

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 11-13

(Amendment to the Credit Policy Adopted in Resolution No. 09-22)

WHEREAS, the Southeast Metro Stormwater Authority (SEMSWA) adopted Resolution No. 09-22 in regard to SEMSWA credits for System Development Fees (SDF's), Annual Fees, and the Grant Program; and

WHEREAS, the Credit Policy was developed and adopted pursuant to the Board's authorization; and

WHEREAS, the policy addressed the Board's desire to provide existing customers a reduction in the Annual Fee or new customers reduction in a System Development Fee, in the form of a credit for practices that relieve a capital construction or maintenance burden from SEMSWA, or provide enhanced water quality or quantity that benefits the regional stormwater system; and

WHEREAS, the Credit Policy established a process for users of SEMSWA's stormwater management system to apply to SEMSWA for a modification in the Annual Fee or System Development Fee based on an activity on, or improvement to, a parcel of land or other conditions which will reduce the impact of a parcel's runoff into the SEMSWA stormwater system in accordance with the Credit Policy; and

WHEREAS, in accordance with the Board's desire to address credits by establishing a procedure for users of SEMSWA's stormwater management system to apply to SEMSWA for a modification in user's rate or fee because of an improvement to a parcel or other conditions which will reduce the impact of the parcel's runoff on the SEMSWA stormwater system and assist in the implementation of these purposes, SEMSWA has determined it is necessary to revise the Credit Policy to better define and clarify the procedures and processes required in association with a request for a credit; and

WHEREAS, the revisions to the Credit Policy will further the intent of the Credit Policy as an incentive to construct improvements that implement new or enhanced components of the stormwater system, and/or meet the needs of the maintenance goals for stormwater facilities; and

WHEREAS, there are currently no pending applications for a credit making this an appropriate time to amend the Credit Policy.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Directors of SEMSWA acting by and through SEMSWA Water Activity Enterprise hereby approves and adopts the attached Amended Credit Policy.
2. The Executive Director is authorized and directed to implement the Amended Credit Policy effective concurrent with the adoption date of the Amended Credit Policy.
3. The Executive Director is authorized to make minor, non-substantive changes to the Credit Policy.

SOUTHEAST METRO STORMWATER AUTHORITY
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Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

Credit Policy

POLICY INTENT

The Southeast Metro Stormwater Authority (SEMSWA) Board is offering a Credit Program to SEMSWA customers that could reduce the fees some properties pay. The intent of this policy is to provide a mechanism by which developers can reduce their one-time drainage basin fee, referred to as a System Development Fee (SDF), or an existing property owner can receive a credit on their recurring annual stormwater fee, or an existing property owner can apply for technical assistance and grant funds.

STATEMENT OF PURPOSE

The purpose of this document is to establish SEMSWA's Credit Policy. This policy establishes a system of credits within SEMSWA's Service Area for new and existing development. Credits will be offered to provide incentives either to construct improvements that implement a new or enhanced component of the overall stormwater management program, or to take advantage of an existing maintenance program. SEMSWA will utilize three Credit Program options to meet these objectives:

- 1) **SDF Credit**, defined as a one-time reduction in the drainage basin fee resulting from the construction of stream improvements or construction of a regional detention or water quality pond that benefits SEMSWA's stormwater management program. The constructed improvement must be identified in approved Master Plans.
- 2) **Self-Maintenance Annual Credit**, defined as a continuing reduction in the property owner's annual fee for conducting stormwater facility maintenance that would be otherwise performed by SEMSWA. This credit remains in effect as long as the recipient continues to maintain the facility.
- 3) **Grant Program Credit**, defined as a technical assistance and funding program for retrofitting existing facilities. The grant program will use budgeted funds each year to assist property owners with the costs of upgrading stormwater facilities that reduce the demand on and/or enhance the stormwater management program

Definitions of common terms contained in this Policy document are contained in Appendix A.

REFERENCES

Several documents were utilized in preparing this Policy memo, including the following:

- Potential Credits Technical Memo, AMEC, June 11, 2008

Credit Policy

- Further Credit Analysis Technical Memo, AMEC, October 25, 2008
- Credit Policies, AMEC, April 15, 2009

These documents are contained in Appendix B.

BACKGROUND

The rate structure of a public utility is the framework that describes how much each property owner pays. In 2006, SEMSWA established its methodology for calculating stormwater user fees, based on its customers' impact on the stormwater system to discharge runoff (Resolution No.5, Series of 2006 "*Adoption of Level of Service and Fix Rates and Rate Structure*"). The methodology was identified in order to establish the base for the revenue stream.

One component of a rate structure is a rate modifier, of which credits are one type. SEMSWA staff and its consultant, in conjunction with a Board committee, have evaluated the credits available and have determined that the following credits can be applied for:

- 1) A one-time activity by a new developer that constructs a Regional Master Planned stormwater facility that reduces demand on the stormwater system or reduces SEMSWA's cost of services and exceeds what they are required to do for that development (**SDF Credit**).
- 2) On-going activities on the property that reduce SEMSWA's cost of service (**Self-Maintenance Annual Credit**).
- 3) On-going activities on the property that enhance the water quality of receiving waters, and/or reduces the peak flow impact on the stormwater system via retrofitting of existing facilities (**Grant Program Credit**).

These credits are explained in further detail below. For a complete description of the benefits and costs, pros and cons, barriers to use by developers or existing property owners, and a discussion of the financial impact to SEMSWA revenues from each credit type, please see the referenced documents in Appendix B.

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SDF Credit

The major costs to SEMSWA resulting from development are maintenance costs that preserve the capacity of the stormwater system and capital improvements costs that are necessary to increase the capacity of the system to carry increased peak runoff volumes. SDF credits give developers an incentive to build regional facilities that might not otherwise be built, encouraging the over-design of facilities that could help prevent or lessen flooding and channel degradation in the long term. The SDF Credit increases the equity of the rate structure because it recognizes a property's reduced impact on the stormwater system. For example, a new development that completes stream stabilization ahead of development would be eligible for an SDF Credit. However, a new development in an area with adequate regional water quality treatment may not be eligible, since there would be no need for or opportunity to provide treatment for other properties.

Any new development may be eligible for the SDF Credit if its stormwater improvements treat more than their site runoff and the facility fulfills a particular Master Plan-identified quality or quantity need.

SDF Credits up to 100% of the drainage basin SDF may be available depending on the criteria met. A developer may receive a credit for the costs of the regional facility as estimated by SEMSWA. The credit amount will be calculated based on the excess capacity created by the regional facility minus the costs associated with the required site improvements. Additionally, if the costs of the regional facility exceed the drainage basin fee obligation, the developer may receive a SDF Credit for the entire drainage basin SDF and may enter into a Reimbursement Agreement with SEMSWA for the additional costs to construct the facility or improvement.

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Self-Maintenance Annual Credit

Within SEMSWA's Service Area, there are properties with the capability to maintain regional stormwater systems that SEMSWA would otherwise maintain. By maintaining regional facilities, a property owner relieves SEMSWA of the responsibility to use public resources for this portion of the stormwater system. The Self-Maintenance Annual Credit recognizes this effort. For an example, a property may have a formal maintenance program for its infrastructure, including maintaining regional stormwater facilities on their property or a property may maintain an adjoining regional channel as part of its regular landscape maintenance.

To qualify for this credit, a property owner must be able to provide maintenance of regional stormwater facilities that would otherwise be maintained by SEMSWA, maintain the facility per an approved Maintenance Agreement detailing maintenance schedules and other thresholds, responsibilities and formal drainage easements, have a history of such maintenance, and budget to continue this practice into the future.

A Self-Maintenance Annual Credit may not be for more than 50% of the annual fee, as the annual fee paid by the property owner covers more than maintenance, and there is no savings on the other services provided by SEMSWA. The credit may not exceed the actual savings as calculated by SEMSWA for SEMSWA to perform the maintenance activities. The credit will be calculated on a case by case basis, and may be reevaluated each year if conditions or situations change. The annual credit will continue as long as the property owner adequately maintains the regional stormwater facility and complies with the approved maintenance plan.

Grant Program Credit

In the City of Centennial and Arapahoe County, water quality capture volume and flow control detention have been required since 2007 for all new development and redevelopment. Current property owners who built stormwater facilities before this requirement and who wish to upgrade their stormwater facilities to meet quantity and quality goals to exceed requirements that existed at the time of their original facility installation, may apply for a Grant Program Credit. The Grant Program Credit will give existing property owners incentive to upgrade their stormwater facilities which may help to lessen flooding and channel degradation in the long term, and will enhance water quality over time. For example, a property owner that treats more than their share of drainage area runoff in addition to their own, resulting in a classification as a sub-regional facility, may be eligible to receive a Grant Program Credit to retrofit an existing facility to exceed water treatment requirements.

Owners of non-single family residential properties who desire to retrofit facilities that would benefit the regional stormwater system may be eligible. A Homeowners Association (HOA) may

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apply for a grant for facilities that exceed requirements which serve their neighborhood. To qualify for the Grant Program Credit, property owners need to both own an existing stormwater facility that can be upgraded to meet SEMSWA's program goals, and must address an existing or future need for detention or water quality treatment. SEMSWA would assist with the project by providing technical assistance during the design phase of the retrofit as well as partially funding the construction.

The Grant Program Credit would use budgeted funds each year to assist property owners with the costs of upgrading stormwater facilities. The funds budgeted will be determined during each budget cycle. Funds will initially be allocated on a first come, first serve basis, but may need to be part of a priority system if the need exceeds the grant program funds. SEMSWA will work with the property owner to properly design and construct the stormwater facility and will estimate the cost of the construction of the stormwater facility. The grant amount will be based on the excess capacity created by the sub-regional or regional facility minus the costs associated with the required site improvements, if any. The eligible costs and maintenance responsibilities will be established through a Grant Agreement.

CRITERIA

Criteria will be used to guide the Board's consideration of the Executive Director's recommendation for authorizing a credit and the prioritizing of the requests anticipated for the various credits offered. Criteria to determine what conditions will be acceptable for the credits are as follows:

SDF Credit

Credit for the drainage basin fees may be allowed if ~~one or more~~all of the following applicable conditions are met:

1. The Developer constructs a) a regional or sub-regional (as approved by SEMSWA) detention facility that provides excess capacity in a regional system as required by SEMSWA or b) the developer constructs a regional water quality pond, or c) the developer constructs regional stream improvements ahead of development that eliminates the need for a future SEMSWA CIP project as identified in a Master Plan.
2. The ~~regional~~ facility meets SEMSWA's program goals and addresses an existing or future capacity need.

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3. The ~~regional~~-facility serves more than one development or serves an area greater than ~~160-130~~ acres, and the proposed facility is viewed as going above and beyond the quantity or quality requirements of that development.
4. The ~~regional~~-facility provides excess capacity for quantity and/or enhanced quality.
5. The ~~regional~~-facility design includes one or more of the following four steps in addition to capture and treatment of the water quality capture volume (WQCV):
 - a. Reduce runoff volume to the maximum extent practicable.
 - b. Provide WQCV and flood control detention via full-spectrum detention.
 - c. Utilize stream channel stabilization techniques.
 - d. Undertake source control, control illicit discharge, and use best available technologies.
6. The ~~regional~~-facility provides a cost savings by reducing the need for future projects.
7. The ~~regional~~-facility is designed by a professional engineer and meets SEMSWA's design criteria.
8. The ~~regional~~-facility is approved through the standard SEMSWA procedures.
9. The ~~regional~~-facility area is included in the calculation of the SDF.
10. The ~~regional~~-facility meets SEMSWA design, construction, and maintenance standards in effect at the time of construction.

Self-Maintenance Annual Credit

Credit for self-maintenance of regional facilities may be allowed if ~~one or more~~all of the following conditions are met:

1. The facility must be a regional or sub-regional (as approved by SEMSWA) facility that SEMSWA would otherwise be required to maintain.
2. The property owner must have the means to adequately maintain the stormwater facility.
3. Details for maintaining regional stormwater facilities will be documented in a Maintenance Agreement.
4. Certification that the maintenance activities were completed is required annually.
5. A Right-of-Entry form is completed to allow SEMSWA to perform periodic inspections.

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Grant Program Credit

Credit as part of the Grant Program may be allowed if ~~one or more~~all of the following conditions are met:

1. The stormwater facility meets one or more of the following conditions:
 - a. The stormwater facility is being upgraded to include stormwater quality where it was not required at the time of construction.
 - b. The stormwater facility is a regional detention facility that provides excess capacity in a regional system as required by SEMSWA.
 - c. The regional facility meets SEMSWA's program goals and addresses an existing or future capacity need.
 - d. The regional facility serves more than one development or serves an area greater than 160 acres.
 - e. The regional facility is providing excess capacity for quantity and/or enhanced quality.
 - f. The regional facility provides a cost savings to SEMSWA by reducing the need for future projects.
2. The stormwater facility is professionally engineered and meets SEMSWA's design criteria.
3. The stormwater facility is approved through the standard SEMSWA procedures.
4. The stormwater facility meets design, construction, and maintenance standards in effect at the time of construction.

IMPLEMENTATION PROCEDURES

SEMSWA will require that potentially credit-worthy properties apply for credits through a formal Credit Program Application process (Appendix C). The credit is extended only to properties that apply for and demonstrate that they qualify for credits. This means that property owners must make an investment of time and money in order to obtain credits. The Application process is contained in a separate "Implementation of the SEMSWA Credit Program" document.

In general, the implementation procedure for authorizing credits will include:

- ✓ A completed Credit Application Form

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- ✓ A completed Right-of-Entry Form
- ✓ SEMSWA inspection of the property

When all requirements and conditions are met and funding is available, the credit will be authorized upon successful completion of the stormwater improvement project for the one-time SDF Credit, or upon successful completion of the project design for the Grant Program Credit, or upon successful annual inspections of a functioning regional system for the Self-Maintenance Annual Credit.

POLICY EXEMPTIONS/LIMITATIONS

No public or private property shall receive any credits to offset fees for any condition or activity unrelated to SEMSWA's cost of providing stormwater management services. Credits will not apply to permit review, GESD, application, or other permitting or review fees. A credit will not be given for required site stormwater facilities that are the property owner's responsibility to maintain.

APPEALS PROCESS

Appeals of credit decisions may be brought to the SEMSWA Board of Directors by sending a formal written Request for Appeal of Stormwater Credit Determination to SEMSWA within ninety (90) days of SEMSWA's initial determination of a credit request. Such appeal shall include all information and data that the appellant relies on in the appellant's appeal. Such appeal shall be referred to the SEMSWA subcommittee delegated the task of initially reviewing such appeals. If such subcommittee determines that there is a basis for the granting of the relief requested, the appeal will be referred to the entire SEMSWA Board of Directors for a public hearing.

If the Board awards an alternate credit determination, adjustment of fees may be made retroactive.

Appendix A: Definitions

Credits are conditional reductions in the fee assessment to an individual property owner based on the provisions of this Credit Policy.

Development is any change in the use of land that creates additional demand on the stormwater system and need for public facilities.

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Detention Facility is a facility constructed for the purpose of mitigating stormwater runoff from a developed site to control the peak discharge rates (normally maintained as a dry basin).

Maintenance is cleaning, spraying, removing obstructions from and making repairs to a drainage facility so that it will perform the functions for which it was designed and constructed. Maintenance expectations are included in the Maintenance Agreement for the facility.

Maintenance Agreement is a legal agreement between the owner of a quantity or quality facility and the regional stormwater agency.

Master Planned is the effort to take into consideration the impacts of urbanization and increased impervious area on a watershed basis.

Regional ~~Detention~~ Facility is an on-line facility on a major drainageway that serves several developments, has a tributary area greater than 130 acres and is part of a stormwater system that is master planned for optimization of quality and quality controls.

Requirements are the minimum standards as established by SEMSWA.

Stormwater Facilities are all ditches, channels, conduits, retention/detention systems, swales, sewers, and other natural or artificial means of managing stormwater.

Stormwater Improvements are site improvements and facilities that are planned and designed to provide service for development resulting from a development activity and are necessary for the use and convenience of the occupants or users of development.

Sub-regional ~~Detention~~ Facility is a facility located on a minor drainageway that serves more than 1 ~~lot-development~~ and is not part of a regional master-planned system.

System Development Fees are one-time charges paid by new development to finance the construction of public facilities needed to serve it.

Technical Assistance is provided to appropriately design or construct a stormwater facility.

Water Quality Facility is a facility constructed for the purpose of treating stormwater runoff from a developed site.



Board Summary Report

To: Board of Directors

From: Lanae Raymond, WQ Program & Special Projects Program Manager

Date: April 20, 2011

Re: Amendment to the Credit Policy

Board Meeting Date: April 27, 2011

Purpose and Recommendation

The purpose of the Credit Policy is to establish a system of credits within SEMSWA's Service Area for new and existing development. The Credit Policy was established in June 2009 and has been tested by SEMSWA Staff by applying the Credit Policy to possible application situations. However, there have been no formal applications to date. An evaluation of the program with respect to these test cases has identified two issues in the document regarding 1) the intent for the applicant to meet all criteria specified for the particular credit, and 2) revising the verbiage to better define qualifying facilities and clarify requirements for credits as they pertain to these facilities. It is recommended that the Board authorize this Amendment to the Credit Policy to revise the Credit Policy to further the intent of the of the incentive program.

Background

The Southeast Metro Stormwater Authority (SEMSWA) Board adopted a Credit Policy (*Resolution 09-22, adopted June 24, 2009*) that could reduce the Annual Fee and/or System Development Fee (SDF). Each of the Credits identified in the Policy contain a list of criteria that would be used to guide the Board's consideration of the Executive Director's recommendation for authorizing a credit and for prioritizing the requests for the various credits offered. The statements that identify the criteria read as follows:

SDF Credit

*Credit for the drainage basin fees may be allowed if **one or more** of the following applicable conditions are met:*

Self-Maintenance Annual Credit

*Credit for self-maintenance of regional facilities may be allowed if **one or more** of the following conditions are met:*

Grant Program Credit

*Credit as part of the Grant Program may be allowed if **one or more** of the following conditions are met:*

In addition, the SDF credit policy calls out specifically “regional facilities” as those that can receive a SDF credit, and does not implicitly indicate or specifically define the term “regional facility”.

Discussion

After review of potential scenarios, staff realized that utilizing just one of the criteria will not meet the intent of the Credit Policy as an incentive to construct improvements that *implement new or enhanced components of the stormwater system, and/or meet the needs of the maintenance goals for stormwater facilities*. Staff believes that now is the time to revise the Credit Policy, as no formal applications have been submitted to date. Staff feels that the criteria listed for each of the credit types must **all** be met for the application to be considered, and as such, staff is recommending that the language in the Credit Policy be revised to read as follows:

SDF Credit

*Credit for the drainage basin fees may be allowed if **all** of the following applicable conditions are met:*

Self-Maintenance Annual Credit

*Credit for self-maintenance of regional facilities may be allowed if **all** of the following conditions are met:*

Grant Program Credit

*Credit as part of the Grant Program may be allowed if **all** of the following conditions are met:*

Additionally, staff feels that it is in the best interests of SEMSWA’s mission that a credit is available for facilities that provide excess capacity in a regional system, are part of a Master Plan, or may serve a tributary area greater than 130 acres. Staff recommends that the Credit policy be revised to clarify qualifying facilities eligible for the SDF Credit as “facilities” in lieu of “regional facilities”, as the term regional might contradict other noted conditions.

Alternative

The Board may choose not to revise the Policy at this time.

Fiscal Impacts

It is staff’s opinion that it is in the best interests of SEMSWA to make a project/owner meet all criteria for a particular credit type, and to allow applicable sub-regional facilities to participate in the program.

As it is now written, an owner can request a Self-Maintenance Annual Fee credit only with the requirement that “the property owner has the means to adequately maintain the facility”. Staff feels that the other requirements, including that it be a ‘facility that SEMSWA would otherwise maintain’, have a Maintenance Agreement in place, and a Right-of-Entry form on file to periodically inspect maintenance practices, are critical to making sure that the credit is appropriate to SEMSWA’s mission. The fiscal impact from authorizing a credit for an inappropriate maintenance activity would be the lost revenue from the Annual Fee. It remains the Board’s choice to approve recommended credits, so this fee loss can be avoided. However, correcting the verbiage rather than relying on a Board action is more expedient.

Credits for sub-regional facilities will provide excess capacity and/or enhanced water quality and will allow SEMSWA to spend funds on other components of the SEMSWA mission.