Turning Liabilities into Assets:
Municipal Stream and Wetlands Restoration
SeSwA – 8th Annual Regional Stormwater Conference
25 October 2013
Turning Liabilities into Assets:
Municipal Stream and Wetlands Restoration
SeSwA – 8th Annual Regional Stormwater Conference
HAPPY ANNIVERSARY
Happy 41st Anniversary

- Federal Water Pollution Control Act Amendments

- Clean Water Act – 18 October 1972
  - Nixon – veto
  - Senate – override = 52 (39 D, 17 R)
  - House – override = 247 yes (151 D, 96 R), 23 no, 160 “present”
Clean Water Act:
Prohibition on Discharge of Material

- Prohibits the discharge of dredged or fill material into the waters of the United States without a Section 404 permit
Clean Water Act: Permit Requirements

- No practicable alternative
- Minimize
- Avoid
- Compensate (mitigate)
Compensatory Mitigation: Allowable Types

- Restoration
- Creation
- Enhancement
Compensatory Mitigation: Requirements

- Mitigation Bank
- In-lieu fee
- Permittee
1989

No net loss
Compensatory Mitigation for Losses of Aquatic Resources
40 CFR Parts 325 and 332 (2008)
Thursday,
April 10, 2008

Final Rule

Part II

Department of Defense

Department of the Army, Corps of Engineers
33 CFR Parts 325 and 332

Environmental Protection Agency

40 CFR Part 230
Compensatory Mitigation for Losses of Aquatic Resources; Final Rule
Mitigation Bank Preference

- watershed scale
- measurable, enforceable ecological performance
- mitigation plan
- monitoring

40 CFR Parts 325 and 332 (2008)
40 CFR Parts 325 and 332 (2008)

- long-term assurances
- protection
- financial assurances
- responsible parties
June 2011

- Session Law 2011-343. An Act to Direct the Department of Environment and Natural Resources to Reorganize the Ecosystem Enhancement Program to Improve Operational Efficiency
Local Government Banks?

- N.C.G.S.A. § 143-214.11. Ecosystem Enhancement Program: compensatory mitigation
Local Government Banks?

- (1a) Compensatory mitigation bank. -- A private compensatory mitigation bank or an existing local compensatory mitigation bank.
(1b) Existing local compensatory mitigation bank. -- A mitigation bank operated by a unit of local government that is a party to a mitigation banking instrument executed on or before July 1, 2011, notwithstanding subsequent amendments to such instrument executed after July 1, 2011.
Local Government Banks?

- (4b) Private compensatory mitigation bank. -- A site created by a private compensatory mitigation provider and approved for mitigation credit by State and federal regulatory authorities through execution of a mitigation banking instrument. **No site owned by a government entity or unit of local government shall be considered a “private compensatory mitigation bank.”**
Local Government Banks?

(4b) Private compensatory mitigation bank. -- A site created by a private compensatory mitigation provider and approved for mitigation credit by State and federal regulatory authorities through execution of a mitigation banking instrument. No site owned by a government entity or unit of local government shall be considered a “private compensatory mitigation bank.”
(b) Department to Coordinate Compensatory Mitigation. --All compensatory mitigation required by permits or authorizations issued by the Department or by the United States Army Corps of Engineers shall be coordinated by the Department consistent with the basinwide restoration plans and rules developed by the Environmental Management Commission. All compensatory mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans. All compensatory mitigation shall be consistent with rules adopted by the Commission for wetland and stream mitigation and for protection and maintenance of riparian buffers.
(d) Compensatory Mitigation Options Available to Government Entities. -- A government entity may **satisfy compensatory mitigation requirements** by the **following actions**, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the Department or of the United States Army Corps of Engineers, as applicable:
Local Government Banks?

- (1) **Payment** of a fee established by the Commission into the *Ecosystem Restoration Fund* established in G.S. 143-214.12.

- (2) **Donation** of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

- (3) Participation in a **compensatory mitigation bank** that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation.

- (4) Preparing and implementing a compensatory **mitigation plan**.
Local Government Banks?

- (d1) Compensatory Mitigation **Options Available to Applicants Other than Government Entities.** -- An applicant other than a government entity may satisfy compensatory mitigation requirements by the following actions, if those actions meet or exceed the requirements of the United States Army Corps of Engineers:
Local Government Banks?

- (1) **Participation in a compensatory mitigation bank** that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation. This option is only available in a hydrologic area where there is at least one compensatory mitigation bank that has been approved by the United States Army Corps of Engineers.

- (2) **Payment** of a fee established by the Commission into the **Ecosystem Restoration Fund** established in G.S. 143-214.12. -- This option is only available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available.

- (3) **Donation of land** to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

- (4) Preparing and implementing a compensatory **mitigation plan**.
Since 2011, no local government banks established
How Many, Where?

- Charlotte – approved local, prior to 1 July 2011
- Raleigh – approved local, prior to 1 July 2011
- Greensboro – not approved prior to 1 July 2011
  - Currently uses credits internally
- AL?
- MS?
- GL?
- SC?
- GA?
- TN?
- KY?
To Bank or not to Bank

Pros
- Revenue
- Savings
- Internal Control
- Location

Cons
- Investment
- Responsibility
  - Design
  - Construction
  - Monitoring
  - Maintenance
  - Credit Ledger
To Bank or not to Bank

Location

- Most banks and many EEP projects far from urban impacts
  - Easement cost
  - Number of parcels
  - Project size
  - Constraints
    - Existing easements (sewer)
    - Stormwater outfalls
Typical Municipal Funding

- CWMTF
- EEP
- 319
- SRF Green Reserve
- Parks and Recreation Trust Fund
Typical Municipal Funding

- CWMTF
  - Competitive
  - Match
  - Limited Funds
  - Uncertain year to year budget
Typical Municipal Funding

- EEP
  - Project Size
  - Credit Need
  - Limited Funds
  - Implementation timeline
Typical Municipal Funding

- 319
  - Competative
  - Match
  - Limited Funds
  - Only 303d waters
Typical Municipal Funding

- PARTF
  - Competitive
  - Match
  - Limited Funds
  - Must be associated with greenway or other P&R project
Typical Municipal Funding

- SRF Green Reserve
  - Competitive
  - Loan
  - MAY be used to implement a bank project
To Team or not to Team

Pros
- No Investment
- Little Responsibility
  - Design
  - Construction
  - Monitoring
  - Maintenance
  - Credit Ledger
  - Only long term maint.
- Location

Cons
- Less or no Revenue
- Limited or no Internal
  Credit Availability
- Limited or no Internal
  Control
Win Win

- Banks don’t have to or will pay less for:
  - Easement holder
  - Easement plat

- Municipalities will get:
  - Projects constructed sooner, rather than later, if ever
  - Confidence of successful completion and release
  - Control over land stewardship and responsibility
ROAD CLOSED
Roadblocks

- Project Identification
- Project Size
Roadblocks

- Administrative/Board Buy In
Roadblocks

- Administrative/Board Buy In
Roadblocks

- Administrative/Board Buy In
Existing Relationships
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