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February 22, 2013

Senator Steve Cassano  
Representative Jason Rojas  
Continuing Legislative Committee on  
State Planning and Development  
Legislative Office Building, Room 2100  
Hartford, CT 06106

Re: Draft State Plan of Conservation and Development, 2013-2018

To Senator Cassano, Representative Rojas, and Continuing Legislative Committee Members:

This letter and attachments are a further effort to convince the General Assembly to amend the General Statutes to make it clear to all state agencies that the Locational Guide Map ("LGM") portion of the State Plan of Conservation and Development must be regarded as advisory only, and cannot be used as a regulation with the force of law. This can be achieved simply, by adding to General Statutes § 16a-31, Application of plan, a new subsection (f), stating: **"Any locational guide map prepared in connection with the plan shall be advisory only, and shall not be used by any state agency subject to the plan as determining consistency with the plan."**

We are land use lawyers. We represent property owners, state agencies, municipalities, and special districts, among others. We are not being compensated by anyone to provide this commentary. We do so because, based on several experiences during the past seven years, we have seen the LGM be distorted, resulting in poor land use planning and decision-making. By making it clear that the LGM does not have the force of law, all state agency decisions governed by the State Plan will proceed on a site-specific basis – by evaluating the specific subject property and the proposed agency action using the six Growth Management Principles stated in the State Plan. This will be a rational, thorough process.

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Attached to this letter is an extended explanation of the flaws in the LGM and how it is distorting land use planning. In very brief summary, the LGM may have been a well-intentioned exercise, but in practice it has become dysfunctional, for these reasons:

- it attempts to assign every square inch of the State to one of eight categories, represented by a color on the Map;
- the criteria for determining each category and color are so vague, open-ended, and subjective that neither the General Assembly nor any government would ever accept them for regulatory purposes, to establish legal rights and obligations; and
- as OPM has conceded, the input it receives from municipalities and other sources as it prepares the LGM is incomplete and outdated.


Thus, the LGM is a noble-sounding idea, but in reality, mapping the entire state into eight categories and colors is simply an impossible exercise. In particular, the Conservation and Preservation categories and colors are arbitrary and inaccurate.

Despite OPM's own protests, several state agencies are using the LGM as a mandatory regulation, considering all areas labeled "Conservation" or "Preservation" as off-limits to state agency action. DEEP is one, but not the only, offender. One of DEEP's positions is that if any property is shown on the LGM as a Conservation or Preservation Area, no new sewer infrastructure may be installed, and even existing infrastructure may not be extended or upgraded. In other words, even though the LGM is based on vague definitions and incomplete and outdated information, state agencies are treating the LGM as accurate and as legally binding. This absurdity should end.

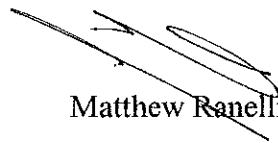
As noted, the simple fix is to clarify in Title 16a that the LGM is advisory only and should not have the force of law with respect to state agency decisions governed by the State Plan. The effect of doing so will be that state agency actions subject to the Plan will require the development of site-specific (that is, accurate) information, which will be analyzed under the six Growth Management principles stated in the State Plan. This process will constitute sound planning.

Thank you for your attention.

Very truly yours,



Timothy S. Hollister



Matthew Ranelli

TSH:GMR:ekf  
Attachments



**WHY THE LOCATIONAL GUIDE MAP COMPONENT OF THE STATE PLAN OF  
CONSERVATION AND DEVELOPMENT SHOULD BE ADVISORY ONLY  
February 2013**

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by Attorneys Tim Hollister and Matt Ranelli, Shipman & Goodwin LLP, Hartford

The 2005-2010 Locational Guide Map

Attached to the existing State Plan is the 2005-2010 Locational Guide Map. Its ostensible purpose is to identify where the Plan and its principles should be implemented. The Map assigns every parcel of land in the state to one of four "development" categories (Regional Centers, Neighborhood Conservation, Growth, and Rural Community Centers) or one of four "conservation" categories (Existing Open Space, Preservation, Conservation, and Rural Lands). Each category is represented on the map by a color. Open Space, Preservation, and Conservation Areas are designated Light, Medium, and Dark Green, respectively.

**The criteria that determine each category and color are not defined in the Plan or by cross-reference to any state statute, regulation, or other source; they are not self-evident or universally understood; and they do not remotely satisfy the standards for specificity and precision that are required of any statute, regulation, or ordinance. This ambiguity and subjectivity may be illustrated by these examples:**

Category: EXISTING PRESERVED OPEN SPACE (Dark Green)

Criteria include: "Forests, trails, greenway corridors, and other selected open space" and "major open space preserves"

Category: PRESERVATION AREAS (Medium Green)

Criteria include: "floodways/wave hazard areas. . . ."; "locations of State Endangered, Threatened and Special Concern species and their essential habitats (not currently mapped)"; "potential major outdoor recreational areas including impoundments, diversion pools, recreational streams. . . ."

Category: CONSERVATION AREAS (Light Green)

Criteria include: "scenic areas – ridgelines, scenic highways, coastal bluffs, trails, greenways or other areas associated with the protection and enforcement of existing major investments in public open space and recreation. . . ."; "prime agricultural lands"; "historic areas"; "natural areas of local significance, including conservation easements."

**These criteria, when applied on the Map, not only designate an area into a category but also determine its boundaries. Thus, for example, from nothing more than terms such**

as "potential major outdoor recreation" or "unmapped locations" of Special Concern species, the Locational Guide Map designates areas that are essentially off limits to state agency expenditures or private sector extension of existing infrastructure. These criteria are so vague and subjective as to be inappropriate as a basis for direction or regulation of government action.

The assigned colors are often based on inaccurate and outdated information, such that the Map does not and cannot reflect existing land use conditions. According to OPM, only 57 percent of towns provided input into the 2005 Map revision. The State Plan is also plagued by the fact that it is on a different revision cycle from municipal plans, with the former redone every five years but local plans only every ten years. **Simply put, the Map is not and cannot be an accurate compilation of existing land uses in Connecticut, because the informational input is substantially incomplete, and keeping the Map reasonably up to date is impossible.**

#### The Department of Energy and Environmental Protection's Use Of The Map

The Map's specific use by the Department of Energy and Environmental Protection (DEEP) is even more problematic. For the past several years, the DEEP has taken the position that **any sewer planning, improvement, or extension undertaken by a municipality that has a loan of Clean Water Funds must adhere to the Locational Guide Map's colors. That is, a city or town with such a loan may not build, repair, replace, or extend sewers on any land that is shown on the Map as Open Space, Conservation, or Preservation (Light, Medium, or Dark Green). DEEP imposes this limit by threatening financial penalties under the existing loans.** DEEP's position and actions in this regard are illustrated in the attachments to this memo.

#### "Interim Changes" To The Map

Under current state statutes, once the legislature adopts a new five-year State Plan, changes to the Plan or the Map can only be made by a petition to and approval of the ten-member Continuing Legislative Committee on State Planning and Development (Attachment A), § 16a-32. In 2009, the Office of Legislative Research issued a report on the State Plan's Interim Changes process, stating:

In recent years, the number of applications for interim changes has increased substantially. Part of this increase appears to reflect a policy of the Department of Environmental Protection. Under this policy, the department has informed municipalities that they risk losing funding for future sewer line and sewage treatment projects if they approve developments that require sewers in areas designated for conservation under the locational guide map of the State Plan of C&D. This policy applies even if the developer pays for the sewers for his development. As a result, a number of developers and municipalities have sought interim changes in the designation of the affected property under the map. The

committee has been asked to act on technical issues rather than broad policies. In this respect, the continuing committee has effectively taken on a role analogous to a zoning board of appeals with regard to these developments.

### The 2013-2018 Draft Plan and Map

OPM has acknowledged in the public draft of the State Plan for 2013-18 that the Locational Guide Map has caused confusion, and that it should not be used as a stand-alone determinant of state agency actions. The two major categories are "Priority Development Areas" and "Priority Conservation Areas." Development Area criteria are: designation as "urban" in the 2010 census; areas within one half mile of an existing or planned mass transit station; areas of "existing or planned" sewer or water service; and areas served by "local bus service." Priority Conservation criteria are: "core forest areas"; existing or potential drinking water watersheds; aquifer protection areas; wetlands soils greater than 25 acres; "prime or locally important agricultural soils" greater than 25 acres; hurricane inundation zones; 100 year flood zones; and "critical habitats." These two overall categories are supplemented by three other categories, "Balanced Growth Areas," which contain characteristics of both Development and Conservation; Village Growth Areas, which are "traditional village centers" in rural areas; and "Undesignated Areas." The proposed new Map colors the entire State into one of these categories, with an additional feature that Development and Conservation Areas are valued by whether they contain 1-2, 3, or 4-6 of the listed factors.

### The Continuing Problems

Thus, the new proposed Map still suffers from these problems that plague the existing Map:

- the criteria are so vague and undefined that they are inappropriate as any kind of guideline or reference point for government spending;
- assigning colors and categories to the entire State remains an impossible exercise, either to create in the first place or to update periodically;
- the Map does not curb or correct DEEP's misuse of it to dictate sewer locations;
- prohibiting areas shaded green from being served by new or improved sewers contradicts the existing system of municipal water pollution control, General Statutes §§ 7-245 *et seq.*, in which municipal authorities are empowered and directed to draw up their own sewer plans and issue their own permits;

- outlawing sewers in all areas colored a shade of green on the Map prohibits the land use practices, techniques, and advantages that result from sewer systems, including clustering, open space maximization, water quality protection, wetlands and watercourse preservation, transit-oriented development, green building, and solar orientation;
- the disconnect between the five year State Plan revision cycle and the ten year municipal plan revision cycle has not been addressed; and
- the process for interim amendments to the Map during the State Plan's five year reign has not been changed.

The Map is not only dysfunctional but unnecessary. Any state agency that is considering an action or expenditure should be tasked with undertaking a thorough, site-specific review of the existing land use and environmental characteristics of the geographic area in question and applying the six planning principles stated in the State Plan to that specific, accurate, updated information. The State Plan's six planning principles, the mandates and criteria for Priority Funding Areas, along with the long-established statutes and regulations for municipal land use, sewer systems, wetlands regulations, open space preservation, and other permits and approvals, many of which function with State agency oversight, are sufficient to guide a land use decision. We do not need the inaccurate and dysfunctional Locational Guide Map as an overlay.



## MEMORANDUM

TO: Tim Hollister  
Shipman and Goodwin

FROM: Vince McDermott  
Milone & MacBroom, Inc.

DATE: September 5, 2012

RE: Mapping Issues with State Plan of Conservation and Development

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You asked us to provide you with examples where we have found discrepancies between the policies contained in the state Plan of Conservation and Development (C&D Plan) and the Guide Map that is incorporated as part of the plan. At the core of each of the examples below is the policy where the Department of Energy & Environmental Protection (DEEP) interpreted the C&D in a way that prevented the extension of public sewers into areas where the Guide Map illustrated sensitive resources and designated the land as conservation or rural development.

### Wiese Road, Cheshire, Connecticut

The subject property is approximately 31 acres located easterly of the center of Cheshire. The property is zoned for single-family residences on one-acre lots. The property has public water, and public sewer is nearby. The land to the north is developed as a single-family cluster community, and the land to the west is single-family residential on one-acre lots.

Both the town's sewer facility plan and Plan of Conservation and Development (POCD) included the subject property in an area where sanitary sewers were to be extended. The C&D Guide Map designated the majority of the property as Conservation with a narrow band along the watercourse as Preservation and two small segments on the edges of the property as Rural.

The contract purchaser of the property wanted to develop an age-restricted development of 41 homes that avoided the wetlands (the land identified in the C&D as Preservation) and proposed significant areas for permanent open space, all consistent with the local zoning code. While the local WPCA initially granted conceptual approval to extend the sewer in accordance with the adopted facility plan, it reversed its decision based on DEEP's prohibition of extending sewers into areas identified as Conservation or Rural on the C&D Guide Map.

The discrepancy between the C&D policies and the Guide Map are:

- The land is not a Class II type reservoir land or mapped as a Level A or B aquifer.
- It is not active agriculture nor does it contain 25 acres of prime agriculture soils.
- It is not a large contiguous forest block.
- It is not a significant sand and gravel resource.

- It is not a designated historic district or site or cultural resource.
- It is not a trap rock ridge.
- It is not a greenway or area of concern due to the presence of endangered, threatened, or special concern flora or fauna.
- It is not a 100-year floodplain.
- It is not a scenic or recreation corridor.
- It is not an area protected by conservation easements.

In short, the land should not have been mapped as Conservation. Only the Preservation designation applied to the wetlands surrounding the watercourse along the edge of the property.

Pistol Creek Golf Course, Berlin and Middletown, Connecticut

At the time when this example was being discussed, the subject property was the former Pistol Creek Golf Course that was discontinued in 2004. It was comprised of two parcels, the larger parcel was zoned for half-acre lots, and the smaller parcel was zoned for one-acre lots. Both parcels were contiguous to an active public sewer, and a "dry" sewer was constructed on the golf course property.

The Town of Berlin POCD identified the section of town where the property is located as being a "Utilitized Area" where extension of sewers was anticipated. By virtue of allowing half-acre residential lots, the town's zoning regulations anticipated that the sewers would be extended. The C&D Guide Map designated the majority of the property a Conservation and Rural with the corridor adjacent to the watercourse flowing through the property as Preservation. It should be noted that an earlier version of the C&D Guide Map showed the larger parcel as Growth prior to the construction of the golf course.

The purchaser of the golf course wanted to construct an age-restricted community on the larger parcel, preserving the open space along the watercourse consistent with the underlying zoning designation. These homes were to be connected to the existing sewer system. The smaller parcel was to be developed for single-family homes on one-acre lots, also consistent with the underlying zone. After initially granting conceptual approval for the sewer extension, the WPCA reversed its position based on DEEP's position regarding extending sewers in lands designated as Conservation or Rural.

Similar to the first example, the discrepancy between the C&D policies and the Guide Map are:

- The land is not a Class II type reservoir land or mapped as a Level A or B aquifer.
- It is not active agriculture nor does it contain 25 acres of prime agriculture soils.
- It is not a large contiguous forest block.
- It is not a significant sand and gravel resource.
- It is not a designated historic district or site or cultural resource.
- It is not a trap rock ridge.

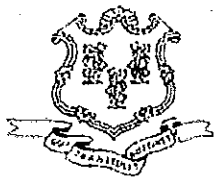
- It is not a greenway or area of concern due to the presence of endangered, threatened, or special concern flora or fauna.
- It is not a 100-year floodplain.
- It is not a scenic or recreation corridor.
- It is not an area protected by conservation easements.

In addition, the Guide Map did not reflect the town's facility plan and the fact that the perimeter of the property had active sanitary sewers in the road. The proper designation of the Guide Map should have been Growth, the designation of the land immediately to the north.

Enclosures

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STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

79 ELM STREET HARTFORD, CT 06106-5127

PHONE: 860-424-3001



Gina McCarthy  
Commissioner

March 24, 2006

Mr. Michael Milone  
Town Manager  
Cheshire Town Hall  
84 South Main Street  
Cheshire, CT 06410

Re: Richmond Glen Proposal and Conservation  
and Development Plan for Connecticut

Dear Mr. Milone:

On November 23, 2005, former Deputy Commissioner Jane Stahl and I met with Representative Al Adinolfi, Anthony Fazzone and John Milone concerning the proposed Richmond Glen age-restricted development. This meeting was requested through Representative Adinolfi's office. As a result of the meeting, the Department committed to respond to two particular questions as follows:

- Is sewerage of conservation or preservation areas consistent with the Conservation and Development Policies Plan for Connecticut 2005-2010 (C&D Plan)?
- If sanitary sewers are extended to the Richmond Glen site, is the town of Cheshire at risk of being denied state funding?

The Conservation and Development Policies Plan for Connecticut is comprised of two important components – the Plan text and the Locational Guide Map. In the current 2005-2010 Plan, the sixth such plan for the state since 1979, the text was significantly altered in its structure from the previous five versions. New to this Plan is the introduction of six growth management principles and associated policy recommendations. These growth management principles were developed to better coordinate long-standing state policies that focus future development in a manner that makes fuller use of existing infrastructure and already developed areas while preserving the state's natural resources. The growth management principles and policies provide the guide for state planning and public investments. State actions are required to be consistent with this Plan.

The property in question appears to be in both Preservation and Conservation Areas. While the growth management principles and policies thereunder do not expressly prohibit sewerage, they do direct that structural development into preservation and conservation areas should be avoided where inconsistent with preservation and conservation values. Further, the policies under the Preservation and Conservation Areas advocate for the protection of the natural resources and landscape from uses and activities incompatible with these resources/lands, although they may support the introduction and/or expansion of development inconsistent with the policies only after evaluation of alternatives and demonstration of overriding public benefits. Consideration is given in the policies to supporting infrastructure extensions and connections in conservation priority areas (open space, preservation, conservation, and rural lands) where necessary to solve existing pollution problems.

We understand that an existing sewer main is in close proximity to the proposed development. However, given the land classifications under the C&D Plan for this general area, such sewer line would appear to be inconsistent with the Plan. While it may not be possible to reconcile past development with the C&D Plan, new and further incursions of sewer infrastructure into conservation priority areas would be inconsistent with the Plan. As it currently stands, the extension of sewers to the subject area is inconsistent with the C&D plan. Should the natural resource conditions, and the facts and circumstances of the situation warrant a relook at the Plan, you will need to request an interim change to the C&D Plan via the process set forth in section 16a-32 of the Connecticut General Statutes.

With respect to the question of whether future state funding could be jeopardized if, in the future, sewers are extended into an area inconsistent with the C&D Plan, the answer is yes. Section 16a-31 of the Connecticut General Statutes requires that activities supported by state funds in excess of \$100,000 be consistent with the C & D Plan. This statutory requirement was adopted in 1991. Post 1991 projects and activities including those that expand or improve the service area or increase or utilize existing capacity need to be in conformance with the C&D Plan if state funding is to be provided. We encourage the Town of Cheshire to undertake a wastewater facilities planning project consistent to delineate a sewer service area consistent with State C&D Plan. Such action will ensure that the town is eligible for funds in the future. At this point in time, new, improved or expanded service or use of existing capacity must, if state funding is to be provided, be directed to areas consistent with the state C D Plan. Please note that connecting existing homes which front a road with an existing sewer line is acceptable and would not affect funding eligibility.

If you have any questions on this matter, please call William Hogan, Supervising Engineer for the Municipal Facilities section at (860) 424-3753 or Yvonne Bolton, Chief of the Bureau of the Water Management at (860) 424-3704.

Yours truly,



Gina McCarthy  
Commissioner

GM:WH:ks

cc: John Milone, Milone & MacBroom  
Representative Al Adinolfi  
Jay Brodach  
Anthony Fazzone, Esq.  
Donald Chalton, Metcalf & Eddy  
John Knott, Town Attorney  
Steven Eberle, WPCA  
Daniel Morley, OPM



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



November 4, 2008

To: Water Pollution Control Authority Chairman  
From: William Hogan, Municipal Facilities Section of DEP

*William Hogan*

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RE: Development of a Water Pollution Control Plan with a Sewer Service Area Map

The Department of Environmental Protection is pleased to distribute this guidance document to all water pollution control authorities in the state. We encourage each WPCA to follow the step by step procedures outlined in the document, as this is an opportunity that will benefit each municipality.

**What does the document encourage each WPCA to do?** It encourages each WPCA to use authorities granted to them by the state statutes by developing a Water Pollution Control Plan that includes a sewer service area map.

**Who is expected to do the work?** This will vary in each municipality. The best organization to conduct the work is often the WPCA itself, because of their working knowledge of the subject. If a municipality has GIS capabilities for the mapping, the entire process can be done in-house. If GIS capabilities do not exist, then the municipality may need to seek outside assistance for either GIS or paper map preparation. The fact that GIS may not be available in your municipality should not discourage you from undertaking this effort.

**How does the municipality benefit from this effort?** There are multiple ways that each municipality will benefit from this effort, as outlined below:

- ❖ The sewer service area map (as differentiated from a collection system map) will put the municipality in control of where the sewer system is constructed and will influence how and to what density the municipality is developed.
- ❖ Communications between the WPCA, the municipal planner, the Planning and Zoning Commission, the chief elected official and other land use boards will be improved, resulting in a more complimentary approach to planning and a consistent message to developers as to how the town plans its own future.
- ❖ The water pollution control plan and the sewer service area map can be included in the municipality's Plan of Conservation and Development. This again indicates that the various boards and commissions of the municipality are in sync with one another.
- ❖ Clean Water Fund eligibility, as determined by DEP, is contingent upon a finding of consistency with the Conservation and Development Policies Plan for Connecticut (State C&D Plan). An up-to-date sewer service area map will be an important consideration during the next State C&D Plan revision process. Such a map will provide the Office of Policy and Management (OPM) with a better understanding of your municipality's plans when they undertake the revision process.

**When should this effort be completed?** The ideal time frame for completion of the work would be by the end of September 2009. Why this particular date? At that time, OPM will be requesting information from the municipalities for the revision to the State C&D Plan. While it will take a concerted effort, DEP believes that with good cooperation amongst various boards and commissions in each municipality, the date is achievable.

**Will assistance be provided from others?** While the DEP cannot provide one-on-one assistance to a hundred municipalities, we are willing to work with the regional planning organizations (RPO) and conduct training on a regional basis. This would also allow for networking amongst the municipalities so that each may learn from the others. The regional planning organizations may also be able to provide guidance on GIS or on how to convert maps into GIS format.

In addition, each RPO will be receiving a limited amount of funding from OPM to, at a minimum, develop regional GIS data for existing sewer service. While it is not likely that this would result in a sewer service area map that meets all of the specification of the guidance document, it should provide assistance to those towns that currently do not have this information in a GIS format.

**Request of the DEP:** The Department would like to hear from each municipality by not later than January 15, 2009 on your plans to conduct this effort. Do you think that it can be accomplished by September 2009? Do you plan on using GIS mapping technology?

**Where to find the guidance document:** If copies of the guidance document were sent to all of the parties, the Department would need to make more than 850 copies. In both a cost saving mode and for the flexibility of forwarding the document to others, the Department will list the guidance document on our web site at the following address:

[www.ct.gov/dep/lib/dep/water/municipal\\_wastewater/development\\_of\\_wpcplan.pdf](http://www.ct.gov/dep/lib/dep/water/municipal_wastewater/development_of_wpcplan.pdf)

This letter will also be sent to the chief elected officer, the municipal planner, the planning and zoning commission, and the wastewater superintendent to start the communications between the various land use boards.

If you have further questions on this matter and wish to speak with a DEP representative, you may contact either William Hogan at 860-424-3753 or George Hicks at 860-424-3752.

CC: Chief Elected Official  
Planning and Zoning Commission  
Municipal Planner  
Wastewater Superintendent  
Regional Planning Organization



**Development of a Water Pollution Control Plan and a Sewer Service Area Map  
(And Integration of Such Plan into Municipal Plans of Conservation and Development  
and the Conservation and Development Policies Plan for Connecticut)**

November 2008

By the Connecticut Department of Environmental Protection

**Introduction**

The creation of a Water Pollution Control Plan with a proper sewer service area map is an important responsibility for every municipality with any amount of sewers. It is also applicable to municipalities without any sanitary sewers. How this gets done, what factors are considered, who is involved and how it is utilized for future planning of the municipality's development will be further explained in this document.

**Authorizing State Statutes**

Chapter 103 of the Connecticut General Statutes (CGS) "Municipal Sewerage Systems" is the starting point for this effort. Within Chapter 103, Sec. 7-246(b) of the CGS, the authorization to prepare a water pollution control plan and to define where sewers are to be located and where they are not to be is given to the Water Pollution Control Authority (WPCA) of the municipality. Specifically, the pertinent section of this statute reads:

"Each water pollution control authority designated in accordance with this section may prepare and periodically update a water pollution control plan for the municipality. Such plan shall designate and delineate the boundary of: (1) Areas served by any municipal sewerage system; (2) areas where municipal sewerage facilities are planned and the schedule of design and construction anticipated or proposed; (3) areas where sewers are to be avoided; (4) areas served by any community sewerage system not owned by a municipality; (5) areas to be served by any proposed community sewerage system not owned by a municipality; (6) areas to be designated as decentralized wastewater management districts. Such plan shall also describe the means by which municipal programs are being carried out to avoid community pollution problems and describe any programs wherein the local director of health manages subsurface sewage disposal systems."

**What is a water pollution control plan and who develops it?**

The responsibility for this plan rests solely with the WPCA (as authorized by the statutes). No other board or commission of the municipality has such an authorization by the statutes. Water Pollution Control Plans are best developed by the members of the WPCA (consultants are not necessary for many municipalities) and are typically limited in length to 5 to 10 pages including the sewer service area map. Subject matter includes, but may not be limited to, setting forth policies and objectives for the control of pollution, the establishment of the sewer service area, the establishment of areas where sewers are to be avoided, the establishment of areas where private sewers are allowed, a map

indicating the locations of each of these first three areas, policies regarding privately owned and community systems, identification of capacity of the sewerage system, reference to a detailed facilities plan if appropriate, and any other miscellaneous wastewater or related issue specific to the municipality.

#### **Who develops a sewer service area map?**

The Water Pollution Control Authority (WPCA) of the municipality is the only entity authorized to develop the sewer service area map (CGS Sec. 7-246(b)). The determination of what areas are to be served with sewers and what areas are not to be served with sewers is not within the authority of any other municipal board or commission.

The WPCA may undertake the development of the sewer service area map itself (perhaps with the assistance of the town's GIS professionals, if available) or it may seek outside consultant services. In either case, the process should be one of consensus within the municipality among, at a minimum, the WPCA, local sanitarian, Department of Health, Planning and Zoning Commission, Conservation Commission, Inland Wetlands Commission, Economic Development Agency and municipal planner. **The goal is to develop a service area map that all relevant boards and commissions can clearly understand, buy into and support in the future in their respective land use decisions.** The review should address any needs to abate existing pollution from failing septic systems or to provide for an alternative collection system for marginal septic systems, consider current zoning, the local plan of conservation and development (POCD) and a review for consistency with the Conservation and Development Policies Plan for Connecticut (State C&D Plan). Multiple meetings led by the WPCA will likely be necessary to develop a sewer service area that reflects the needs and desires of the entire municipality. The time period to develop a sewer service area map will vary from municipality to municipality based upon individual situations, but it is reasonable to think that it can be accomplished in a 5 to 9 month period if essentially starting from scratch.

#### **What is a sewer system map versus a sewer service area map?**

A sewer service area map indicates not only where the current sewers are, but also indicates what properties are currently served as well as what properties are allowed to tie into the sewer in the future either for addressing pollution problems or for supporting potential desired development. In most cases, the service area boundaries should be developed along property lines and not a set distance back from the sewer or the road. In accordance with the authorizing statute, the map should also indicate the areas of the municipality where the use of onsite septic systems are the preferred long-term wastewater alternative. It should not include those areas of the municipality that cannot be properly corrected onsite.

In a survey of municipalities conducted in 2007 and 2008 by the DEP, the Department requested copies of sewer service area maps from municipalities. With respondents in

excess of 100, more than 65% submitted sewer system maps. These municipalities did not have maps that indicate the areas to be served but had maps that only indicate the location of the sewers in the streets or rights of way. Such a map that indicates only the location of the sewers is considered a collection system map. These maps do not meet the intention of CGS Sec 7-246(b).

#### **Suggested Resources for the WPCA in Developing a Sewer Service Area Map**

- Previous Water Pollution Control Plan (if available)
- Current sewer service area map (if available)
- Current sewer system map
- Previous facilities plan or engineering report (if available)
- Local Plan of Conservation and Development
- State C&D Plan, including Locational Guide Map
- Local zoning regulations and map

#### **Steps in the Development of a Sewer Service Area Map**

- Compile a map of all existing sewers as the starting point. (During the five year update of the C&D Plan to occur in late 2009, OPM would desire that the municipality submit its sewer service area map during this time period. This would assist OPM in the drafting of the C&D Plan for 2011-2015, including the assignment of appropriate development classifications on the Locational Guide Map.)
- Determine the service area of the existing sewers. This may include, but not be limited to, documentation from design calculations for flows, a determination of which parcels have been fully charged benefit assessments, a determination of which parcels have been partially charged benefit assessments, or maps from earlier dates that indicated sewer service areas. The payment of full benefit assessments is a justification for inclusion of that area in the sewer service area. Service area boundaries are best developed along parcel lines and not roadway setbacks.

If a service area for existing sewers is to be justified by benefit assessments, it should be determined that the assessments were levied in accordance with the municipality's assessment policies and the authorizing state statutes. Deferred assessments on partially developed or undeveloped parcels can make the determination of whether the parcel is within or outside of the sewer service area more difficult.

- Determine potential future sewer service areas based upon need to solve existing water pollution problems, i.e. subsurface disposal problems with existing development, not vacant lots. This should include verifiable documentation from

the local sanitarian or regional health district relative to the ability to adequately repair on-site septic systems.

- Determine potential future sewer service areas based upon growth areas desired by the municipality.
- Major wetlands systems, rivers, and open space lands should be excluded from the sewer service area either by a notation on the map that they are not part of the service area or by interior lines within the sewer service area that exclude these obvious areas from service.
- From the iterative process described above, a draft map will have been prepared that can then be compared to the municipality's Plan of Conservation and Development (POCD) and the State C&D Plan.
- Issues related to the municipality's POCD: Does the sewer service area support the vision of the growth and future of the municipality as identified in the POCD? Does the sewer service area support the zoning designations and permitted uses? Are there areas designated as sewer service areas that do not need sewers to achieve the goals of the POCD? Are there areas with zoning classifications and permitted uses that cannot realistically be developed without sewers that are not in the sewer service area? Are there areas needed for affordable housing that should be sewerred?
- Issues related to the State C&D Plan: Is the sewer service area located in either growth or neighborhood conservation areas as indicated in the Locational Guide Map? If so, these areas of the sewer service map are consistent with the C&D Plan. Is any of the sewer service area located in conservation, preservation or rural land classification as indicated in the Locational Guide Map? If so, are the sewers in these areas existing or proposed? If existing, is the area limited to only areas already developed? If the service area is for proposed sewers, is it based upon an assessment of needs to solve an existing water pollution problem? As this review occurs, it is possible that areas with existing sewers will be located in rural lands or conservation areas. No one expects that sewers will be ripped out of the ground or that existing development will be knocked down as the means by which the inconsistency is resolved. Each area will be reviewed based upon the individual circumstances of that area. The goal will be to minimize any further inconsistencies in rural lands or conservation areas.
- After a review of the issues related to both the municipality's POCD and the State C&D Plan, changes may be determined necessary in a number of documents. These could include 1) changes to the sewer service area such that the resulting map is determined to be consistent with both plans, 2) changes to the local POCD, 3) changes to the State C&D, or 4) written justification of areas which are inconsistent with other planning documents.

### **Why Is Consistency With the State C&D Plan Required?**

The development of a Water Pollution Control Plan and sewer service area map in accordance with Sec. 7-246(b) is not the end point if municipalities desire to avail themselves of Clean Water Fund financing in the future.

Similar to other state agencies awarding funding in excess of \$200,000, the DEP is required by the Connecticut General Statutes to assure that the project is consistent with the State C&D Plan prior to awarding Clean Water Funds. This often puts DEP at the forefront of discussions with municipal officials over the need to address consistency with the State C&D Plan when the municipality is seeking Clean Water Fund financing.

### **Explanation of State Statute Requiring Consistency with the State C&D Plan**

The State Plan of Conservation and Development is defined in Sections 16a-24 through 16a-33 of the CGS. The objective of the State C&D Plan is to guide a balanced response to the current and future human, economic, and environmental needs of the State. More specifically related to state financing of various infrastructure needs of the municipalities is CGS Sec. 16a-31(a) (4). This statute reads: "The following actions when undertaken by any state agency, with state or federal funds, shall be consistent with the plan: (4) The authorization of each state grant, any application for which is not pending on July 1, 1991, for an amount in excess of \$200,000, for the acquisition or development or improvement of real property or for the acquisition of public transportation equipment or facilities."

Wastewater treatment plants pump stations and sewers are real property and therefore, any state grant and/or loan in excess of \$200,000 for wastewater infrastructure acquisition, development or improvement must be consistent with the State C&D Plan. The DEP is obligated to assure that wastewater projects funded by the CWF or projects that discharge to wastewater projects funded by the CWF are consistent. DEP simply does not have the flexibility of ignoring the statute.

### **How to determine consistency with the State C&D Plan as relates to sewer service areas**

The sewer service area map is the key document to determine consistency with the State C&D Plan. Once the proposed sewer service area map is developed, it can be compared with the State C&D Plan to determine if the service area is in a designated Growth and Neighborhood Preservation areas or if the service area includes Rural Land or other conservation/preservation areas. Sewer service areas within Growth and Neighborhood Conservation areas are not a conflict with the State C&D Plan. However, sewer service areas within Rural Lands and other conservation/preservation areas may pose a conflict unless the sewers exist at the time of the comparison or the sewer service area is proposed to solve an existing pollution problem caused by substandard septic systems that cannot be effectively repaired. It should be noted that if pollution problems from failing septic

systems arise in the future in Rural Lands or Conservation/Preservation Areas, sewer service can be extended without modifying the State C&D Plan, if such sewers extensions are minimally sized for the problem area only.

The Department intends to develop a separate Question and Answer Document based upon real cases that municipalities can use in determining how to address current, apparent inconsistencies and how to avoid future inconsistencies as new development applications are reviewed by the municipality. It is expected that this document will be available in January 2009.

### **The Underlying Issue-Identification and Resolution of Inconsistencies**

In the development of the sewer service area map, the municipality must consider the current version of the State C&D Plan and the Locational Guide Map of that plan. In a number of situations, municipal officials have expressed frustration and concern that the Locational Guide Map does not reflect their views of their community nor do they understand the basis for the various land classifications within the State C&D Plan and how they were assigned to segments of their municipality. This is not an issue that the DEP can resolve. Resolution of conflicts between the local plan of conservation and development and the State C&D Plan must occur through one of two opportunities offered under the State C&D Plan statutes. The first opportunity, which is preferred by the Office of Policy and Management (OPM), is during the regular five-year update cycle for the State C&D plan. This update will be initiated in 2009. At each five-year cycle for adoption of a new plan, input is sought from the municipalities as well as from the regional planning agencies. It is at this time that the municipalities can best advise the state as to their preferred classification of the land and to justify recommended changes in the land classifications. The second opportunity, much less preferred because of its micro-view of a single parcel or relatively small areas of land, is through the interim change provision of the CGS Sec. 16a-32.

Municipalities are encouraged to collaborate with the staff of OPM during the revision period of each State C&D plan and reach a satisfactory consensus. For this reason, it is strongly suggested that the WPCA communicate clearly with the municipal planner to explain the WPCA's Water Pollution Control Plan and sewer service area map, as well as the importance of ongoing consistency with state and local land use plans and decisions, so that the planner can be prepared to provide appropriate input to OPM when the State C&D Plan is up for revisions. If this happens, the issue of developing a sewer service area that is consistent with the State C&D Plan is a much simpler task. With a consistent sewer service area map that a municipality then follows, the DEP can meet its statutory obligation of undertaking funding actions that "shall be consistent with the plan".

### **Incorporation of Sewer Service Area Maps into Municipal POCD**

As the final step for creating a consistent message from all town officials, the sewer service area map should be included in the infrastructure section of the municipality's

POCD adopted by the Planning Commission.

This can be done in the decennial update or as an amendment to an adopted POCD when the sewer service area map has been prepared. The goal for all stakeholders within the municipality should be that a consistent message concerning wastewater infrastructure is sent regardless of the municipal messenger. The WPCA, Planning Commission, Zoning Commission, Municipal Planner, Economical Development Commission, and CEO of the municipality should all understand and support the limits of the sewer service area.

#### **When Can the DEP Review a Sewer Service Area Map for Consistency with the C&D Plan?**

At a minimum, the DEP will require the creation of a facilities plan to support the need for any wastewater infrastructure project that will seek Clean Water Fund financing. Such a facilities plan will be required to include a sewer service area map that will indicate areas of the municipality that are sewerred, areas that are planned to be sewerred in the future, and areas where sewers are to be avoided in which development must occur that can be sustained by the land. The DEP is required to review and approve the facilities plan including the sewer service area map prior to funding the project. However, only a small number of individual municipalities have wastewater projects funded in any given year. The question then is what happens if a municipality develops a Water Pollution Control Plan before a facilities plan is developed? How can it be determined if the sewer service area map is consistent with the State C&D Plan?

According to CGS 7-246(b), the WPCA of any municipality "may prepare and periodically update a water pollution control plan". This means that there is no set schedule for submitting a Water Pollution Control Plan, unlike the requirement to update a municipal plan of conservation and development every ten years. However, the same statute continues as follows: "The authority shall file a copy of the plan and any periodic update with the Commissioner of Environmental Protection...." The municipality, when it files the water pollution control plan with the DEP may either just submit the document or may submit the document with a request for the DEP to review the sewer service area map for consistency with the State C&D Plan. The Department may review the sewer service area maps within its resource capabilities at the time of submission. If determined to be consistent based upon the review, the Department may issue an advisory letter to the municipality to that effect. This will help assure that development that occurs, if consistent with the sewer service area map between the time of submission of the map and the next Clean Water fund project, does not jeopardize the funding potential for the municipality.





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## Sewer Request Could Hinder \$100 Million Sewer Project



By KEN BYRON, [kbyron@courant.com](mailto:kbyron@courant.com)

The Hartford Courant

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BERLIN —

A seemingly straightforward request from a developer to extend sewer lines for a proposed 83-home development could have time-consuming and costly consequences for the planned \$100 million expansion of the Mattabasset District regional sewage plant, officials said.

JFC Endeavors of **Plainville** wants to build the 83 homes off Orchard Road and has asked the town for permission to extend sewers to the land. That request is now before the town's water control commission.

Several issues have held up the request. Brian Armet, director of the Mattabasset District, said the most important one for his agency and the town may be that JFC Endeavors wants to build in an area where the state is discouraging sewers in an attempt to limit development.

Making a move into that area could cause the state to delay releasing money set aside for the Mattabasset sewer project, according to an official for the state Department of Energy and Environmental Protection. The town sends its sewage to the Mattabasset plant for treatment.

The JFC Endeavors development would produce an average of 21,000 gallons of sewage a day, a relatively small amount that the town's sewer system can handle, officials said.

But the land is designated for rural conservation in the state's plan of conservation and development, said Gian-Carl Casa, a spokesman for the state Office of Policy and Management. The designation discourages the installation of sewers because that can enable high-density development.

Dennis Greci, a supervising engineer for DEEP said that when the state provides money for wastewater treatment projects like the Mattabasset District's renovation plan, it has to be able to say that the project is consistent with the plan of conservation and development. If a plant serves a system that is suddenly extended into an area not designated for sewers, that creates an inconsistency that must be resolved before funding can be released, Greci said.

"Ironing out an inconsistency like that with OPM is not something that takes a week or so and time is money," Greci said.

He said another issue is that while state officials are resolving such a conflict, any money set aside for the Mattabasset project could instead go to another project that is ready to go.

Town Engineer Arthur Simonian said local officials are aware of the problem and said that designating the southern part of town as a conservation area was a decision made by the town leaders many years ago.

There are certain parts of town that they wanted to keep open, and sewers were not extended there for that purpose," Simonian said.

Another issue is that the town has recently designated the area where JFC Endeavors wants to build as an aquifer protection area, another designation that discourages sewer extension, Simonian said.

