

Background

The Nature Conservancy (TNC) and the Chicago Metropolitan Planning Council (MPC), in coordination with the Metropolitan Water Reclamation District (MWRD) of Greater Chicago, have completed significant analyses to assess the feasibility and policy considerations associated with establishing a stormwater credit trading market in Cook County (the Market). To further the development of the Market, TNC and MPC retained Corona Environmental Consulting, American Rivers, and AMP Insights (project team) to evaluate key aspects of market administration. The objectives of this analysis are to:

- Understand the processes and systems needed to effectively administer the market
- Evaluate fiscal and legal aspects of alternative administration scenarios
- Assess complexities and tradeoffs associated with having a third-party administer all or some aspects of the Market, in coordination with MWRD and its' member municipalities
- Develop alternatives and make recommendations related to Market administration structure and responsibilities.

To conduct this analysis, the project team reviewed literature and information on existing environmental markets and conducted interviews with individuals knowledgeable on the administrative functions associated with those markets. We leveraged the experience and knowledge of TNC and MPC team members, along with our experience in stormwater credit trading market design, to develop market administration options and recommendations. We also spoke with MWRD staff to better understand the agency's current processes related to watershed management permits (WMPs), as well as their capacity to undertake additional market administration activities. The project team was advised by lawyers at Latham and Watkins about various legal implications associated with potential administration models.

Market Administration Activities

Figure 1 shows the administrative functions necessary to support the Market, organized as follows:

- Administrative functions related to the ***demand side*** of the market, including tasks associated with facilitating participation in the market by developers seeking offsite compliance (outlined in yellow in Figure 1);
- Administrative functions related to the ***supply side*** of the market, including tasks associated with facilitating credit generation, certification, and sales (outlined in red in Figure 1);
- ***Additional market administration functions and considerations***, including administrative activities that cross over the supply and demand sides of the market and other activities and considerations associated with overall administration (outlined in blue in Figure1).

For each activity identified in Figure 1, the project team considered alternatives that reflect varying levels of complexity (where applicable) in terms of how the activity should be performed or structured, as well as the potential for different administrative roles for MWRD and Authorized Municipalities, a third-party Market administrator, and/or MWRD's member municipalities. The accompanying report provides additional detail on the specific activities associated with each task.

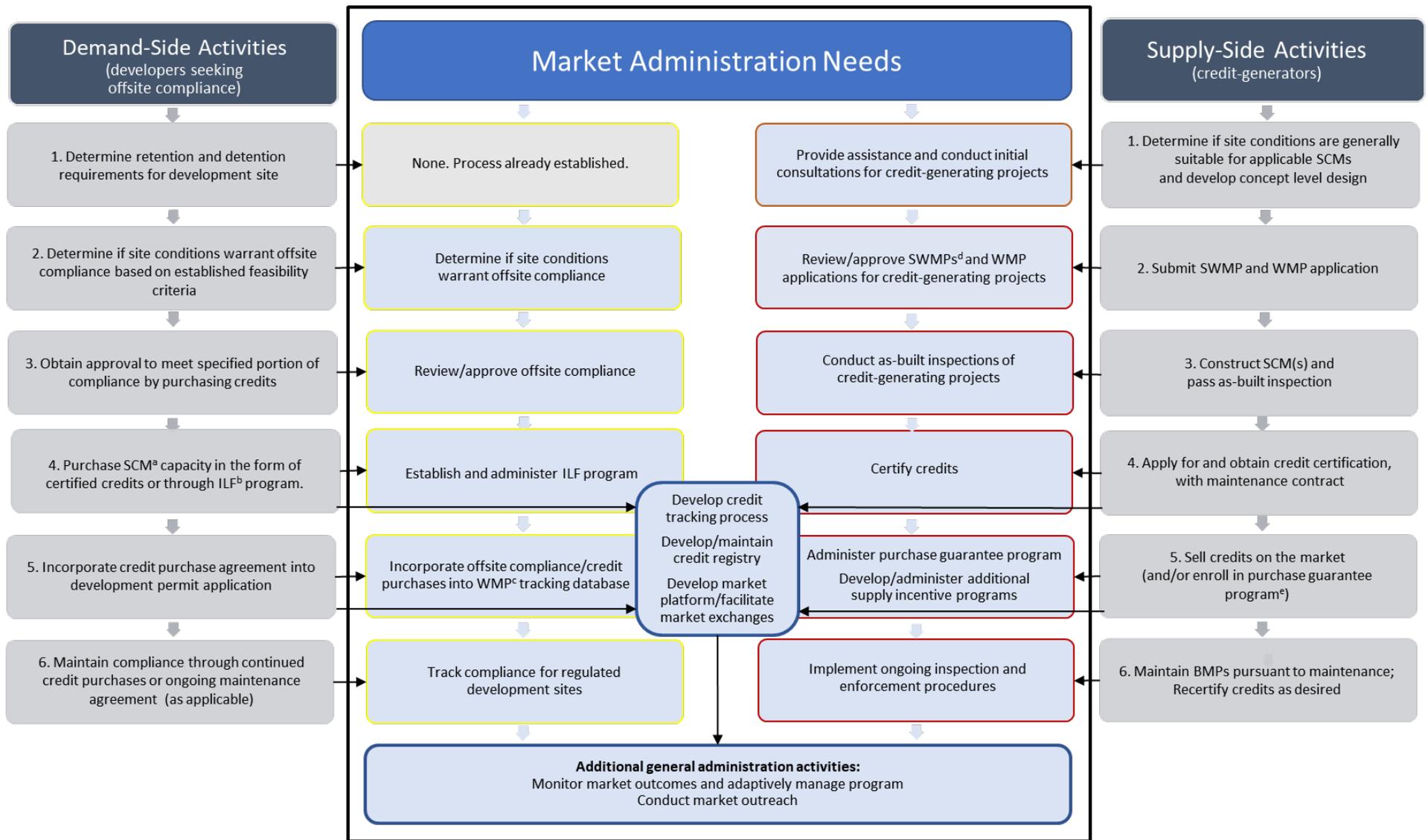


Figure 1. Overview of administrative processes for Market

a). SCM – Stormwater control measure, commonly referred to as stormwater best management practice (BMP); b). ILF - in-lieu fee, offers developers the option to pay a fee to MWRD (or designated party) in lieu of purchasing credits; c). WMP – watershed management permit – all stormwater control measures (SCMs, including onsite and offsite require a WMP from MWRD; d). SWMP – stormwater management plan, developers and credit-generators need to submit a SWMP with their WMP application. SWMP details the design and construction of SCMs; e. Purchase guarantee program is a form of market incentive intended to provide certainty to potential credit generators where MWRD or designated party serves as the buyer of last resort for credits.

Key Findings and Recommendations

The project team's analysis of Market administration needs and options reveals that many of the tasks necessary to support a functioning market are already conducted by MWRD¹ as part of the existing Watershed Management Permit (WMP) approval/issuance process and/or are closely related to current District functions. Many of these tasks must be retained by MWRD because they cannot legally be delegated to a third-party. This includes tasks related to WMP review, approval, and compliance enforcement. As described below, there are additional administrative functions that could feasibility be undertaken by a third-party administrator and/or with support from member municipalities.

Tasks required or recommended for MWRD/Authorized Municipalities

On the demand side of the market there are several administrative tasks that only the District can perform, including:

- Establish criteria and define site constraints that allow developers to seek offsite compliance.
- Develop processes for reviewing and approving offsite compliance for developers, as well as for tracking offsite compliance within existing WMP database.
- Take appropriate enforcement actions if developers fail to purchase credits.

In addition, the project team recommends that MWRD implement and administer an in-lieu fee program. This is a critical component of the Market because it provides certainty to buyers that an offsite compliance option will be available and serves as the Market ceiling price for credits. MWRD has the expertise to perform this task in house; requiring a third party to establish this capacity for a program that would not be highly utilized could result in unnecessary cost inefficiencies.

On the supply side, the District's Watershed Management Ordinance (WMO) requires all credit-generating projects to obtain a WMP. As such, there are two functions that MWRD will be required to perform:

- Review and approve WMP applications for credit-generating projects
- Conduct final/as-built inspections of credit-generating projects

While not necessarily legally required, the project team recommends that MWRD serve as the agency that officially certifies credits associated with supply projects. Credits must be officially certified before they can be sold on the Market and only after a project has passed final inspection. As a contingency of credit certification, credit generators must commit to maintaining their stormwater control measure (SCM) by signing a maintenance agreement. Because MWRD must retain enforcement authority for credit-generating projects, it makes sense for the agency to sign off on the maintenance agreement and to certify credits as part of this process.

Tasks that could be undertaken by third-party administrator

There are additional administrative functions associated with the Market that could be accomplished by MWRD through the establishment of an "in-house" program. This option would require the District to devote sufficient and focused funding, staff, and programmatic leadership to develop new capacities and

¹The 14 Authorized Municipalities within MWRD service area have authority to implement WMP-related functions. Roles identified for MWRD also apply to Authorized Municipalities.

expand existing ones. Alternatively, these functions could be undertaken by a third-party under contract to the District. This includes activities related to developing and implementing a credit tracking process and developing and maintaining a credit registry and market exchange platform. As described in more detail in the accompanying report, these activities require the development of a comprehensive database and online Market platform, and related expertise. If a third-party administrator takes on these tasks, program staff will need to work closely with MWRD staff to develop and maintain necessary data-sharing functions. Additional activities that could be undertaken by a third party, include:

- Provide pre-application technical assistance and consultations to potential credit-generators
- Track on-going compliance of credit-purchasing development projects
- Manage self-reported inspection process for credit-generating projects, conduct any necessary follow up inspections, and notify MWRD of non-compliance issues
- Administer a purchase guarantee program and other supply-side incentive programs
- Monitor market outcomes and adaptively manage program
- Conduct Market outreach activities related to fostering both Market supply and demand.

Role of member municipalities

As described in the accompanying report, many Market administration activities are well-suited to be supported by member municipalities based on their existing relationships with developers and the roles municipalities currently play in the WMP process. However, there is relatively little advantage to relying on MWRD's 148 member municipalities to play a large market administration role. Some municipalities within the District may face financial, staff, and cultural constraints if tasked with additional administration roles. More importantly, the interests of managing a consistent market across the six watersheds within MWRD's service area suggest that division of Market administration across multiple municipalities would give rise to avoidable complications and problems.

Conclusions

The project team's analysis identifies the administrative tasks necessary to support a functioning stormwater credit trading program in Cook County. MWRD will need to play an essential role in many of these tasks; however, our finding is that the Market could be effectively administered through a partnership between MWRD and a third-party administrator. A third-party administrator would provide cost-effective support, augment MWRD's expertise in specific areas, reduce MWRD's administrative burden, and provide a centralized administrative function that coordinates activities across MWRD's member municipalities and watersheds. Table 1 provides a visual representation of the potential role that MWRD, a third-party administrator, and member municipalities could play in Market administration.

Further, there are several activities that need to occur to get the Market up and running. As a first step, MWRD will need to evaluate which administrative tasks it wants to conduct in-house and which tasks it plans to contract to a third-party. A precursor to establishing the market is to develop clear criteria for developers to determine whether they can meet stormwater management requirements through offsite compliance and to establish an offsite compliance review process. While the infrastructure for tracking credits and conducting market exchanges needs to be in place at the outset of the market, the complexity of these systems can evolve over time. Programs related to Market outreach and incentives can also change and develop as the Market matures.

Table 1. Potential role of MWRD, third-party, and member municipalities in Market administration.

Dark green indicates leading role; light green indicates supporting role of recommended/required party

Administrative Tasks	MWRD	Third-party	Municipalities
Demand-side administrative activities			
Determine if site conditions warrant offsite compliance; review and approve offsite compliance	✓*		✓
Establish and administer ILF program	✓		✓
Incorporate offsite compliance / credit purchase into WMP tracking database	✓*	✓	
Track compliance for regulated development sites (if ongoing credit purchase is required)	✓*	✓	
Supply-side administrative activities			
Provide technical assistance and conduct initial site consultations		✓	✓
Review and approve WMP applications	✓*		✓
Conduct as-built inspections	✓*		
Certify credits	✓		
Administer Purchase Guarantee Program		✓	
Develop and administer additional supply incentive programs		✓	
Inspect and enforce compliance for credit-generating projects	✓	✓	✓
General administrative activities			
Develop credit tracking process	✓	✓	
Develop/maintain credit registry	✓	✓	
Develop market platform/facilitate market exchanges	✓	✓	
Monitor market outcomes and adaptively manage program	✓	✓	✓
Conduct market outreach	✓	✓	✓
<p>✓ = Recommended/required responsible party ✓ = Additional responsible party/supporting role * = Activities MWRD is required to perform (even in supporting role)</p>			