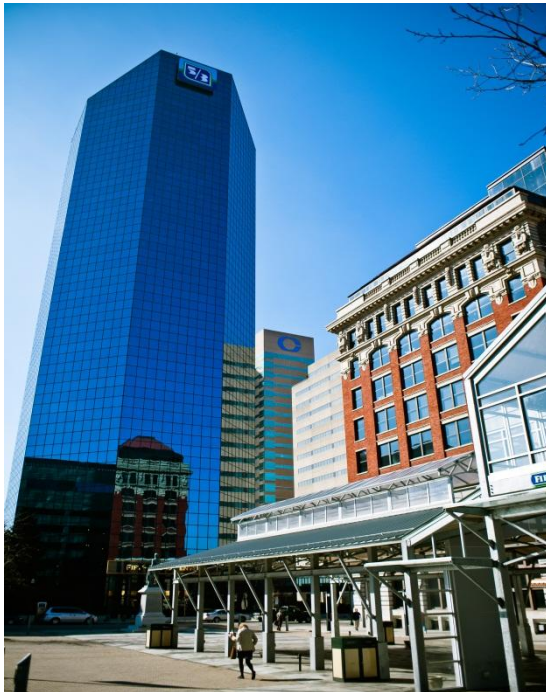




*livegreenlexington*



# Sanitary Sewer System Capacity Assurance Program (CAP)

**COUNCIL WORK SESSION**  
Lexington-Fayette Urban County  
Government  
Division of Water Quality

**November 13, 2012**



**Stantec**

# AGENDA

- ❑ **Recap of October 16 Discussion**
- ❑ **Key Task Force Recommendations (cont.)**
  - CAP Entry Point
  - Use of Record
  - Essential Services
  - Schedule
- ❑ **Report of Task Force Recommendations**
- ❑ **Discussion**



# INFORMATION ITEM

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## **Key Recommendations Discussed October 16, 2012 Work Session**

- ✓ Credit Banks
- ✓ Grandfathering
- ✓ Capacity Allocation Expiration Period
- ✓ Schedule

## INFORMATION ITEM

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# Continued Introduction of Key Task Force Recommendations

## RECOMMENDATION

## CAP Entry Point

- ❑ New connections to the sanitary sewer system will require a capacity or credit allocation.
- ❑ The **CAP Entry Point** policy refers to when a developer may reserve sewer capacity/credits.
- ❑ To meet the requirements of the Consent Decree, a CAP Entry Point no later than tap permit issuance is sufficient.

## RECOMMENDATION

## CAP Entry Point

### CAP Entry Point

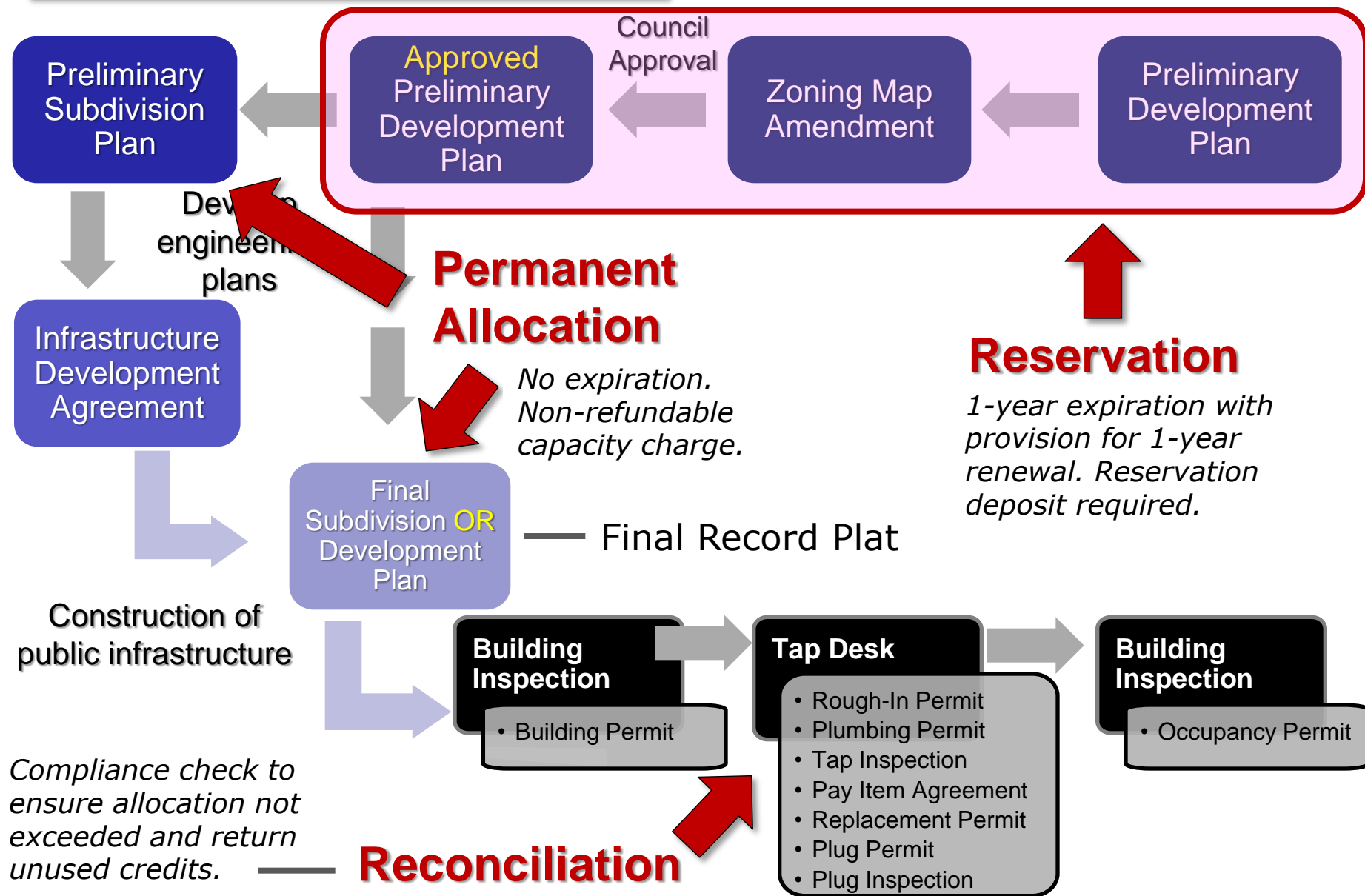
For developments requiring construction of public infrastructure, **Permanent Allocation** of capacity/credits may be requested upon approval of the *Preliminary Subdivision Plan, Final Development Plan, or Amended Final Development Plan*.

For developments not requiring construction of public infrastructure, Permanent Allocation of capacity/credits is required prior to issuance of building permit. In either case, a tap permit shall not be issued without certification of adequate capacity or proof of credit allocation.

A capacity/credit **Reservation** may be made anytime after submission of a Preliminary Development Plan. Reservations shall expire after 1-year. A 1-year extension may be requested. After 2 years, re-application will be necessary.

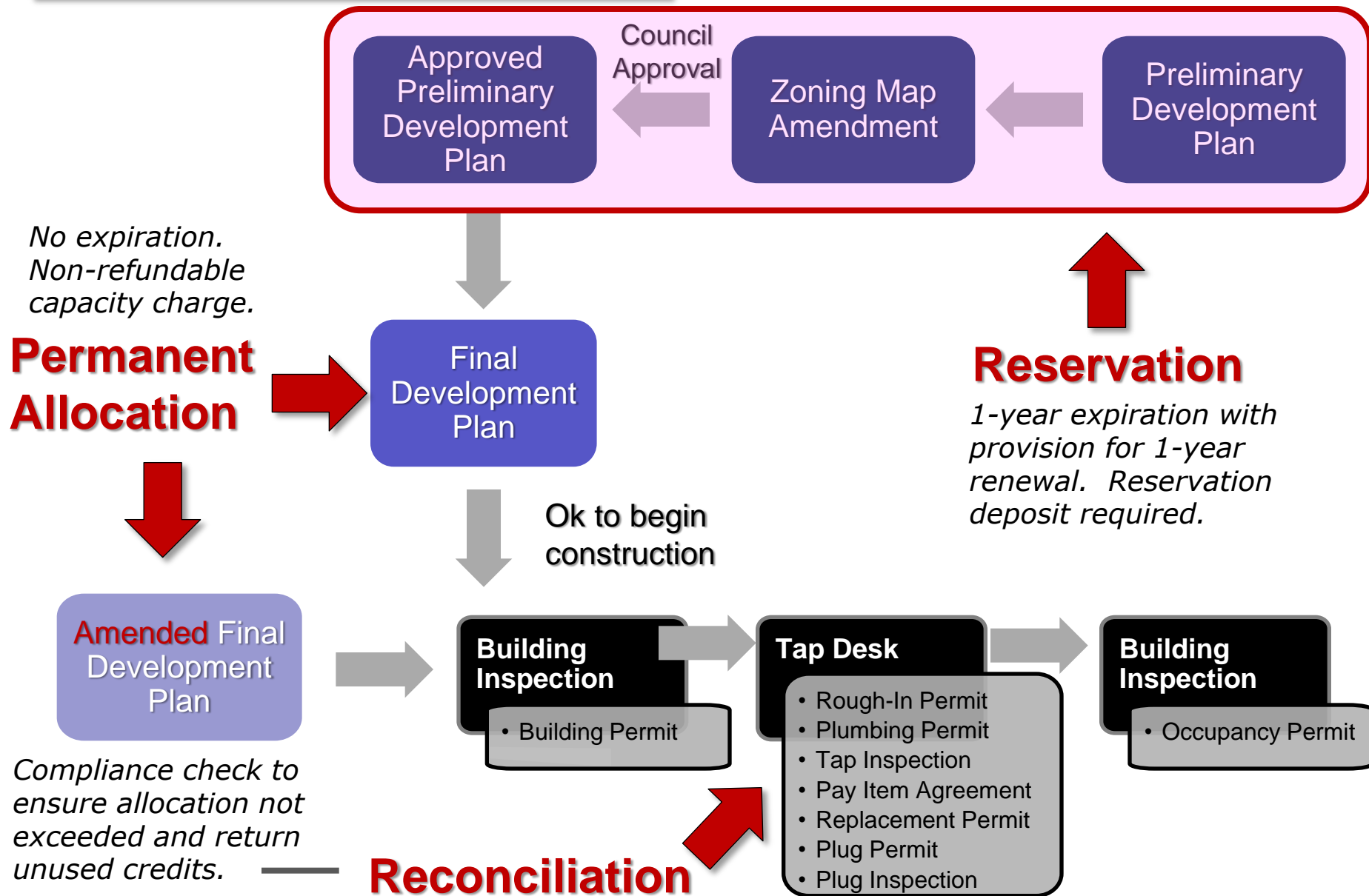
# CAP ENTRY POINT

# RESIDENTIAL



# CAP ENTRY POINT

# NON-RESIDENTIAL





# RECOMMENDATION

## CAP Entry Point

### Why?

- ✓ *Minimizes risk to development community by allowing sewer capacity to be secured earlier in land development process than tap permit issuance.*
- ✓ *Complies with Consent Decree requirements.*
- ✓ *Precedence in other benchmark communities.*
- ✓ *Approved Preliminary Subdivision Plan, Final Development Plan, and Amended Final Development Plan represents a commitment by LFUCG to allow development to be built.*
- ✓ *Belief that recommendation has a fairness level that avoids a high administrative cost burden.*
- ✓ *Avoids potential negative impacts from Permanent Allocations too early in the land development process.*

# RECOMMENDATION

## Use of Record

### Use of Record

Refers to the sewage flow from an existing, developed property that is already accounted for in the hydraulic model (baseline condition).

Credits earned from redevelopment to a lesser sewer use will be retained with the property unless released by property owner.

### Why?

- ✓ *Credits earned from a change in property use were earned with private dollars.*
- ✓ *Loss of unused capacity by the property to the public credit bank could be considered a partial taking.*
- ✓ *Can be used by property at a future date.*
- ✓ *In other benchmark communities the unearned capacity is retained with the property.*



## FLOW WORKSHEET

### Existing Use

#### Lexington Mall

XXX sq. ft. = retail/shops

XXX sq. ft. = restaurant

OR

Historic water use records

EXISTING SEWAGE FLOW =  
**3000 gallons per day**

## FLOW WORKSHEET

### Proposed Use

#### Southland Church

XXX seats = sanctuary

PROPOSED SEWAGE FLOW =  
**1000 gallons per day**

## REQUESTED FLOW

3000 gpd = Existing Flow

1000 gpd = Proposed Flow

**-2000 gpd = Requested Flow**

## RECOMMENDATION

## Essential Services

- ❑ Defined in Consent Decree (CD) as:
  - Health care facilities
  - Public safety facilities
  - Public schools
  - Illicit connections (septic tank removals, etc.)  
*Fayette County Health Dept. approval required.*
  - Other facilities as agreed upon in writing by EPA and EPPC.
- ❑ New connections from Essential Services are authorized in CD even if no adequate capacity or sufficient banked credits.
- ❑ Deduction from credit bank still made.



## RECOMMENDATION

## Essential Services

### Essential Services

Allow exception in Consent Decree for Essential Services.

Further define public schools and healthcare facilities as follows:

- 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 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 healthcare services or is otherwise integral to hospital operations or which building or facility is required to have Certificate of Need under KRS 216B.010, et. seq.

# SCHEDULE

## Moving Forward

### When does the CAP begin?

Full Implementation of the CAP on **July 3, 2013**

Event	Schedule
Present CAP at Council Work Session	December 4, 2012
Present Draft CAP Plan to Planning Commission	November 29, 2012
<b>Submit CAP Plan to EPA</b>	<b>January 3, 2013</b>
Earliest date EPA could require CAP Implementation to commence	February 3, 2013

## INFORMATION ITEM

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# Report of Task Force Recommendations

# TASK FORCE REPORT

CAP

- ❑ Nineteen (19) recommendations vetted by Stakeholders and approved by Task Force
- ❑ Report summarizes the recommendation, other options considered, and why recommendation selected.
- ❑ Draft Report was distributed to Task Force members for their review and comment on November 2, 2012.
- ❑ Final version of Report to be included on LFUCG's web site (<http://www.lexingtonky.gov/capacityassurance>)



**December 4, 2012**

## **Topics**

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**Next Work Session presentation will discuss:**

❑ **Conditional Approval**

- A commitment by LFUCG to create sewer capacity for economic development activities deemed to be in the best interest of Lexington.

❑ **Credit Allocation Priority**

- Protocols for how banked credits will be assigned to sewer capacity requests.

❑ **Developer Earned Credit Program**

- Program to permit private developers to fund public sewer improvements to earn banked credits and avoid the Waiting List.

# DISCUSSION

More information on the CAP is available on LFUCG's website at:  
<http://www.lexingtonky.gov/capacityassurance>



# TASK FORCE RECOMMENDATIONS

To be included in  
implementing  
ordinance(s)

No.	Recommendation	Description	Decision
1.	<b>Credit Banking Unit</b>	Bank accounts at SSO locations, treatment plants, major pump stations, and capacity-limited trunk sewers.	<b>Plan</b>
2.	<b>Credit Harvest Date</b>	Negotiate with EPA for the date of the baseline condition in hydraulic models (Group 1 = 8/19/2008; Groups 2&3 = 6/1/2009)	<b>Plan</b>
3.	<b>Use of Record</b>	Credits earned from redevelopment to a lesser sewer use will be retained with the property unless released by property owner.	<b>Implement</b>
4.	<b>Essential Services</b>	Allow exception in CD for Essential Services.	<b>Plan</b>
5.	<b>Third-Party Trading</b>	No third-party trading of publicly or privately earned credits.	<b>Implement</b>
6.	<b>Developer-Earned Credit Program (DECP)</b>	Include provision for voluntary DECP. Developer enters contract with LFUCG. LFUCG either does work or has stop-work authority.	<b>Implement</b>
7.	<b>Credit Allocation Priority</b>	A credit amount of 2,500 gpd will be reserved in each bank for minor connections unless waiver approved by Commissioner of Planning. Credit allocations will be made on a "first-in, first-out" basis. Essential Services will be unaffected.	<b>Plan</b>
8.	<b>Expiration Period</b>	No expiration period for permanent allocations.	<b>Implement</b>

# RECOMMENDATIONS

To be included in  
implementing  
ordinance(s)

No.	Recommendation	Description	Decision
9.	<b>CAP Entry Point</b>	If construction of public infrastructure or subdivision of property, permanent credit allocation at approval of Preliminary Subdivision Plan (PSP) or Final Development Plan (FDP). If no construction of public infrastructure, then permanent allocation required prior to building permit issuance. Reservation may be made anytime after submission of Preliminary Development Plan and has 1-year expiration (with 1-year renewal upon request).	<b>Plan</b>
10.	<b>Grandfathering</b>	All developments with an approved PSP, FDP, or Amended FDP will receive a permanent credit allocation (grandfathered). All developable property within EA#2 will also be grandfathered, regardless if an approved Plan is on file.	<b>Plan</b>
11.	<b>Essential Services</b>	Established criteria to further define public schools and health care facilities to guide reviewer during CAP implementation. Public schools must document non-profit status in tax code 501(c)(3) or as defined by state. Health care facilities must meet KRS 216B.015 definition and be licensed by the state. Amended to include ancillary buildings adjacent to licensed health care facilities. <i>(Companion to Recommendation No. 4.)</i>	<b>Implement</b>

# RECOMMENDATIONS

To be included in  
implementing  
ordinance(s)

No.	Recommendation	Description	Decision
12.	<b>Administrative Fee</b>	Payment of a non-refundable, administrative/processing fee will be required for capacity/credit requests.	<b>Implement</b>
13.	<b>Deposit/Charge for Credit Allocations</b>	A deposit will be assessed for capacity/credit reservations. The reservation deposit will be applied to Capacity Charge. A non-refundable Capacity Charge will be assessed for permanent capacity/credit allocations.	<b>Implement</b>
14.	<b>Schedule for Full Implementation</b>	CAP will be fully-implemented within 180 days of EPA approval of CAP Plan. LFUCG has set internal target date of July 3, 2013.	<b>Plan</b>
15.	<b>Review Time</b>	Set a goal of 10 days from the date that a completed sewer capacity request is received for a determination letter to be sent to applicant. Average review time will be assessed quarterly.	<b>Implement</b>
16.	<b>Appeals Process</b>	A written appeal may be submitted to Commissioner of Environmental Quality and Public Works. A determination will be made by the Commissioner within 30 days. If appeal based on technical data, then must submit the technical data with appeal.	<b>Implement</b>

# RECOMMENDATIONS

To be included in  
implementing  
ordinance(s)

No.	Recommendation	Description	Decision
17.	<b>Conditional Approvals</b>	Conditional approval may be granted if approved by both the Commissioner of Finance and Commissioner of Planning. LFUCG to set aside dedicated funding to perform sewer improvements necessary to support conditional approval (i.e. will not re-prioritize/delay other planned neighborhood or RMP projects).	<b>Implement</b>
18.	<b>Public/Stakeholder Access</b>	Maps illustrating bank boundaries, bank balances, transaction history, and waiting lists will be made available to the public via the internet. Quarterly reports to EPA are also publicly available.	<b>Implement</b>
19.	<b>Program Auditing</b>	CAP to be audited after 2 years and every other year after that. Audit to be performed by third party (i.e. not internal audit).	<b>Implement</b>