



Kimley-Horn
and Associates, Inc.

RECEIVED
DEC 5 2008

WATER QUALITY
WETLANDS AND STORMWATER BRANCH

RECEIVED
OCT 31 2008

DENR - WATER QUALITY
WETLANDS AND STORMWATER BRANCH

08-1473

KN-
7-8-11

P.O. Box 33068
Raleigh, North Carolina
27636-3068

October 31, 2008

Mr. Eric Kulz and Ms. Amy Chapman
NC Division of Water Quality
2321 Crabtree Blvd.
Suite 250
Raleigh, North Carolina 27604

Re: Neuse Riparian Buffer Umbrella Mitigation Bank
Jones, Johnson, and Wayne Counties, North Carolina

Dear Ms. Chapman and Mr. Kulz:

Please find the attached Addendum to the EBX Neuse Riparian Buffer Umbrella Mitigation Bank Prospectus and revised RBMBI. Note that in addition to the inclusion of nutrient offset credit in the instrument, we have amended the credit yield for the riparian buffer mitigation as well. The changes to the riparian buffer mitigation are the result of update information regarding the easement boundary locations. This resulted in a decrease of projected yield from the Marston Site and an increase at the Nahunta Site. The increase at the Nahunta site is the result of the fact that less stream was backfilled than originally indicated. Therefore, the amount of existing wooded riparian buffer was over-estimated at the site. The updated riparian buffer credit yield reflects the fact that the over-estimated existing wooded riparian buffer amount is, now, not subtracted from the total yield from the Nahunta Site.

If there is any additional information you need or any way we can assist in expediting the processing of this application, please do not hesitate to contact me at (919) 653-2950.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.


Todd St. John, PE

Attachments:

Revised RBMBI (Version 2.0)

Addendum to the EBX Neuse Riparian Buffer Umbrella Mitigation Bank Prospectus

FILE COPY

(Revised Version 2.0 October, 2008)

**AGREEMENT TO ESTABLISH THE EBX NEUSE RIPARIAN BUFFER UMBRELLA
MITIGATION BANK
IN JOHNSTON, WAYNE, AND JONES COUNTIES, NORTH CAROLINA**

This EBX Neuse Riparian Buffer Umbrella Mitigation Banking Instrument (RBMBI) is made and entered into on the ____ day of _____, 200_, by EBX Neuse I, LLC, hereinafter Sponsor, and the North Carolina Division of Water Quality (NCDWQ).

WHEREAS the purpose of this Agreement is to establish the EBX Neuse Riparian Buffer Umbrella Mitigation Bank (Bank) providing compensatory mitigation for unavoidable riparian buffer impacts and/or nutrient offsets separately authorized by Authorizations or Variances to impact Riparian Buffers and/or stormwater management requirements per 15A NCAC 2B .0200;

WHEREAS the Sponsor currently controls through the purchase and recording of a permanent conservation easement, certain parcels of land as described in the Neu-Con Wetland and Stream Umbrella Mitigation Banking Instrument (Neu-Con MBI), the RBMBI Prospectus with Addendum, and in the Neu-Con Wetland and Stream Umbrella Mitigation Bank Restoration Plans (Restoration Plans) that are located in the Neuse Basin in Johnston, Wayne, and Jones Counties, North Carolina (Appendix A), and as shown in Figures 1 through 4 of the RBMBI Prospectus and Addendum;

WHEREAS NCDWQ agrees that the Bank site is a suitable riparian buffer mitigation bank site, and that implementation of the plans as described in the Restoration Plans is likely to result in restored and protected riparian buffers at the Bank site;

WHEREAS the Sponsor may acquire additional buffer mitigation sites in the Neuse River Basin and submit each such site to NCDWQ for review and approval for inclusion in the Bank;

THEREFORE, it is mutually agreed between the parties to this Agreement that the following provisions are adopted and will be implemented upon execution of this RBMBI.

General Provisions

1. The goal of the Bank is to restore, enhance, and preserve stream systems with the adjacent riparian buffers and their functions and values to compensate in appropriate circumstances for unavoidable stream buffer impacts and nutrient reduction requirements authorized by 15A NCAC 2B .0233, 2B .0234, and 2B .0235 in circumstances deemed appropriate by NCDWQ.

2. Use of credits from the Bank to offset riparian buffer impacts and nutrient reduction offsets authorized by 15A NCAC 2B .0233, 2B .0234, and 2B .0235. Approvals must be in compliance with said Rules.

(Revised Version 2.0 October, 2008)

3. NCDWQ shall make final decisions concerning the amount and type of compensatory mitigation or nutrient offset to be required for authorized purposes, and whether or not the use of credits from the Bank is appropriate to offset those purposes.

4. The initial Bank sites have previously been restored and are protected by permanent conservation easements. A more detailed description of the baseline conditions of the initial sites is contained in the Monitoring Plans in Appendix A.

5. A Restoration Plan for each proposed additional site shall be submitted to NCDWQ for review and approval prior to each such additional site being included in the Bank, and such submittals shall include a site-specific Monitoring Plan.

6. The Sponsor shall perform the work described in each site specific Monitoring Plan until success criteria have been met.

7. The Sponsor shall monitor the Bank sites as described in the Monitoring (or Restoration) Plans, until such time as the NCDWQ determines that the success criteria of a density of 320 trees per acre after five years have been met. The monitoring period shall be a minimum of five years.

8. The Sponsor is responsible for assuring the success of the restoration, enhancement and preservation activities at the Bank site, and for the overall operation and management of the Bank.

9. The Sponsor shall provide to NCDWQ the annual reports as described in the RBMBI Prospectus and Addendum (Appendix A). The Sponsor shall also copy NCDWQ on correspondence that documents the sales of credits to applicants.

10. NCDWQ shall review said annual reports, and may, at any time, after consultation with the Sponsor, request the Sponsor to take remedial action at a Bank site designed to achieve the specified success criteria.

11. The Sponsor shall implement any remedial measures necessary to achieve the specified success criteria. In the event the Sponsor determines that remedial action may be necessary, it shall provide notice of such proposed remedial action to NCDWQ. No remedial actions shall be taken without the concurrence of NCDWQ.

12. NCDWQ shall be allowed reasonable access to the Bank sites for the purposes of inspection of the Sites and compliance monitoring activities. The Sponsor shall be notified 48 hours in advance of any such NCDWQ inspection.

(Revised Version 2.0 October, 2008)

Use of Mitigation Credits

13. The Geographical Service Area (GSA) is the designated area wherein a bank can reasonably be expected to provide appropriate compensation for riparian buffer impacts or nutrient offset payments. The GSA for this Bank shall include the **Neuse River Basin Hydrologic Units 03020201 for the Westbrook Site, 03020203 for the Nahunta Site, and 03020204 for the Marston Site**. Additionally, other Sites, if approved by NCDWQ, in different 8-Digit Hydrologic Units may be added in the future. Credits generated from such Sites will apply within the 8-Digit Hydrologic Units in which the Sites are located. Use of credits from the Bank to compensate for impacts beyond the GSA may be considered by NCDWQ at an out-of-HUC multiplier of 1.5 on the mitigation or nutrient reduction credits. Separate ledgers shall be developed and maintained for each Site to track mitigation or nutrient reduction credits.

14. The buffer mitigation credits generated by the initial Bank sites shall be as specified in Table 1, below. The nutrient reduction credits are summarized in Table 2, below.

TABLE 1 – Buffer Mitigation Credits

	Zone 1 (sq ft)	Zone 2 (sq ft)	Total (sq ft)	Total (acres)
Nahunta	428,000	250,000	678,000	15.5
Marston	211,000	114,000	325,000	7.4
Westbrook	226,000	131,000	357,000	8.2
Total	865,000	495,000	1,360,000	31.2

TABLE 2 – Nutrient Reduction Credits

2008 mm 11/2/2008 DW 11/10/08

	Nutrient Reduction Buffer (sq ft)	Nitrogen Offset (pounds)
Nahunta	33.6	76,000
Marston	32.4	74,000
Westbrook	19.5	44,000
Total	85.5	194,000

15. It is anticipated by the parties to this Agreement that use of riparian buffer mitigation credits shall be "in-kind;" that is, that riparian buffer credits will be used to offset riparian buffer impacts. For nutrient reduction credits, the Sponsor and NCDWQ agree that the pounds of nitrogen offset per acre of restored riparian buffer shall be 2,273 pounds per acre as established by NCDWQ and applied to existing riparian buffer-based nitrogen abatement sites across the State of North Carolina.

16. Riparian Buffer Mitigation Credits- Riparian buffer mitigation requirements and riparian buffer mitigation credits will be determined according to the procedures described in 15A NCAC

(Revised Version 2.0 October, 2008)

2B 0.233 and .0242. Buffer restoration and buffer enhancement shall be defined per the Memorandum titled "NCDWQ Buffer Interpretation/Clarification #2008-17, January 25, 2008".

17. Nutrient Reduction Credits - Nutrient offset payment requirements and nutrient reduction credits will be determined according to the procedures described in 15A NCAC 2B .0234, 2B .0235, and 2B .0240 provided such use has met all applicable requirements and is authorized by the appropriate authority.

18. Notwithstanding the above, all decisions concerning the appropriateness of using credits from the Bank to offset impacts to riparian buffers or offset nutrient reduction shall be made by NCDWQ or NCDWQ's designee. Any necessary notice to and consultation with NCDWQ or NCDWQ's designee for use of credits shall be through the riparian buffer impact or appropriate stormwater review process.

19. Twenty percent (20%) of the riparian buffer mitigation credits and nutrient reduction credits for each Bank site shall be available for sale immediately upon completion of all of the following:

- a. Execution of this RBMBI by the Sponsor and NCDWQ;
- b. Approval of the Restoration and Monitoring Plans by NCDWQ;
- c. Delivery to NCDWQ of the financial assurance described in paragraph 24 of this RBMBI;
- d. Recordation of the preservation mechanism described in paragraph 23 of this RBMBI;

20. The Sponsor must complete the initial physical and biological improvements to each Bank site pursuant to the Restoration Plans no later than the first full growing season following initial debiting of the Bank. The Sponsor shall provide a record drawing or as-built survey to provide a record of the amount and nature of buffer restoration and enhancement completed.

21. Subject to the Sponsor's continued satisfactory completion of all required success criteria and monitoring, additional buffer mitigation credits shall be available for sale by the Sponsor in accordance with the schedule specified in Table 2, below:

(Revised Version 2.0 October, 2008)

Riparian Buffer Restoration and Enhancement Credit Release:

Table 2 – Credit Release Schedule

Task	Project Milestone	% Credit Available for Sale
1	MBI and Prospectus Approved by NCDWQ, Conservation Easement or Restrictive Covenants Recorded and Financial Assurance Provided to NCDWQ	20
2	Mitigation Site Earthwork, Planting and Installation of Monitoring Devices Completed	20
3	Approval of As-Built Report	10
4	Submit Monitoring Report #1 to NCDWQ (meets success criteria)	10
5	Submit Monitoring Report #2 to NCDWQ (meets success criteria)	10
6	Submit Monitoring Report #3 to NCDWQ (meets success criteria)	10
7	Submit Monitoring Report #4 to NCDWQ (meets success criteria)	10
8	Submit Monitoring Report #5 to NCDWQ (meets success criteria)	10
	Total	100

22. Monitoring of the riparian buffer restoration and enhancement shall be based on the **CVS-EEP Protocol for Recording Vegetation Level 1-2 Plot Sampling Only** Version 4.0, as indicated in the Restoration and/or Monitoring Plans based on a success criteria of 320 trees per acre after five years.

23. The Sponsor shall submit separate, annual ledgers for each Site documenting riparian buffer credit releases and debits and the nutrient reduction credit releases and debits to NCDWQ for maintaining accurate records of credit transactions made from each Site of the Bank. The ledgers will reflect the amounts of riparian buffer mitigation credits and, separately, the nutrient reduction credits. The buffer mitigation areas generally comprise the restored buffer Zones 1 and 2 adjacent to the various streams. The nutrient reduction credit areas generally comprise the restored riparian buffer areas that are adjacent to streams from the outside edge of Zone 2 to 200 feet from the stream bank but within the easement boundaries. The nutrient reduction credit areas also generally comprise restored buffers along ditches from the top of bank to 200 feet but within the easement boundaries. The credit areas shall not overlap. Credits can be converted and transferred from buffer mitigation to nutrient reduction credits, but the opposite shall not occur. Accounting procedures shall include the generation of a report by the Sponsor showing credits used each time they are debited from the Bank, which the Sponsor shall provide within 30 days of the debit to NCDWQ. In addition, the Sponsor shall prepare an annual report, by the end of

(Revised Version 2.0 October, 2008)

each calendar-year, showing all credits used, and the balance of credits remaining to NCDWQ, until such time as all of the credits have been utilized, or this Agreement is otherwise terminated. All reports shall identify credits debited and remaining by type of credit (e. g. riparian buffer), and shall include for each reported debit the NCDWQ ID number for the Authorization for which the credits were utilized.

Property Disposition

24. The Sponsor has recorded a Permanent Conservation Easement for each initial Bank site in the County where each site is located. The Sponsor shall record similar easements for each additional site approved for inclusion in the Bank.

Financial Assurances

25. The Sponsor will provide to NCDWQ financial assurances for the pre-construction release of credits in the form of performance bonds or letters of credit. Such financial assurances shall be in the amount of twenty percent (20%) of the credits anticipated to be generated for each site multiplied by the NCEEP price for riparian buffer mitigation in the Neuse River Basin. Such financial assurances shall be retired upon submittal of the as-built report for each site. For the initial Sites of the Bank (Marston, Westbrook, and Nahunta), no financial assurances are required as the Sites have completed or are in the monitoring period.

Miscellaneous

26. Any delay or failure of Sponsor shall not constitute a default hereunder if and to the extent that such delay or failure is primarily caused by any act, event or conditions beyond the Sponsor's reasonable control and significantly adversely affects its ability to perform its obligations hereunder including: (i) acts of God, lightning, earthquake, fire, landslide, drought, hurricane, storm, flood, or interference by third parties; (ii) condemnation or other taking by any governmental body; (iii) change in applicable law, regulation, rule, ordinance or permit condition, or the interpretation or enforcement thereof; (iv) any order, judgment, action or determination of any federal, state or local court, administrative agency or government body; or (v) the suspension or interruption of any permit, license, consent, authorization or approval. If the performance of the Sponsor is affected by any such event, Sponsor shall give written notice thereof to the NCDWQ as soon as is reasonably practicable. If such event occurs before the final availability of all credits for sale, the Sponsor shall take remedial action to restore the property to its condition prior to such event, in a manner sufficient to provide adequate mitigation to cover credits that were sold prior to such delay. Such remedial action shall be taken by the Sponsor only to the extent necessary and appropriate, as determined by NCDWQ.

27. No third party shall be deemed a beneficiary hereof or shall be entitled to seek enforcement hereof.

(Revised Version 2.0 October, 2008)

28. In the event any one or more of the provisions contained in this RBMBI are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this RBMBI shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

29. This RBMBI shall be governed by and construed in accordance with the laws of North Carolina and the United States as appropriate.

30. The terms and conditions of this RBMBI shall be binding upon, and inure to the benefit of the parties hereto and their respective successors.

31. All notices and required reports shall be sent by regular mail to each of the parties at their respective addresses, provided below:

Sponsor:

Mr. Thomas Rinker
EBX Neuse I, LLC
10055 Red Run Boulevard, Suite 130
Owings Mills, MD 21117-5822

NCDWQ:

Ms. Coleen Sullins, Director
Division of Water Quality Wetlands Unit
1650 Mail Service Center
Raleigh, NC 27699-1650

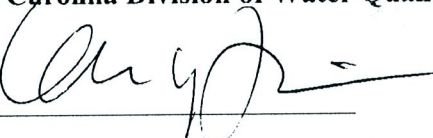
(Revised Version 2.0 October, 2008)

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled
"Agreement To Establish The EBX Neuse Riparian Buffer Umbrella Mitigation Bank In
Johnston, Wayne, and Jones Counties, North Carolina":**

Sponsor: EBX Neuse I, LLC

By:  Date: 11/10/08

North Carolina Division of Water Quality:

By:  Date: 11/07/08

(Revised Version 2.0 October, 2008)

List of Appendices

Appendix A: RBMBI Prospectus and Addendum