

DRAFT3

June 16, 2014

**MEMORANDUM FOR THE SMART GROWTH COORDINATING COMMITTEE**

Re: Southern Kent Island (SKI) Sanitary Project

Queen Anne's Conservation Association (QACA) submits that the Smart Growth Coordinating Committee (SGCC) should not at this time approve the SKI Sanitary Project for loans and/or grants, for the following reasons.

***1. The Project will bring major sprawl development – potentially as many as 2,000 houses -- to an area outside of a PFA on a sinking island in a rising Bay.***

In the area to be served by the Project, there are 1,600 vacant lots that do not “perc”, in addition to 1,518 existing homes. Another 487 vacant lots in the nine SKI communities are planned not to be served by the Project. The County has passed a Lot Consolidation Ordinance to compel merger of commonly-owned adjacent lots in the service area with a view to reducing from 1,600 to 658 the number of vacant lots that will become buildable as a result of the Project.

It is not smart growth to add up to 658 new houses to traffic-snarled, sea-level-rise-vulnerable Kent Island. But, worse, the potential exists for all 1,600 lots, and possibly the 487 as well, to become buildable as a direct result of the Project.

Some of the owners of multiple vacant lots in the service area have announced that they will bring a court challenge against the Ordinance, **the outcome of which we believe, after extensive legal research, is likely to be in favor of the challengers.** The County purports to have legal advice that the challenge will likely fail, but this advice has not been shared with the public -- certainly, **the SGCC should review that advice.** The SGCC should also revisit the determination that the nine-year-old Attorney General's opinion can, on today's facts and law, still be relied on to exclude the 487 lots, some of whose owners have also stated they will take legal action.

The County could have framed its Ordinance to require lot consolidation at once, thus requiring the objecting lot owners to bring their lawsuit and get it resolved before construction of the Project. Instead, the County deliberately wrote the Ordinance so that lot consolidation is not required to be accomplished until the lot owner applies for a building permit, *i.e.* after sewer service is available. This allows the lot owners to wait until the Project has been constructed before asserting their claims; then if they are successful, whether by a litigated judgment or in a settlement, the County will have no practical alternative except to allow 1,600 new houses on SKI (or over 2,000 if the excluded lot owners also prevail in their claims).

***2. The Project, bringing with it major development outside a PFA, is neither the only way to solve a public health problem nor approvable under the cost-effectiveness criteria of House Bill 11.***

The County and its Environmental Health Services Director do not claim that there has ever been a case of disease traced to a “failing septic” on SKI. They do claim that there is a *risk* of disease (which QACA would not dispute, except as to the seriousness of the risk), and (which is where we strongly disagree) that the Project’s pipeline to the KNSG WWTP is the “only permanent solution” to the failing septic problem.

The County has refused to acknowledge the range of alternative onsite treatment alternatives that can be used by the existing SKI homeowners even in situations where their lots are small and the water table seasonally rises to a level leaving less than two feet of dry soil beneath the drainfield. These alternatives include a variety of site-specific modifications to existing systems; mound systems; holding tanks used on an as-needed seasonal basis; and systems that have been approved for BRF funding that, because of their pre-treatment capability, are approved in other jurisdictions for surface discharge.

House Bill 11 requires, as a precondition of BRF funding, findings that either “individual replacement of the onsite sewage disposal system is not feasible” or that connection to the WWTP “is more cost-effective for nitrogen removal than upgrading the individual onsite sewage disposal system”. The first of these

showings cannot be made, given the availability of the systems just referred to. The second showing cannot be made because the Project's connection of the existing SKI homes to the KNSG plant comes at a direct construction cost per house of \$35,000. This sum far exceeds the average per-house cost of onsite upgrades, with the result that the Project's somewhat higher rate of nitrogen removal falls well short of overcoming its cost disadvantage.

**QACA urges the SGCC to look closely at the availability and costs (installation and maintenance) of onsite upgrades.** The SGCC should inquire, more closely than the County has done, into the much higher maintenance costs that other jurisdictions have experienced with the "STEP system" chosen for the Project over a conventional vacuum system. Maintenance costs, in addition to construction/installation costs, would appear to be relevant to the statutory requirement that the WWTP connection be "more cost-effective for nitrogen removal" than onsite upgrades.

***3. The "permanent solution" to both the failing septics problem and the sprawl problem on SKI -- which the Project would hugely exacerbate -- is a policy commitment to onsite upgrades over time and to nearer-term purchase by the State or County of the vacant lots.***

The Project's sewer service to SKI promotes sprawl and lays the foundation for Kent Island eventually becoming Ocean City on the Bay. That would not be smart growth. Better, smarter alternatives exist.

Failing septics: Where there is an identifiable health risk from an existing failing septic that is contaminating surface water, the health officer should intervene and BRF funds should be directed toward an upgrade. Both the County and QACA have estimated that the number of such systems is in the range of 10-15% of the total of 1,518 systems. (See pp. 4-7 of QACA's June 4 Working Paper at [www.qaca.org](http://www.qaca.org)) The remaining systems, the ones whose failure consists in not having in all seasons sufficient unsaturated soil beneath the drainfield, should be upgraded over time – for example, whenever the properties change hands or when building permits are sought for additions.

Vacant lots: While the vacant lots may not require an immediate solution, their existence, and the property rights attached to them, is something of a ticking time bomb. As a “permanent solution” for their long-term sprawl potential, it would be wise policy for the State now to buy up these properties for such beneficial public purposes as improving stormwater management, preserving wetlands and forests, and avoiding future costs of protecting more homeowners on Kent Island against sea level rise and storm surge.

All 2000 of the vacant lots could be bought for no more than the County proposes to borrow from the BRF for the Project. And that leaves out of account the possibility of recouping some (or even most) of the acquisition cost by reselling packages of the lots, with appropriate deed restrictions or conservation easements on them, either to nearby homeowners or to new buyers (the kind of thing that groups like the Eastern Shore Land Conservancy are skilled at doing).

Taking a longer view than the County has been capable of doing, **the SGCC should consider whether a more far-sighted policy for Kent Island should be developed (in the first instance, by MDP) that would use State resources for smart growth strategies for SKI rather than for funding the Project.**

In the interest of keeping this memo to a readable length, we have omitted much detail and supporting information. We stand ready to supply that to the SGCC upon request. Protecting Kent Island from further sprawl is a key part of our mission to protect, for future generations, the environment and rural character of Queen Anne’s County as a whole.

*Jay Falstad, Executive Director  
Queen Anne’s Conservation Association*