legislative session, Senate Bill 1040 was enacted which revised the timelines MDE must follow for its review of locally approved Water and Sewer Plan amendments (and Solid Waste Management Plan amendments as well). The review period (which begins when MDE formally acknowledges receipt of a copy of the local government action) was reduced from 90 days to 60 days. Extensions of the MDE review period were also reduced from 90 days to 45 days. **DEP Staff has drafted new language for the Plan Update recognizing this change.**

Dry Public Systems

The current Ten-Year Plan requires developers to install "dry" water supply and sewerage in new developments with on-site systems where the County intends to allow public service, but where community systems are not currently adequate or available. This requirement has resulted in some dry systems built in the 1970s and 1980s that are still dry today. Ultimately, when dry systems are to be connected, WSSC must do an assessment of the need for the rehabilitation and/or replacement of the system.

The Plan Update requires all subdivisions intended to be served on public water and/or sewer (i.e., W1 or W3 and/or S1 or S3) to utilize community service. No interim permits for on-site systems (with dry systems then built) would be allowed. **Council Staff concurs with this recommended change, as does the T&E Committee. No issues arose during the Council discussion.**

Extension Costs

The Plan Update includes new text (see pages 1-62 through 1-64) regarding extension costs and the need to pursue new approaches to make water/sewer extensions more affordable, while also allocating the costs more equitably among beneficiaries.

The Plan Update includes discussion of a 2012 proposal by a Bi-County workgroup for the creation of extension subdistricts within the WSSC service area that would at least partially accomplish the twin goals noted above.² Possible changes to the existing health hazard subsidy and other financial assistance were also identified by the workgroup as possible solutions. These options were later discussed at a joint T&E/TH&E Committee meeting at WSSC in March 2015.

The Plan Update recommends continued work by the two counties and WSSC to implement the subdistrict concept, as well as to consider other policies (such as grants and subsidies) to make extension

² In Montgomery County, this kind of approach has been utilized to finance other shared community benefits, such as: sidewalks, noise barriers, and even leaf vacuuming. This approach would have the effect of better allocating the costs of extensions with the beneficiaries of the extensions and result in lower costs per property owner.

costs affordable. A Bi-County workgroup of Montgomery County, Prince George's County, and WSSC recently began meeting to research and develop recommendations for both Councils' consideration.

Council and DEP staff agree that further staff review with WSSC and Prince George's County is needed to flesh out potential policy recommendations. Once developed, these recommendations can be brought back to the Council for whatever action(s) may be needed for implementation. These actions may include Water and Sewer Plan policy changes, changes in County law, and possibly changes in State law (especially if changes in WSSC practices are sought), and will likely require joint action by Montgomery and Prince George's Counties.

The T&E Committee supports continued work by the Bi-County workgroup. No issues arose during the Council discussion.

The Private Institutional Facilities (PIF) Policy

The T&E Committee agreed to several changes in the Executive's Plan Update affecting the PIF Policy. These include:

- Maintaining the current minimum criteria for eligibility for consideration.³
- Adding clarifying language that the PIF Policy cannot be considered in cases where a Master Plan specifically recommends against the use of public water/sewer for PIF uses or any use.⁴ *This is consistent with how the PIF Policy is currently interpreted by Executive and Council Staff.*
- Adding language recommended by the Executive noting that the applicant must submit a conceptual development plan (see Chapter 1 of the Plan Update – page 1-40, attached).
- Adding language clarifying that if the PIF makes significant changes (as determined by DEP) to the development plan from the plan considered by the Council at the time of the Council's action, reconsideration of the approval by the Council is required. **Council Staff concurred with the intent of this language, but suggested that the Planning Department (with assistance from DEP and DPS) is better positioned to determine whether significant changes have occurred in the development plan. The Committee concurred.**
- Providing for a five-year deadline for the applicant to meet the conditions included in the Council approval. A five-year extension may be granted by DEP upon request. This provision would apply to all PIF requests as well as any other conditional approvals.
- Added clarifying language noting that the Council may condition PIF approvals upon the PIF applicant going through a subdivision review.

³ The current PIF Policy includes minimum eligibility criteria to be considered for approval by the Council on a case-by-case basis. NOTE: An applicant who meets the minimum criteria for consideration is not guaranteed approval. These criteria include:

- The applicant must be an organization that qualifies for a federal tax exemption under the provisions of Section 501 of Title 26 of the United States Code (Internal Revenue Service).” *NOTE: Common categories of PIF uses are: places of worship, private schools, senior housing, and day care centers.*
- For PIF requests involving main extensions, those main extensions cannot open service to areas otherwise ineligible for public water/sewer. **The Plan Update includes clarifying language, which the Committee supports.**
- PIF approvals are not allowed in the AR zone (as noted earlier), nor are approvals allowed for PIF uses in existing residential structures outside the water/sewer envelope.

⁴ The PIF Policy is a “specific” policy in the Water and Sewer Plan and supersedes other general policies, both in the Water and Sewer Plan and in area Master Plans.

At its November 9 meeting, the T&E Committee asked Council, DEP, and Planning Department staff to develop a revised PIF review approach that provides for more agency review of a PIF applicant's concept plan before the Council's consideration of the PIF request occurs.

Based on this guidance from the T&E Committee, Council, DEP, and Planning Department staff discussed a revised PIF application process that would require potential PIF applicants to submit concept plans to the County's Development Review Committee for comment first, before submitting a PIF application to DEP. This additional review step will provide more information to the applicant (and to the Council ultimately) regarding a concept plan's conformance to Master Plan and other requirements. The Council would still be responsible for approving or denying PIF requests as it is now, but will have more complete information for its review.

DEP drafted revised language for the Plan Update consistent with the Committee's guidance. The T&E Committee expressed support for this change at the March 6 Council worksession and the Council supported these revisions as well.

At the Council worksession on March 6, Councilmember Elrich recommended the formation of a task force to study a number of issues regarding the PIF Policy, such as impervious area impacts and neighborhood compatibility, forest preservation, and other issues. However, this proposal was not supported by a majority of the Council. **No other issues arose during the Council discussion of the PIF Policy.**

Potomac Subregion Peripheral Sewer Policy and Glen Hills

Based on last year's Council actions on Glen Hills (Resolution 18-423), properties in Glen Hills (all of which are zoned RE-1) are:

- 1) Presumed to be served by on-site systems. This presumption is consistent with water and sewer policies countywide for large lot zones (like the RE-1 zone) and with general provisions in the Potomac Subregion Master Plan and other Master Plans, as well as the Ten-Year Water and Sewer Plan.
- 2) Properties in Glen Hills may seek approval for sewer under limited circumstances, including: if the property has a failed (or failing) septic system as documented by the Department of Permitting Services; if the property is included within a designated Special Sewer Service Area approved by the Council (such as the recently approved South Overlea Drive area); or if the property abuts a sewer main. These conditions are similar to how other RE-1 zoned properties are treated elsewhere in the County.

The issue of Special Sewer Service Areas is discussed in more detail later in this memorandum.

Peripheral Sewer Policy

The Peripheral Sewer Policy allows for "the limited provision" of sewer to properties within or "at the periphery" of the proposed water and sewer envelope.⁵ Sewer extensions to serve these

⁵ Being adjacent to properties served by sewer is not the same as being adjacent to the sewer envelope. For example, when properties outside the sewer envelope are approved for public sewer via the abutting mains policy or to address failing systems, those newly-served properties are not considered to be in the sewer envelope.

properties should be along roads rather than go through stream valleys. In practice, DEP has recommended approval for properties adjacent to or confronting the established sewer envelope, which can be served by sewer extensions along rights-of-way (rather than through environmentally sensitive areas or through private easements) and which will minimize the opening of service to other properties that would be ineligible under this policy.

The 2002 Potomac Subregion Master Plan specifically excluded properties adjacent to and in the vicinity of the Palatine subdivision, the lower Greenbriar Branch properties, all properties within the Piney Branch subwatershed, the Darnestown Triangle, and the Glen Hills area (pending the outcome of the Glen Hills study).

The Current Ten-Year Plan includes minimal summary language regarding the policy (see page 1-20). The Plan Update (in Appendix C) includes substantially more language clarifying how the policy is currently implemented.

According to DEP, 26 properties in the Potomac Subregion area have been approved for service under this policy since 2002 (not counting the Council's approval of two category change requests under this policy on October 31, 2017).

The Glen Hills Sanitary Study completed in 2014 did not review the implications of expanding this policy to Glen Hills, nor did the Executive's Glen Hills recommendations or the Council's deliberations or ultimate action through Resolution 18-423 in 2016 touch upon this policy.

Given that the Glen Hills Sanitary Study has been completed and that the peripheral sewer policy as implemented supports extensions along rights-of-way and minimizing opening service to otherwise ineligible properties (consistent with concepts discussed in the Glen Hills Sanitary Study), Council Staff is supportive of extending the peripheral sewer policy into the Glen Hills area (except for those areas within the Piney Branch subwatershed). The T&E Committee concurred with Council Staff. Council Staff worked with DEP staff to draft text for the Plan Update to implement this recommendation. No issues arose during the Council discussion.

Abutting Mains Policy

Non-Abutting Connections

The Current Plan's abutting mains policy (see page 1-21 and 1-22) is silent on non-abutting connections. However, in very limited cases, DEP has supported the approval of "non-abutting" connections under the current abutting mains policy. While the concept of approving a non-abutting connection as part of the abutting mains policy may initially sound contradictory, the intent is to provide some flexibility to serve properties on the edge of the water/sewer envelope in cases where a direct connection to the property can be made without the need for an easement across an intervening property and where the non-abutting connection can meet WSSC policy requirements.

Not allowing easements under this policy is intended to prevent properties ineligible for water or sewer from being able to become eligible through the securing of an easement from an intervening property.

The Plan Update (see pages 1-35 through 1-38) includes new language consistent with DEP's current implementation of the abutting mains policy. After the July 20 T&E Committee meeting, DEP

staff drafted additional language intended to clarify the current policy regarding non-abutting connections.

The Council received correspondence arguing that the Water and Sewer Plan's non-abutting connections policy should be consistent with WSSC's criteria for allowing non-abutting connections (such as allowing easements across intervening lots). *NOTE: There is also a pending category change request in Glen Hills, which the Committee initially discussed on October 12 but tabled pending this policy discussion, in which the property owner is seeking a non-abutting connection.*

Council Staff supports DEP's current approach for non-abutting connection approvals and the new clarifying language in the Plan Update. The T&E Committee concurred with Council Staff (2-1, Floreen supporting a broader approval policy). No issues arose during the Council discussion.

Current Policy

Table 1-T3: Special Master Plan Water and Sewer Service Recommendations	
General Area Affected	Master Plan Service Recommendation & Comments
Potomac Subregion Master Plan (2002)	
Piney Branch Watershed	The provision of community sewer service within this watershed is regulated by the Piney Branch Restricted Sewer Access Policy (see Section II.E.12.b. for specific policy requirements). This policy was amended in 2002 in accordance with the recommendations in the updated 2002 master plan.
Glen Hills Neighborhoods (as defined in the 2002 master plan.)	The master plan recommends that only documented public health problems shall be justification for the approval of sewer service area category changes within this area, pending the completion of an area-wide sanitary survey by DPS and DEP.
Properties zoned RE-1 or RE-2 at the periphery of the master plan's recommended community sewer service envelope	The master plan recommends that these properties may be considered for community sewer service on a case-by-case basis.
Darnestown Triangle: R-200 zoned area bounded by Darnestown Rd. (Rte. 28), Jones Ln., and Turkey Foot Rd.	The master plan recommends against the provision of community sewer service in this area, except to relieve public health problems or to provide single sewer hookups to properties which satisfy the "Abutting Mains" policies (See Section II.E.3.).
Upper Rock Creek Watershed Master Plan (1985)*	
Properties zoned RE-1 and RE-2 north of and adjacent to Muncaster Mill Rd. (Rte. 115).	The master plan recommends that community sewer service may be considered on a case-by-case basis for properties which satisfy the following conditions: <ul style="list-style-type: none"> ▪ sewer service requires only a direct connection to existing mains along Muncaster Mill Rd., without the need for new sewer main extensions; ▪ sewer service requires only the use of gravity connections and hookups (no pumping systems are permitted); and ▪ sewer service will support development which will not result in environmental degradation of Rock Creek.
* These master plans are currently under or are soon scheduled for revision. These revisions may affect the exceptional water/sewer service recommendations provided in this table. DEP will post amendments to this table in the water and sewer section of its website at www.askdep.com .	

2. Community Service to Relieve Public Health Problems -- Community water and/or sewer service may be extended to existing structures to alleviate or eliminate existing or anticipated public health problems, upon certification of such by the Director of the Department of Permitting Services (DPS) or his or her designee. DEP, in coordination with WSSC, shall evaluate whether the provision of community service is reasonable. If appropriate, DEP will direct WSSC to expedite the provision of community water and/or sewer service either by a connection to existing mains or by the extension of new mains in order to relieve the public health problem. Under these circumstances, community service will be provided regardless of the existing service area category, and WSSC need not wait for a service area change approval in order to plan, design, or implement the service. DEP may act to approve related service area changes through the administrative delegation process, Section V.F.2.a.: Public Health Problems. In such cases, community service will generally be limited to a single water and/or sewer hookup for existing properties. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems. In addition, DEP will coordinate with DPS to identify, as necessary, larger-scale, chronic public health problem areas and to recommend solutions for those problems in this plan. A decision to extend community service will depend on the number of properties affected, the feasibility of service, and the viability of alternative relief methods.

Council Staff Draft Text to Implement the Elrich Amendment

County Council Resolution No. 18- (April 17, 2018) Attachment B: Page 19

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[Bracketed Text]: Deletions Underscored Text: Additions

PUBLIC HEALTH PROBLEMS SERVICE POLICY

Revision to this policy as approved by the County Council. The entire "Community Service to Relieve Area-Wide Public Health Problems" policy is presented here, as some of the existing text was reorganized. The significant changes agreed to by the Council affect the subsection addressing area-wide health problems in location outside the planned community service envelopes (pages 20-21). In this revised section of the policy, the inclusion of properties in a survey area requires a DPS-documented onsite system failure where no reasonable onsite relief is feasible. Similarly, the same requirements apply for the inclusion of a property in a Council-designated special service area. This change also resulted in the removal of revised text requested by community groups to clarify the timing for the onsite system survey process, specifically as it applied to the Glen Hills study area.

CHAPTER 1

Starting on draft page 1-34

II.G.2.: Community Service to Relieve Public Health Problems

Public health problems can result from the existing or anticipated failure of individual, onsite water supply or wastewater disposal systems, wells or septic systems. Issues involving failing individual water supply and sewerage systems are addressed in more detail in Section III.C.4.a. Most properties using individual, onsite systems are located in areas where relief of health problems using community service is neither logical nor economical. However, some existing or anticipated public health cases do occur in areas within or in close proximity to areas served by community water and/or sewerage systems.

II.G.2.a.: Individual Public Health Problems

In the majority of onsite systems failures reported to DPS, relief is provided by an onsite repair or replacement. However, community water and/or sewer service may be provided to an existing structure to resolve an existing or anticipated public health problem, upon certification of the health problem by the Director of DPS or the Director's designee. If a water or sewer main extension is required or if the availability of service is unclear, DEP, in coordination with WSSC, will evaluate whether the provision of community service is feasible. In cases where DEP determines that the provision of community service is not feasible, DEP will report this back to the DPS Well and Septic Section. DPS then determines the best possible onsite solution for the health problem. Note that the State of Maryland, typically through MDE, may also direct the use of community service to relieve a public health problem.

Unless a case requires consideration by the County Council, *WSSC will begin the process to provide community service at the direction of DEP regardless of the existing service area category*, the utility does not need to wait for the County to grant a service area change approval in order to plan, design, and implement community service. DEP will follow up this action with the needed category change through the administrative delegation process.

Note that the inability of an unimproved property to support a permitted septic system does not provide justification to allow the provision of community service to that property alone under this policy.

Within the Planned Community Service Envelopes

Where an existing or anticipated onsite system failure occurs for a property located within the planned community service envelope, the property may already have a category 1 or 3 service area designation, allowing WSSC to proceed with providing community service. However, where a property lacks an appropriate category designation for community service, DEP may direct WSSC to proceed with the provision of service, as explained previously. Because the provision of community service is for a property located within an area already planned for community service, DEP may act to approve related service area changes through the administrative delegation process, under the "Consistent with Existing Plans" policy, Section V.D.2.a.

Outside the Planned Community Service Envelopes

Areas outside the planned community service envelopes are intended for service using wells and septic systems. This is consistent with lower-density residential and agricultural areas. In these cases, first consideration for relief of an existing or anticipated health problem will focus on onsite mitigation measures. However, where DPS determines that onsite measures cannot relieve the problem, or where community service

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[Bracketed Text]: Deletions Underscored Text: Additions

is available or in close proximity to the affected property, DEP may act to approve related service area changes through the administrative delegation process, under the "Community Service for Public Health Problems" policy, Section V.D.2.a. In such cases, community service will generally be limited to a single water and/or sewer hookup for existing properties. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

II.G.2.b.: Area-Wide Public Health Problems

In some circumstances, the number and/or the pattern of health problem cases will indicate a problem on a broader-scale than just an isolated, individual public health case. Upon the approval of the County Council, community water and/or sewer service may be extended to a defined special water or sewer service area to resolve area-wide existing or anticipated public health problems. All recommended special service areas for area-wide public health problems and related service area category map amendments require consideration and approval by the County Council.

The anticipated time frame for an onsite system survey starts with DEP's designation of a well or septic system survey area and concludes with MDE's decisions concerning the County Council's action regarding the survey results and recommendations. This process is generally expected to take no more than one year, depending on agency workload, including work on other onsite system surveys.

Standard procedures for onsite system surveys are available on DEP's website at Private Well and Septic Systems | Department of Environmental Protection, Montgomery County, MD.

Within the Planned Community Service Envelopes

A function of this Plan is to identify, as necessary, larger-scale, chronic public health problem areas and to recommend solutions for those problems. The need for onsite system surveys for properties within the planned community service envelopes is limited as the area involved is already intended for community service. Surveys are sometimes done to establish an area eligible for public health subsidies from WSSC to help cover the cost of the extension of a water/sewer main. Valid concerns for studying a potential health problem area include, but are not limited to:

- A failed septic system that cannot be addressed by DPS using a conventional replacement system (deep trench, shallow trench, or sand mound).
- An existing septic system permitted before 1975 and/or installed using septic technology no longer allowed under State and County regulations (seepage pit, dry well, etc.).
- A known limitation affecting future septic system use, as verified by DPS. For example, properties where DPS has acknowledged that either only one or no future replacement systems are feasible.

Individual systems surveys are typically initiated in one of three ways:

- DPS staff will identify an area of concern and recommend a survey to DEP staff.
- DEP staff will identify an area of concern and coordinate a survey with DPS.
- An individual property owner, or a group of owners, identifies an area of concern for DEP to investigate.

The County's designation of a special sewer service area will allow property owners within these communities to take advantage of WSSC's expedited service process and main construction subsidies. Individual properties within an existing or pending special sewer service area that are identified by DPS as public health problems may still be addressed using the procedures outlined in Section II.G.2.a., above.

Outside the Planned Community Service Envelopes

In areas located outside the planned community service envelopes, the identification of existing public health problem areas using onsite system surveys is limited to cases involving a failed onsite system as documented by DPS. In cases involving septic systems, DPS must determine that the onsite system failure cannot be addressed by using a conventional replacement system (deep trench, shallow trench, or sand mound), by innovative and alternative onsite replacement systems, or by new technologies as they are approved for use by the State and County (e.g. graywater systems and waterless toilets). Properties that may have anticipated

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public health problems (as explained in Attachment A: Glossary) are not included for consideration under this specific part of the policy.

In the event of a documented failure, the survey process will consist of the consideration of the status of onsite systems on adjacent and confronting properties only. Such cases require DPS documentation and must satisfy the relief requirements cited previously. Documented onsite system failures for two or more of these specific properties can be addressed as a recommended special service area for the County Council's consideration. Lacking additional documented failures, community service for an individual property may be addressed using the procedures outlined in Section II.G.2.a., above.

The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

Inclusion of additional terms used in the Plan text.

APPENDIX A: GLOSSARY

Starting on draft page A-3

Municipal Well

A groundwater well that provides water for a community water supply system. In Montgomery County, only the Town of Poolesville uses municipal wells to provide a potable water supply to its customers.

Public Health Problems – Existing and Anticipated

Individual, onsite wells and septic systems can fail due to causes such as age, damage, contamination, or insufficient maintenance. Failures may result in problems that can affect public and environmental health due to contact with inadequately treated sewage or contaminated drinking water.

Existing Public Health Problems: The following circumstances are among the most common that constitute an existing public health problem:

- The presence of inadequately treated sewage rising to the surface of the ground or backing up into a building. Or an excessive need to pump out a septic system in order to keep the preceding from happening, usually on the order of several times in a year. Proper septic system operation typically requires tank pumping every two to five years for preventative maintenance.
- Evidence of a septic system discharging inadequately treated sewage into ground or surface waters. This includes problems such as drainfields constructed within the water table, constructed on fractured bedrock, and constructed with an overflow pipe that allows the surface discharge of inadequately treated sewage from the septic tank.
- A well with inadequate water quantity yield. (State minimum standard is 1 gallon per minute.)
- A well with inadequate water quality, resulting from either an inflow of surface water or contamination of the groundwater source.
- A well that does not satisfy current regulatory standards, including hand-dug wells, wells without adequate sleeves/casing, etc. A structural failure of the well may result, such as a side wall collapse

Anticipated Public Health Problems: The expectation that existing onsite wells and/or septic systems cannot be replaced and will not support existing development once they fail can present anticipated public health problems. Early identification of areas or neighborhoods where these conditions exist may result in corrective measures that will prevent actual individual systems failures that will result in health problems.

Sanitary District

The entire area where the responsibility of providing community water and sewer service as identified in this plan falls to a single agency. The Washington Suburban Sanitary District (WSSD), which encompasses most of Montgomery and Prince George's Counties, is served by the WSSC. Two areas within the County are excluded from the WSSD:

Executive's Recommended Plan Update (Excerpt)

Refer to Appendix C for details about the exceptional service policy recommendations included in each of the preceding master plans.

II.G.2.: Community Service to Relieve Public Health Problems

Public health problems can result from the existing or anticipated failure of individual, on-site water supply or wastewater disposal systems, wells and/or septic systems. This chapter addresses issues involving failing individual water and sewerage systems in more detail in Section III.C.4.a. Typically, properties using individual, onsite systems are located at such a distance from areas served by community systems that providing relief by community service could not be considered logical or economical. However, some existing or anticipated public health cases do occur in areas within or in close proximity to areas served by community water and/or sewerage systems.

II.G.2.a.: Individual Public Health Problems

In the majority of onsite systems failures reported to DPS, relief is provided by an onsite repair or replacement. However, community water and/or sewer service may be provided to an existing structure to alleviate or eliminate an existing or anticipated public health problem, upon certification of the health problem by the Director of DPS or his or her designee. If a water or sewer main extension is required or if the availability of service is unclear, DEP, in coordination with WSSC, will evaluate whether the provision of community service is feasible. *As directed by DEP under these circumstances, WSSC will provide community service regardless of the existing service area category; the utility does not need to wait for the County to grant a service area change approval in order to plan, design, and implement community service.* Note that the State of Maryland, typically through MDE, may also direct the use of community service to relieve a public health problem.

In those cases, where DEP determines that the provision of community service is not feasible, DEP will report this back to the DPS Well and Septic Section. DPS then determines the best possible on-site solution for the health problem.

Where the affected property is located outside an area already approved for community water and/or sewer service envelope, DEP may act to approve related service area changes through the administrative delegation process, under the "Community Service for Public Health Problems" policy, Section V.D.2.a. In such cases, community service will generally be limited to a single water and/or sewer hookup for existing properties. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

II.G.2.b.: Area-Wide Public Health Problems

In some circumstances, the number and/or the pattern of health problem cases will indicate a problem on a broader-scale than just isolated, individual public health cases. An important function of this Plan is to identify, as necessary, larger-scale, chronic public health problem areas and to recommend solutions for those problems. Upon the approval of the County Council, community water and/or sewer service may be extended to a defined area either inside or outside the recommended community water and/or sewer service envelopes to resolve area-wide existing or anticipated public health problems.

Individual systems surveys are typically initiated in one of three ways:

- DPS staff will identify an area of concern and recommend a survey to DEP staff.
- DEP staff will identify an area of concern and coordinate a survey with DPS.
- An individual property owner, or a group of owners, identifies an area of concern for DEP to investigate.¹

Valid concerns for studying a potential health problem area include, but are not limited to:

- A failed septic system that cannot be addressed by DPS using a conventional replacement system (deep trench, shallow trench, or sand mound).
- An existing septic system permitted before 1975 and/or installed using septic technology no longer allowed under State and County regulations (seepage pit, dry well, etc.).

- A known limitation affecting future septic system use, as verified by DPS. For example, properties where DPS has acknowledged that either only one or no future replacement systems are feasible.

¹ *Owners of unimproved properties that have no septic system suitability do not have sufficient justification to initiate a sanitary survey. However, septic suitability conditions affecting unimproved properties may be considered if they are included in a survey area.*

DEP, working with DPS and residents, will establish the extent of the sanitary survey area. With an established survey area, DPS will conduct property surveys and WSSC will consider main extension needs. To the greatest extent possible, water and/or sewer main extension planning will need to result in new mains installed a logical, economical, and environmentally acceptable manner. DEP will consider the survey results and prepare a recommendation for the County Executive's consideration.

An Executive recommendation to the County Council to designate a special sewer service area in this Plan and to extend community service will depend in part on the number of properties affected, the feasibility of service, and the viability of alternative relief methods. The issues and alternatives relative to such a proposal will be addressed by DEP as a County-initiated category change request.

The County's designation of a special sewer service area will allow property owners within these communities to take advantage of WSSC's expedited service process and main construction subsidies. Once designated as part of a special sewer service area, all included properties are eligible for service connection and extension benefits accorded to properties identified as individual health problems. Individual properties within an existing or pending special sewer service area that are identified by DPS as public health problems may still be addressed using the procedures outlined in Section II.G.2.a., above.

II.G.3.: Community Service for Properties Abutting Community System Mains

Under specific and limited circumstances, community water and or sewer service may be provided to properties that abut an existing or approved water and/or sewer main. Except in cases where this policy specifically requires the County Council's consideration and action, DEP may grant approval for abutting service hookups through the administrative delegation process, under the "Community Service for Properties Abutting Community System Mains" policy, Section V.D.2.a.

II.G.3.a.: General Requirements

The provision of community service under this policy requires that the property, or a structure on the property, must have been established prior to the extension of the abutting water or sewer main. Residential, institutional, and commercial uses qualify as existing structures; barns, garages, or other types of outbuildings do not qualify. Satisfaction of this requirement qualifies the property for a single public service hookup. Neither the construction of a building on an unimproved property, nor the addition to or replacement of an existing structure, invalidates the application of this policy. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

Technical Feasibility of Service Connections

The provision of community service under this policy also requires that service from the abutting main must be technically feasible. Major water and sewer transmission mains and sewer force mains cannot support individual service connections and hookups, and therefore do not qualify abutting properties for community service under this policy. Service from low-pressure, small-diameter sewer mains may also be restricted, depending on the type or number of users proposed. WSSC's current pump/pressure system policies do not permit both residential and non-residential (commercial/institutional) uses to connect to the same low-pressure main, requiring instead separate, dedicated mains for each separate non-residential use.

Planned Community Service Mains

The implementation of this policy applies to both existing and planned service mains. Where a category change approval is based on new mains planned and approved by WSSC, actual service depends on the construction of that main by the applicant for that main. The owner of a property with a restricted abutting mains approval based on construction of a new main cannot independently initiate the construction of all or part of that new main.

- Interim Permits for individual on-site systems shall bear a notice regarding the interim nature of the permit and stating that connection to a community system shall be made within one year after such system becomes available, and that the construction of such interim systems shall in no way impede or restrict the extension of community sewerage and water systems or create a public health hazard or nuisance in the process; and
- Provisions shall be made to locate the individual systems so as to permit a future connection to the community system in the most economical and convenient manner.
- Construction of dry community water and/or sewerage systems where interim permit individual systems are installed is no longer a requirement of this Plan. Please refer to Section III.A.3. for relevant information concerning dry community systems.

III.C.4.: Individual Water and Sewerage Systems Problems

Although designed to work for decades, individual systems will need regular maintenance, occasional repair, and eventual replacement. Ignoring needed maintenance and repairs will likely shorten the expected life of an individual system.

III.C.4.a.: Individual Systems Failures

When an individual, onsite system fails to function properly, the owner of that individual system has the responsibility for having it repaired or replaced. In some situations, the property owner becomes aware of a problem very quickly, such as when sewage backs up into the house). In other situations, a problem, such as a septic system installed partly within the water table, may go unnoticed for a longer period of time. A failure does not always require a system replacement to resolve; in some cases, a repair (such as replacing a broken pipe) is sufficient. The repair and replacement of individual systems needs to occur in accordance with County and State regulations, as administered by DPS.

III.C.4.b.: Aging Individual Systems

As individual, onsite systems age, the County faces a potential problem in sustaining specific homes and businesses and perhaps entire neighborhoods that currently use these systems. Some of these neighborhoods, built in the 1950s and 1960s, were created using standards that allowed the use of individual systems:

- For lots that are now too small to support both wells and septic systems under current regulations.
- On soils inappropriate for septic systems under today's testing standards because of high water tables and shallow fractured rock.
- With sanitary system technologies that no longer satisfy current regulations, such as hand-dug wells, septic seepage pits and lagoons, and septic overflow pipes.

Wells installed prior to the County's current standards may have been hand-dug, may lack a protective liner (casing), or may be too shallow for adequate flows. Older wells sometimes lack an adequate separation (or setback) from buildings and septic systems.

Older on-site sewerage systems use several varieties of underground discharge structures such as seepage lagoons, dry wells, and seepage pits no longer allowed under current regulations. Some older septic systems include overflow pipes that prevented overloaded, failing systems from backing sewage up into buildings. This can allow for untreated sewage discharges through the overflow pipe either onto the ground surface or into drainages features such as ponds or roadside swales. When discovered, overflow pipes need to be removed; and this may result in an eventual failure of the septic system. State Individual Systems and Public Health Problems and County regulatory changes since the 1960s include requiring the identification of septic system reserve areas for future drainfields; septic system testing to avoid poor soils, shallow or fractured rock; and establishing adequate groundwater well setbacks from septic systems, structures, and water resources (streams, wetlands, etc.)

DPS may allow outdated wells and septic systems to serve existing structures provided they continue to function adequately. However, DPS has the option to require a replacement well and/or septic system that satisfies current regulations in cases where:

- An existing well or septic system that suffers a failure or where such a failure is imminent.

- Property improvements (expansion or replacement of an existing structure, new swimming pool, etc.) are proposed that could constrain the location of existing or future onsite systems.
- Subdivision of an existing property served by individual, on-site systems will change property lines and affect allowed setbacks.

III.C.4.c: Individual Systems and Public Health Problems

Public health problems (as defined in this Plan) can result from the failure or anticipated failure of existing individual systems.

Existing Public Health Problems: Individual systems can fail due to causes such as age, damage, contamination, or insufficient maintenance. The following circumstances are among the most common that constitute an existing public health problem:

- The presence of inadequately treated sewage rising to the surface of the ground or backing up into a building. Or an excessive need to pump out a septic system in order to keep the preceding from happening, usually on the order of several times in a year. Proper septic system operation typically requires tank pumping every two to five years for preventative maintenance.
- Evidence of a septic system discharging inadequately treated sewage into ground or surface waters. This includes problems such as drainfields constructed within the water table, constructed on fractured bedrock, and constructed with an overflow pipe that allows the surface discharge of inadequately treated sewage from the septic tank.
- A well with inadequate water quantity yield. (State minimum standard is 1 gallon per minute.)
- A well with inadequate water quality, resulting from either an inflow of surface water or contamination of the groundwater source.
- A well that does not satisfy current regulatory standards, including hand-dug wells, wells without adequate sleeves/casing, etc. A structural failure of the well may result, such as a side wall collapse

Anticipated Public Health Problems: The expectation that existing onsite wells and/or septic systems cannot be replaced and will not support existing development once they fail can present anticipated public health problems. Early identification of areas or neighborhoods where these conditions exist may result in corrective measures that will prevent actual individual systems failures that will result in health problems.

Health Problem Relief Measures: Typically, properties served by individual systems are located in low-density development areas where access to community systems is not considered logical or economical. In many cases of individual system failures reported to DPS, relief is provided by an onsite repair or replacement, rather than by community service. However, in some cases where individual systems have failed, owners may not be able accomplish a repair or replacement consistent with current regulations, as determined by DPS. Changes to individual systems regulations over the past decades have resulted in improved standards for human and environmental health. However, these regulatory changes can have the potential to hinder efforts to replace existing individual systems with new systems that satisfy current standards. Section II.G.2. of this chapter discusses the conditions where community service can be used to relieve public health problems resulting from individual systems failures.

III.C.4.d.: Rural Sanitation Planning Program

The County has seen a shifting emphasis in community planning from major new development expansion to infill and redevelopment of existing neighborhoods. Accordingly, a similar approach—changing emphasis from major expansion of the community service envelopes towards more neighborhood-based efforts—will be required to address the sustained use of individual systems in the Water and Sewer Plan.

At present, the County has no proactive programs in place to promote the long-term sustainability of individual onsite wells and septic systems. There are minimal opportunities for public education, and there are no regular maintenance reminders, inspections, or testing. In Montgomery County, once a well or septic system is installed and operating, there will very likely be no further contact between the owner and the County government



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MARC ELRICH
COUNCILMEMBER AT-LARGE

MEMORANDUM
July 12, 2018

TO: Councilmembers
FROM: Marc Elrich *ME*
SUBJECT: Follow-up on amendments to the Ten-Year Water & Sewer Plan

I am following up on the actions to date regarding my proposed amendments to the Ten-Year Water and Sewer Plan. Here is a summary of what has transpired:

- The 2019-2024 Update to the Ten-Year Water and Sewer Plan was discussed at length in committee in 2017, and by the full Council in 2018, most recently on April 17. Throughout the discussions, the focus has been the policy regarding on-site waste systems (e.g. septic systems). Based on these discussions, a majority of councilmembers has upheld the principle of presumption and full support for continued reliance on septic systems in the Agricultural Reserve and other low-density areas – a principle that is a foundational element in our General Plan, Master Plans, and clean water and planning laws.
- At the Council's March 20th worksession, we discussed the amendments I proposed, which reinforce the underlying principle of presumption and full support for retaining septic service in the Agricultural Reserve and in other low-density areas. I mentioned two purposes for the amendments: (1) to establish a much-needed homeowner education and assistance program focused on better maintenance of the systems in areas served by septic; and (2) to change the focus of Septic System Surveys from areas where there are still-functioning septic systems, to areas that should be prioritized – those with failed or imminently failing systems, for which on-site remedies have been exhausted. After a lengthy discussion, there was a 5 - 4 straw vote in favor of adding language to place greater emphasis on educational elements and to narrow the scope of the survey areas.
- My revised amendment is attached. It includes changes that respond to the concerns raised in the April 17th council session, defines the term "imminently failing," and retains the underlying principles of the original amendment.

- As I indicated in my March 15, 2018 memo and in the March 20th worksession, I am open to revised language so that a homeowner will not have to wait for a septic system failure before requesting a survey to determine whether there are feasible onsite remedies.
- I support language that allows sewer conversions for failed or “imminently failing” systems with no feasible onsite remedy, if we adopt a definition for that term as I am proposing. While staff has indicated its strong preference for the term “anticipated” public health problems, the definition allows consideration of very subjective factors such as the age of a system or theoretical soil conditions. Another argument for using “anticipated” was that it was used in several places in the Ten-Year Plan; however, the term “imminent” is also used in the plan (Section III.C.4.b: Aging Individual Systems).
- The April 17th packet includes staffs’ proposed language for final action on the Ten-Year Plan. In both Chapter 1, Section II.G.2.a (Individual Public Health Problems) and Section II.G.2.b (Area-Wide Public Health Problems) new language was added proposing separate consideration for properties depending on whether they are located within or outside of planned community service envelopes. This distinction was not made in past versions of the draft plan, the council did not discuss or request it prior to the straw vote, the sewer service envelope boundaries are unrelated to public health protection, and the differentiation dilutes the underlying presumption that properties on septic systems will continue to be on septic as long as there is an onsite remedy for a failed or imminently failing system. This presumption is important, because it provides long-term sustainability for the Agricultural Reserve, its low-density residential buffer, and other low-density areas throughout the county.

The April 17th packet also contains a memo sent by County Executive Leggett requesting that council reconsider its support for the proposed changes to the area-wide public health problems policy, indicating his preference for a policy that has allowed sewer conversions for properties which do not have failed or even imminently failing septic systems. However, when considering the advisability of the latter approach, one need only look at a “clean streams” map (attached) to see that the last best streams are in areas of the county where sewer has not been extended. I believe we can continue to protect our water supply and address the public health problems arising from failed or imminently failing septic systems. That is the goal of this amendment. Please let me know if you have any questions.

Thank you!

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CHAPTER 1: OBJECTIVES AND POLICIES

II.G. Special Policies for Water and Sewer Service

II.G.2: Community Service to Relieve Public Health Problems

Public health problems can result from the existing or [anticipated] imminent failure of individual, onsite water supply or wastewater disposal systems, wells or septic systems. Issues involving failing individual water supply and sewerage systems are addressed in more detail in Section III.C.4.a. Most properties using individual, onsite systems are located in areas where relief of health problems using community service is neither logical nor economical. However, some existing or anticipated public health cases do occur in areas within or in close proximity to areas served by community water and/or sewerage systems.

II.G.2.a: Individual Public Health Problems

In the majority of onsite system failures reported to DPS, relief is provided by an onsite repair or replacement. However, community water and/or sewer service may be provided to an existing structure to resolve an existing or [anticipated] imminent public health problem, upon certification of the health problem by the Director of DPS or the Director's designee. In cases involving septic systems, DPS must determine that the onsite system failure or imminent failure cannot be addressed by using conventional replacement system (deep trench, shallow trench, or sand mound), by innovative and alternative onsite replacement systems, or by new technologies as they are approved for use by the State and County (e.g. graywater systems and waterless toilets). If a water or sewer main extension is required or if the availability of service is unclear, DEP, in coordination with WSSC, will evaluate whether the provision of community service is feasible. In cases where DEP determines that the provision of community service is not feasible, DEP will report this back to the DPS Well and Septic Section. DPS then determines the best possible onsite solution for the health problem. Note that the State of Maryland, typically through MDE, may also direct the use of community service to relieve a public health problem.

Note that the inability of an unimproved property to support a permitted septic system does not provide justification to allow the provision of community service to that property alone under this policy.

Relief of an existing or [anticipated] imminent health problem will focus on onsite mitigation measures. However, where DPS determines that onsite measures cannot relieve the problem or where community service is available or in close proximity to the affected property, DEP may act to approve related service area changes through the administrative delegation process, under the "Community Service for Public Health Problems" policy, Section VD. 2. a. In such cases, community service will generally be limited to a single water and/or sewer hookup for existing properties. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

II.G.2.b: Area-Wide Public Health Problems

In some circumstances, the number and/or the pattern of health problem cases will indicate a problem on a broader-scale than just an isolated, individual public health case. Upon the approval of the County Council, community water and/or sewer service may be extended to a defined special water or sewer service area to resolve area-wide existing or [anticipated] imminent public health problems. All recommended special service areas for area-wide public health problems and related service area category map amendments require consideration and approval by the County Council.

The anticipated time frame for an onsite system survey starts with DEP's designation of a well or septic system survey area and concludes with MDE's decisions concerning the County Council's action regarding the survey results and recommendations. This process is generally expected to take no more than one year, depending on agency workload, including work on other onsite system surveys.

Standard procedures for onsite system surveys are available on DEP 's website at Private Well and Septic Systems | Department of Environmental Protection, Montgomery County, MD.

With this new Ten Year Plan (2018), all surveys - whether initiated before or after the adoption of this new plan - will be conducted and evaluated according to the rules of this new (2018) Plan.

The identification of existing or imminent public health problem areas using onsite system surveys is limited to cases involving a failed or imminent failing onsite system as documented by DPS. In cases involving septic systems, DPS must determine that the onsite system failure or imminent failure cannot be addressed by using conventional replacement system (deep trench, shallow trench, or sand mound), by innovative and alternative onsite replacement systems, or by new technologies as they are approved for use by the State and County (e.g. graywater systems and waterless toilets).

In the event of a documented failure or imminent failure, for which DPS has determined cannot be addressed by the on-site remedies listed above, the survey process will consist of the consideration of the status of onsite systems on adjacent and confronting properties. Such cases require DPS documentation and must satisfy the relief requirements cited previously. Documented onsite system failures or imminent failures for two or more of these specific properties can be addressed as a recommended special service area for the County Council's consideration. Lacking additional documented failures or imminent failures, community service for an individual property may be addressed using the procedures outlined in Section 11.G.2.a. above.

The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels, if they would not otherwise be entitled to connect to community systems.

Inclusion of additional terms used in the Plan text.

APPENDIX A: GLOSSARY

Public Health Problems - Existing and [Anticipated] Imminent

Individual, onsite wells and septic systems can fail due to causes such as age, damage, contamination, or insufficient maintenance. Failures may result in problems that can affect public and environmental health due to contact with inadequately treated sewage or contaminated drinking water.

Existing Public Health Problems (also referred to as a failed septic system): The following circumstances are among the most common that constitute an existing public health problem:

- The presence of inadequately treated sewage rising to the surface of the ground or backing up into a building.
- Evidence of a septic system discharging inadequately treated sewage into ground or surface waters. This includes problems such as drainfields constructed within the water table, constructed on fractured bedrock, and constructed with an overflow pipe that allows the surface discharge of inadequately treated sewage from the septic tank.
- A well with inadequate water quantity yield. (State minimum standard is 1 gallon per minute.)
- A well with inadequate water-quality, resulting from either an inflow of surface water or contamination of the groundwater source.
- A well that does not satisfy current regulatory standards, including hand-dug wells, wells without adequate sleeves/casing, etc. A structural failure of the well may result, such as a side wall collapse

Delete the following definition:

[Anticipated Public Health Problems: The expectation that existing onsite wells and/or septic systems can-not be replaced and will not support existing development once they fail can present anticipated public health problems. Early identification of areas or neighborhoods where these conditions exist may result in corrective measures that will prevent actual individual failures that will result in health problems.]

Replace with this definition:

Imminent Public Health Problems (also referred to as an Imminent Failure of a septic system): the condition that exists when the Department of Permitting Services (DPS) certifies that an observable warning sign indicates that failure is likely to occur in the near term. This warning sign is defined as follows: the septic tank requires pumping more than four times a year as certified by DPS to resolve situations where the static level in the septic tank rises above the level of the inlet and/or outlet pipe."

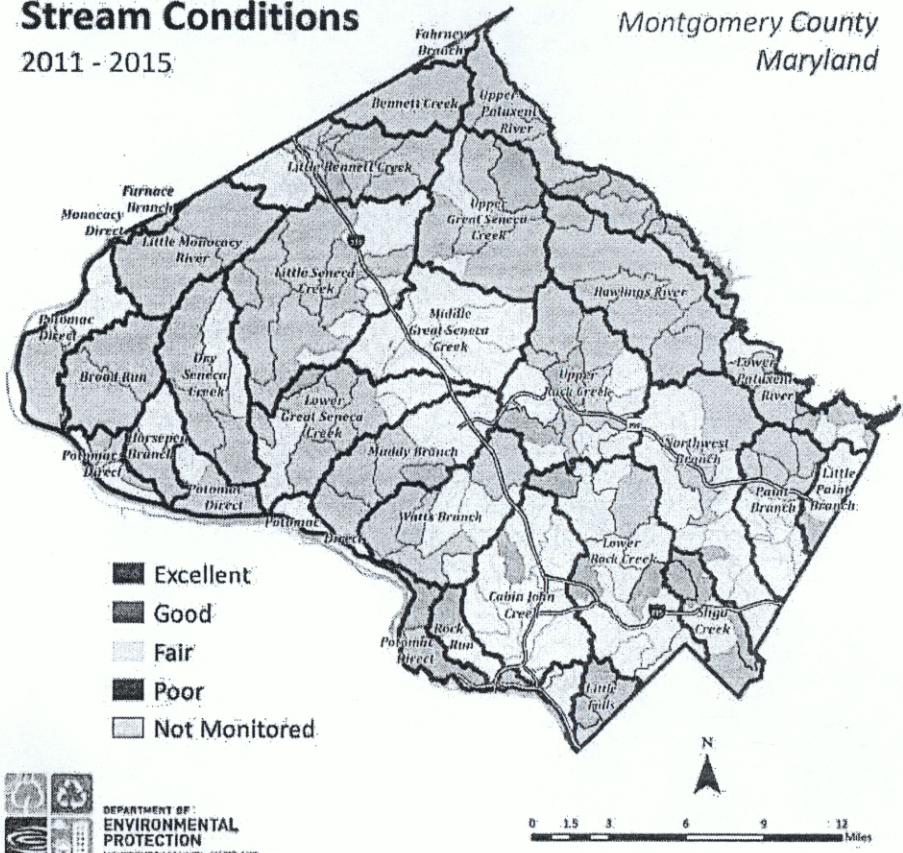
Failed septic systems: see Existing Public Health Problems

Imminent Failure of a Septic System: see Imminent Public Health Problem

Stream Conditions

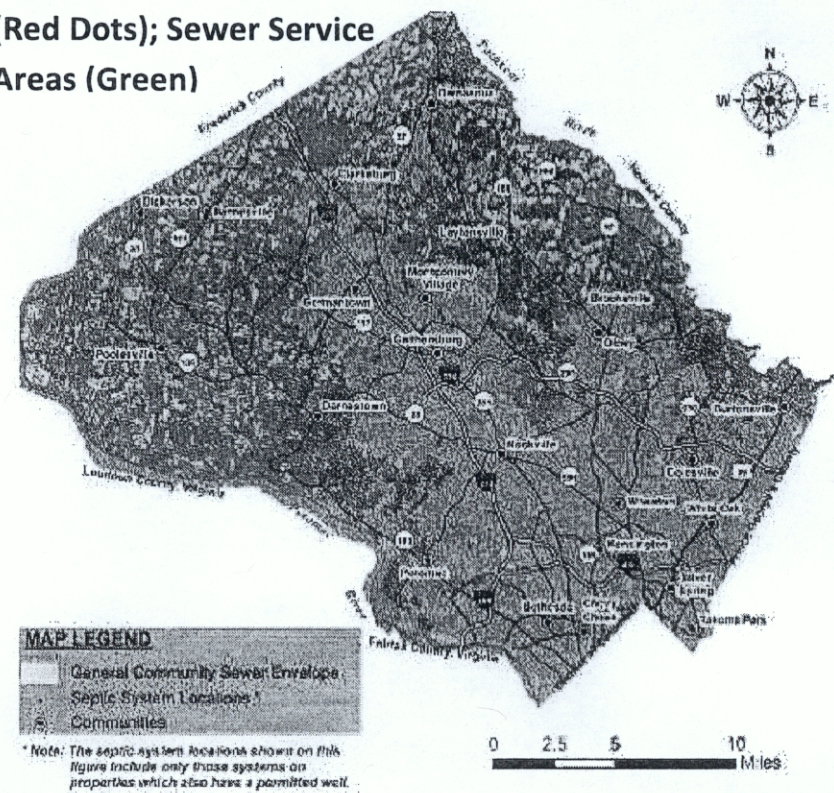
2011 - 2015

Montgomery County
Maryland



DEPARTMENT OF ENVIRONMENTAL PROTECTION
MONTGOMERY COUNTY • MARYLAND

Septic System Locations (Red Dots); Sewer Service Areas (Green)



MAP LEGEND
 General Community Sewer Envelope
 Septic System Locations
 Communities

* Note: The septic system locations shown on this figure include only those systems on properties which also have a permitted well.

Source of maps

Left: Montgomery County DEP Stream Conditions Map, 2011-2015; <https://www.montgomerycountymd.gov/water/streams/watershed-health.html>;
 Right: DEP Proposed Draft 2017-2026 Water and Sewer Plan Update, map of areas currently served with septic systems (Fig.4-F23; page 4-74)
<https://www.montgomerycountymd.gov/DEP/Resources/Files/Downloads/WS/2017-chapter4-draft.pdf>

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Area-Wide Public Health Problem Areas/Special Service Areas Background Information and Policy Discussion

Background

The current Ten-Year Plan includes some general language regarding area-wide public health problem areas in Chapter 1, Section 2E2 (“Community Service to relieve Public Health Problems”) (see ©18). Over the past few decades, according to DEP, the County has performed numerous area-wide sanitary studies and the Council has considered the creation of public health problem areas, including:

Sewer Cases

- Sam Rice Manor (sewer approved) (1980s), RC zone
- Norbrook Drive – Olney (sewer approved) (1980s), RE-2 zone
- Jonesville & Jerusalem – Poolesville area (sewer approved) (1980s), R-200 zone
- McNeil Lane – Cloverly (sewer approved) (1984), RE-1 zone
- Hyattstown (sewer approved - to relieve wells contaminated by failing septic systems) (1995), R-200 & AR* zones
*parkland only
- The Corral Drive in Potomac (sewer approved) (2002), RE-2 zone
- East Ashton Area (sewer denied) (2003), CRT-0.75, R-60, RC zones
- Tune Avenue in Damascus (sewer approved) (2004), R-200 & RE-1 zones
- Lakewood Estates (sewer approved) (2006), R-200 & RE-1 zones
- Clarksburg Historic District (sewer approved) (2008), CRT-0.5 zone
- South Overlea Drive in Potomac (sewer approved) (2017), RE-1 zone
- North Potomac Highlands – Glen Hills (sewer review pending) (2018), RE-1 zone

Water Cases

- Oaks Landfill Area (water approved) (1995), R-200, RE-1, RE-2, & AR zones
- Town of Laytonsville (water approved) (2001), local municipal zoning
- Bryants Nursery Road – Cloverly (water approved) (2005), RE-2 zone
- Kings Manor/Clarksburg Road Area (water approved) (2007), AR zone

Since 2000, DEP and DPS have investigated and reported to the Council on seven septic survey areas (or about one case every other year). Six were approved for public sewer service.

In the above cases, DEP assigned a level of health concern of high (recent septic failures), moderate (properties with a combination of factors that raise concern about the feasibility of replacing the existing septic system, such as site size, lack of septic testing or permit records, old systems with no septic reserve areas established, close proximity to recent documented septic failures), and low (for properties lacking the preceding issues and/or with sufficient acreage to be sustainably served with on-site systems).

During the Glen Hills text amendment discussion in 2016, the Council agreed to add language to the Ten-Year Plan to allow consideration of public health problem areas within Glen Hills. Previously, only residents with documented on-site system failures could seek approval

for public sewer. As part of that action, the T&E Committee asked DEP to provide more detail as to the current criteria for the creation of these areas and time goals for review of and creation of these areas and how these criteria would apply in Glen Hills. Resolution 18-423 includes this text (see ©37-38). At the time of approval, DEP staff noted that the criteria noted in the resolution reflect current policy.

The Plan Update includes clarifying language (©22-23) similar to the Glen Hills resolution language. Based on feedback from the Glen Hills community, DEP revised the terminology (but not the criteria) used for these areas to “special sewer service areas”.

It should also be noted that after DEP’s completion of a sanitary survey of the designated area, the Executive submits category change recommendations for each of the properties to the Council for action. The creation of a survey area does not guarantee that some or all properties in that survey area will ultimately be recommended by the Executive or approved by the Council for public water or sewer service. For example, in 2003, an area in East Ashton was studied but, ultimately, designation as a public health problem area was not recommended by the Executive or approved by the Council.

On November 3, 2017, the Council received correspondence from Conservation Montgomery expressing concern that the special sewer service area process, as implemented, runs counter to Master Plan recommendations for rural zoned areas in the County by favoring sewer extensions over on-site solutions. The letter notes that documentation of an actual septic failure is not required, criteria not directly related to the functioning of a given septic system are used, and the potential for septic system repair or replacement is downplayed.

At its November 9 meeting, the T&E Committee asked representatives from Conservation Montgomery to submit any recommended text revisions to this policy for staff consideration; Council and Executive Staff later reviewed their recommendations. DEP staff drafted updated text for the Ten-Year Plan providing clarifications consistent with existing policy.

The Committee also asked DEP staff to draft special sewer survey area operating procedures reflecting current policy. Draft procedures (dated February 16, 2018) are attached on ©26-33.

Conservation Montgomery, along with several other groups, sent a letter to the Executive on February 1, 2018 reiterating its concerns with the implementation of the current process and asking the Executive to pause work on any additional special sewer service areas, pending further review by the Council of this policy.

Councilmember Elrich’s proposed changes, which were initially supported by the Council at its March 20 meeting (but later referred back to T&E at the Council’s April 17 meeting), are in line with Conservation Montgomery’s concerns above. These changes would

narrow the policy to address only failing septic systems that do not have viable on-site solutions. Draft revised text for this policy with these changes is attached on ©19-21.

On July 12, Councilmember Elrich sent a memorandum (©40-45) to Councilmembers with a revised amendment. The revised amendment, as noted, “retains the underlying principles of the original amendment” while including a definition for “imminent failures.” The memorandum also questions the distinction Council Staff included for properties included within versus outside the planned service envelopes and the revised amendment language does not distinguish between areas inside versus outside the planned service envelopes.

On September 4, 2018 the Montgomery Coalition to Stop Sewer Sprawl (which includes four organizations – Watts Branch Watershed, Alliance; Montgomery Countryside Alliance; West Montgomery County Citizens Association; and Conservation Montgomery) submitted recommendations and proposed Water and Sewer Plan text revisions in support of Councilmember Elrich’s amendment.

Policy Discussion

As previously discussed by the Council on March 6, March 20, and April 17, these proposed changes raise a clear policy question for the Council as to how proactive it wants the special service area policy to be, especially regarding the potential extension of sewer to address “anticipated septic failures.” Also, to the degree changes are made to the special service area criteria, criteria for addressing individual cases may also need to be reviewed.

The current policy was most recently implemented in the South Overlea Drive Special Sewer Service Area approved by the Council in July 2017. This approval raised concerns from the West Montgomery County Citizens Association and Conservation Montgomery that the special sewer service area was approved for 16 properties, even though there were no identified failed septic systems, nor was a site-by-site analysis done to confirm whether the systems were failing or at risk of failure without an on-site remedy.

At the March 6 Council meeting, DEP staff described the area-wide septic survey process, noting that the intent of the surveys is to review permit records and other available information about existing septic systems on each property and to evaluate site constraints (such as well setbacks, stream and wetland setbacks, steep slopes, soil conditions, and floodplains) that would affect the long-term sustainability of septic on each property. Properties with moderate or slight or no constraints are expected to be excluded from a special sewer service area.

While septic failures can be addressed through this area-wide survey process, the presence of a documented septic failure is not required for an area to be considered or approved. The policy focus is to address “anticipated public health problems” proactively, whether or not there are known septic failures.

Definitions

At the Council worksessions earlier this year, there was discussion about defining public health problems, imminent failures, anticipated public health problems, documented failures, and failures with no viable/feasible on-site remedy.

The Plan Update includes language defining existing public health problems (©25) resulting from a well or septic system failure. Council Staff suggests that at its most basic, a failure occurs when an on-site system cannot meet the standards in place when the system was initially permitted. The Department of Permitting Services is responsible for documenting system failures.

The term “imminent failure” has also arisen in the context of whether the County should be proactive in addressing septic system issues before failures occur. However, based on discussions with DEP and DPS staff, there is no reliable way to predict failures in this way. In some cases, a property owner may be addressing a current septic failure through frequent pumping or reduced usage of the system. However, these strategies are not preventing an imminent failure but rather mitigating an existing failure.

Anticipated public health problems are defined in the Plan Update (see ©25) as a situation where the existing system cannot be replaced and will not support existing development when it fails. This is equivalent to a determination of “severe constraints” that is used in the context of special service area surveys. This determination does not predict if or when the system will fail, although it does consider some on-site system information such as system age, type of system, permit records, repair/replacement history if available, etc. Instead, this determination indicates that, if the system fails, there is likely no viable on-site remedy. **A key issue with special service areas is how proactive the County should be in considering public water/sewer to address these “severe constraints” when identified. As noted earlier, Councilmember Elrich’s amendment would require all properties in a survey area to have a documented failure or an “imminent” failure, not just the identification of severe constraints. The approach discussed and supported by the T&E Committee at its July 16 meeting would require at least one documented failure, but then other nearby properties (with or without failures) could be added to the survey area by DEP.**

Determining whether there is a viable or feasible remedy to an on-site failure is often a case-by-case issue. Severe constraints on a site would generally mean that there is no viable on-site remedy. However, there may also be situations where an innovative on-site solution may be possible but it will be costly, especially if compared to connecting to public water or sewer if a line is nearby. In these cases, currently DPS and DEP consider whether connecting to public water or sewer is the best long-term solution given the specific circumstances.

DRAFT PLAN POLICY LANGUAGE
(based on T&E Direction to Staff on July 16, 2018)

II.G.2.a.: Single Property Public Health Problems

In the majority of onsite systems failures reported to DPS, relief is provided by an onsite repair or replacement. However, community water and/or sewer service may be provided to an improved property to resolve an existing or anticipated public health problem, upon certification of that problem by the Director of DPS or a designee. If a water or sewer main extension is required or if the availability of service is unclear, DEP, in coordination with WSSC, will evaluate whether the provision of community service is feasible. In cases where DEP determines that the provision of community service is not feasible, DEP will report this back to the DPS Well and Septic Section. DPS then determines the best possible onsite solution for the health problem. Note that the State of Maryland, typically through MDE, may also direct the use of community service to relieve a public health problem.

Unless a case requires consideration by the County Council, *DEP may direct WSSC to begin and expedite the process to provide community service regardless of the existing service area category.* The utility does not need to wait for the County to grant a service area change approval to plan, design, and implement community service. DEP will follow up this action with the needed category change through the administrative delegation process. The inability of an unimproved property to allow for a permitted septic system does not provide justification to allow the provision of community service to that property alone under this policy.

In cases addressed by this policy, community service will generally be limited to a single water and/or sewer hookup for existing properties. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

Within the planned community service envelopes, where DPS determines that an existing or anticipated health problem from an existing onsite system occurs, the property involved may already have a category 1 or 3 service area designation. This allows WSSC to proceed with expediting the provision of community service. However, where a property lacks an appropriate category designation for community service, DEP may direct WSSC to proceed with the provision of service, as explained previously. Because the provision of community service is for a property located within an area already planned for community service, DEP may act to approve related service area changes through the administrative delegation process, under the "Consistent with Existing Plans" policy, Section V.D.2.a.

Outside the planned community service envelopes, first consideration for relief of an existing or anticipated health problem will focus on onsite mitigation measures. However, some cases occur where DPS determines that onsite measures cannot relieve the problem. In addition, some cases occur where community service is readily available, abutting or in close proximity to the affected property. In these cases, the provision of community service can be accomplished using an abutting or non-abutting

service connection, without the need for a new main extension.

In cases involving documented, existing health problems, with readily available community service, DEP may act to approve related service area changes through the administrative delegation process, under the "Community Service for Public Health Problems" policy, Section V.D.2.a. Otherwise, existing or anticipated health problems found outside the planned community service envelopes and related service area category changes will be addressed by the County Council. Depending on the circumstances affecting such cases, the County Executive may transmit appropriate recommendations to the Council outside the usual semi-annual cycle of Plan amendments.

In areas planned to use onsite water and/or sewer systems, the County's decisions to provide public water and/or sewer service and approval for related service area changes are not intended to change existing development patterns originally based on the suitability of onsite systems use. To this end, properties outside the planned service envelopes cannot be subdivided into more than one lot where approved for public water and/or sewer service due to the identification of an existing or anticipated public health problem.

No
Subdivision

→ **II.G.2.b.: Area-Wide Public Health Problems**

In some circumstances, the number and/or the pattern of health problem cases will indicate a problem on a broader-scale than just an isolated, individual case. A function of this Plan is to identify, as necessary, larger-scale, chronic public health problem areas and to recommend solutions for those problems. Upon the approval of the County Council, community water and/or sewer service may be approved for a defined special water or sewer service area to resolve area-wide existing or anticipated public health problems. All recommended special service areas for area-wide public health problems and related service area category map amendments require consideration and approval by the County Council.

The County's designation of a special community service area will allow property owners within these communities to take advantage of WSSC's expedited service process and main construction subsidies. Individual properties within an existing or pending special service area that are identified by DPS as public health problems may still be addressed using the procedures outlined in Section II.G.2.a., above.

In addition to onsite systems survey requests from individual property owners (see outside the planned service envelopes, below), DPS may also identify and recommend to DEP potential onsite systems survey areas.

The provision of community service under this policy shall not be used as justification for the connection of intervening or nearby lots or parcels if they would not otherwise be entitled to connect to community systems.

Within planned community service envelopes, the need for onsite system surveys for properties is limited as the area involved is already intended for community service.

Surveys are sometimes done to establish an area eligible for public health subsidies from WSSC to help cover the cost of the extension of a water/sewer main.

Outside planned public water or sewer service envelopes, individual, onsite systems surveys are typically initiated by an individual property owner, or a group of owners, who identify an area of concern for DEP to investigate. At least one property owner requesting a survey must demonstrate that the existing onsite system has either failed or suffers from major problems, as verified by DPS. DPS must also find that the onsite system problem cannot reasonably be resolved by an onsite repair or replacement of that system.

The inability of an unimproved property to allow for a permitted septic system does not provide a property owner with justification to request an onsite system health survey. DEP may include unimproved properties within a survey area as appropriate, except where an unimproved property is at the outside limit of a survey area.

In cases involving septic systems, DPS must determine that the onsite system failure cannot be addressed reasonably by using a conventional replacement system (deep trench, shallow trench, or sand mound), by innovative and alternative onsite replacement systems, or by new technologies as they are approved for use by the State and County (e.g. graywater systems and waterless toilets). Note that in the case of septic systems, reasonable relief methods do not include the use of a holding tank. This may require an onsite system inspection by a qualified contractor. A previous inspection may also satisfy this requirement, if acceptable to DPS. Owners of unimproved properties that have no septic system suitability do not have sufficient justification to initiate a sanitary survey.

No subdivision
In areas planned to use onsite water and/or sewer systems, the County's establishment of special public service areas and approval for related service area changes are not intended to change existing development patterns based originally on the suitability of onsite systems use. To this end, properties outside the planned service envelopes cannot be subdivided into more than one lot where approved for public water and/or sewer service through the designation of health problem special service areas.

II.G.2.c: Onsite Systems Surveys

Once DEP accepts qualified properties for an onsite systems survey, staff will evaluate conditions of other properties in the immediate vicinity for inclusion in the survey area. DEP considers factors such as zoning, lot size, and onsite system age, among others. Based on this evaluation, DEP will formally designate an onsite systems survey area. DEP cannot require the owners of properties that DEP has added to a survey area to conduct septic system inspections.

opt out
Once DEP establishes an onsite systems survey area, staff will notify all property owners of the beginning of the survey process. At this point, any owner may choose to formally withdraw a property from inclusion in the survey. Withdrawal of a property requires a written and signed notification from the owner to DEP. Once withdrawn from a survey, the subject property will not be recommended for inclusion in either any

Opt
Out } special service area or related service area category change. However, DEP may use and present the results of the research gained for withdrawn properties as part of the overall survey evaluation. }

DEP and DPS expect that all property owners choosing to participate in an onsite systems survey will provide access to their properties for purposes of a site assessment. DEP and DPS staff will contact owners in advance of a scheduled site visit. Staff will not pursue a site visit from those owners who choose to withdraw from the survey.

The anticipated time frame for an onsite system survey starts with DEP's designation of a well or septic system survey area and concludes with MDE's decisions concerning the County Council's action regarding the survey results and recommendations. This process is generally expected to take no more than one year, depending on agency workload, including work on other onsite system surveys. An exception to this schedule is for surveys in the Glen Hills Study Area where research conducted for the Glen Hills Area Sanitary Study already provides some background information concerning existing conditions. For those areas of Glen Hills that qualify as "higher priority areas" (see Appendix C, pg. C-4), the schedule for transmittal of an Executive recommendation to the Council is three (3) months after DEP's designation of the survey area.

Standard procedures for onsite system surveys are available on DEP's website at Private Well and Septic Systems | Department of Environmental Protection, Montgomery County, MD.

MONTGOMERY COALITION TO STOP SEWER SPRAWL

Council President Hans Riemer and Councilmembers
100 Maryland Avenue
Rockville, MD 20850

September 4, 2018

Dear President Riemer and Councilmembers,

The Montgomery Coalition to Stop Sewer Sprawl (MCSSS) is comprised of four organizations – Watts Branch Watershed Alliance; Montgomery Countryside Alliance; West Montgomery County Citizens Association; and Conservation Montgomery. We share an interest in protecting waterbodies and open space in Montgomery County, including streams and groundwater that supply us with clean drinking water; these are located in our Agricultural Reserve and low-density areas surrounding it.

Our General Plan and Master Plans establish protection goals for water resource and open space protection. Continued adherence to these plans - including strictly limiting the extension of public sewer lines into rural and low-density areas - will ensure continued clean water protection for streams and groundwater. As Councilmember Marc Elrich noted in his July 12, 2018 memo to Councilmembers (attached),

“a majority of councilmembers has upheld the principle of presumption and full support for continued reliance on septic systems in the Agricultural Reserve and other low-density areas – a principle that is a foundational element in our General Plan, Master Plans, and clean water and planning laws.”

We expect the same council majority - Councilmembers Berliner; Hucker; Riemer; Elrich; and Navarro - to continue to support this policy, and the door remains open for other Councilmembers to join with the majority in voting for a Ten-Year Water and Sewer Plan Update that codifies this approach. Yet, for reasons that elude us, the August 24 staff draft supports a very different approach - one that continues to use areawide surveys to push sewer lines into areas that don't need them. We are writing to ask you to support the attached Montgomery Coalition to Stop Sewer Sprawl (MCSSS) clean water amendment. This supports the approach proposed by Councilmember Elrich in his July 12 memo, along with additional items proposed by MCSSS to support our clean water goals. We also ask that you reject any proposals allowing properties with functioning septic systems to be converted to sewer service. In fact, per DEP's "RE-1 Sewer/Septic Policy Framework Evaluation" five of seven organizations that DEP contacted support our position.

While we appreciate some of the proposed changes discussed at the July 12 committee session – notably, that areawide septic surveys must be initiated by sites with failures or “major problems,” and the provision of a mechanism for owners to opt-out of a survey - on balance, the latest proposal for the Water & Sewer Plan is a dirty-water, pro-sprawl approach. It would promote sewer sprawl by promoting sewer conversions for properties without documented failures and with on-site remedies, as happened in the South Overlea Drive survey in Glen Hills. Such an approach leaves septic owners vulnerable to unnecessary, costly sewer conversions – and subverts the intent of our General Plan, Master Plans, and clean water policies and programs.

The Montgomery Coalition to Stop Sewer Sprawl only supports a process whereby only properties with either documented septic failures or “potential problems¹” and that have no on-site solutions, are included in an areawide survey. Otherwise, the scope and extent of future sewer category changes could be far larger than the scope that's

¹ “potential problem” defined as: a condition that exists when the public cannot yet be exposed to, or come in direct contact with, inadequately treated sewage. For this condition to be validated, the Department of Permitting Services (DPS) certifies that an objective, observable warning sign indicates that failure has the potential to occur in the near term. This warning sign is defined as follows: the septic tank requires pumping more than four times a year, as certified by DPS, to resolve situations where the static level in the septic tank rises above the level of the inlet and/or outlet pipe.

MONTGOMERY COALITION TO STOP SEWER SPRAWL - letter to Councilmembers 9.4.2018

intended by the T&E Committee and Council majority. If the areawide surveys are triggered by a property with a failed or potential problem system, but then allowed to include other properties with working septic systems without documented problems, the result could be more neighborhoods approved for unwarranted sewer category changes - like the South Overlea Drive Septic Survey in Glen Hills. These unwarranted sewer category changes would lead to extensive sewer sprawl, increased imperviousness and density, eventual sewer pipe leaks and breaks (Sanitary Sewer Overflows), and declining water quality. (It should be noted that WSSC sewer lines have spilled over 9 million gallons of raw sewage in three years (2015-2017). (<https://www.wsscwater.com/customer-service/emergency-sewerwater-problems/sanitary-sewer-overflow-reports.html>))

The map comparison below illustrates what's at stake with your upcoming vote on the proposed Update to the Ten-Year Water and Sewer Plan: Montgomery's commitment to clean water, open space, and agricultural land protection. The map on the left shows that the Agricultural Reserve and low-density Residential Wedge are the areas with the cleanest, healthiest streams (colored green for Good stream health, and blue for Excellent stream health). These are the areas served with septic systems. The map on the right uses red dots to show these septic systems, and sewer service areas are shown in green. Residents countywide who want to drink clean water and walk next to clean streams demand a Water and Sewer Plan that avoids sewer sprawl, and that supports property owners to maintain functioning septic systems.

At the September 11th council work session, we ask you to openly support the clean water amendment proposed by the Montgomery Coalition to Stop Sewer Sprawl.

Sincerely yours,

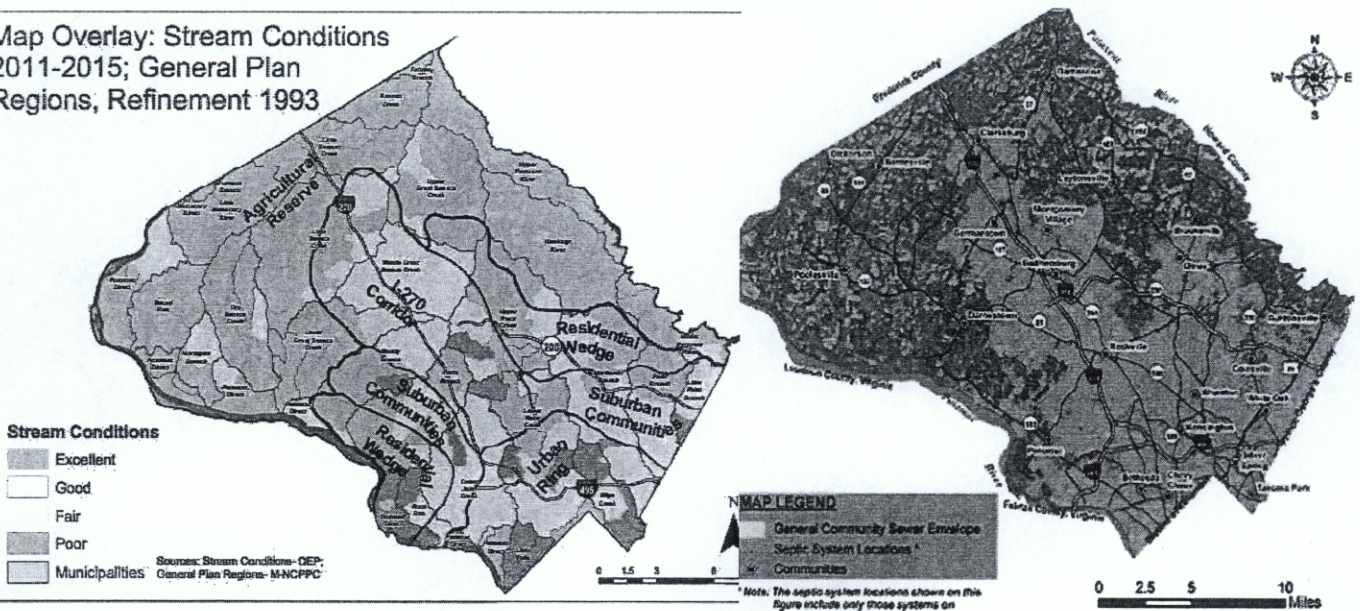
Diane Cameron, Conservation Montgomery

Ken Bawer, Watts Branch Watershed Alliance

Caroline Taylor, Montgomery Countryside Alliance

Ginny Barnes and Susanne Lee, West Montgomery County Citizens Association

Map Overlay: Stream Conditions
2011-2015; General Plan
Regions, Refinement 1993



Montgomery Coalition to Stop Sewer Sprawl (MCSSS)

Summary and Detailed Explanation of the proposed MCSSS amendment to the Water and Sewer Plan

Summary of items requested by MCSSS in the Water and Sewer Plan Ten-Year Update:

- 1) Only septic systems that have documented failures or potential problems for which on-site solutions have been exhausted, are eligible for:
 - a) triggering a septic survey;
 - b) inclusion in a survey; or
 - c) consideration for a category change recommendation.
- 2) Replace “anticipated” health problem with “potential” health problem
- 3) Revise definition of “existing public health problems.”
- 4) Replace “major” and “significant” problem with “potential” problem as one of the conditions that make a property eligible for triggering a septic survey, inclusion in a survey, or consideration for a category change;
- 5) Remove distinction between within and outside the Planned Community Service Envelopes.
- 6) Do NOT grandfather evaluation criteria for the North Potomac Highlands Septic Survey.

Our reasons for the above changes are expanded below.

- 1) Only septic systems that have documented failures or potential problems for which on-site solutions have been exhausted, are eligible for:
 - a) triggering a septic survey,
 - b) inclusion in a survey, or
 - c) consideration for a category change recommendation.

Explanation: It is our understanding that this policy was agreed to during the T&E Committee session on July 16th, but, the staff draft released on August 24 veers away from this policy. On March 20, 2018, a majority of Councilmembers took a straw vote in favor of an amendment offered by Councilmember Elrich establishing that “A category change should be limited to a failing or imminently failing system for which DEP certifies that there is not [a] feasible on-site solution.” In the 7/16 meeting, it was agreed to use the term “likely problem” instead of “imminent problem” as a concession to homeowners concerned about the impact of a term such as “imminent problem” or “imminent failure” on real estate values. This replacement, however, was not done in the Revisions to Council Staff draft of 8/24/18: “Health & Other Policy Updates (Post 7/16/18 T&E Meeting)”.

Therefore, since “major problem” is used in II.G.2.b, and “significant problem” is used in Appendix C, II.E, both of which are distinct from an actual failure, the Plan should standardize on using the term “potential problem”. As an example, a high-water level in a septic tank may not be either a “significant” or “major” problem if caused by overloading due to inappropriate simultaneous water usages.

Montgomery Coalition to Stop Sewer Sprawl (MCSSS)

Summary and Detailed Explanation of the proposed MCSSS amendment to the Water and Sewer Plan

2) Replace “anticipated” health problem with “potential” health problem

Explanation: Eliminate use of the term “anticipated” to avoid any confusion with how the term “anticipated” was used in the past. As previously defined and used in surveys, this term has been discredited as a valid justification for granting a category change. An “anticipated” problem has been defined as the County’s expectation that onsite systems will not be capable of providing adequate water supply or wastewater disposal service at some unspecified time in the future – unfortunately, this definition was applied in Glen Hills to allow category changes for properties with perfectly functioning septic systems. An “anticipated” problem was based on bogus logic and assumptions since no lot-by-lot soil testing was done as recommended by the Glen Hills Area Sanitary Study. The sense of the 7/16/18 T&E Committee Meeting discussion was that this should no longer be a valid reason for granting a septic category change.

The definition of a Potential Public Health Problem (in reference to a septic system with a potential problem) should be: a condition that exists when the public cannot yet be exposed to, or come in direct contact with, inadequately treated sewage. For this condition to be validated, the Department of Permitting Services (DPS) certifies that an objective, observable warning sign indicates that failure is likely to occur in the near term. This warning sign is defined as follows: the septic tank requires pumping more than four times a year, as certified by DPS, to resolve situations where the static level in the septic tank rises above the level of the inlet and/or outlet pipe.

This definition was partially informed by the Massachusetts Department of Environmental Protection, <https://www.mass.gov/files/documents/2017/09/27/310cmr15.pdf>, (p.77/97):

Code of Massachusetts Regulations (CMR); 310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION; 310 CMR 15.000: THE STATE ENVIRONMENTAL CODE, TITLE 5: STANDARD REQUIREMENTS FOR THE SITING, CONSTRUCTION, INSPECTION, UPGRADE AND EXPANSION OF ON-SITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS AND FOR THE TRANSPORT AND DISPOSAL OF SEPTAGE

The difference between a “Potential Public Health Problem” and an “Existing Public Health Problem” (a.k.a. failed septic system) is that with a Potential Public Health Problem (as we define it) there is no untreated sewage on the surface of the ground, in a building, or otherwise exposed to the public. Thus, with a Potential Problem, prudent action can be taken to avoid an Existing Public Health Problem, i.e., possible public exposure to untreated sewage.

This definition of a “Potential Public Health Problem” and its inclusion as one of the triggers for a septic survey addresses the legitimate concern that homeowners should NOT have to wait for sewage in their basement or backyard before requesting (and being approved for) a septic survey. Instead, properties with either a failure or a “potential public health problem” would be eligible for a survey. Thus, there is now a pro-active scenario that should satisfy the legitimate concern for a pro-active approach in the near term (vs. decades in the future).

Montgomery Coalition to Stop Sewer Sprawl (MCSSS)

Summary and Detailed Explanation of the proposed MCSSS amendment to the Water and Sewer Plan

3) Revise definition of “existing public health problems.”

Explanation: Our proposed revised entry in the Glossary for “Existing Public Health Problems (also referred to as Failed Systems)”: As stated in section III.C.4.c, onsite system failures may result in problems than can affect public and environmental health due to contact with inadequately treated sewage or contaminated drinking water. The following circumstances are among the most common that constitute an existing public health problem:

- The presence of inadequately treated sewage rising to the surface of the ground or backing up into a building.
- Evidence of a septic system discharging inadequately treated sewage into ground or surface waters. This includes problems such as drainfields constructed within the water table, constructed on fractured bedrock, and constructed with an overflow pipe that allows the surface discharge of inadequately treated sewage from the septic tank.”
- A well with inadequate water quantity yield. (State minimum standard is 1 gallon per minute.)
- A well with inadequate water quality, resulting from either an inflow of surface water or contamination of the groundwater source.
- A well that does not satisfy current regulatory standards, including hand-dug wells, wells without adequate sleeves/casing, etc. A structural failure of the well may result, such as a side wall collapse

The difference between an “Existing Public Health Problem” (a.k.a. failed septic system) and a “Potential Problem” is that with a Potential Problem (as we define it) there is no untreated sewage on the surface of the ground, in a building, or otherwise exposed to the public. The danger of exposure to sewage is the difference between an Existing Public Health Problem (failure) and a Potential Problem as we define it.

It should be noted that, per Ken Bawer’s conversation with DPS Manager Heidi Benham on 12/14/2017, DPS does not currently have a written definition of a failed system. A failure is not defined in the DPS “Well and Septic Guideline for Septic System Repairs” and it is not defined in either a) COMCOR CHAPTER 27A. INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL FACILITIES — REGULATIONS or b) COMAR Title 26, Department of the Environment, Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, AND SOLID WASTE. This need for a formal definition of failure - termed “Existing Public Health Problem” - is met by our proposed definition specified above.

Montgomery Coalition to Stop Sewer Sprawl (MCSSS)

Summary and Detailed Explanation of the proposed MCSSS amendment to the Water and Sewer Plan

- 4) Replace “major” and “significant” problem with “potential” problem as one of the conditions triggering a septic survey, inclusion in a survey, or consideration for a category change.

Explanation:

Since “major problem” and “significant problem” are both used, replace both of these terms with “potential problem”. This makes sense using the example of a high-water level in a septic tank that may not turn out to be a “major” or “significant” problem if caused by overloading due to inappropriate simultaneous water usages.

- 5) Remove distinction between within and outside the Planned Community Service Envelopes

Explanation: MCSSS objects to the insertion of separate sections for “Within the Planned Community Service Envelopes” and “Outside the Planned Community Service Envelopes.” This is a completely new distinction made by staff in the 4/17/2018 Analyst Packet. We urge elimination of any reference to “Service Envelopes” since this distinction has not been made in past versions of the draft plan, the Council did not request this change, and “the service envelope” is unrelated to public health protection.

Reasons to eliminate Planned Service Envelope distinctions from Section II.G.2.: Community Service to Relieve Public Health Problems (i.e., why the Service Envelope is not a useful concept for clean water protection):

- a) It is not transparent - the public does not have ready access to the map(s) or detailed list of areas that are “within” and “outside” the planned service envelope.
- b) The exact boundary of the “Planned Community Service Envelope” is impossible to discern given its proposed definition per the 4/17/18 Draft W&S Plan (Circle 21) in II.A.: County Water and Sewer Systems and in Appendix A: Glossary (note that this is not in the 7/16/18 T&E packet):

“Planned Community Water/Sewer Service Envelopes: Those areas intended for community service under the County’s Water and Sewer Plan’s general service policies and local area master plans recommendations.”

- c) The boundary of the Planned Community Service Envelope is arbitrary and therefore irrelevant to the issue of public health and clean water protection. The granting of a sewer category change from septic to sewer should be based solely on whether or not a public health problem exists. The decision to grant sewer category changes in Glen Hills to properties with functioning septic systems has made a mockery of the idea of a clearly defined Planned Community Service Envelope. What is the point of being outside the envelope if sewer lines can be extended at will?

Montgomery Coalition to Stop Sewer Sprawl (MCSSS)

Summary and Detailed Explanation of the proposed MCSSS amendment to the Water and Sewer Plan

- d) There are lots within the Planned Community Service Envelope that are not category 1 or 3 with no “by-right” ability to get an administrative category change. Even though a property is within the Planned Community Service Envelope, the existence of a public health problem, not a geographical location, should drive consideration of a category change. Note that the proposed survey process for within the planned community service envelope is not even specified in this draft.
 - e) There are clean streams inside the Planned Envelope that must be protected.
- 6) Do NOT grandfather evaluation criteria for the North Potomac Highlands Septic Survey

Explanation: This survey was not triggered by documented septic system failures or problem septic systems showing signs of near-term possible failure. Furthermore, the County has no binding commitment to grant sewer category changes according to superseded criteria. There is absolutely no reason to continue through the survey review process using the old, flawed decision criteria.

Please see the proposed MCSSS amendment to the Water and Sewer Plan Update – in the form of our specific, recommended text edits (deletions and additions) in GREEN to the August 24 staff draft titled: “Health & Other Policy Updates (Post 7/16/18 T&E Meeting)”.