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Sanitary Sewer System Capacity Assurance Program (CAP)

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

October 16, 2012



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PRIOR PRESENTATIONS

**Public CAP
Presentations**

Forum	Date
Environmental Quality Committee	March 13, 2012, May 15, 2012
Planning Commission	May 17, 2012
UCC Work Session	August 14, 2012
CAP Task Force	Eleven (11) Task Force Meetings held between May 3, 2012 and September 25, 2012

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PRESENTATION

Challenges

The challenge for the Task Force and ours as a government: how to comply with the Consent Decree requirement that no development can occur unless sewer capacity is assured or offset, while simultaneously minimizing disruption and delay of development projects important to the well-being and prosperity of our community.

- ▣ **Very Complex Topic**
 - Over **15 pages** of the Consent Decree devoted to CAP requirements
 - Over **22 hours** of work by the Task Force
- ▣ **Work Session time allocation limit**
 - Focus will be on **"what time it is"** and not **"how to build a watch"**





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AGENDA

AGENDA

- ▣ **CAP Task Force**
- ▣ **Introduction to Key Recommendations**
 - Credit Banks
 - Grandfathering
 - Capacity Allocation Expiration Period
 - Schedule
- ▣ **Discussion**





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INFORMATION ITEM

CAP Task Force

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CAP TASK FORCE **Voting Members**

- ▣ Chair – CM Tom Blues (2nd District)
- ▣ Task Force
 - CM Linda Gorton (Vice Mayor) – Vice Chair
 - CM Steve Kay (At-large)
 - CM Chuck Ellinger (At-large)
 - CM Peggy Henson (11th District)
 - CM Kevin Stinnett (6th District)
 - Derek Paulsen
(Commissioner of Planning)




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CAP TASK FORCE

External Stakeholders

- Stakeholders
 - Fayette County Public Schools
 - University of Kentucky
 - Home Builders Association
 - Commerce Lexington
 - Ball Homes
 - North Forty Properties
 - The Fayette Alliance
 - Fayette County Neighborhood Council
 - Associated General Contractors of Kentucky
 - Various attorneys and consultants representing the development community
 - General Public



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CAP TASK FORCE

Internal Stakeholders

- LFUCG
 - Department of Environmental Policy and Public Works
 - Department of Law
 - Division of Planning
 - Division of Engineering
 - Division of Building Inspection
 - Division of Environmental Policy
 - Planning Commission
 - Division of Water Quality
- CAP Consultant Team

<ul style="list-style-type: none"> ■ Stantec (Prime) ■ Integrated Engineering 	<ul style="list-style-type: none"> ■ ERI International ■ Blue Heron
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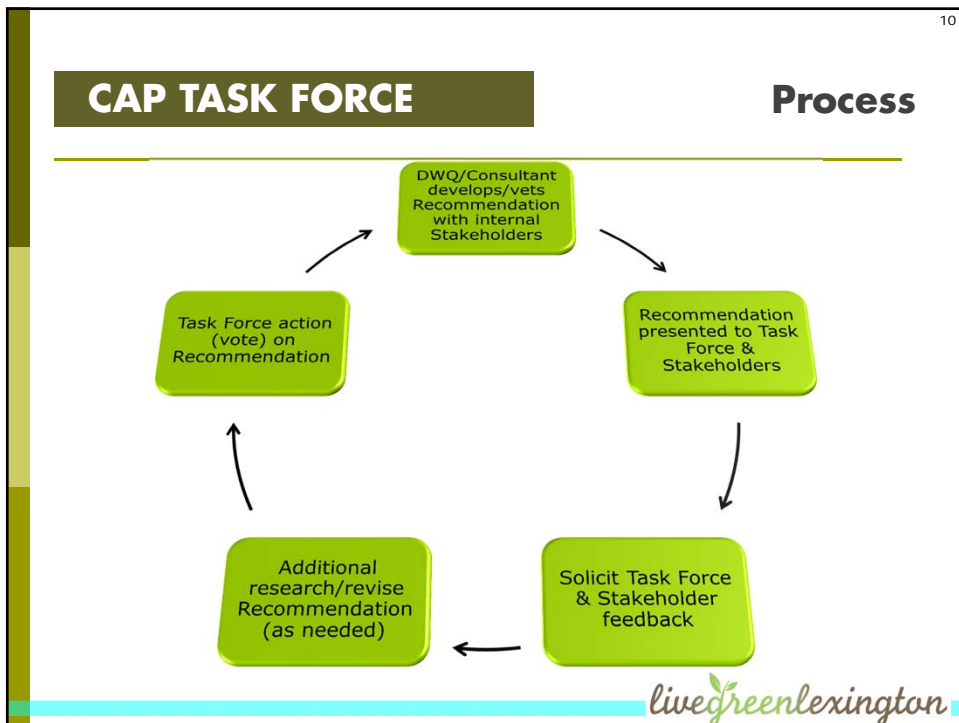
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CAP TASK FORCE

Meetings

- Objective – involve stakeholders to provide perspective and input during the development of the CAP
- Eleven (11) Task Force Meetings were held between May 3, 2012 and September 25, 2012
- Meetings held in Council Chambers, open to the public, and advertised on LFUCG’s website
- Stakeholders were heavily involved throughout and extremely helpful in vetting recommendations
- Detailed Meeting Notes prepared for each meeting and posted on LFUCG’s website
- Task Force summary report to be prepared for distribution to Council

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TASK FORCE OUTCOME **No fairy tale endings**

- ❑ Consent Decree’s expectations present huge, near-term challenges for Lexington
- ❑ Task Force objective was a CAP that everyone in the community can live with
- ❑ Nineteen (19) recommendations vetted by Stakeholders and approved by Task Force
- ❑ Implementing ordinances based on the Task Force recommendations represent a **fair and transparent CAP Plan for the neighborhoods and the development community**

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INFORMATION ITEM

**Introduction to
Key Recommendations**

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RECOMMENDATION

Credit Banks

Credit Banking Unit

Bank accounts at Sanitary Sewer Overflow (SSO) locations, treatment plants, major pump stations, and capacity-limited trunk sewers

Why?

- ✓ *It represents a middle ground approach to what other benchmark cities are doing*
- ✓ *Belief that EPA will not approve a more liberal approach*
- ✓ *Belief that recommendation has a fairness level that avoids a high administrative cost burden*
- ✓ *Belief that this recommendation is the fairest approach to both the development community and the neighborhoods*

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CREDIT BANKS

East Hickman

Initial Banks

★ = Recurring SSOs

CREDIT BANKS

Recurring SSOs



5th District – Recurring SSO in backyard – public park in background

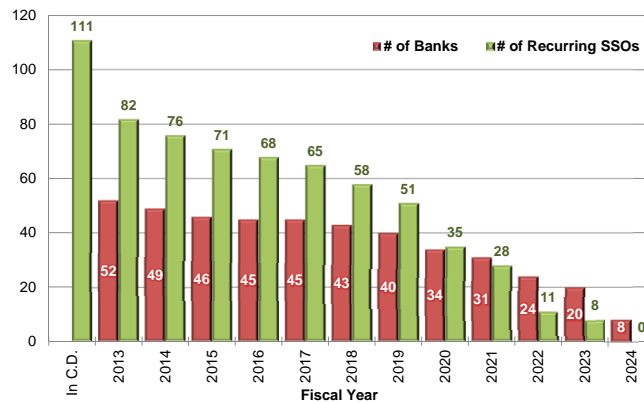


7th District – Recurring SSO in backyard – public risk

CREDIT BANKS

Credit banks will change with time

- The number of credit banks will diminish as Remedial Measures Plan projects restore adequate capacity/eliminate SSOs and credit banks are merged.



Based on current, tentative Remedial Measures Plan schedule.

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RECOMMENDATION

Grandfathering

How to Allocate Sewer Capacity to On-Going Development Projects (Grandfathering)

All developments with an approved Preliminary Subdivision Plan (PSP), Final Development Plans (FDPs), or Amended FDP will receive a sewer capacity credit allocation (grandfathered). All developable property within Expansion Area #2 (EA2) will also be grandfathered, regardless if an approved Plan is on file.

- ❑ Task Force recognition that LFUCG should honor previous commitments for sewer capacity
- ❑ Recommendation allows those developments currently in process but not yet at grandfathered stage to attain that level by **July 3, 2013**
- ❑ Risk Issue – Grandfathering will cause some areas (credit banks) to have negative initial credit balances

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RECOMMENDATION

Grandfathering

Pros:

- ❑ Does not create additional financial risk for on-going developments
- ❑ Allows LFUCG to draw a clearer “line in the sand” when transitioning into full CAP implementation

Cons:

- ❑ Creates a credit bank drain from approved plans that aren’t “active” or “near-term”
- ❑ Negative bank balances may not be well received by EPA
- ❑ Potential for some SSO locations to worsen before a Remedial Measures project is implemented

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RECOMMENDATION

**Credit Allocation
Expiration Period**

Expiration Period for Capacity Allocations
No expiration period for permanent capacity allocations.

- ❑ Grandfathered Developments – Assuming EPA approval of the Authorized Future Connections List (grandfathered developments), sewer capacity credit allocation becomes a **permanent record for the parcel or tract**
- ❑ Future Capacity Allocations – Sewer capacity allocation becomes permanent upon approval of Preliminary Subdivision Plan or Final Development Plan or Amended Final Development Plan (whichever applicable)

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RECOMMENDATION

Schedule

When does the CAP begin?
Full Implementation of the CAP on **July 3, 2013**

Event	Schedule
Present CAP at Council Work Session	November 13, 2012 December 4, 2012
Present Draft CAP Plan to Planning Commission	November 29, 2012
Submit CAP Plan to EPA	January 3, 2013
Earliest date EPA could require CAP Implementation to commence	February 3, 2013

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RECOMMENDATION

Schedule

Full Implementation of the CAP on July 3, 2013

Why?

- No way to determine when EPA will formally approve the CAP
- Delaying implementation leaves post-January 3, 2013 development projects in “sewer capacity availability limbo”
 - CAP implementation uncertainties pose additional risk for development community
 - Can’t get a permanent sewer capacity allocation unless program is in place

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November 13, 2012

Topics

Next Work Session presentation will discuss:

- **CAP Entry Point**
 - Non-grandfathered sewer capacity connection requests
- **Use of Record**
 - Existing parcels with existing sanitary sewer connections
- **Essential Services**
 - Sewer capacity exceptions for schools, health care facilities and public safety facilities

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DISCUSSION

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



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TASK FORCE
RECOMMENDATIONS

To be included in
implementing
ordinance(s)

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

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RECOMMENDATIONS

To be included in implementing ordinance(s)

No.	Recommendation	Description	Decision
9.	CAP Entry Point	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).	Plan
10.	Grandfathering	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.	Plan
11.	Essential Services	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>	Implement

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RECOMMENDATIONS

To be included in implementing ordinance(s)

No.	Recommendation	Description	Decision
12.	Administrative Fee	Payment of a non-refundable, administrative/processing fee will be required for capacity/credit requests.	Implement
13.	Deposit/Charge for Credit Allocations	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.	Implement
14.	Schedule for Full Implementation	CAP will be fully-implemented within 180 days of EPA approval of CAP Plan. LFUCG has set internal target date of July 3, 2013.	Plan
15.	Review Time	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.	Implement
16.	Appeals Process	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.	Implement

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RECOMMENDATIONS

**To be included in
implementing
ordinance(s)**

No.	Recommendation	Description	Decision
17.	Conditional Approvals	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).	Implement
18.	Public/Stakeholder Access	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.	Implement
19.	Program Auditing	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).	Implement

