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Final Report

Capacity Assurance Program
(CAP) Task Force
Recommendations



Prepared for:

Division of Water Quality, Lexington-Fayette

Urban County Government

Lexington, Kentucky

November 28, 2012



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Mr. Charles Martin, PE
Division of Water Quality, Lexington-Fayette Urban County Government
125 Lisle Industrial Avenue, Suite 180
Lexington, Kentucky 40511

Re: Final Report
Capacity Assurance Program (CAP)
Task Force Recommendations

Dear Mr. Martin:

The Lexington-Fayette Urban County Government (LFUCG) signed a Consent Decree with the U.S. Environmental Protection Agency (EPA) in 2008. The Consent Decree was entered by the U.S. District Court on January 3, 2011. Under the terms of the Consent Decree, LFUCG is required to develop and implement a Capacity Assurance Program (CAP) for its wastewater system. A CAP Plan must be submitted to the EPA by January 3, 2013 that summarizes the specific methods and protocols by which LFUCG will govern their CAP implementation.

Stantec Consulting Services, Inc. (Stantec) was retained by the Division of Water Quality (DWQ) in May 2012 to assist in development and implementation of LFUCG's CAP. Stantec is a consulting engineering firm with offices in Lexington and has prior experience implementing Capacity Assurance Programs in other Consent Decree communities.

In April 2012, LFUCG formed a Task Force to review and evaluate recommendations proposed by DWQ/Stantec prior to introduction of the proposed CAP for action by the Urban County Council (Council). Ordinance approval by Council will be necessary for CAP implementation. The CAP will require a marked change in the existing land development planning and permitting process in Fayette County.

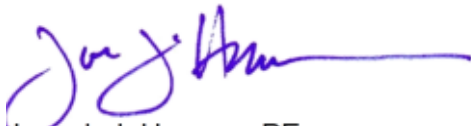
The CAP Task Force was formed in April 2012 and consisted of six (6) voting members: five (5) Council Members and the Commissioner of Planning, Preservation and Development. The Task Force included extensive involvement and input from internal (LFUCG) and external (community) stakeholders. The Task Force and stakeholders met eleven (11) times from May 2012 through September 2012.

This Report provides a summary of the nineteen (19) recommendations endorsed by the CAP Task Force. Detailed notes and presentation materials from the Task Force meetings are included in the appendices of this Report. The recommendations in this Report will be used as the basis for the CAP Plan submitted to the EPA and the ordinances necessary for CAP implementation presented to Council for approval.

Stantec appreciates the opportunity to assist LFUCG in meeting their Consent Decree objectives and, ultimately, improving the quality of life in Lexington. If you have any questions regarding the information presented or require additional information, please contact me.

Sincerely,

STANTEC CONSULTING SERVICES INC.



Joseph J. Herman, PE
Principal

/rdr

Final Report

Capacity Assurance Program (CAP) Task Force Recommendations



Prepared for:
Division of Water Quality, Lexington-Fayette
Urban County Government
Lexington, Kentucky

November 28, 2012

Final Report Capacity Assurance Program (CAP) Task Force Recommendations

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Final Report

Capacity Assurance Program (CAP)

Task Force Recommendations

1. Introduction

1.1. Background

The Lexington-Fayette Urban County Government (LFUCG) signed a federal Consent Decree with the U.S. Environmental Protection Agency (EPA) and Commonwealth of Kentucky Environmental and Public Protection Cabinet (EPPC) on March 14, 2008 (Lodging Date). The Consent Decree was entered by the Court on January 3, 2011 (Effective Date). The terms of the Consent Decree obligate LFUCG to eliminate sanitary sewer overflows (SSOs) and other unpermitted bypasses and discharges from the wastewater system.

As part of the Consent Decree, LFUCG is required to develop and implement a Capacity Assurance Program. Within two (2) years of the Effective Date of the Consent Decree (January 3, 2013), LFUCG must submit for review, comment, and approval, a Capacity Assurance Program Plan (Plan) to the EPA and EPPC. No later than thirty (30) days after approval of the Plan by the EPA, LFUCG must commence implementation of the Capacity Assurance Program, subject to the schedules set forth in the approved Plan.

The Division of Water Quality (DWQ) entered into an Engineering Services Agreement (Resolution No.: 268-2012) with Stantec Consulting Services, Inc. (Stantec) on May 17, 2012, to assist them in the development and implementation of LFUCG's Capacity Assurance Program. Stantec provides professional consulting services in planning, assessment, engineering design, and management of stormwater and wastewater infrastructure projects, and has prior experience implementing Capacity Assurance Programs in other Consent Decree communities. Stantec is a publicly traded company with a staff of over 11,000 professionals in more than 170 offices in North America. Locally, Stantec employs approximately 200 professionals in their two offices at 1409 North Forbes Road and 400 East Vine Street.

1.2. Capacity Assurance Program (CAP)

Section VII.16B of the Consent Decree obligates LFUCG to implement a Capacity Assurance Program (CAP) for their sanitary sewer system. Under the CAP, LFUCG may only authorize new connections (flow additions) if adequate capacity can be certified in the collection, transmission, and wastewater treatment systems. In the absence of this certification, new connections may also be authorized by use of a "banked credit system." Under the banked credit system, flow removal from qualifying activities (inflow/infiltration removal, off-line storage, capacity enhancement projects) may be used to offset flow from new connections at an exchange rate (trade ratio) prescribed in the Consent Decree. This Report is not intended to paraphrase all requirements in the Consent Decree.

1.3. Definitions

"Adequate Capacity" shall mean Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as defined in Section VII, Paragraph 16B of LFUCG's Consent Decree.

“Adequate Treatment Capacity” shall mean that at the time the wastewater treatment plant (WWTP) receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the Sanitary Sewer System), the WWTP will not be in “non-compliance” for quarterly reporting as defined in 40 C.F.R Part 123.45, Appendix A, and that the new or increased flow to the WWTP will not result in Unpermitted Bypasses or diversions prohibited by the KPDES Permits due to lack of treatment capacity.

“Adequate Transmission Capacity” shall mean that each Pumping Station through which a proposed additional flow from new or existing sewer service connections would pass to the WWTP receiving such flow, has the capacity to transmit the existing One-Hour Peak Flow passing through the Pumping Station, plus the addition to the existing One-Hour Peak Flow predicted to occur from the proposed connection, plus the addition to the existing One-Hour Peak Flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Sanitary Sewer System.

“Adequate Collection Capacity” shall mean that each Gravity Sewer Line, through which the proposed additional flow from new or existing connections would pass, has the capacity to carry the existing One-Hour Peak Flow passing through the Gravity Sewer Line, plus the addition to the existing One-Hour Peak Flow from the proposed connection, plus the addition to the existing One-Hour Peak Flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Sanitary Sewer System without causing a Surcharge Condition.

“Capacity Assurance Program” or **“CAP”** shall mean the System Capacity Assurance Program as defined in Section VII, Paragraph 16.B. of the Consent Decree.

“Capacity Request” shall mean written submission of a request to the Division of Water Quality (DWQ) for a Permanent Allocation or Reservation of sewer capacity/credits.

“Clean Water Act” or **“CWA”** shall mean the Clean Water Act, formally entitled the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251-1387.

“Consent Decree” shall mean the Decree and all attachments Lodged on March 14, 2008 between the United States of America and the Commonwealth of Kentucky (Plaintiffs) v. Lexington-Fayette Urban County Government (Defendant), Civil Action No. 5:06-cv-386, with an Effective Date of January 3, 2011.

“Credit” shall mean a unit of flow equivalent to one gallon per day (1 gpd).

“Credit Bank” shall mean the section of LFUCG’s wastewater collection and transmission systems that is a distinct drainage or wastewater collection area where banked credit transactions are recorded under the Capacity Assurance Program.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“EPCC” shall mean the Environmental and Public Protection Cabinet of the Commonwealth of Kentucky.

“Force Main” shall mean all sanitary sewer lines that operate under pressure due to pumping of sanitary wastewater at a pump station except for those sanitary sewer lines that serve a single structure or building.

“Gravity Sewer Line” shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity. Gravity sewers are typically not intended to flow full under normal operating conditions.

“I/I” shall mean the total quantity of water from Infiltration and Inflow without distinguishing the source.

“Infiltration” as defined by 40 C.F.R. § 35.2005(b)(20) shall mean water other than wastewater that enters a sanitary sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes.

“Inflow” as defined by 40 C.F.R. § 35.2005(b)(21) shall mean water other than wastewater that enters a sanitary sewer system (including sewer service connections) from source such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage.

“KPDES” shall mean Kentucky Pollutant Discharge Elimination System, as established by 401 KAR Chapter 5 and KRS Chapter 224.

“Minor Sewer Connections” shall mean connections which do not exceed 2,500 gallons per day.

“MS4” shall mean LFUCG’s municipal separate storm sewer system, as that term is defined in 40 C.F.R. § 122.26 (b)(8).

“One Hour Peak Flow” shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2-year, 24-hour storm event.

“Permanent Allocation” shall mean the assignment of sewer capacity/credits to a property that is not subject to expiration.

“Private Lateral” shall mean that portion of a sanitary sewer conveyance pipe, including that portion in the public right of way, that extends from the wastewater main to the single-family, multi-family, apartment, other dwelling unit, business, industry, institution or structure to which wastewater service is or has been provided. Private Laterals do not include connector joints at LFUCG’s sewer line.

“Pumping Station” shall mean all pumping stations owned or operated by LFUCG except for pump stations that serve a single structure or building, and except for the pump station serving Southland Christian Church in Jessamine County.

“Recurring SSO” shall mean a sanitary sewer overflow (SSO) that occurs in the same location more than once per twelve (12) month rolling period.

“Reservation” shall mean the temporary assignment of sewer capacity/credits to a property until a Permanent Allocation is made or the temporary assignment expires.

“Sanitary Sewer Overflow” or **“SSO”** shall mean any discharge to waters of the United States from the Sanitary Sewer System through point sources not specified in any KPDES permit (otherwise known as “Unpermitted Discharges”), as well as any release of wastewater from the Sanitary Sewer System to public or private property that does not reach waters of the United States, such as a release to a land surface or structure that does not reach waters of the United States; provided, however, that releases or wastewater backups into buildings that are caused by blockages, flow conditions, or malfunctions in a Private Lateral, or other piping or conveyance system that is not owned or operationally controlled by LFUCG are not SSOs. SSOs include any cross-connections between LFUCG’s Sewer System and its MS4 which allow wastewater to pass from the Sanitary Sewer System to the MS4, but does not include exfiltration that does not reach waters of the United States, or land surface or structures.

“Sanitary Sewer System” shall mean the wastewater collection and transmission systems (WCTS) owned or operated by LFUCG designed to collect and convey municipal sewage (domestic, commercial and industrial) to a WWTP. The Sanitary Sewer System does not include LFUCG’s MS4.

“Sewershed” shall mean a section of LFUCG’s wastewater collection and transmission systems (WCTS) that is a distinct drainage or wastewater collection area and designated as such by LFUCG.

“Surcharge Condition” shall mean the condition that exists when the supply of wastewater resulting from the One-Hour Peak Flow is greater than the capacity of the pipes to carry it and the surface of the wastewater in manholes rises to an elevation greater than twenty-four (24) inches above the top of the pipe or within three (3) feet of the rim of the manhole, and the sewer is under pressure or head, rather than at atmospheric pressure, unless LFUCG has, pursuant to Section VII Paragraph 16.B.(i)(e) of the Consent Decree, identified that pipe segment and manhole is designed to operate in that condition, in which case the identified level of surcharge will be used.

“Use of Record” shall mean the existing or previous wastewater flow from a property that is represented in the baseline condition of the hydraulic model of the Sanitary Sewer System.

“Waiting List” shall mean the record of applicants for a specific Credit Bank for which sufficient offsetting credits were unavailable to fulfill the proposed request.

“Wastewater Collection and Transmission Systems” or **“WCTS”** shall mean the municipal sanitary wastewater collection and transmission systems, including all pipes, force mains, gravity sewer lines, lift stations, pumping stations, manholes and appurtenance thereto, which are owned or operated by LFUCG.

“WWTP” shall mean wastewater treatment plant.

For any definitions not provided, the definitions included in Section IV of the Consent Decree shall prevail.

2. CAP Task Force

2.1. Purpose

In April 2012 a Task Force was established to review and evaluate recommendations developed by DWQ and their Consultant prior to introduction of the proposed CAP for approval by the Urban County Council (Council). The CAP represents a new program to LFUCG and will involve a marked change in the existing land development planning and permitting processes in Fayette County. The development of a CAP Task Force provided an opportunity for Council members, other LFUCG Divisions outside of DWQ, and community stakeholders to closely review, critically evaluate, and offer insights/revisions to proposed CAP recommendations.

2.2. Voting Members

Approval of each recommendation relative the proposed CAP was presented to the Task Force for a vote. The CAP Task Force was comprised of the following seven (7) voting members:

- Council Member Tom Blues
(Chair, 2nd District)
- Vice Mayor Linda Gorton
(Vice Chair, At-Large)
- Council Member Chuck Ellinger
(At-Large)
- Council Member Steve Kay
(At-Large)
- Council Member Kevin Stinnett
(6th District)
- Council Member Peggy Henson
(11th District)
- Derek J. Paulsen, Ph.D.
(Commissioner of Planning,
Preservation and Development)

Council Member (CM) Tom Blues served as the Task Force Chair and Vice Mayor (VM) Linda Gorton served as the Vice Chair.

2.3. Internal Stakeholders

Internal stakeholders were invited to Task Force meetings and encouraged to provide feedback during the meetings. Internal stakeholders were comprised of the Administration and those Departments and Divisions within LFUCG that could potentially be involved or affected by CAP implementation. Internal stakeholders that attended the CAP Task Force meetings included:

- Mayor's Office
- Chief Administrative Officer
- Planning Commission
- Council Office
- Department of Law
- Department of Environmental Quality
and Public Works
- Department of Planning,
Preservation and Development
- Division of Engineering
- Division of Building Inspection
- Division of Environmental Policy
- Division of Water Quality

Internal stakeholders provided valuable insight on LFUCG's existing land development processes and feedback on how proposed CAP decisions would impact their existing business practices.

2.4. External Stakeholders

External stakeholders were invited to Task Force meetings and encouraged to provide feedback during the meetings. External stakeholders included members of the development community, public schools, universities, and other community organizations and interested individuals from the general public. External stakeholders that attended the CAP Task Force meetings included:

- Fayette County Public Schools
- University of Kentucky
- The Fayette Alliance
- Home Builders Association of Lexington
- Fayette County Neighborhood Council
- Various attorneys and consultants representing development interests
- Commerce Lexington
- Ball Homes
- North Forty Properties
- Associated General Contractors of Kentucky
- St. Joseph Healthcare
- Transylvania University

External stakeholders were provided opportunities during each meeting to provide feedback and suggestions for improvement on proposed CAP decisions. External stakeholder participation provided an excellent opportunity for Task Force members and DWQ to hear community interests/concerns and gain a better understanding of the potential ramifications of proposed decisions/recommendations.

2.5. Task Force Meetings

Eleven (11) task force meetings were conducted from May 2012 through September 2012. All Task Force meetings were held in Council Chambers, open to the general public, and advertised in advance on LFUCG's web site. Task Force meetings were held from 9:00 a.m. to 11:00 a.m. on the following dates:

- May 3, 2012
- May 24, 2012
- June 14, 2012
- June 28, 2012
- July 12, 2012
- August 7, 2012
- August 9, 2012
- August 23, 2012
- September 6, 2012
- September 20, 2012
- September 25, 2012

A sign-in sheet was available at each Task Force meeting and attendees were encouraged to provide their name and contact information so that Task Force materials could be distributed to them. Individuals on the meeting sign-in sheet were identified as attendees in the Meeting Notes.

Prior to Task Force meetings, a copy of the meeting's agenda and an advance copy of the presentation slides was distributed to Task Force members and stakeholders. Printed copies were also provided at the Task Force meetings. The meeting agenda and presentation slides are included in the Meeting Notes.

2.6. Meeting Notes

Detailed Meeting Notes summarizing the previous meeting were prepared and published for each Task Force meeting. The Meeting Notes included an overview of the information presented at the previous meeting, discussion highlights, questions/comments expressed by stakeholders during the previous meeting, and included a copy of the slides presented at the previous meeting. A copy of the Meeting Notes was distributed (via email) to Task Force members and all stakeholders who provided their contact information on the sign-in sheet for that meeting (or any prior Task Force meeting). An electronic copy of the Meeting Notes is available on LFUCG's website (www.lexingtonky.gov/capacityassurance). The Meeting Notes for each Task Force meeting are also provided in Appendices A through K of this report.

This Task Force Report will become the final record for all Meeting Notes, slides and agendas. DWQ will maintain a copy of this report for the duration of the Consent Decree (estimated end date - January 3, 2024).

2.7. Process

Individual CAP recommendations were systematically presented to the Task Force and stakeholders for review and discussion at each CAP Task Force meeting. DWQ and Stantec were responsible for developing individual draft recommendations and presenting them to the Task Force. Prior to Task Force meetings, DWQ and Stantec participated in technical meetings to determine available options relative to each recommendation, review research from other CAP benchmark communities, discuss the merits of each option, and select a preferred option for recommendation to the Task Force. The following general criteria were considered when evaluating and selecting proposed recommendations:

- Compliance with Consent Decree requirements;
- Impact on the cost / effort to administer the program;
- Fairness to existing rate payers and community stakeholders; and
- Transparency and ability to effectively communicate program elements to the public.

Internal (LFUCG) stakeholders were frequently invited to participate in the technical meetings to assist DWQ/Stantec in understanding existing land development processes, and vet proposed recommendations.

Proposed recommendations developed by DWQ/Stantec were presented to the Task Force and stakeholders for consideration at the Task Force meetings. Task Force and stakeholder feedback was solicited during the Task Force meetings. In some cases, Task Force members requested additional research and/or information. Similarly, revisions and/or improvements to the proposed recommendation were sometimes necessary to address Task Force concerns or accommodate stakeholder feedback. At the conclusion of discussion regarding each recommendation, the voting members of the Task Force were asked to approve the proposed CAP recommendation.

Figure 1 provides a graphical representation of the process by which CAP recommendations were developed and presented to the Task Force and stakeholders.

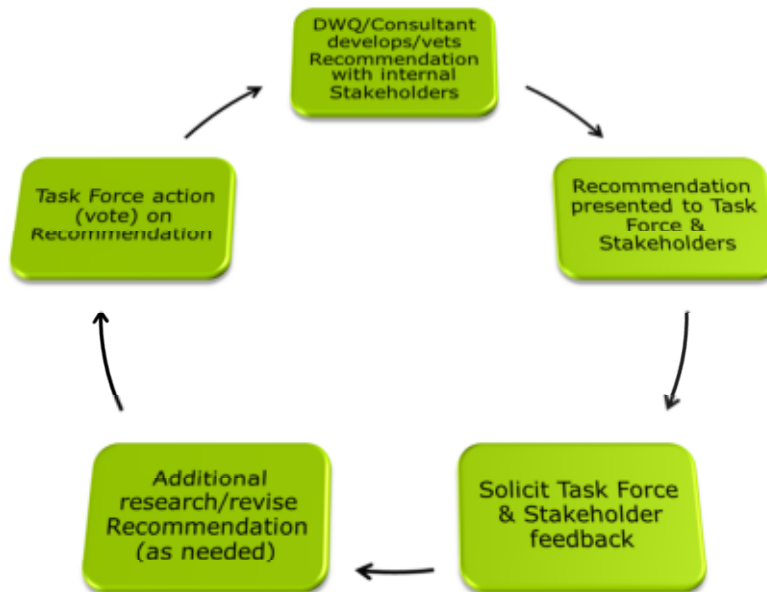


Figure 1. Overview of Task Force Review Process

3. Recommendations

Nineteen (19) individual recommendations were submitted by DWQ and approved by the CAP Task Force. Proposed recommendations will serve as the basis for the CAP Plan to be submitted to the EPA (due January 3, 2013), and used to draft the resolutions/ordinances necessary for CAP implementation.

The following subsections provide a brief description of each recommendation approved by the CAP Task Force. A detailed summary and Task Force discussions relative to each recommendation are included in the Meeting Notes presented in Appendices A through K. Table 1 (page 9) provides a summary of the individual recommendations that were discussed at each Task Force meeting. Table 1 can be used to quickly identify the relevant Meeting Notes for each recommendation and the associated appendix in this report where they can be found.

Table 1. CAP Recommendations and Task Force Meeting Dates

No.	Recommendation	Task Force Meeting Date										
		5/3/2012	5/24/2012	6/14/2012	6/28/2012	7/12/2012	8/7/2012	8/9/2012	8/23/2012	9/6/2012	9/20/2012	9/25/2012
1	Credit Banking Unit			●								
2	Credit Harvest Date			●								
3	Use of Record			●								
4	Essential Services (Allow Exception)			●	●	●						
5	Third-Party Trading				●	●						
6	Developer-Earned Credit Program (DECP)					●	●		●			
7	Credit Allocation Priority						●	●	●			
8	Expiration Period						●		●			
9	CAP Entry Point						●		●	●		
10	Grandfathering						●		●	●	●	
11	Essential Services (Define/Establish Criteria)			●	●	●						●
12	Administrative Fee									●	●	
13	Reservation Deposit and Capacity Charge									●	●	
14	Implementation Schedule									●		
15	Review Time										●	
16	Appeals Process										●	
17	Conditional Approval										●	
18	Public Access										●	
19	Program Auditing										●	●
	<i>Report Appendix</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>H</i>	<i>I</i>	<i>J</i>	<i>K</i>

3.1. Credit Banking Unit

The Credit Banking Unit is the defined area(s) within the wastewater collection system where credit transactions are recorded. LFUCG's Consent Decree references recurring sanitary sewer overflows (SSOs) and the "capacity-limited portion" of the sewer system in the context of the requirements for the capacity in lieu of certification (i.e. banked credit system). The Credit Banking Unit adopted by other CAP benchmark communities includes: banking at SSO locations (Cincinnati, Ohio), at major catchments/sewersheds (Louisville, Kentucky), or a dynamic bank that is generally defined as everything upstream of the proposed tap connection location (Knoxville, Tennessee).

The Task Force approved the following recommendation for **Credit Banking Unit**:

Bank locations will be identified at SSO locations, wastewater treatment plants, major pump stations, and at capacity-limited trunk sewers.

The capital improvement projects outlined in LFUCG's Remedial Measures Plan (RMP) will be designed to restore adequate capacity in the sewer system. As adequate capacity is restored through completion of RMP improvements and other system rehabilitation activities, the credit banks will combine with one another. Maps illustrating the credit banks at the onset of CAP implementation within each of Lexington's major sewersheds are presented in Appendix L.

3.2. Credit Harvest Date

The Credit Harvest Date is the retroactive date that LFUCG can earn credits for completed sewer improvements. Sewer improvements completed after the Credit Harvest Date will earn credits that can be posted to the credit banks and used to offset proposed flow additions from development activity. LFUCG's Consent Decree states that "LFUCG may use a banking credit system for [projects] completed after the Effective Date" (Section VII, 16.B(iii)(i)). The Effective Date for LFUCG's Consent Decree is January 3, 2011. DWQ has been aggressively performing improvements to its wastewater system since the Consent Decree was Lodged in March 2008. The Credit Harvest Date for other CAP benchmark communities (Cincinnati, Ohio and Knoxville, Kentucky) is prior to the Effective Date of their respective Consent Decrees.

The Task Force approved the following recommendation for **Credit Harvest Date**:

Authorize staff to communicate with the EPA in order for LFUCG to receive credit for sanitary sewer improvements completed prior to the Effective Date of the Consent Decree.

It is anticipated that a letter will accompany the CAP Plan submission to the EPA on January 3, 2013. The letter will request a Credit Harvest Date that coincides with the baseline condition in the hydraulic models. For the Group 1 sewersheds (East Hickman, West Hickman, and Wolf Run), the baseline condition in the model is based on sewer system flows established on **August 19, 2008**. For the Group 2 sewersheds (Cane Run and Town Branch) and Group 3 sewersheds (North Elkhorn and South Elkhorn), the baseline condition in the hydraulic model is based on sewer system flows established on **June 1, 2009**.

3.3. Use of Record

Use of Record refers to the wastewater flow from a property based on its existing or previous land use. The Use of Record flow is reflected in the baseline condition of the hydraulic model that is used to establish existing sewer capacity.

The CAP requirements in the Consent Decree apply to increases in flow to the sanitary sewer system. Redevelopment of a previously developed property to a usage that will result in a net increase in the wastewater flow to the sewer system will require offsetting banked credits (assuming adequate capacity cannot be certified) in the amount of the net flow increase. In other words, only the net flow increase must be offset with banked credits. Redevelopment of a previously developed property to a usage that will result in a net decrease in the wastewater flow to the sewer system will not require offsetting banked credits, since an increase in flow to the sewer system does not occur.

In other CAP benchmark communities, residual Use of Record flows that result from redevelopment of a property to a less intensive land use remain with the property/parcel for future usage. Since residual Use of Record flows were earned by private investment, their loss may be subject to legal challenge as a property rights “taking.”

The Task Force approved the following recommendation for **Use of Record**:

Residual flow (credits) earned from redevelopment of a property to a less intensive land use will be retained with the property unless voluntarily released by the property owner. Credits earned from Use of Record would not be subject to expiration and may be used by the property owner on another property they own within the same credit bank.

3.4. Essential Services (EPA Allowed Exception)

LFUCG’s Consent Decree includes a provision for those facilities that are deemed essential to connect to the sewer system even if adequate capacity cannot be certified or there are not enough banked credits available to offset the proposed flow increase. A withdrawal from the credit bank must still be made from the credit bank. Essential Services facilities are defined in the Consent Decree as:

- Health care facilities;
- Public safety facilities;
- Public schools;
- Illicit connections (septic tank removals, etc.) that are approved by the Fayette County Health Department; and
- Other facilities as agreed upon in writing by the EPA and Kentucky EPPC.

The Task Force approved the following recommendation for **Essential Services (EPA Allowed Exception)**:

The exception provided in the Consent Decree for Essential Service facilities will be allowed.

The Task Force clarified that the allowance of the Essential Service exception does not constitute a guarantee that all Essential Service facilities will be granted the exception. It was further clarified that the recommendation simply provides the flexibility for LFUCG to provide the exception.

3.5. Third-Party Trading

Third-Party Trading refers to the ability of property owners to sell, trade, or donate all or part of their credit allocation to another non-LFUCG entity. There is no mention (either allowance or prohibition) in LFUCG's Consent Decree with respect to credit trading. Third-party trading is not permitted in any of three CAP communities (Cincinnati, Ohio; Louisville, Kentucky; Knoxville, Tennessee) used for benchmarking by the Task Force. Third-Party Trading requires additional administrative effort to manage/track transactions, and protocols would need to be established to guide notification, documentation, and dispute resolution of credit trades.

The Task Force approved the following recommendation for **Third-Party Trading**:

Third-Party Trading of publicly or privately earned CAP credits will not be allowed.

3.6. Developer-Earned Credit Program (DECP)

When there are not banked credits to offset a proposed flow increase, the applicant will be placed on a Waiting List until sufficient credit reserves become available. Under a Developer-Earned Credit Program (DECP), an applicant (developer) may elect to use private funds to rehabilitate LFUCG's sewer system to earn needed credits.

A DECP provides a mechanism for a developer to move forward with a proposed development when adequate sewer capacity cannot be certified and credits necessary to offset the proposed development are currently unavailable. Credits earned under a DECP are assigned to the participating developer upon completion of the rehabilitation work for their use to offset flow increases. Earned credits may only be used to offset proposed flow increases in the same credit bank as they were earned (i.e. where the sewer improvements/rehabilitation was performed).

The Task Force approved the following recommendation for **Developer-Earned Credit Program (DECP)**:

Include a provision in LFUCG's CAP for a voluntary DECP. The developer and LFUCG would enter into a contract. Credits earned under the DECP would not be subject to expiration. Who performs the work on the public sewer system necessary to earn credits would be negotiated, but in all cases LFUCG shall have stop work authority.

3.7. Credit Allocation Priority

Credit Allocation Priority refers to the rule(s) that will govern how credits are allocated and the Waiting List is managed. As LFUCG earns credits, they will be posted to the credit bank in which they were earned, and made available to candidates on the Waiting List and new applicants. A "first-in, first-out" approach is a generally accepted method for allocating

resources when demand is perceived to exceed supply. A “first-in, first-out” approach for allocating sewer credits could result in delays for small credit requests that are made subordinate to large credit requests for which there are insufficient banked credits available.

The Task Force approved the following recommendation for **Credit Allocation Priority**:

A credit amount of 2,500 gallons per day (gpd) will be reserved in each credit bank for minor sewer connections unless waived by the Commissioner of Planning, Preservation and Development. If a waiver is approved by the Commissioner, it shall be provided with a written rationale for the waiver. When credit bank balances exceed the reserve amount, credit allocations will be made on a “first-in, first-out” basis. Facilities that are allowed the Essential Service exception will be unaffected.

3.8. Expiration Period

Capacity credits may either be *reserved* or *allocated* to a property. A *reservation* is the temporary assignment of sewer capacity/credit to a property until an *allocation* is made or the temporary assignment expires. The Expiration Period refers to the period of time that a credit allocation is valid. An Expiration Period for credit allocations provides a mechanism to return unused credits to LFUCG in cases where (after allocation is made): there is a change in the planned development’s capacity needs, there is a cancellation of the planned development, or a change in development priorities. Too short of an Expiration Period may be impractical and limit the ability of the developer to secure financing from lending institutions. Too long of an Expiration Period may unnecessarily deplete credit bank balances in the short-term and promote stockpiling behavior.

The Task Force approved the following recommendation for **Expiration Period**:

There will not be an Expiration Period for permanent credit allocations.

3.9. CAP Entry Point

The CAP Entry Point refers to the point within the land development process when a developer may reserve sewer capacity/credits. To meet the requirements in LFUCG’s Consent Decree, a CAP Entry Point no later than tap permit issuance is necessary. Setting the CAP Entry Point coincident with tap permit issuance presents a financial risk to the development community, since there would be no guarantee of sewer capacity until late in the land development process, and may effectively result in a self-inflicted moratorium on new development. Allowing an entity to reserve capacity too early in the process (such as at the early planning or zoning stage) may result in the potential for unfair business practices (stockpiling), unnecessary allocations to non-viable business plans, or overly conservative capacity/credit requests. Each of the three CAP benchmark communities (Cincinnati, Ohio; Louisville, Kentucky; and Knoxville, Tennessee) includes provisions to allow major developments to reserve credits well in advance of tap permit issuance.

The Task Force approved the following recommendation for the **CAP Entry Point**:

Permanent Allocation of capacity/credits may be requested upon approval of a Preliminary Subdivision Plan, Final Development Plan, or Amended Final Development Plan. For developments that do not require the aforementioned plans, Permanent Allocation of capacity/credits is required prior to issuance of the building permit. In any case, a tap permit shall not be issued without certification of adequate capacity or proof of credit allocation.

3.10. Grandfathering

The Consent Decree requires LFUCG to maintain a list of future authorized connections. The Authorized Connections List (ACL) represents those planned new connections to the sanitary sewer system that are currently in the land development planning/permitting process, but that have not yet physically connected to the sewer system. Grandfathering refers to those planned developments that are included on the ACL. Grandfathering is not a “free pass”, but rather a commitment of sewer capacity by LFUCG that was made prior to the onset of the CAP. LFUCG’s Consent Decree does not identify if grandfathered developments will require a subtraction from the credit bank or if negative credit bank balances will be permitted if there are insufficient offsetting credits available.

The Task Force approved the following recommendation for **Grandfathering**:

Planned or ongoing developments would be permitted to request sewer capacity/credits upon approval of an enabling Resolution by the Council.

Permanent Allocation or Reservation of sewer capacity/credits would be made based on the date of submission/approval of a Preliminary Subdivision Plan (PSP), Final Development Plan (FDP), Amended FDP, or tap permit. Specifically, the following criteria would be applied:

- *Case #1. If a development has a PSP, FDP, or Amended FDP that was submitted to the Planning Commission for approval prior to the Resolution Date (date of the Resolution enabling ongoing developments to request sewer capacity/credits), then Permanent Allocation of sewer capacity/credits would be made (subject to approval of the PSP, FDP, or Amended FDP). The Permanent Allocation would not expire and the Administrative Fee and Capacity Charge would not be assessed. The PSP, FDP, or Amended FDP must be approved by the Planning Commission by July 3, 2013 or the development must re-apply for sewer capacity in accordance with the CAP implementing ordinance(s).*

- Case #2. *If a PSP, FDP, or Amended FDP is submitted and approved after the Resolution Date and before July 3, 2013, then:*
 - *Permanent Allocation would be made for residential developments, but a maximum annual threshold on tap connections would be established/enforced. A Capacity Charge would be required for any tap connections occurring after July 3, 2014.*
 - *A Reservation would be made for non-residential developments that would be valid until July 3, 2014. All or part of the Reservation must be utilized by paying all tap-on fees by July 3, 2014. No Reservation Deposit or Capacity Charge would be required for tap connections occurring prior to July 3, 2014. Any unused reservations will expire on July 3, 2014 and applicant must re-apply for sewer capacity in accordance with the CAP implementing ordinance(s).*
- Case #3. *Permanent Allocations for a PSP, FDP, or Amended FDP approved after July 3, 2013 will be made in accordance with the CAP implementing ordinance(s) and CAP fees (i.e. Administrative Fee, Reservation Deposit, and Capacity Charge) would be applicable.*

All developable property within Expansion Area 2 (EA2) will be grandfathered (Permanent Allocation), regardless if an approved PSP, FPD, or Amended FDP is on file. Property owners within EA2 must still submit a Capacity Request for sewer capacity/credit allocations, but no Administrative Fee or Capacity Charge would be assessed.

Developments with an approved PSP, FPD, or Amended FDP (Qualifying Plan) that has not expired will not be required to submit a request for grandfathered credit allocations. DWQ will initiate the allocation to the applicable parcels from information provided by the Division of Planning. If a Qualifying Plan has expired but is renewed prior to July 3, 2013, then grandfathering will be granted in accordance with the provisions in Case #2 of the recommendation. Qualifying Plans that are renewed prior to July 3, 2013 will not be required to submit a request for grandfathered credit allocations. DWQ will similarly initiate the allocation to the applicable parcels from information provided by the Division of Planning.

3.11. Essential Services (Define/Establish Criteria)

Essential Service facilities are defined in the Consent Decree as:

- Health care facilities;
- Public safety facilities;
- Public schools;
- Illicit connections (septic tank removals, etc.) that are approved by the Fayette County Health Department; and
- Other facilities as agreed upon in writing by the EPA and Kentucky EPPC.

LFUCG's Consent Decree includes provisions for those facilities that are deemed essential to connect to the sewer system even if adequate capacity cannot be certified or there are not

enough banked credits available to offset the proposed flow increase. A withdrawal from the credit bank must still be made from the credit bank.

The Consent Decree does not provide guidance/criteria to further define what types of developments would qualify as a health care facility or public school under the Essential Services exception.

The Task Force approved the following recommendation for **Essential Services (Define/Establish Criteria)**:

Public schools must be a registered non-profit in tax code 501(c)(3) or as defined by the State. Health care facilities must be licensed by the Kentucky Cabinet for Health and Family Services and meet the definition in KRS 216B.015, or be a building or facility that is contiguous to or connected to a licensed hospital and which serves as a medical office building, site for delivery of outpatient health services or is otherwise integral to hospital operations or which building or facility is required to have a Certificate of Need under KRS 216B.010, et. seq.

3.12. Administrative Fee

The CAP represents a new program for LFUCG and management and implementation of the program will require financial and staff resources. An Administrative Fee has been used in other CAP communities to defray program costs. The Administrative Fee is charged directly to those who use the service (i.e. development community) and does not alter customers' monthly sewer bill.

The Task Force approved the following recommendation for **Administrative Fee**:

An Administrative Fee will be assessed for sewer capacity request reviews. Payment of the fee will be required before LFUCG will perform the review.

3.13. Reservation Deposit and Capacity Charge

A Reservation Deposit has been used in other CAP communities as a means to minimize non-viable or speculative sewer capacity/credit requests, thereby improving sewer capacity/credit availability for legitimate development opportunities. The deposit is required in order for an applicant to reserve capacity/credits and is usually applied towards the Capacity Charge (or may be refunded if there is no Capacity Charge) at the time a Permanent Allocation of sewer capacity/credits is made.

A Capacity Charge has been assessed in other CAP communities for Permanent Allocations of sewer capacity/credits. Reasons cited in other CAP communities for the Capacity Charge is to defray the future cost of providing Master Plan sewerage facilities and the additional costs associated with complying with Consent Decree requirements. Capacity Charges are typically non-refundable and the amount of the charge is proportional to the size of the sewer capacity request.

The Task Force approved the following recommendation for **Reservation Deposit and Capacity Charge**:

A Reservation Deposit will be assessed for sewer capacity/credit requests. The Reservation shall be valid for one year, with a provision for a one year renewal. (After two years, reapplication would be necessary.) Payment of the Reservation Deposit will be required prior to issuance of the Reservation. The Reservation Deposit will be credited towards the Capacity Charge. The Reservation Deposit will be non-refundable if the proposed development does not advance to Permanent Allocation.

A Capacity Charge will be assessed for permanent capacity/credit allocations. Payment of the Capacity Charge will be required prior to allocation of capacity/credits.

3.14. Implementation Schedule

Under the obligations in LFUCG's Consent Decree, no later than thirty (30) days after EPA approval of the CAP Plan, LFUCG shall commence implementation of the CAP, subject to the schedules set forth in the approved CAP Plan. A schedule for full implementation of the CAP must be included in the CAP Plan. The deadline for submission of the CAP Plan to avoid stipulated penalties is January 3, 2013. A deadline for EPA's review of the submitted CAP Plan and response to LFUCG is not defined.

The Task Force approved the following recommendation for **Implementation Schedule**:

Fully implement the CAP within 180 days after EPA approval of the CAP Plan.

The Task Force also concurred with DWQ's recommendation that an internal deadline for full CAP implementation be July 3, 2013. This firm date will not be provided to the EPA.

3.15. Review Time

Review Time is defined as the elapsed period of time from submission of a Capacity Request to LFUCG and when a determination is made and the applicant is notified. Review Times for Capacity Requests in the three CAP benchmark communities were reviewed. Both Cincinnati, Ohio and Louisville, Kentucky have not formally established a Review Time maximum or target. A target of 10 days to review Capacity Requests has been instituted in Knoxville, Tennessee.

The Task Force approved the following recommendation for **Review Time**:

Set a goal of ten (10) calendar days from the date that a completed sewer capacity request is received for a determination letter to be sent to the applicant. Actual average review times will be calculated on a quarterly basis.

3.16. Appeals Process

An appeal represents an opportunity for an applicant to dispute a capacity/credit determination and request reconsideration.

The Task Force approved the following recommendation for **Appeals Process**:

Applicants wishing to appeal a sewer capacity/credit determination must submit a written appeal (letter) to the Commissioner of Environmental Quality and Public Works. If an appeal is based on technical data, the data must be submitted with the appeal. An appeal decision shall be rendered within thirty (30) calendar days of receipt of the appeal request letter and any supporting technical data (if applicable).

3.17. Conditional Approval

There may be occasions to attract a business/industry that would present a meaningful economic development opportunity to Lexington. If sewer capacity availability is not known up-front, it may reduce Lexington's ability to market/capitalize on these opportunities. Commerce Lexington and other entities engaged in attracting these opportunities could be at a disadvantage if assurances regarding sewer capacity cannot be given.

A Conditional Approval is a commitment by LFUCG that sewer capacity will be available to a proposed development by the time the tap connection is made. When a Conditional Approval is granted, the development is provided a Permanent Allocation and LFUCG performs the necessary improvements needed to restore adequate capacity or earn sufficient credits to offset the proposed flow increase. Granting a Conditional Approval may require unscheduled action by LFUCG to make sewer improvements and the work must be completed to meet the development's schedule. Under the terms of the Consent Decree, developments would not be permitted to connect to the sewer if LFUCG had not completed the sewer improvements needed to offset the proposed flow increase associated with the Conditional Approval.

The Task Force approved the following recommendation for **Conditional Approval**:

Include a provision for a Conditional Approval. Conditional Approvals will require approval of both the Commissioner of Finance and Commissioner of Planning. LFUCG will set aside dedicated funds to support Conditional Approvals and they will not result in re-prioritization or delay of other planned neighborhood sewer improvements or Remedial Measures Plan (RMP) capital projects. The Commissioners will report to the Environmental Quality Committee any Conditional Approvals within 30 days.

3.18. Public Access

Public Access refers to the degree that the public will have ready access to CAP data. There is no public outreach requirement for the CAP in the Consent Decree. Information relative to the CAP is subject to the provisions in the Kentucky Open Records Act.

The Task Force approved the following recommendation for **Public Access**:

Maps illustrating credit bank boundaries, as well as bank balances, transaction histories, and Waiting List information, will be publicly available on LFUCG's website. The maps will be updated after bank consolidations. Quarterly Reports submitted to the EPA will be publicly available on LFUCG's website.

3.19. Program Auditing

Program Auditing refers to the examination of records and financial accounts associated with the CAP that shall be performed to check their accuracy. Program Auditing requirements in the three CAP benchmark communities were reviewed. Both Cincinnati, Ohio and Louisville, Kentucky do not have a formal audit process for their CAPs. An internal Program Audit is performed every two years on the CAP in Knoxville, Tennessee.

The Task Force approved the following recommendation for **Program Auditing**:

Collected fees and program expenses associated with DWQ's Sanitary Sewer Program are to include an initial, independent audit after two (2) years from CAP implementation and followed by an independent audit every second year thereafter. Quarterly Reports submitted to the EPA (and publicly available on LFUCG's website) document credit ledger transactions and are subsequently subject to regulatory reviews and public scrutiny.

Appendix A

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Meeting Notes
May 3, 2012

Appendix B

Task Force
Meeting Notes
May 24, 2012

Appendix C

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Meeting Notes
June 14, 2012

Appendix D

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Appendix E

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Appendix F

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Appendix G

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Appendix H

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Appendix I

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Appendix J

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Appendix K

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Appendix L

Credit Bank Maps