

1



livegreenlexington



Sanitary Sewer System Capacity Assurance Program (CAP)

CAP TASK FORCE
Lexington-Fayette Urban County Government
Division of Water Quality

September 20, 2012

2

AGENDA

September 6th

- Recommendations for Task Force
 - Updated Schedule
 - Grandfathering*
 - Deposit and Administrative Fee*
 - Conditional Approval
 - Review Time
 - Appeals Process
 - Public/Stakeholder Access
 - Program Auditing
 - Essential Services – Definition/Criteria*



* Topic previously introduced.

livegreenlexington

3

INFORMATION ITEM

CAP

Updated Schedule



4

SCHEDULE

CAP

Event	Schedule
Last CAP Task Force Meeting	Sept. 20, 2012
Present CAP at Council Work Session	Oct. 16 th , Nov. 13 th , & Dec. 4 th , 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
Full CAP Implementation	July 3, 2013



5

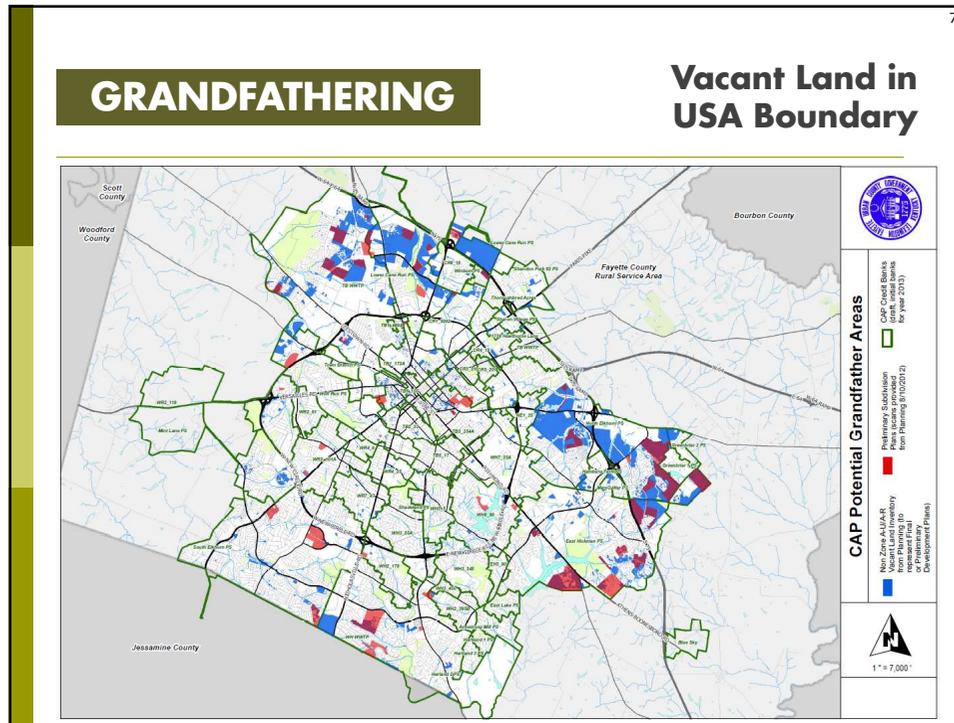
DECISION ITEM	Task Force Action Needed
<h1>Grandfathering</h1>	

livegreenlexington

6

GRANDFATHERING	Recap from Sept. 6 th Task Force Meeting
<ul style="list-style-type: none">❑ The Consent Decree requires LFUCG to maintain a list of Approved Connections. (<i>Section VII.16B.(vii)</i>)❑ The Approved Connections List (ACL) represents those planned new connections to the sewer system that are currently in the land development process, but that have not yet physically connected to the sewer system.❑ Developments that are on the ACL will be allowed to connect to the sewer system regardless if there are available credits (i.e. grandfathered).❑ LFUCG's Consent Decree (CD) does not identify if grandfathered developments will require subtraction from the credit bank (or if negative credit bank balances will be permitted).	

livegreenlexington

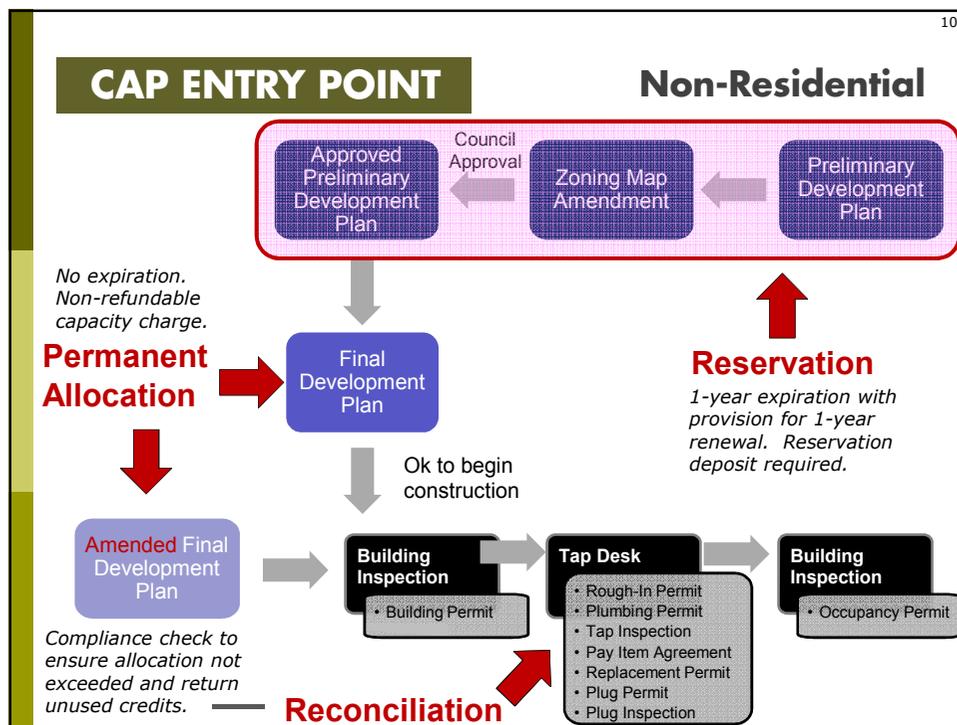
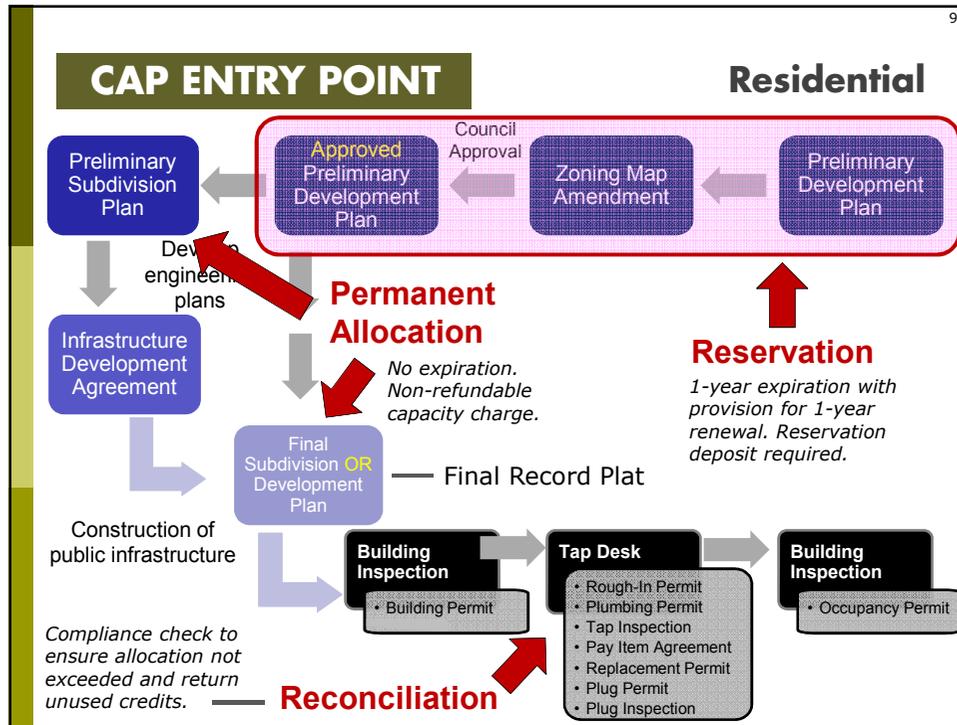


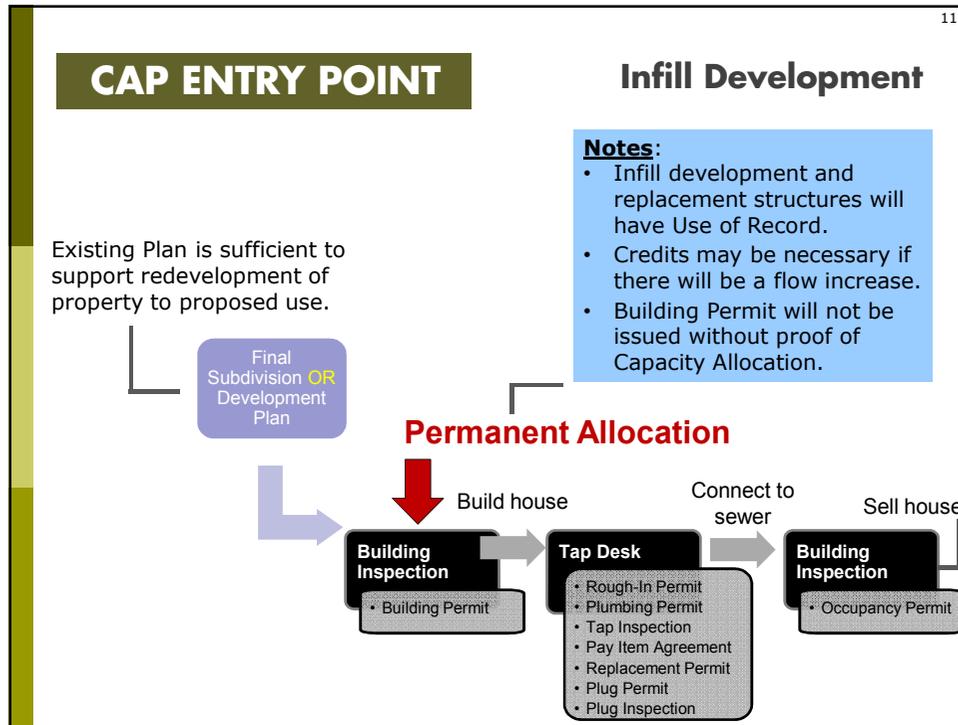
GRANDFATHERING

Expansion Area Development Activity

- **Expansion Areas (EA)**
 - **EA#1**
 - Tates Creek and Delong Road (Overbrook Farm).
 - Currently undeveloped and no Preliminary Subdivision Plan or Preliminary Development Plan has been submitted.
 - Sanitary sewer infrastructure not currently in place to serve EA#1.
 - **EA#2**
 - North of I-75 between Man O' War and Winchester Road.
 - Development is ongoing.
 - Large percentage of gravity trunk sewers have been constructed.
 - EA#2A pump station construction pending.
 - **EA#3**
 - North of I-75 between Russell Cave Road and Newtown Pike.
 - Preliminary Plan on file since ~ 2004, but minimal development activity to date.
 - Sanitary sewer infrastructure not currently in place to serve EA#3.

livegreenlexington





- 12
- ### GRANDFATHERING

Considerations
-
- ❑ **Grandfather Cutoff Date (GCD)** recommendation requested by Task Force at Sept. 6th meeting.
 - ❑ The GCD represents the date after which a development would no longer be considered eligible for grandfathering.
 - ❑ The **CAP Implementation Date** represents the first day of full implementation of LFUCG's CAP. (July 3, 2013)
 - ❑ If GCD set to **coincide** with CAP Implementation Date, then potential for a "run on the bank".
 - ❑ If GCD set **prior** to CAP Implementation Date, then potential risk for developer in the gap period. (Infill development most at risk.)
- livegreenlexington

13

GRANDFATHERING

Recommendation

- Council **Resolution** (in **2012**) to enable ongoing developments to reserve sewer capacity/credits.
- Resolution represents the start of CAP implementation (but not full implementation).
- **Resolution Date** ~ Date that Council passes resolution to enable ongoing developments to reserve sewer capacity/credits.
- **Grandfather Cutoff Date (GCD)** = **July 3, 2013**.
- **Acronyms:**
 - PSP = Preliminary Subdivision Plan
 - FDP = Final Development Plan
 - AFDP = Amended FDP

14

GRANDFATHERING

Recommendation

□ **Case #1** (*Plan submitted before Resolution*)

If Development has a PSP, FDP, or AFDP that was **submitted** to the Planning Commission for approval **prior** to the Resolution Date, then Permanent Allocation would be made (subject to Plan approval) with **no expiration and no fees** (i.e. administration fee & capacity charge waived). Plan approval by July 3, 2013 or must the reapply for capacity determination in accordance with CAP implementing ordinance.

15

GRANDFATHERING

Recommendation

- **Case #2.** *(Plan submitted and approved after Resolution, but before July 3, 2012)*

If a PSP, FDP or AFDP is **submitted and approved after** the Resolution date and **before** July 3, 2013, then:

- **Residential Developments.** **Permanent Allocation** made, but a maximum annual threshold on tap connections would be established/enforced. Capacity Charge would be required for tap connections occurring after **July 3, 2014**.
- **Non-Residential Developments.** **Reservation** granted that is valid until July 3, 2014. All or part of Reservation must be utilized by paying all tap-on fees by **July 3, 2014**. No Reservation Deposit/Capacity Charge required for tap connections occurring prior to July 3, 2014. Any unused reservations will expire and applicant must the reapply for capacity determination in accordance with CAP implementing ordinance.

16

GRANDFATHERING

Recommendation

- **Case #3.** *(Plan submitted after July 3, 2013)*

For a PSP, FDP, AFDP **approved after July 3, 2013**, then Permanent Allocation made in accordance with the CAP implementing ordinance and fees would apply.

17

GRANDFATHERING	Outcome
<p style="text-align: center;"><u>Recommendation No. 10: Grandfathering.</u></p> <p><i>Planned or ongoing developments would be permitted to request sewer capacity/credits upon approval of enabling Resolution by Council.</i></p> <p><i>Permanent Allocation or Reservation would be made based on date of submission/approval of Preliminary Subdivision Plan, Final Development Plan, Amended Final Development Plan, or Tap Permit.</i></p> <p><i>All developable property within EA#2 will be grandfathered, regardless if approved Plan on file. Property owners within EA#2 must still complete request form for sewer capacity/credit allocations and fees waived.</i></p> <p>□ Task Force Action</p> <ul style="list-style-type: none">■ Disposition■ Council action required? Yes (part of implementing ordinance)	

18

DECISION ITEM	Task Force Action Needed
<h2 style="margin: 0;">Deposit and Administrative Fee</h2> <div style="text-align: center;"></div> <p style="text-align: right; font-size: small; margin-top: 10px;"><i>livegreenlexington</i></p>	

19

DEPOSIT & ADMIN FEE

Concept

□ **Administrative Fee**

- The CAP represents a new program for LFUCG.
- Management and implementation of the CAP will require financial and staff resources.
- One means to help offset the costs associated with CAP implementation is to assess a **administrative fee** for capacity review requests.
- Administrative fee is charged directly to those who use the service and will not impact monthly sewer bills.

livegreenlexington

20

DEPOSIT & ADMIN FEE

Concept

□ **Deposit**

- Some CAP communities require a **Deposit or Capacity Charge** for capacity reservations / allocations.
- The Deposit/Capacity Charge is typically assessed based on the size of the capacity request.
- Both provide an effective means to minimize non-viable or speculative capacity requests and improves capacity/credit availability for legitimate developments.
- Deposits may be refunded to the developer through credit toward building or tap permit fees or as a cash payment.
- Capacity Charges are non-refundable.

livegreenlexington

21

DEPOSIT & ADMIN FEE

Considerations

- **Knoxville**
 - Administrative Fee
 - \$300 (non-refundable) ~ Capacity Review Fee
 - Due up-front, even if capacity is determined to be unavailable.
 - Reservation Deposit
 - Multi-unit residential developments = \$300 / unit
 - Commercial, industrial, or gov't developments = \$2 / gallon
 - Deposit refunded on annual basis based on upon build-out.
 - 10% forfeiture if Capacity Reservation Extension Agreement not executed within 1 year.
- **Cincinnati**
 - No Administrative Fee, Deposit, or Capacity Charge is required.

livegreenlexington

22

DEPOSIT & ADMIN FEE

Considerations

- **Louisville**
 - No Administrative Fee
 - Reservation
 - Based on lost revenue (capacity x sewer billing rate)
 - Monthly charge (non-refundable)
 - Allocation
 - Capacity Charge (non-refundable)

"to help defray the future cost of providing Master Plan sewerage facilities"

"Calculated by multiplying the unit capacity charge times the gallons per day estimated to flow from a new development connecting to MSD's sewer system as determined by MSD. The unit capacity charge (value per gallon) shall be calculated by dividing MSD's Net Worth (system value) by MSD's total system-wide design capacity." Currently is \$1486.40 / single family unit.
 - I/I Surcharge Fee (non-refundable)
 - \$1 per gallon (\$400 project minimum)
 - I/I Surcharge will terminate when MSD terminates CAP.

Both are one-time charges

23

DEPOSIT & ADMIN FEE	Outcome
<p><u>Recommendation No. 12 & 13: Deposit and Administrative Fee.</u></p> <p><i>An administrative fee will be assessed for sewer capacity review requests. Payment of the fee will be required before LFUCG will perform the review.</i></p> <p><i>A reservation deposit will be assessed for capacity/credit reservations. The reservation fee shall be valid for 1 year. Payment of the reservation fee will be required prior to issuance of the reservation. The reservation deposit will be credited toward the capacity charge. Non-refundable if proposed development does not advance to permanent allocation.</i></p> <p><i>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.</i></p> <p>□ Task Force Action</p> <ul style="list-style-type: none"> ■ Disposition ■ Council action required? Yes (part of implementing ordinance) 	

livegreenlexington

24

DECISION ITEM	Task Force Action Needed
<h1 style="margin: 0;">Conditional Approval</h1>	

livegreenlexington

25

CONDITIONAL APPROVAL

Concept

- ❑ There may be opportunities to attract a business/industry that would present a significant economic development benefit 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 big disadvantage if assurances regarding sewer capacity cannot be given.
- ❑ One option to consider is the **conditional approval**.
- ❑ A conditional approval is a commitment by LFUCG that sewer capacity will be available to the proposed development by the time the tap connection is made.

livegreenlexington

26

CONDITIONAL APPROVAL

Considerations

- ❑ If a conditional approval is provided, 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.
- ❑ The work must be completed to meet the development's schedule.
- ❑ Under the terms of the Consent Decree, the development would not be permitted to connect to the sewer if LFUCG had not yet completed the sewer improvements needed to offset the proposed flow increase.

livegreenlexington

27

CONDITIONAL APPROVAL

Considerations

- ❑ Sewer improvements associated with a conditional approval would require dedicated funds or re-prioritization of planned sewer improvement activities.
- ❑ Conditional approvals should be used sparingly.
- ❑ Over-use of conditional approvals may jeopardize LFUCG's ability to meet their Consent Decree obligations and honor commitments made to the existing rate payer and development community.



livegreenlexington

28

CONDITIONAL APPROVAL

Outcome

Recommendation No. 17: 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 funding to support conditional approvals and will not result in re-prioritization/delay of other planned neighborhood sewer improvements or RMP projects.

- ❑ **Task Force Action**
 - Disposition
 - Council action required?
Yes (part of implementing ordinance)

livegreenlexington

29

DECISION ITEM	Task Force Action Needed
<h2>Review Time</h2> 	

livegreenlexington

30

REVIEW TIME	Concept
<ul style="list-style-type: none"> ▣ Review Time ~ The elapsed period of time from submission of a Capacity Request to when determination is made and the applicant notified. ▣ Benchmark Communities: <ul style="list-style-type: none"> ▪ Cincinnati MSD - <i>No defined Review Time.</i> ▪ KUB - <i>10 days, but typically quicker.</i> ▪ Louisville MSD - <i>No defined Review Time.</i> ▣ Review time is an <u>implementation decision</u> and will not be included in the CAP Plan submitted to EPA by Jan. 3, 2013. 	

livegreenlexington

31

REVIEW TIME	Outcome
<p><u>Recommendation No. 15: Review Time.</u> <i>Set a <u>goal</u> of 10 (calendar) days from the date that a <u>completed</u> sewer capacity request is received for a determination letter to be sent to the applicant.</i> <i>Average review times will be calculated on a quarterly basis.</i></p>	
<p>▣ Task Force Action</p> <ul style="list-style-type: none">■ Disposition■ Council action required? Yes (part of implementing ordinance)	

livegreenlexington

32

DECISION ITEM	Task Force Action Needed
<h1>Appeals Process</h1>	

livegreenlexington

33

APPEALS PROCESS

Concept

- ❑ An applicant who wishes to dispute a capacity/credit determination may submit a written **Appeal**.
- ❑ The Appeal Process is an implementation decision and will not be included in the CAP Plan submitted to EPA by Jan. 3, 2013.





34

APPEALS PROCESS

Outcome

Recommendation No. 16: 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 appeal is based on technical data, then the data must be submitted with the appeal.

*Appeal decision to be rendered by the Commissioner within **30 calendar days** of receipt of letter and any supporting data (if applicable).*

- ❑ **Task Force Action**
 - Disposition
 - Council action required?
 - Yes (part of implementing ordinance)



35

DECISION ITEM	Task Force Action Needed
----------------------	-------------------------------------

Public/Stakeholder Access

livegreenlexington

36

PUBLIC ACCESS	Recommendation
----------------------	-----------------------

- ❑ **Public Access** refers to the degree that the public/stakeholders will have **ready access** to CAP data. (There is no public outreach requirement for CAP data in the Consent Decree.)
- ❑ The Public Access recommendation does not release LFUCG from any obligations under the [Kentucky Open Records Act](#).
- ❑ Maps illustrating **credit bank boundaries** are available on LFUCG's web site. Maps updates will also be posted.
- ❑ **Bank balances** and **transaction histories** will be included in the Quarterly Reports sent to the EPA. Quarterly Reports will continue to be available on LFUCG's web site. Real-time access to bank balances and transactions will not be provided.
- ❑ DWQ will not undertake any special effort to make the **Waiting List** and **hydraulic model** available.

livegreenlexington

PUBLIC ACCESS

Outcome

Recommendation No. 18: Public Access.

Maps illustrating credit bank boundaries will be available on LFUCG's web site and will be updated after bank consolidations.

Quarterly Reports submitted to the EPA will be available on LFUCG's web site and include bank balances and transaction histories.

□ **Task Force Action**

- Disposition
- Council action required?
Yes (part of implementing ordinance)

livegreenlexington

DECISION ITEM

Task Force Action Needed



Program Auditing

livegreenlexington

39

PROGRAM AUDITING

Considerations

- ❑ A recommendation relative to **Program Auditing** recommended by Task Force at prior meeting to promote program transparency and fiscal responsibility.
- ❑ Collected fees/deposits and program expenses (including consultant costs) associated with CAP implementation would be covered by DWQ's existing financial audit process.
- ❑ Credit ledgers to be included in Quarterly Reports to EPA.
- ❑ **Benchmark Communities:**
 - **Cincinnati MSD** – No formal audit process. Stantec performed one in mid-2000's (incidental to other program work).
 - **Knoxville Utilities Board** – Performs internal audit every 2 years (not by outside consultant).
 - **Louisville MSD** – No formal audit process.

livegreenlexington

40

PROGRAM AUDITING

Outcome

Recommendation No. 19: Program Auditing.

Collected fees and program expenses associated with the CAP to be included in DWQ's existing financial audit process.

Quarterly Reports submitted to EPA (and posted on LFUCG web site) document credit ledger transactions are subsequently subject to regulatory reviews and public scrutiny.

- ❑ **Task Force Action**
 - Disposition
 - Council action required?
Yes (part of implementing ordinance)

livegreenlexington

41

DECISION ITEM	Task Force Action Needed
<h2 style="margin: 0;">Essential Services (Definition/Criteria)</h2>	
	

42

ESSENTIAL SERVICES	Concept
<ul style="list-style-type: none"> □ CD includes provision for those facilities that are deemed essential to connect to public sewer even if adequate capacity can not be certified or there are not enough banked credits available to offset the proposed flow increase. □ Withdrawal from credit bank still taken. □ CD defines these Essential Services as: <ul style="list-style-type: none"> ■ Health care facilities ■ Public safety facilities ■ Public schools ■ Illicit connections (septic tank removals, etc.) <i>Fayette County Health Dept. approval required.</i> ■ Other facilities as agreed upon in writing by EPA and EPPC. 	

43

ESSENTIAL SERVICES

Recommendation

□ Recommendation from DWQ/Stantec:

- Allow the CAP exception for Essential Services provided in CD.
- Define **health care facilities** as:
 - KRS 216B.015 definition for "health care facilities"
 - Licensed by the Kentucky Cabinet for Health and Family Services
 - Must possess a valid license
- Define **public schools** as:
 - Must be a registered non-profit in tax code 501(c)(3) or as defined by state
 - Same definition used by Tap-On Desk
 - Must be able to produce tax certificate

44

ESSENTIAL SERVICES

June 14th Meeting

□ Discussion Highlights

<ul style="list-style-type: none"> ■ Impose a limit on how negative a credit balance will be permitted to occur from Essential Service exemptions. (CM Henson)
<ul style="list-style-type: none"> ■ Concern that case-by-case evaluation of Essential Service facility exemptions will be subjective and expose LFUCG to legal challenges. (DWQ)
<ul style="list-style-type: none"> ■ 501(c)(3) definition is appropriate for Tap-On Desk because it is basis for a fee determination, but non-profit status for public schools not relevant for sewer capacity. (CM Stinnett)
<ul style="list-style-type: none"> ■ Request to provide information on the number of facilities that would be considered Essential Service under DWQ/CAP Consultant recommended definition. (VM Gorton)
<ul style="list-style-type: none"> ■ Request to provide information on how other communities with similar Consent Decree provisions are handling Essential Services. (VM Gorton)

45

ESSENTIAL SERVICES

June 28th Meeting

Discussion Highlights

- List of licensed health care facilities maintained by Kentucky Cabinet for Family and Health Services did not include therapeutic massage or acupuncture facilities. (VM Gorton)
- We need to decide whether to allow the exemption for Essential Services and then govern on a case-by-case basis. Developing a comprehensive definition is problematic. (CM Kay)
- Everything associated with outpatient facilities are not licensed but they are an integral part of the inpatient licensed facilities. (Bob Wiseman)
- Developing a set of criteria to govern how Essential Services are evaluated by the CAP reviewer may be an option rather than developing a comprehensive definition. (Chairman Blues)
- Sewer rehabilitation efforts in the collection system will continue to be ramped up in an effort to provide sufficient sewer credits, such that exemptions **may** become unnecessary. (DWQ)

46

ESSENTIAL SERVICES

Clarification

Plan Decision

- Is LFUCG going to allow the CAP exception for Essential Services provided in CD?

Implementation Decisions

- Will exception apply to all facility types (i.e. health care, public safety, and public schools) identified in CD?
- How are health care facilities going to be defined?
- How are public schools going to be defined?
- Will there be a maximum limit on how negative a bank will be permitted from Essential Service?

47

ESSENTIAL SERVICES

July 12th Meeting

Discussion Highlights

- How will the CAP implementation schedule affect Fayette County Public Schools current planning efforts for a new high school? (Kelly Breeding)
- Does the CAP Task Force anticipate defining Essential Services at a later date? (Emma Tibbs)
- How long would CAP implementation decisions be delayed given the potential for EPA to approve the CAP Plan in early 2013. (Bruce Simpson)
- It is the intent of the Task Force to make implementation decisions over the next several months, prior to CAP Plan submission in January 2012. (Chairman Blues)
- **Motion by CM Kay to allow the exception in the Consent Decree for Essential Services passed without dissent. (Task Force)**

48

ESSENTIAL SERVICES

Outcome

Recommendation No. 4: Essential Services.

Allow exception in CD for Essential Services.



Recommendation No. 11: Essential Services (Definition/Criteria).

Health care facilities must meet Kentucky Cabinet for Health and Family Services definition. Public schools must meet 501(c)(3).



Task Force Action

- Disposition
- Council action required?
Yes (part of implementing ordinance)

THANK YOU!

What's Next?

Event	Schedule
Last CAP Task Force Meeting	Sept. 20, 2012
Present CAP at Council Work Session	Oct. 16 th , Nov. 13 th , & Dec. 4 th , 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
Full CAP Implementation	July 3, 2013

