

Sussex County Infrastructure Prioritization Policy (September 2016)

Sussex County performed an internal evaluation of the fourteen (14) communities (the “Impacted Communities”) listed in the Voluntary Compliance Agreement with the U.S. Department of Housing and Urban Development, dated November 28, 2012. This evaluation is set forth in the Impacted Communities Study by GCR, Inc., dated September 2016.

Using information provided in the Impacted Communities Study (the “Study”), the County has performed an analysis of its investment strategies and funds spent in the Impacted Communities. The information that follows in this Sussex County Infrastructure Prioritization Policy (“Policy”) sets forth the County’s current investment strategies and how it prioritizes infrastructure and/or community development over which it has primary governing authority. Also discussed is the County’s participation in providing secondary elements of infrastructure, the source of the funding, how the funding for such infrastructure is prioritized, and the formal approval process for providing such infrastructure. Lastly, this policy discusses those elements of infrastructure over which the County has no governing authority and which, as a result, cannot be prioritized for delivery by the County or be part of a formal County approval process. It should be noted that the County views this Policy as a living document that will be influenced by the continual public processes that guide the development of Sussex County.

I. Overview

By far, the largest source of housing-related funding available to the County is the federal funding it receives from the Community Development Block Grant (“CDBG”) and the Home Investment Partnerships Program (“HOME”). In total, these two funding sources comprise approximately 58% of the funding from all sources that the County Department of Community Development and Housing utilizes. Based on CDBG and HOME awarded grant allocations from FY2009 through FY2016, the County has determined that approximately 20%¹ of the funding has been awarded to the Impacted Communities.

A requirement of both CDBG and HOME funding is that this funding be used to assist low-to-moderate income (LMI”) residents of Sussex County. According to the Delaware State Housing Authority, there are approximately 39,646 LMI residents in Sussex County.² As determined within the Impacted Community Study, the percentage of LMI residents within the Impacted Communities ranges between 74% and 100%, for a total number of LMI residents within the Impacted Communities of 2,307 (see **Attachment 1**). Of the total number of LMI residents countywide, the number of LMI residents within the Impacted Communities is approximately 6%. According to the Study, only 23% of the residents within the Impacted Communities are White, while approximately 65% of the residents within

¹ This percentage was calculated by reviewing all CDBG/HOME awards from FY2009 through FY2016, identifying all the funding targeted to rural impacted communities, and dividing by the overall award allocation. The exact percentage is 19.89%. The calculation is only based on initial awards.

² The County LMI% was found using DSHA’s Sussex County Housing Fact Sheet (4/26/16). The Fact Sheet identified that Sussex County has 79,368 Total Households, and there are 16,182 Households with incomes below \$25,000. The 16,182 Households were multiplied by the County’s average household size of 2.45 (as taken from Fact Finder Census 2010 information).

the Impacted Communities are Black or African American, with an additional 5% self-identifying “Other/Multi-Racial”. Six percent (6%) of the residents did not disclose their race.

In sum, the County’s internal evaluation of the Impacted Communities determined that 20% of CDBG funding is spent within the Impacted Communities, which counts for only 6% of the total LMI residents in Sussex County.³ As a result of this analysis, the County believes its current investment strategy of funding within the Impacted Communities is appropriate, and it is confident that its expenditures within the Impacted Communities have gone to serve LMI individuals, the majority of which are minorities.

II. Infrastructure – Primary Governing Authority

With some important caveats, the County has primary governing authority over the establishment and expansion of public sewer, drinking water, and street light districts. The most important caveat to this statement is that the County, by policy, only establishes any of these districts if the residents within the proposed districts agree, by referendum, to the establishment of the district. Although the County has the statutory authority to establish or expand a sewer district without a referendum of the residents within the proposed district, the County believes strongly that the residents within the proposed districts should have the controlling voice since the establishment of a sewer, water, or street light district brings with it a cost for that service that the residents must bear from that point forward.

The second caveat to this statement is that not all public water and sewer districts are governed by the County. As more fully set forth in the Impacted Communities Study, public water and sewer districts are also established and maintained by municipalities and private service providers. In many instances, the closest public water or sewer system is a system established and maintained by either a municipality or a private service provider. The establishment and governance of public water and sewer districts by private service providers is overseen by the Delaware Public Service Commission.

A. County Public Sewer

Investment Strategy and Priority Designation

Public sewer in Sussex County is provided by Sussex County, the municipalities, and private wastewater companies such as Tidewater Environmental Services, Inc. and Artesian Wastewater Management, Inc. The County’s strategy to expand sewer service is currently set forth within the Sussex County 2008 Comprehensive Plan Update. This strategy will continue to evolve as the County embarks on its revision of the Comprehensive Plan due in 2018.

³ This figure does not account for scattered site funding invested in the Impacted Communities through CDBG, HOME, HPG, and County Council Emergency Repair Funding, which would likely increase the investment to the Impacted Communities by 5%-10%. Scattered site funding is funding that is available to households located in the unincorporated areas of Sussex County, which also include the Impacted Communities.

A major component in drafting the 2018 Comprehensive Plan is the solicitation of public comments and the incorporation of new reports and data gathered by the County since 2008. This process has already begun in earnest. Valuable data from the Impacted Communities Study will figure into the investment strategy and prioritization of providing sewer service to areas not currently served by public sewer. At the conclusion of the County's study period, the 2018 Comprehensive Plan will be adopted by County Council sometime in 2018.

The County's current strategy is to continue expanding County sewer service in a pre-planned manner according to officially adopted wastewater service area plans.⁴ The priority designated for the individual expansions is as set forth in the current County Five Year Capital Improvement Program. The County establishes sanitary sewer districts in accordance with the provisions of Title 9 of the Delaware Code, Chapter 65, by taking the question of whether to establish the district to the electors in the proposed sewer district by a referendum. Fifty or more legal voters of a proposed sanitary sewer district may petition the county government to submit the question of organizing a sanitary sewer or water district to a vote of electors in that district. Alternatively, a sewer district boundary may be extended upon the request of a property owner/developer when new development is planned for an area after meeting with the County and upon the approval by Sussex County Council. The County implements five programs aimed at providing assistance for low income residents to cover the cost of connecting to public sewer: (1) the County Sewer and Water Low-Income Assistance Program; (2) the State West Rehoboth Sewer Low-Income Assistance Program; (3) the County Sewer Low-Income Septic & Connection Fee Assistance Program; (4) the Federal Rural Development Hookup Cost/Loan Grant Program; and (5) the State Septic & Connection Fee Loan Program.⁵ Additionally, CDBG Hook-Up funding is also available to assist owner-occupied households with incomes at or below 80% AMI with connections to central water and sewer systems.

The information compiled in the Impacted Communities Study will help to focus the County's attention on the desires of the residents within those communities that have identified connection to public water and sewer as a priority for their community. As the public discussion continues regarding the 2018 Comprehensive Plan and the development of future capital improvement programs, meaningful evaluation of those communities' desire for public sewer will occur. In its evaluation, the County will consider issues such as:

(1) The location of the Impacted Community and whether it is located within or in close proximity to an existing County sewer district, a potential municipal annexation area, a primary or secondary sewer planning area, or outside of all of the above.

(2) The acreage and spatial distribution of the Impacted Community and whether such community is growing or shrinking in size regarding the number of residents residing within the community.

⁴ Sussex County Comprehensive Plan Update, June 2008, p. 1 - 6.

⁵ See <http://www.sussexcountyde.gov/sewer-and-water-assistance-programs>

(3) Whether the community is located within a water resource protection area or some other sensitive environmental area that may be impacted by the operation of septic systems as recognized by the State of Delaware.

(4) Whether the community has expressed a desire for public sewer extension into the community.

(5) The likelihood of providing sewer to the community as a condition of nearby planned new development.⁶

(6) The likelihood that a nearby municipality will provide sewer to the community.

Importantly, the County has already embarked on a strategy of seeking agreements with private service providers where a private sewer district is nearby or planned, and sewer connection to an existing County sewer service district is not economically feasible. One example of this is the Bulk Wastewater Services Agreement with Artesian Wastewater Management Inc. considered by County Council on August 30, 2016. Using information provided within the Impacted Communities Study regarding the residents' desire for public water and sewer, the County will consider pursuing other agreements with private service providers to supply the desired service.

B. County Public Water

Investment Strategy and Priority Designation

Private water service providers and municipalities supply nearly all of the public drinking water in Sussex County. Dewey Beach is the only area in the County served by a water system that is owned and operated by Sussex County.⁷ The County's water supply strategy is currently set forth within the Sussex County 2008 Comprehensive Plan Update. This strategy will continue to evolve as the County embarks on its revision of the Comprehensive Plan due in 2018.

A major component in drafting the 2018 Comprehensive Plan is the solicitation of public comments and the incorporation of new reports and data gathered by the County since 2008. This process has already begun in earnest. Valuable data from the Impacted Communities Study will figure into the investment strategy and prioritization of providing water service to areas not currently served with public water. At the conclusion of the County's study period, the 2018 Comprehensive Plan will be adopted by County Council sometime in 2018.

The County is not currently embarking on strategy to expand County-owned and maintained public water districts, although pursuing agreements similar to the agreements discussed above

⁶ Through the expansion of the West Rehoboth Sewer District for the The Villages at Red Mill Pond North, the County in partnership with the developer was able to expand county sewer to serve Pinetown, an Impacted Community.

⁷ Sussex County Comprehensive Plan Update, June 2008, p. 6 – 2.

regarding public sewer with private water service providers that have established, or will be establishing, water service districts is under consideration. The information compiled in the Impacted Communities Study will help to focus the County's attention on the desires of the residents within those communities that have identified connection to public water as a priority for their community. Importantly, under Title 9 of the Delaware Code, Chapter 65, fifty or more legal voters of a proposed water district, may petition the county government to submit the question of organizing a water district to a vote of residents in that district.

In its evaluation of whether to pursue an agreement with a private water service provider, the County will consider issues such as:

(1) The location of the Impacted Community and whether it is located near an existing or planned private water service area or within a potential municipal annexation area.

(2) The acreage and spatial distribution of the Impacted Community and whether such community is growing or shrinking in size regarding the number of residents residing within the community.

(3) Whether the community is located within an area that may be vulnerable to contamination by the operation of septic systems as recognized by the State of Delaware.

(4) Whether the community has expressed a desire for public water the community.

(5) The likelihood of providing public water to the community as a condition of nearby planned new development.

(6) The likelihood that a nearby municipality will provide public water to the community.

As is the case with the establishment or expansion of a public sewer district, the establishment or expansion of a public water district, even through the process of an agreement with a private service provider, must be approved by the residents within the proposed district or expansion area.

C. Street Lights

Investment Strategy and Priority Designation

As mentioned in the Impacted Communities Study, Chapter 95 of the Sussex County Code provides the legal authority for the County to establish a street lighting district and levy taxes. It also provides the guidelines for the establishment, maintenance and modification of the street lighting district. Communities are eligible to apply if there are at least ten (10) or more dwellings, there is a minimum length of 500 linear feet of roadway, and it is situated in such a way that it is reasonably and economically capable of being improved by the installation, maintenance and operation of streetlights.

In order for a street lighting district to be established, the community must present an initial request to the Sussex County Engineering Department indicating their desire to form a district. If more than 50% of residents submit petitions in support, the County will move forward with creating a lighting district. Ultimately, votes are cast by the residents, and the determination is made by the simple majority of votes cast. If passed, each property owner is charged an annual fee.

The Impacted Communities Study reveals that street lighting is a high priority for a number of the Impacted Communities. In order to address this issue, the County's strategy will be to provide education and outreach to those communities that have expressed a desire for street lights in their community and the process for establishing a street lighting district. The County will also provide a link on its website to the specific sections of the County Code that govern this process. It is anticipated that the meetings with the communities will begin sometime after January 2017 and will include not only information on how to petition the County for a street lighting district, but how to petition the County for other services identified by the communities as priorities as well. This strategy proved successful recently in the Pinetown Community whereby the County administered the Chapter 95 program for the residents and new street lights have been installed.

III. Infrastructure – Secondary Governing Authority

The County considers infrastructure elements over which it has secondary governing authority as those elements for which it receives funding (federal, state, or local), but which are governed primarily by laws and programs implemented by either federal or state government.

A. Funding Distributed by the County's Department of Community Development and Housing ("CD&H")

The top priority for a majority of the Impacted Communities is individual resident home repair. According to the Impacted Communities Study, 11 of the 14 Impacted Communities choose home repair as the number one Resident Need in their community. This validates the County's past approach to spending since the vast majority of the federal funds (88.5%) awarded to the County (CDBG, HPG⁸, and HOME funds) have been spent on owner-occupied home repairs.⁹ It is noteworthy that although these are federal funds, the County only receives these funds as a sub-grantee of the Delaware State Housing Authority ("DSHA"). As a sub-grantee, the County has to request the funds from DSHA and receives only such funding as DSHA allots to it.

⁸ HPG is the Housing Preservation Grant fund administered by the U.S. Department of Agriculture Rural Development (USDA). As mentioned in the Impacted Communities Study, the HPG program provides funding to rehabilitate housing for low-income (<50% AMI) households in rural areas.

⁹ This percentage was derived by reviewing CDBG, HOME, and HPG awards from FY2009 through FY2016 for funding specifically allotted to rehabilitation, that amount was divided by the overall amount awarded during that period.

In conformance with the Impacted Communities Study, the County intends to continue to spend the majority of its federal funds on home repairs; however, it also recognizes that there are other issues in the Impacted Communities that are important to the residents. Historically, infrastructure elements other than home repairs that have also been funded with CDBG, HPG, and HOME are water and sewer hookups, home accessibility, and demolition of structures. CDBG funds have also been awarded for street/road improvements, minor drainage improvements, and sidewalk installation; however, the use of those funds requires a local match of the CDBG funding awarded.¹⁰ Because of this match requirement, the use of CDBG funds for such infrastructure has only been utilized in the municipalities in the past. Lastly, light (minimal) code enforcement is an eligible CDBG funded activity.¹¹

Under Chapter 96 of the Sussex County Code (the Sussex County Improvement Program), residents can now petition the County to request technical and financial assistance for the construction of new pavement and related improvements. This program requires the homeowners association to present an initial request to the County indicating their desire to receive assistance. If more than 50% of residents submit petitions in support, the County will move forward with the project improvements and financing. Ultimately, votes are cast by the residents, and the determination is made by the simple majority of votes cast. If passed, each property owner is charged an annual fee based on a 15-year repayment period.

In order to address desired elements of infrastructure within the Impacted Communities, the County will be implementing a Rural Community Funding Plan. This Plan is based upon the County's calculation of the past amount of CDBG funds spent within the Impacted Communities, on an average yearly basis, such amount being approximately \$236,500/year.¹² In practice, this amount will be adjusted in accordance with the amount of CDBG funding actually received by the County. In order to spread the available funding equitably across the Impacted Communities, the County will use a three-year funding cycle and each community will be assigned a percentage of this funding based upon the number of LMI residents residing within each community as a percentage of the total number of LMI residents in all of the Impacted Communities combined, such percentage being derived from the information presented in the Impacted Communities Study.

By way of example only, the initial three-year funding cycle may look as described in **Attachment 2** to this Policy. However, the funding total will be based upon the actual funding received by the County and the actual 1st Year, 2nd Year, and 3rd Year Funding will depend upon the requests made of the County by the individual Impacted Communities.

The remaining federal funds received by the County (HOME and HPG) will be allocated by a system of first-come first-served, with HPG funding allocated on an advertised call-in day.

¹⁰ Infrastructure Match Requirements as identified in the Delaware Community Development Block Grant Program Guidelines for FY2016, page 18; http://destatehousing.com/Landlords/landlordmedia/cdbg_fy2016_proguide.pdf

¹¹ Definition of Infrastructure in the Delaware Community Development Block Grant Program Guidelines for FY2016, page 3; http://destatehousing.com/Landlords/landlordmedia/cdbg_fy2016_proguide.pdf

¹² This calculation is derived from the County's funding awards for the Impacted Communities from fiscal years 2009 to 2016.

The County's Community Development and Housing Department ("CD&H") implements the distribution of the federal funding awarded by DSHA mentioned above. In addition, CD&H receives a certain amount of funding every year from County Council referred to as County Council Emergency Repair Funds. This amount varies each year, but is generally in the range of \$100,000 to \$200,000. These funds are designed to assist with low- and moderate-income households with targeted emergency repairs, such as no water, no heat, or a severely leaking roof (see **Attachment 3** for the application).

In order to access the federal funding, the County already has in place a formal approval process in which individuals fill out an application and submit the application to CD&H for consideration. The application takes into account the household income, disability status and age of the applicant, as well as the type of home repair requested. Each of those elements is assigned a weight to guide in the CD&H's decision-making process (see **Attachment 4** for a copy of the application and guidelines). The County intends to continue using these funds for the purposes mentioned and utilizing the application process to document and track the spending of these funds.

B. Funding Distributed by County Council

County Council distributes grant funds (referred to as County Council Non-Profit Grants and County Council Human Service Grants in the Impacted Communities Study) to applicants to address such infrastructure as after school programs, financial literacy education, street lights, and community center repairs. The formal approval process consists of an applicant filling out an application and that application being considered at an open meeting of County Council. It should be noted that these grants are discretionary grants given out by a majority vote of County Council and the funds are applied for by a non-profit entity on behalf of the community. Because the County Council Non-Profit Grants are given out on a first-come, first-served basis, prioritization has been difficult. The County Council Human Service Grants are distributed once a year through a deadline application process. Over the last few years, data collected on the application is used to determine the prioritization of the funds. Data used to determine the allocation of funding is number of beneficiaries, financial need, and if other grants were already given to the entity by Sussex County Government. The applications for these grants are attached as **Attachments 5 and 6** to this Policy.

The Impacted Communities Study provides a baseline of information from within the Impacted Communities about which elements of infrastructure are important to the residents within those communities and the relative importance of those elements. Initially, County Council members will be presented with a synopsis of the Impacted Communities Study and will receive, as part of the synopsis, a compilation and synopsis of how the County Council grant funding has been spent in the Impacted Communities since FY10. The Impacted Community Study will be consulted by the County when each grant request is submitted and, going forward, at the end of each year, the County will compile a report (or chart/table) showing the allocation of Council's grant funding for the previous year in the Impacted Communities and this information will be presented to County Council. Although the resulting vote on each grant request is captured within the minutes of each County Council meeting and posted on the County's website, the yearly compilation will also be posted on the County's website.

C. Funding Utilized by the County Constable’s Office

Every year, the State of Delaware, through the Delaware Department of Health and Social Services, Division of Public Health (DPH), provides \$10,000 to Sussex County in order to carry out rodent control activities (the “Rodent Control Program”). Under this contract, the following activities are authorized:

“Services/activities must focus on the alteration of the physical environment within residential or public communities through the elimination of food and water sources as well as the eradication of harborage areas.

- A. Neighborhood Clean-up Program (i.e., Strong Community Program)
 - * Roll-off/dumpster rental, etc.
 - * Necessary tools and safety equipment,
 - * Associates utilization of work release/prison labor.
- B. Certified Pest Control Services (Residential/Public Communities, etc.)
- C. Rodent Harborage Clean-up/Eradication
- D. Purchase of Neighborhood Rodent Proof Trash Containers.”¹³

The Rodent Control Program is implemented by the Sussex County Constable’s Office by receipt of a complaint or by requests for assistance by community leaders, property owners, and groups such as First State Community Action on a first-come, first-served basis. There is no formal application process if the request is for assistance.

Upon receiving a complaint or request for assistance, the Constable’s Office first examines the conditions leading to the situation to determine whether an enforcement action should be initiated against a property owner. The Constable’s Office also has the discretion to provide assistance to resolve the issue complained of, and then cost recover against the property owner through any legal means. Often, this takes the form of a lien against the property if the property owner cannot be located, is uncooperative, or is financially unable to rectify the issue that is the subject of the complaint or the request for assistance.

The Constable’s Office considers the following factors when determining whether to expend Program funds:

- 1. Are the funds requested for a service or activity authorized under the Contract?

¹³ DPH Contract # 14-223 Between the Division of Public Health, Delaware Department of Health & Social Services, and Sussex County for Rodent Control Services, Appendix B (the “Contract”).

2. Have funds been expended within this community recently (i.e., the past two to three years)?
3. Consideration of the magnitude of the public health threat
 - A. Number of people/residences affected
 - B. Type of threat (i.e., rodents, trash, insects, etc.)
4. Anticipated cost of the service or activity relative to the amount of funds remaining under the Contract.
5. Are the funds for the service or activity to be expended within an Impacted Community?¹⁴
 - A. Is the service or activity listed as an identified resident or community need within the Impacted Communities Study?

Because the funds from this Program are not grants and, instead, are generally related to an enforcement effort by the Constable's Office, a formal approval process for requesting the funds is not appropriate. Instead, these funds will continue to be utilized on a case-by-case basis. However, under the terms of the contract with DPH, the Constable's Office must provide periodic status reports and financial reports to DPH as well as a final State fiscal year expenditure report within 30 calendar days of the end of the contract period.¹⁵

The Constable's Office will copy the Director of the Sussex County Community Development and Housing Department on the reports sent to DPH so that these funds can be tracked and made publicly available via Sussex County's website as part of the County's larger effort in tracking funding provided to low-to-moderate income communities in Sussex County in general, and specifically, the Impacted Communities.

IV. Infrastructure – No Governing Authority

There are some infrastructure elements identified as priorities within the Impacted Communities over which the County has no governing authority. Those elements are water quality testing, animal control services, sidewalks, and public transportation. Water quality testing is controlled and provided by the Delaware Department of Health and Social Services, Division of Public Health. Animal control services are provided by the State of Delaware, Office of Animal Welfare. Public transportation is controlled by the State of Delaware Department of Transportation. Lastly, sidewalks within the Impacted Communities for those homes located along State roads are controlled by the State of Delaware Department of Transportation.

¹⁴ "Impacted Community" refers to one of the 14 communities identified in the Sussex County Impacted Communities Study, prepared by GCR Inc., dated September 2016 (the "Impacted Communities Study").

¹⁵ *Id.*

With the exception of animal control services, the County has not typically provided any funding towards these elements of infrastructure since it has no governing authority over these. However, recognizing that these are issues that, in some cases, are important to residents of some Impacted Communities, the County will provide letters of support for the service on behalf of the particular communities to the appropriate governing agency.

Regarding animal control services, the County does have a contract in the amount of \$683,000/year with the State of Delaware to provide this service in Sussex County, although outside of the broad parameters of the contract, it does not dictate to the Office of Animal Welfare how those funds must be spent. In the case where an Impacted Community has identified animal control as a priority, the County will send a letter of support to the Office of Animal Welfare specifically requesting assistance from the Office in that community.