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Stormwater: Tips and Strategies for Funding the Unfunded Mandate

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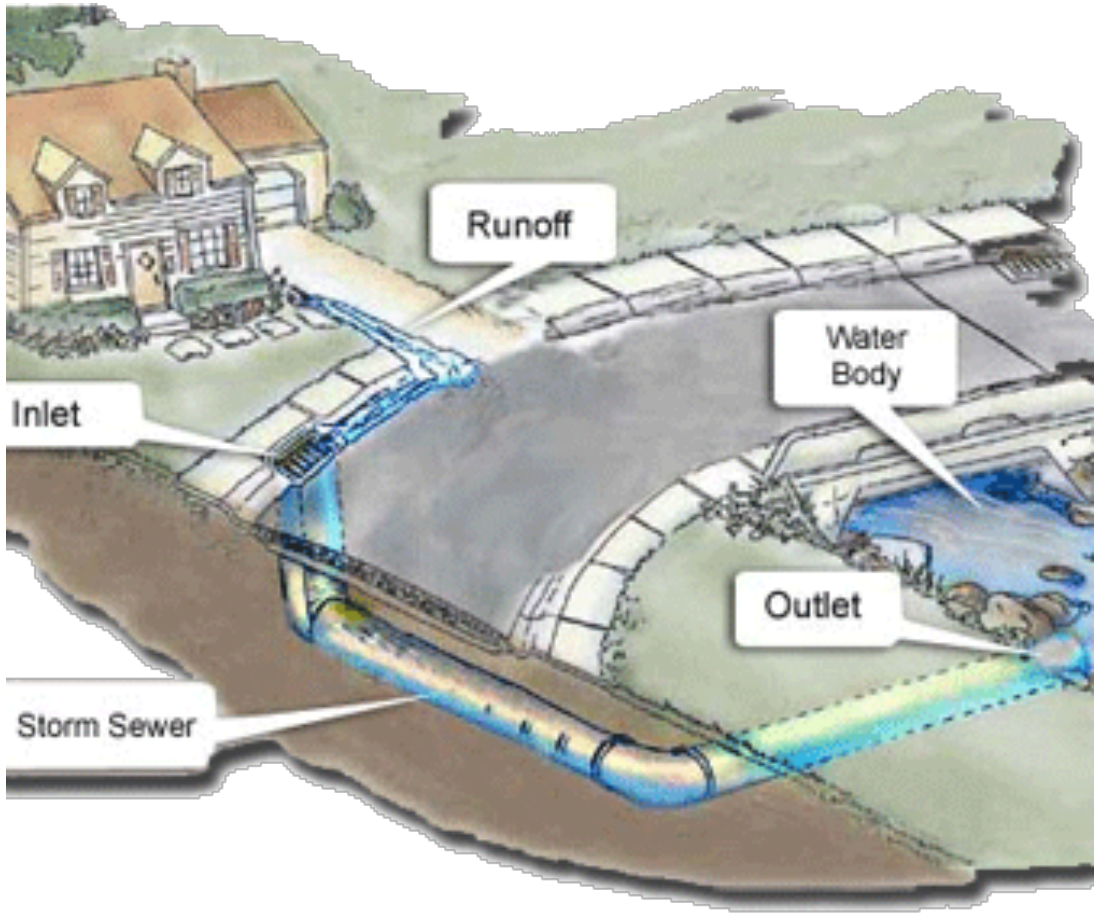
How does stormwater runoff occur?

- Stormwater runoff occurs when precipitation from rain or snowmelt flows over the ground.

- Impervious surfaces like buildings, rooftops, driveways, sidewalks, and streets prevent stormwater runoff from naturally soaking into the ground.



What is the problem?

- Stormwater can pick up debris, chemicals, dirt, and other pollutants and flow into a stormwater system or directly to a lake, stream, river, wetland, or coastal water.

- Anything that enters a storm sewer system is discharged untreated into the waterbodies we use for swimming, fishing and providing drinking water.



What is an MS4?

- An MS4 is a conveyance or system of conveyances that is:
  - Owned by a state, city, town, village, or other public entity that discharges to waters of the U.S.;
  - Designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.);
  - Not a combined sewer; and
  - Not part of a Publicly Owned Treatment Works (sewage treatment plant).

Why do cities care, why is this a funding issue?

- Polluted stormwater runoff is transported through the MS4s, from which it is usually discharged untreated into local waterbodies.

- To prevent harmful pollutants from being washed or dumped into an MS4, operators must obtain a NPDES permit and develop a stormwater management program.

- A municipality's NPDES permit requires an ever-increasing array of responsibilities being put upon the operator, and failure to comply results in fines, among other things

NPDES permits for municipal stormwater discharges

- (i) are issued on either a system- or jurisdiction-wide basis;
- (ii) include a requirement to *effectively prohibit non-stormwater discharges into the storm sewers*; and
- (iii) require *controls to reduce the discharge of pollutants to the maximum extent practicable*, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

- 33 USCS § 1342 (emphasis added)

Ways that Cities Fund Stormwater Management Programs

Service Fees

- ***Service fees within a city's water or wastewater system budget***
  - Line items within a city's water or wastewater enterprise system budgets
  - Waster & wastewater utilities charge customers fees for services rendered
  - Typically base customers fees on metered water flow

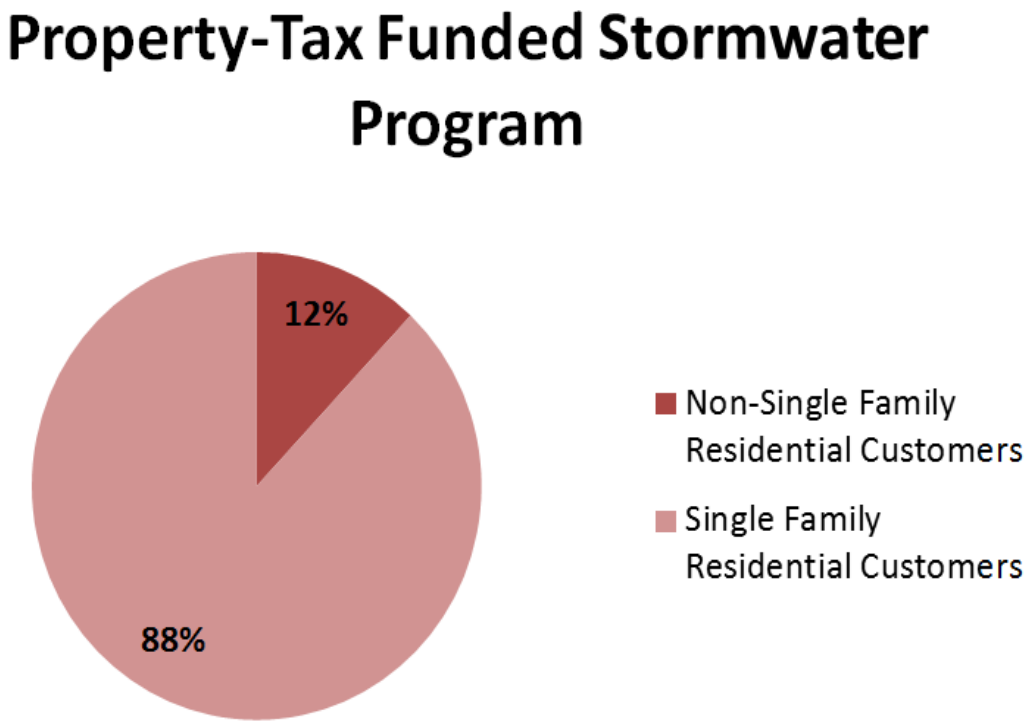
- ***Equity problem***
  - A property's metered water flow usually bears no relationship to the SW runoff it generates
  - Example: shopping center
    - Generates significant amount of SW runoff from impervious area of its buildings & parking lots
    - Usually uses relatively small amount of metered water

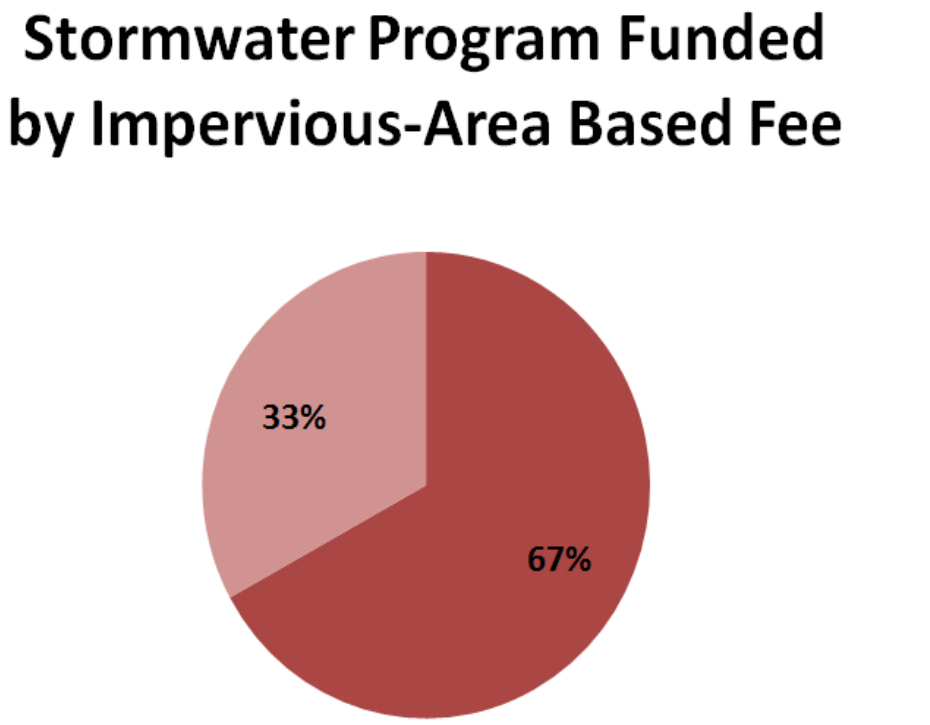
Property Taxes/General Fund

- ***Property taxes paid into general fund (GF)***
  - Fierce competition for GF $ + low priority
  - Total cost of SW management not readily apparent
  - SW management costs increase ≠ matching increase in GF budgets

- ***Equity problem***
  - Tax-exempt properties will contest their obligation to pay
    - Examples – schools, colleges, universities, governmental properties like state agencies and federal government facilities
    - Property taxes based on assessed property value of property
    - Cost of SW service to individual properties bears no relationship to assessed value of the property

Distribution of stormwater management costs in Baltimore City based on property taxes (left) versus an impervious-area based stormwater fee (right). (Source: *Baltimore City Department of Public Works, 2013*)





Special Assessment Districts & System Development Charges (SDC)

- ***Special assessment district fees***
    - If SW construction project benefits only a portion of municipality
    - Funded by fees assessed only to those properties within that area
- ***System development charges (SDC) or Impact fees, sometimes called connection fees or tie-in charges***
    - One-time fees to connect to water/wastewater system
        - to buy into infrastructure already built for them, to pay fair share of infrastructure expansion necessary to serve them, or combo of both
        - Based on potential water demand new customer will place on system
    - Stormwater SDCs can also be developed
        - but amount of SW SDC typically tied to area of customer's property
- ***Limitation problem -- for these funding approaches -- limitations on how and where the funds can be applied***

Stormwater Utility (SWU) & SWU Fees

- Funds costs of services directly related to control & treatment of SW
- Operates in a manner similar to an electric or water utility
- Administered and funded separately from revenues in GF
- Ensures dedicated revenue source for SW mgmt expenses

Stormwater Utilities

What is a stormwater utility

- In the stormwater industry, the phrase “Stormwater Utility” refers to three primary elements:

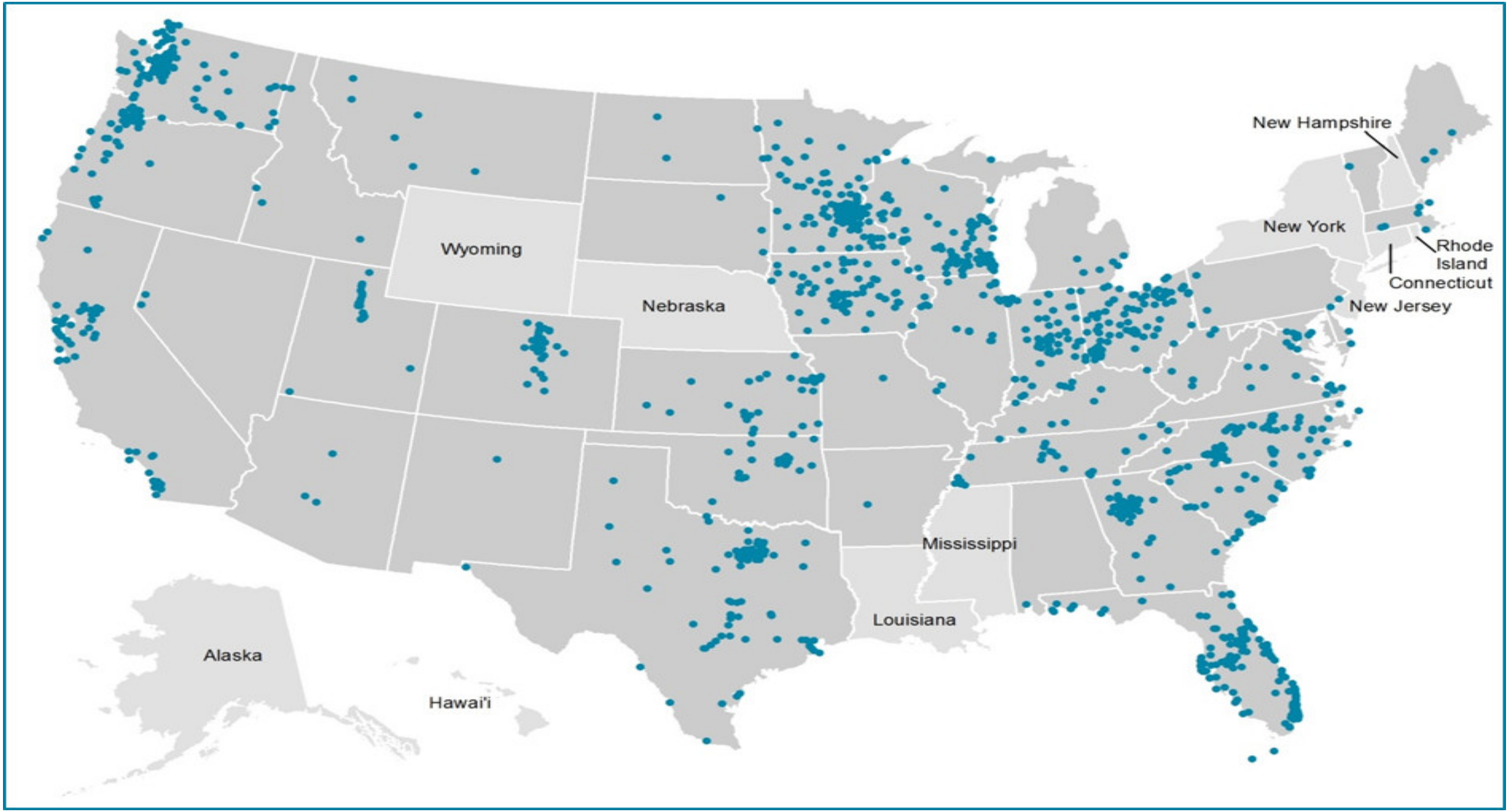
1. a program that defines stormwater operations and management;

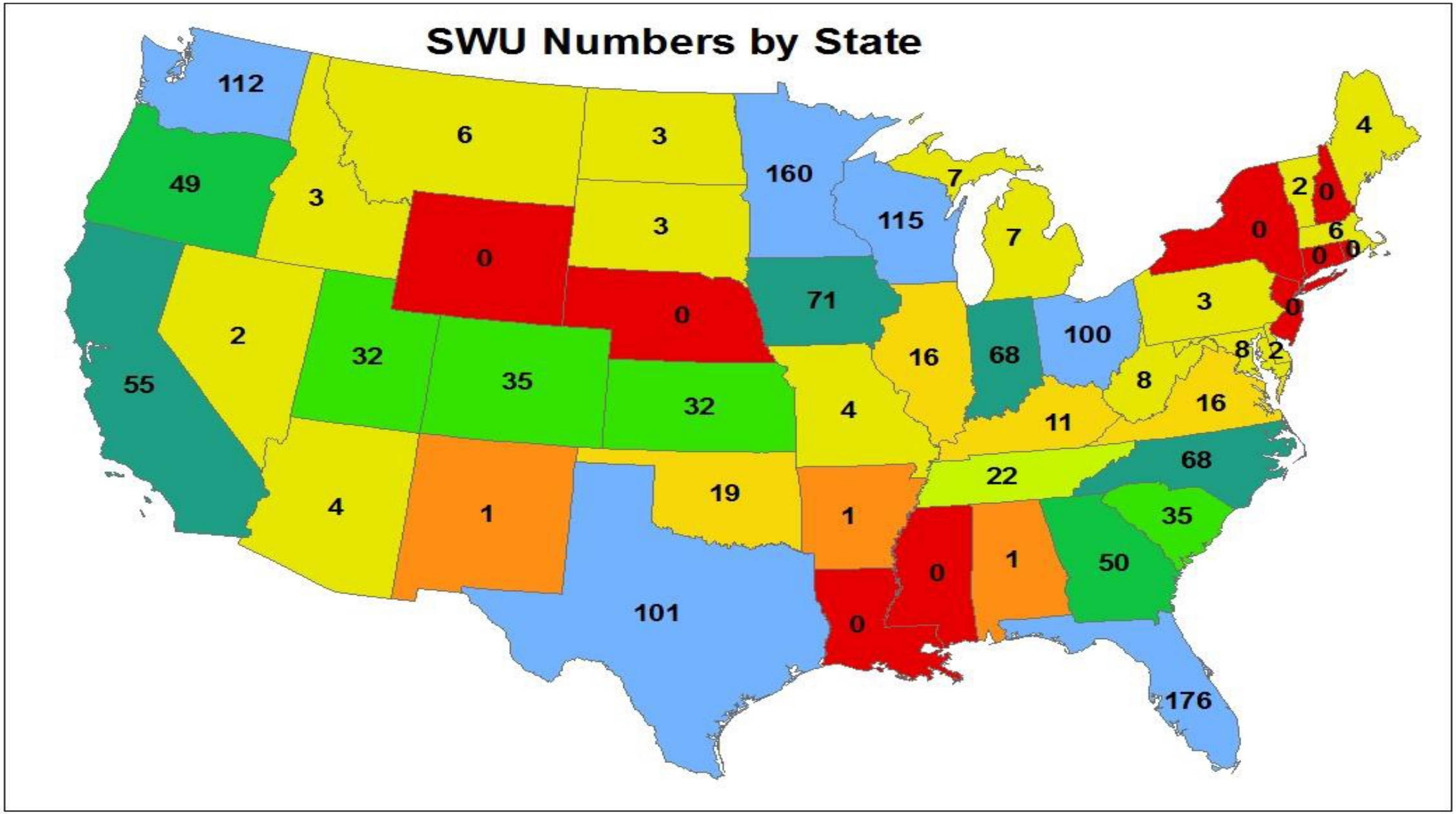
2. an organization that is responsible for governance; and

3. a funding approach that provides dedicated financing.

Benefits of SWU

- No tax increases
  - local property taxes are not increased
- Stability and predictability
  - unlike taxes, utilities not dependent on whims of annual budgetary process
- Equity - SWUs are equitable
  - cost is borne by the user on basis of user's demand placed on the drainage system.
  - All owners of property, including tax exempt property, pay for SW management
- Credits - SWUs can incorporate credits
  - individuals can pay reduced rate for helping to diminish amount of runoff from their properties.
  - foster community awareness of water pollution problems
  - support treatment of impaired waterbodies
  - encourage individuals to reduce runoff from their properties
  - help prevent water pollution before it starts.


New Hampshire
New York
Rhode Island
Connecticut
New Jersey
Wyoming
Nebraska
Mississippi
Louisiana
Alaska
Hawai'i



Source: Western Kentucky University Stormwater Utility Survey 2013

Tips and Strategies from Case law

Tax vs. Fee & other issues frequently litigated

- most frequently litigated issue -- question of whether a service charge is actually a “tax.”
- Other issues also emerge, sometimes as subset of the “fee vs. tax” issue, whether the fee . . .
  - Is voluntary,
  - Is “reasonable” and directly related to the cost of providing the service
  - benefits those it is imposed upon
  - Must be used to cover the cost of providing the narrowly defined stormwater services alone, or
  - Can any surplus can be used for capital improvements.

Revenue generated cannot be in excess

- Stormwater fees that generate revenue in excess of what is needed to operate the stormwater program can be found by a court to be a tax.

- If a stormwater fee is deemed a tax it will be struck down as invalid.

Amounts collected and spent need not be exact

- Revenue generated by fee must correlate with the costs to administer the program, but
- amounts collected and spent do not need to correlate exactly
- the difference between expenses and revenues must be reasonable.

When creating a stormwater utility

- *Stakeholder Support*.
  - Use of a citizen's stakeholder group
  - effective technique that facilitates problem understanding, a vision for the future, and shared ownership of the plan
- *Quick Concept Study*.
  - Done to assess basic advisability of pursing a stormwater program and funding with a stormwater user fee.
  - Low cost and quick, to build an internal vision for going forward
- *Feasibility Study*.
  - Done to assess the existing stormwater management program, make recommendations for future directions and changes
  - assess feasibility of funding the program with a stormwater utility (user fee) and other methods.
  - Designed to be low risk -- givea political leaders security in a phased approach that involves others in the decision to proceed.

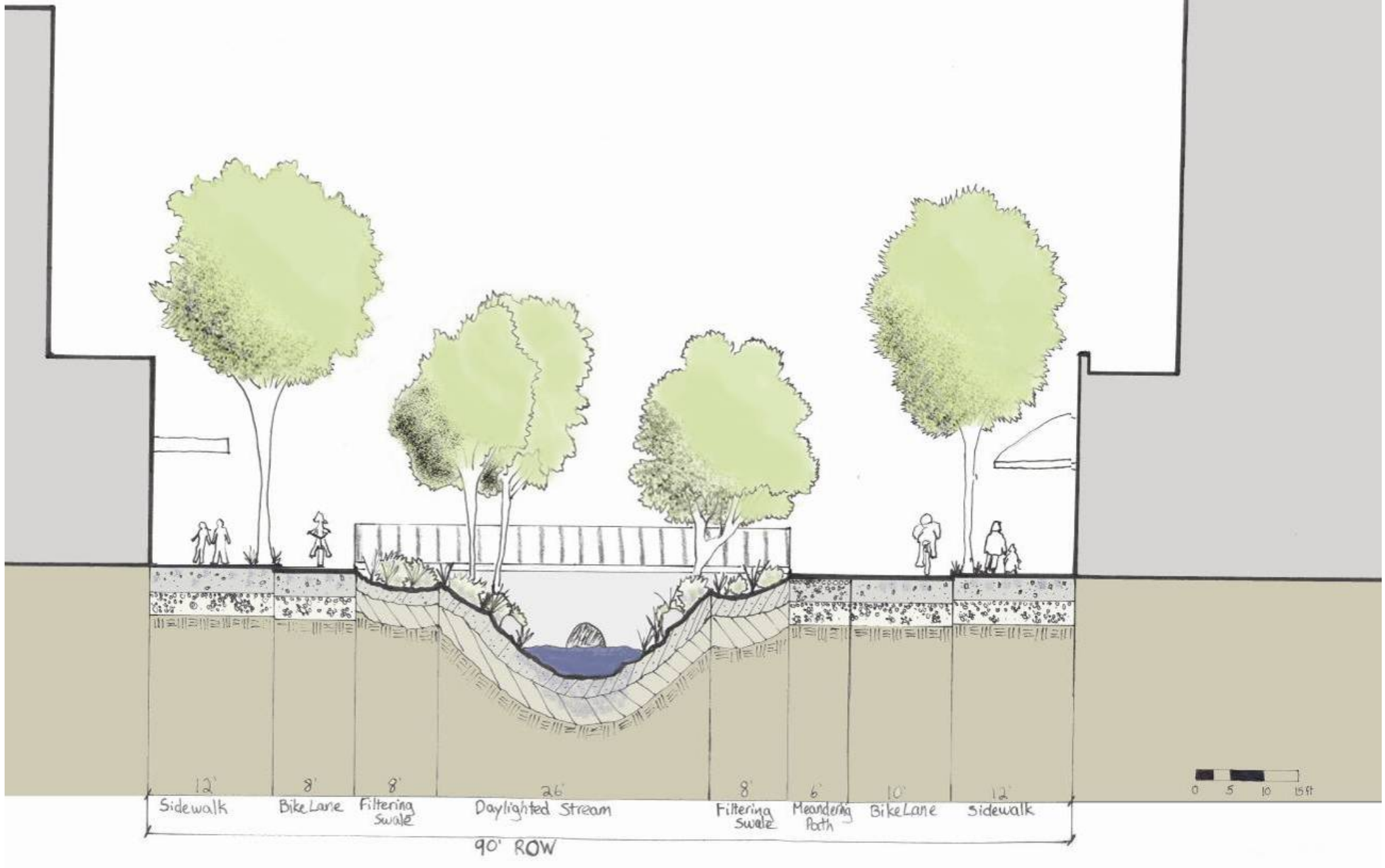
Provisions or programs to consider including in your ordinance

- *Opt–Out Provisions/Voluntary*. An element found to influence the question of whether a stormwater service charge is a fee or a tax is whether the user has a choice to accept or decline the service. Consider allowing for an "opt-out" provision that will provide for a situation where the user has a choice to accept or decline the service.
  - *Development Codes*. Do the municipality's own development codes allow for low intensity development, green infrastructure, and the type of retrofits that would allow a user to lessen or eliminate their property's impact on the stormwater system?
- *Credits*. Consider providing users with credits for undertaking certain activities intended to lessen the impact of their property's contribution to stormwater runoff and pollutants. Credits can be given for reducing the impervious cover footprint, for installing green infrastructure improvements on their property.
- *Appeals*. Consider allowing for a meaningful appeals process whereby a user can contest the stormwater charges.

Regarding surviving a legal challenge

- *Legal authority*.
  - Know the legal authority for the stormwater utility fee.
  - Charter, statutes, applicable provisions of the state constitution, key precedents in your jurisdiction.
- *Data*.
  - A rate methodology must have supporting data.
  - Know the data and how it was created.
  - Know what the data can and cannot support.
- *Experts*.
  - Employ and contract with experts, and use them often and regularly, both the utility's own resident/employee experts as well as outside consultant experts
  - Utility's experts should be significantly more knowledgeable than the plaintiff's regarding the utility in general, technical and financial aspects providing the basis for the utility's extant stormwater fees, the rate structure, stormwater operations, programs, and projects.

What some cities are doing related to stormwater management programs


12'
Sidewalk
8'
Bike Lane
8'
Filtering Swale
26'
Daylighted Stream
8'
Filtering Swale
6'
Meandering Path
10'
Bike Lane
12'
Sidewalk
90' ROW
0 5 10 15 ft

The Living Lattice: Network of Neighborsheds

Integrated, Connected Green Infrastructure

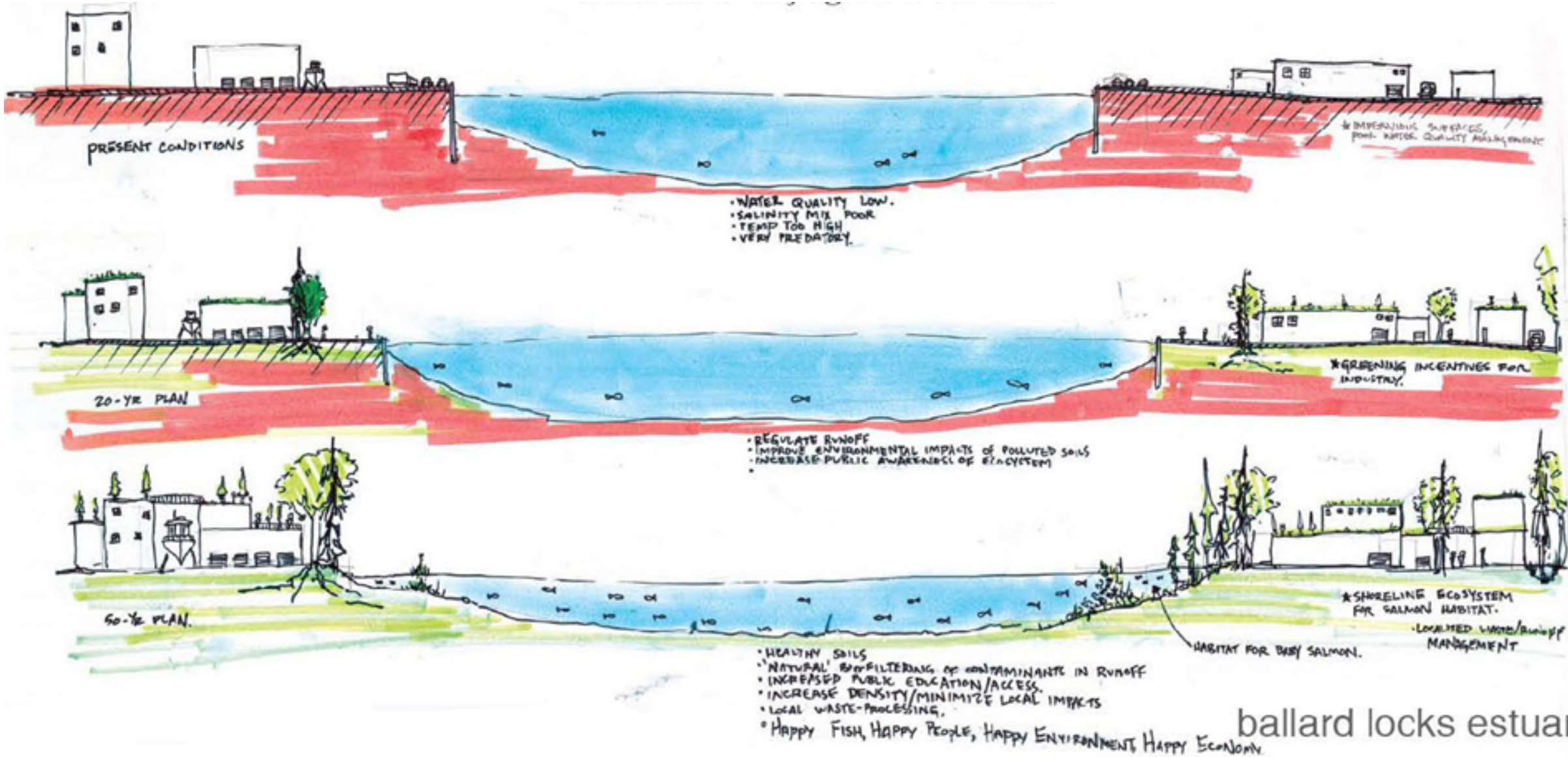
- Aggregation of Open Space to Create Connections and Urban Green-ways
- Redefined Transportation Corridors

Density and Community

- Green Roofs and Walls

Ecological Open Space

- Understand the City as Watersheds
- Respect for Underlying Conditions
- Re-establish Historic Streams & Creeks
- Restore Shorelines for Habitat
- Recreate Natural Drainage to Restore Our Waters
- Enhance Greenbelts and Habitat Networks



ballard locks estuary



alaskan way container canyon



river mouth area



kellogg island

The Services of Green Infrastructure

Expensive
Disruptive
Energy + Material Consumptive
Contributes to Greenhouse Emissions
Requires Extractive Processes



Relatively Inexpensive
Community Asset
Locally Grown and Harvested Materials
Sequesters Carbon
Effectively Stores/Slows/Treats Stormwater Runoff





Some examples of projects funded by stormwater fees in Maryland are shown below.

Howard County plans to install bioretention practices like this one that will treat more than 2,000 acres of land in the county (Source: Center for Watershed Protection)



Baltimore County plans to reforest 50 acres of streamside land such as this to help achieve their nutrient and sediment reductions (Source: Chesapeake Bay Program)



This map includes those cities and utilities cited by the Report's contributors and is not meant to be comprehensive. Many other cities and utilities also are innovating in clean water.

