

BALDWIN COUNTY STORMWATER COOPERATIVE

# **Baldwin County Stormwater Cooperative Feasibility Assessment**

Prepared for:

Mobile Bay National Estuary Program  
and the Baldwin County Stormwater Working Group

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## BALDWIN COUNTY STORMWATER COOPERATIVE

### Executive Summary

#### *Purpose*

The purpose of this project was to explore the formation of a regional stormwater program concept and funding mechanism that would provide stormwater management support to the local governments located in Baldwin County, Alabama.

There are a number of things that initially attracted local leadership to this idea, but the primary reason is the need to protect and preserve the unique and attractive surface resources in the county, and to do so in a cost effective manner. This is coupled with a mutual desire to guide sound development in a way to promote economic growth and development without sacrificing the natural surface water resources that contribute so much to the quality of life enjoyed by all regional citizens.

#### *Why might a regional stormwater program be an attractive idea?*

The agency would be formed to:

- focus the various limited stormwater programs in one synergistic agency to both save money and remove responsibilities from generally underfunded and understaffed local governments.
- more effectively respond to changing regulatory mandates as a unified region.
- become more consistently and uniformly responsive to citizen flooding and infrastructure decay.
- bring consistency and coordination in promulgation and management of: design standards, review and inspection, watershed protection, capital construction, levels and extents of stormwater service across the region, and regional planning of capital needs.
- provide a "watershed-based" approach for solving water quality degradation.

#### *What would the regional agency do?*

The mission of the Baldwin County Stormwater Cooperative (BCSC) would be: **The BCSC exists to support local communities in managing flooding, drainage, and water quality problems related to urban stormwater runoff in Baldwin County.**

In addition to funding and technical assistance, the agency would provide comprehensive stormwater management services including: watershed information and master plans, stream system inspections, consistent development standards and design criteria, education and training, water quality programs and compliance, capital construction and remedial maintenance management. Optional services would be provided in addition to those services above and would include: customer service, plans review, construction inspections, infrastructure maintenance and replacement, minor system inspections, engineering and planning support, enforcement support and other general stormwater consulting services.

#### *How would its activities be paid for?*

The agency would be funded primarily through a stormwater user fee (sometimes called a stormwater utility). The user fee has the advantages of being equitable, stable, adequate, and very flexible to adjust to varying circumstances and to provide credits. The user fee would be charged to developed parcels in participating entities and would be based on the amount of hard surface covering the parcel. Hard surfaces do not allow rain to penetrate, which creates runoff, which creates the demand for a stormwater system and stormwater management.

#### *How would it be governed and managed?*

The agency would be formed by special legislation and would be under the control of a Board and Executive Committee. Participation would be voluntary and each participating entity would be fairly represented on the Board. Policy decisions would focus on equitable return of revenues to constituent members, program efficiency and effectiveness, a strong connection between fees paid and services rendered, and flexible application of programs to fit the variety of circumstances and needs of its members.

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# BALDWIN COUNTY STORMWATER COOPERATIVE

## *Chapter 1 – Overview and Purpose*

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### **Overview**

Baldwin County local governments have been facing water quality issues associated with non-point source pollution for years, as has the rest of the nation. In fact, non-point source pollution and specifically stormwater runoff have been a focus of discussion in Congress since as early as the late 1980s. In 1988, a report to Congress stated that “Stormwater is the leading cause of water quality impairment in the United States.” To address stormwater management, the United States Environmental Protection Agency began focusing their environmental management efforts in earnest in 1990 on managing non-point sources of pollution rather than point sources of pollution, which had been their focus since the 1970s. In addition, a variety of other stormwater issues have grown in importance including: development pressures, channel flooding, erosion, and deteriorating infrastructure.

To better manage stormwater issues at a local level, many cities and counties have created stormwater utility districts. Stormwater utility districts can provide a range of services including planning, designing, constructing, inspecting, maintenance, and preservation activities. In addition, a stormwater utility district provides a stable source of funding, an equitable rate structure, and opportunities for incentives if best management practices are employed. Today, there are over 600 stormwater utility districts developed with the purpose to generate funds especially designated for stormwater management and stormwater programs.

Baldwin County, Weeks Bay Reserve, Alabama Coastal Foundation and Mobile Bay National Estuary Program, along with the entities within the County, joined forces in the summer of 2006 and formed the Baldwin County Stormwater Working Group (SWG) to explore whether the formation of a regional stormwater program and funding mechanism, such as a stormwater utility district, is feasible and desirable. AMEC Earth & Environmental and Eco-Systems, Inc. were hired by the Baldwin County SWG to conduct the project.

### **Goal**

The goal of this project was to address two basic questions:

1. What is the advisability of forming a regional organization to assist local communities in their local stormwater management programs?
2. What is the advisability of funding it with a stormwater user fee?

The process and results of this study are described in the following chapters. The study was conceptual in nature, but resulted in the establishment of a framework to move forward and potential legislative language.

## **Membership**

The Baldwin County SWG is comprised of representatives, typically members of staff, from Baldwin County and the following cities or towns: Daphne, Elberta, Fairhope, Foley, Gulf Shores, Loxley, Magnolia Springs, Orange Beach, Robertsdale, Silverhill, Spanish Fort, and Summerdale.

## **Process**

The role of the Baldwin County SWG was three-fold:

1. Complete a questionnaire about current stormwater program practices, efforts, costs, and resources and about the most pressing problems, needs, and issues;
2. Participate in the regional meetings and in three Baldwin County SWG meetings designed to identify the (1) activities a regional stormwater program might provide, (2) the organizational structure of a program, and (3) the funding mechanism of such a program; and
3. Participate in reaching a decision regarding next steps and how to gain community and political awareness and support.

Initially, three regional meetings were held across the county to encourage countywide participation. These kickoff meetings were developed to discuss details of the project and to initiate individual discussions with the participating entities. The meeting focused on: (1) current spending and activities in stormwater management, (2) current funding sources, (3) compelling needs and issues, and (4) opportunities and the climate for potential change. A report was developed as a result of the regional meetings describing the entities' current stormwater programs and current funding mechanisms.

The SWG then began their meetings to discuss the background information gathered from each entity and to initiate the action plan process. The SWG determined their top concerns, problems and issues that they felt a regional stormwater program should address to be successful.

## **Report**

The following chapters describe the roles of the potential organization based on preferences discussed by the Baldwin County SWG, the legal issues surrounding the formation of a regional stormwater program, and the estimated potential costs, potential revenue, and potential funding sources for a program for such an organization.

Also included in this report are the recommended next steps in gaining political and public support.

## Chapter 2 – Compelling Case for Change

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### Overview

Baldwin County is one of the largest counties in the southeast and is comprised of many communities. The communities share the watershed and natural and economic resources of Mobile Bay and the coast of the Gulf of Mexico. The majority of the county is growing rapidly and experiencing the environmental impacts of urban development.

Prior to the first meeting, the SWG completed a questionnaire regarding descriptions of their community, the local government's ability to manage stormwater, and the drivers for their local stormwater program. Most communities revealed the main drivers were: (1) infrastructure maintenance to prevent small-scale flooding and to repair aging infrastructure, (2) growth and development pressures, (3) improving water quality and meeting regulatory demands, and (4) preservation of property value and quality of life in Baldwin County.

To discuss the drivers further...

1. Infrastructure Maintenance. Few of the communities have adequate maintenance programs for the burgeoning stormwater infrastructure and frequent flooding events. Most are strictly reactive programs, and a few have no stormwater management program at all. All will be stretched to the breaking point in the next few years.
2. Growth Pressures. Most of the communities are facing enormous growth pressures far outstripping the ability of the local staff to handle effectively. The communities do not have strong enough design standards and criteria, plans review staff, inspection staff, erosion control programs, master plans for areas facing development, or on-going maintenance. The lack of technical tools, data, and master plans is seen as a real draw back in the ability of the governments to work effectively with proposed developments and to anticipate and work to minimize the impacts of such developments.



3. Regulatory Demands. The demands of water-related regulatory programs are growing very fast. There is a strongly felt need for some organization to represent and steward the watershed and surface water aspects of the regulatory demands and to do so in a regionally coordinated manner and in partnership with water and sewer agencies, where practical and applicable. This would also give the region a stronger voice in regulatory matters and a better ability to steer its own course in the face of new programs and the advent of TMDL implementation.
4. Quality of Life and Property. Most people moved into the region because of the high quality of life. Preservation of that standard and of property values in the face of development is a strong and mutually felt desire among member communities.



So why a regional agency? There were a number of reasons to explore this idea, but the primary reasons were a shared desire to protect and preserve the unique and attractive surface resources in the county, and to do so in a cost effective manner. This is coupled with a mutual desire to guide sound development in a way to promote economic growth and development without sacrificing the natural surface water resources that contribute so much to the quality of life enjoyed by all regional citizens.

Much of the discussion centered around a few strongly felt needs:

- To focus the various limited community stormwater programs into one synergistic agency to both save money through economies of scale and reduced duplication, and remove critical responsibilities from generally underfunded and understaffed local governments.

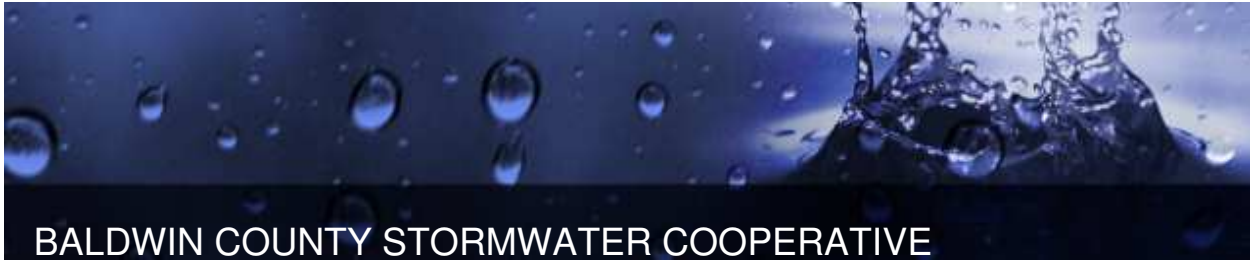
- To simplify regulatory compliance and more effectively respond to changing regulatory mandates as a unified region.
- To become more consistently and uniformly responsive to citizen flooding and infrastructure decay complaints and needs.
- To bring consistency and coordination in promulgation and management of: design standards, review and inspection, watershed protection, capital construction, levels and extents of stormwater service across the region, and regional planning of capital needs.
- To provide a “watershed-based” approach for solving water quality degradation would receive favorable reviews by state and federal regulators, thus opening funding opportunities that would otherwise not be available to individual communities.

### ***Problems, Needs and Issues***

During the first meeting, each SWG member expressed their key concerns. The group went through an exercise on key issues, problems, needs and the reasons that a regional agency could be effective. The longer list of concerns was combined and reduced to the following nine key program priority areas:

- **Water Quality** – Includes all aspects of water quality, green design practices, monitoring, buffers, water supply protection, and the development of water quality standards for site design.
- **Watershed Planning** – Includes watershed master planning, regional approaches to site development analysis, capital improvement planning, and coordination with other land and growth planning efforts.
- **Funding & Administration** – Includes the institutional barriers to regional cooperation, administrative barriers to effective enforcement, lack of manpower at the local level, the inefficiency of a piecemeal approach to managing surface water resources, and the coordination of responsibilities at various political levels and across geographies.
- **Development Controls** – Includes dealing with the complete development process from site permitting and regulation of structure location, and plans review, through site inspection and enforcement, including current holes in the ability of local governments to oversee development within their jurisdictions.
- **Operations & Maintenance** – Includes oversight, management and execution of maintenance of existing stormwater systems including the proper upkeep of private stormwater controls and systems.
- **Technology** – Includes the establishment of appropriate databases and analysis tools and software.
- **Education & Training** – Includes public, stakeholder and key staff education and awareness.

- **Flooding** – Includes major and minor system flooding and administration of floodplains and the Federal flood insurance program.
- **Channel Restoration** - Includes protection and restoration of natural channels, streambank restoration and protection, and maintenance of channels in their natural condition.



## **Chapter 3 – Program Concept**

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### **Background Considerations**

A question was posed to the SWG that basically addressed the potential activities of a desired regional organization. What would the regional agency do? Prior to considering program specifics, the group discussed key background considerations necessary to formulating a program concept.

Local stormwater programs accomplish certain activities and they also pay for certain activities that are not seen as operational functions. There are many operational functions of a stormwater program from maintenance and planning to education and enforcement. Some operations can be performed and managed locally. However, many local programs are overwhelmed by the many other functions required of a stormwater program are not capable of performing these functions efficiently and successfully on their own. As noted by the SWG, these functions include:

<i>General Data Collection</i>	<i>Capital Improvements</i>	<i>Design Criteria, Standards, &amp; Guidance</i>
<i>Mapping and Imagery</i>	<i>Master Planning</i>	<i>Land, Easements, and ROW</i>
<i>GIS Applications</i>	<i>Engineering and Planning</i>	<i>Inspections</i>
<i>Hazard Mitigation</i>	<i>Water Quality Retrofitting</i>	<i>Regulation and Enforcement</i>
<i>Routine Maintenance</i>	<i>Drainage System Inspections</i>	<i>Illicit Discharges &amp; Illegal Dumping</i>
<i>Remedial Maintenance</i>	<i>Flood Insurance Programs</i>	<i>Watershed Assessments and TMDLs</i>
<i>Emergency Response Maintenance</i>	<i>Erosion Control Programs</i>	<i>Industrial Monitoring</i>

### **Roles of a Regional Stormwater Entity**

The SWG discussed a variety of roles that a regional stormwater entity could fill along a continuum of roles, from provision of information only through complete involvement in all aspects of the local stormwater program. The proposed feature roles and sub-program components of what is currently being called the Baldwin County Stormwater Cooperative or BCSC is described below.

### **Program Overview**

The essential character of the BCSC is one of regional support to local stormwater programs. As such, and by way of example, it has the ability to:

- Be a force for consistency in appropriate stormwater program levels of service across the urbanized and urbanizing portions of the County and address issues on a multi-jurisdictional watershed related basis;

- Be of technical competence with an ability to provide guidance and support to local governments in sound engineering and planning practices.
- Be an impartial source of data, a home for storage and provision of other information such as mapping or floodplain information;
- Be an integration force for comprehensive master planning with an ability to assist local governments in land use decision making;
- Provide for elimination of redundancy and a vehicle for cost sharing where local entities are performing activities in a manner that overlaps others;
- Integrate the County's response to unfunded regulatory mandates in a way that insures compliance while reducing individual entity cost;
- Assume stewardship of the inter-community drainage system and receiving waters through monitoring, remedial maintenance, capital construction, and other activities;
- To collect and disburse funds to local governments and to serve as a single point of contact for some customer service and educational components; and
- Provide as requested, optional stormwater program management services for municipalities without the staff to provide comprehensive services to its citizens.

**Mission Statement:**  
**The Baldwin County Stormwater Cooperative exists to support local communities in managing flooding, drainage, and water quality problems related to urban stormwater runoff in Baldwin County.**

The BCSC is planned to be governed in an equitable way, to work on a cooperative basis, and to provide significant value to each constituent member. Membership in and receiving the benefits of the BCSC will be on a voluntary basis. All unincorporated areas of the county are expected to be included with recognition that rural areas typically have a lesser impact on the stormwater system.

The SWG discussed specific program roles and made recommendations concerning whether these would be core or optional roles and whether they should be priority for immediate deployment or reserved for a later phase of program implementation.

### ***Program Details***

The ultimate roles of the BCSC are organized into five major themes. It was decided that, in many of the themes there would be “core services” that are part of the BCSC’s role throughout the County, and there are also “optional services” that can be obtained from the BCSC on a cost reimbursable basis by any participating local municipality. This provision of a flexible suite of services allows for meeting the great variability of needs among the local governments. While the locally focused services are optionally provided by the BCSC, the need for these services by the citizens is not optional –

***It is envisioned that the BCSC will play five major roles:***

- ***Watershed and Stream Stewardship,***
- ***Development of Standards and Criteria,***
- ***Regulatory Compliance Coordinator,***
- ***Stream System Manager,***
- ***Local Stormwater Program Service Partner.***

they are part of a moderate service level necessary for proper stormwater management throughout the urban portions of the County.

The actual details of the overall cost of the program, its growth path, and the details of various policies have yet to be negotiated among the member communities. There are many unanswered questions. Yet there is unanimous support among local community staff for the concept and for the general structure of the program framework.

The Table below gives the overall details of the program concept.

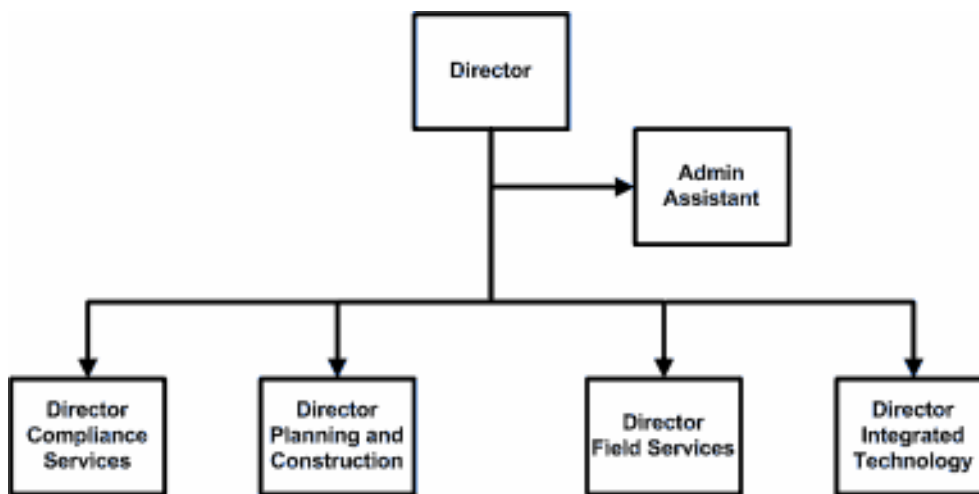
<p><b><i>BCSC Stormwater Program Role</i></b></p>	<p><b><i>Key Features of the Program Role</i></b></p>
<p><b><i>Watershed and Stream Stewardship</i></b></p>	<p>This program element deals with the ability of the BCSC to take a regional and watershed look at the streams and to develop planning and monitoring tools to assess health and to track changes due to development. It also allows the BCSC to provide local governments with timely analysis of proposed land use changes and to provide input on the impacts of such changes on stream flow and pollution. The BCSC can serve as a central repository of watershed data and can also develop tools and applications to serve this data to local planners, developers, and others.</p> <ul style="list-style-type: none"> <li>• Development of watershed information and data for entity use</li> <li>• Stream system inspection, monitoring</li> <li>• Education programs to raise public awareness</li> <li>• Coordination of regional projects and activities</li> <li>• Development of watershed master plans and real-time models which can serve as a tool to predict the impacts of new development</li> <li>• Development of GIS, mapping, databases and applications pertinent to local government needs and to compliance</li> </ul>
<p><b><i>Development of Standards and Criteria</i></b></p>	<p>The BCSC will work to establish consistent standards for development and regulation of stormwater and related activities. This includes development of coherent and useful design criteria, training and education, and support to local governments in adoption of such standards and ordinances. The BCSC is also the agency that will investigate and seek better ways to apply new green standards for development and land use.</p> <ul style="list-style-type: none"> <li>• Development of regional stormwater design criteria and standards for optional local adoption</li> <li>• Investigation into and development of green designs, low impact development, and sustainability design approaches</li> <li>• Development of model stormwater and related ordinances</li> </ul>

	<p>And optionally, at the request of a local government:</p> <ul style="list-style-type: none"> <li>• Education of the development and plans review staff in new standards</li> <li>• Application of standards locally</li> </ul>
<p><i>Regulatory Compliance Coordinator</i></p>	<p>The BCSC will provide services to all local communities in compliance with NPDES stormwater permits as well as assistance in other regulatory programs as the need arises. The point is that it can help eliminate redundancy, reduce issues of non-compliance, and provide a consistency of approach across the County.</p> <p>For those communities that do not have the resources to comply appropriately with permit requirements or to take advantage of FEMA flood insurance programs and program cost reductions, the BCSC can effectively provide those services on a cost reimbursable basis.</p> <ul style="list-style-type: none"> <li>• Coordination of NPDES permit compliance</li> <li>• Execution of various joint permit compliance components</li> <li>• Compliance and tracking all water quality and related permits</li> <li>• Non-profit group coordination and partnerships</li> <li>• Coordinate annual updates and reports</li> <li>• Development of grant applications and lobbying efforts on behalf of the county communities</li> <li>• Become a co-applicant to the NPDES permits</li> </ul> <p>And optionally, at the request of a local government:</p> <ul style="list-style-type: none"> <li>• Compliance-based inspections such as erosion control, illicit connections, post construction controls, etc.</li> <li>• Long term inspections of stormwater systems and key structural controls</li> <li>• Floodplain management and regulatory enforcement</li> <li>• Multi-objective floodplain corridor management</li> <li>• FEMA program implementation and local cooperating technical partner execution</li> </ul>
<p><i>Stream System Manager</i></p>	<p>The BCSC will assume responsibility for the management and protection of streams through inspections, capital construction and remedial maintenance management and other educational activities.</p> <ul style="list-style-type: none"> <li>• Capital construction master plans</li> <li>• Capital construction project planning, design and management</li> <li>• Stream inspection, remedial maintenance and operations management</li> <li>• Stream condition inspections</li> </ul>

<p><b>Local Stormwater Program Service Partner</b></p>	<p>For those communities that cannot attain the level of service they would wish for their stormwater programs, the BCSC can provide cost reimbursable services in a number of local government stormwater program areas such as:</p> <ul style="list-style-type: none"> <li>• Collection and administration of user fees</li> <li>• Collection of user fees for local governments</li> <li>• Development of a call and customer service center</li> <li>• Local plans review</li> <li>• Local site development-related inspections</li> <li>• Local maintenance management</li> <li>• Local neighborhood master plans</li> <li>• Capital construction management</li> <li>• Maintenance management</li> <li>• Minor system inspections</li> <li>• Enforcement support</li> <li>• Complaint response</li> <li>• General stormwater and surface water consulting services to local governments</li> </ul>
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**Program Structure and Cost**

Basic cost estimates were generated for the suite of County-wide roles enumerated above. In every case efforts were made to describe a moderate level of stormwater service appropriate to the County’s needs. The figure below depicts a proposed organizational structure reflective of the key program functions and operational efficiency. The program is leanly staffed making maximum use of existing resources in local government, non-profit organizations and the private sector.

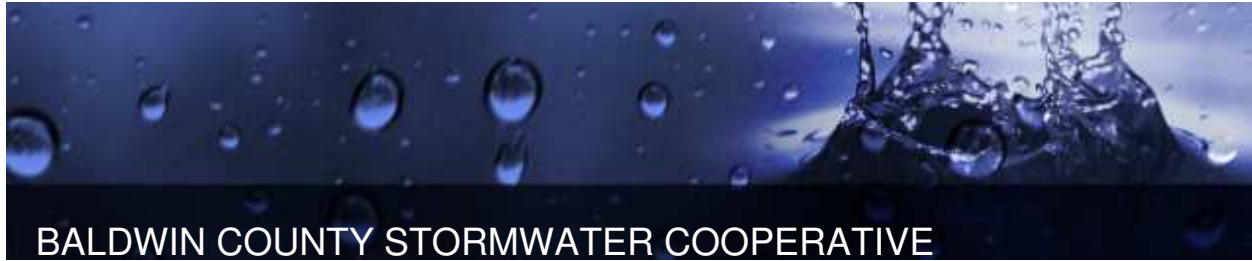


The following describes the key positions:

- **Director** – responsible for the overall direction and success of the organization. Handles all administration, funding and finance, supervision, policy setting, direction, external relationships, etc.
- **Administrative Assistant** – handles day-to-day administrative support, correspondence, filing, billing, etc.
- **Director – Compliance Services** – responsible for coordination of permit compliance, execution of joint permit activities, all education activities, coordination with external groups, joint annual updates, grant applications, lobbying.
- **Director – Planning and Construction** – responsible for master planning, capital construction planning, design and construction management, remedial maintenance, contracting, and regional project coordination.
- **Director – Field Services** – responsible for all aspects of field operations including all inspections, construction observation, monitoring, etc.
- **Director – Integrated Technology** – responsible for the establishment and maintenance of data and database development, maintenance and support and digital applications including housing and serving regional data, web-based services, model upkeep.

It is estimated that the non-construction related aspects of the overall program may cost in the range of \$800,000 to \$1,200,000. The capital construction need and need for remedial stream maintenance is unknown at this time, but a figure of \$1,500,000 to \$2,000,000 was used for planning purposes.

These duties and cost estimates do not include optional support to local governments for their local programs – which would be provided on a cost reimbursable basis either through the use of locally generated revenues or through the provision of a user fee surcharge applied locally to cover the cost.



## **Chapter 4 – Legal Options**

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### **Overview**

In order to fully understand the context through which the Baldwin County SWG will create an entity to manage stormwater related issues in Baldwin County, it was considered important to have a full understanding of the legal options that exist for formulation of that entity. In an effort to address these issues, considerable research was undertaken to understand the options that exist and to formulate opinions and recommendations as to the most efficient and logical course of action to pursue. This research was done within the context of two meetings of the SWG in which ideas were shared specific to the issues of legal organization and governance. The options were also considered within the context of the lack of home rule authority by local governments in Alabama.

For the purpose of clarification, home rule is defined as the delegation of power from the state to its sub-units of governments including counties, municipalities, towns or townships, or villages. That power is limited to specific fields, and subject to judicial interpretation. Home rule creates local autonomy and limits the degree of state intrusion in local affairs. The relationship between the state and local governments in Alabama is such that the State retains many of the powers typically delegated to local governments in home rule states and the discretionary powers of the local governments are limited strictly to what the State allows through legislation.

### **Legal Options**

Three primary options exist with respect to the legal formulation of a stormwater management organization in Baldwin County:

- **Option 1 – Create under an existing State Authority.** This option reflects an analysis of a variety of existing governmental and quasi-governmental entities that currently exist based on existing legislation and the current Code of Alabama. An analysis of this option indicates that the majority of the existing legal options do not provide the level of flexibility, ability to generate fund, and equity of funding sources and sinks desired in terms of mission and financing options. Options considered included:
  - Watershed Management Authorities
  - Watershed Conservancy Districts
  - Environmental Improvement Authorities
  - Water Conservation and Irrigation Agencies
  - Water Conservation and Irrigation Corporations
  - Water Management Districts
  - Drainage Districts and Sub-districts
  - Water, Sewer and Fire Protection Authorities
  - Water Sewer, Solid Waste Disposal, and Fire Protection Districts

- **Option 2 – *Modify an existing State Authority through special legislation.*** The primary legal structure considered under Option 2 includes a modification of the existing Stormwater Utility District legislation to allow for the inclusion of Baldwin County. The existing legislation applies only to Class I Municipalities and only includes Jefferson County and the municipalities contained therein. This option is problematic because of issues and concerns that continue to exist with the Jefferson County legislation.
- **Option 3 – *Create a new authority through special legislation.*** This option would involve creating new legislation that would be specific to Baldwin County. The proposed legislation would call for the creation of a Stormwater Utility District similar to Option 2 but would be a new bill and new law without the limitations that may exist with the Jefferson County legislation.

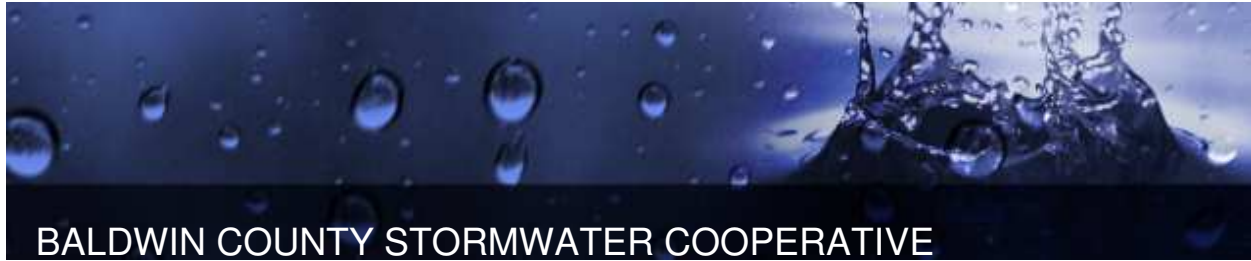
### Summary of Legal Options

In-depth research into the various legal options that exist led us to the conclusion that the best option is to **pursue new legislation** that would allow for the formulation of the BCSC in Baldwin County.

The pros and cons of Option 3 further make the case for moving forward with an effort to implement Option 3. These pros and cons include:

Pros	Cons
Authority is specific to the stated issues at hand.	Would require very broad political support on both the state and local levels.
Funding authorities are broad and include fees and grants.	Would require new legislation.
Powers and duties are specifically aligned with the stated goals of the SWG.	This option may be opposed by some stakeholders.
The current planning effort will make a good argument for formation in Baldwin County	The idea is “new” and therefore may have to overcome some level of skepticism.

An analysis of the pros and cons of Option 3 conducted in the context of SWG meetings indicates that the group is aware of both the pros and cons of the preferred option and is willing to pursue this option as the most efficient and logical of the options presented.



## ***Chapter 5 - Governance Concept***

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### ***Overview***

How might such a stormwater program be governed? This section discusses guiding governance principles and a concept of governance.

### ***Guiding Principles***

“Governance” refers to the eventual organization and control of the agency. Who will make decisions? How will they be made? How will the roles, influence, funding, and a myriad of other decisions be made and enforced? How will the agency be controlled and governed?

The SWG discussed various aspects of governance for the agency. They arrived at several guiding principles for the agency with a strong eye on providing balance in every possible way.

The following principals reflect political, legal, and practical factors that the SWG discussed in a general way and that they believe will help the participating entities define and conduct a due diligence process that properly assesses the stormwater governance and funding options. They provide a guide in formulating key decisions on service fee rate design if that type of funding is to be instituted.

- One segment or area of the geographical area should not have to “bail out” another. Needs vary substantially across the BCSC region. The current structure of stormwater governance and funding has created a legacy of responsibilities and commitments, many of which have financial implications. To the maximum extent practicable, no geographical area of the broader community or individual constituency should be expected to relieve or subsidize another in meeting its established stormwater management responsibilities or prior commitments nor in making up for lack of prior stormwater investment in a way that violates overall equity.
- Some program components are applicable equally across the County while others are localized. Funds generated, by whatever mechanism or means, in a definable geographic area of the County should, over time and for geographically-based program components, find their way back to that area in the form of stormwater services and facilities, recognizing that this is a long-term objective that may need to be flexibly applied in interim time periods to accomplish major regional improvements.
- Funding should be consistent, equitable, and responsive to varied circumstances. The governance mechanism must be able to create a service capability and institute funding mechanism(s) that can be consistently applied to the varied circumstances that exist across the region.
- Similarly situated properties should be treated in a similar and consistent way, and any differences should be reasonable and proportional and reflected in funding practices throughout the applicable governance service area. If there is a discernable and definable difference in the level, type, and cost of service provided in different parts of the service area, then these different geographical regions might be subject to different

rates and/or be charged different fees.

Consistent treatment is a broadly overriding issue of basic fairness (or equity) that extends beyond the specifics of funding to related items that may influence constituents' costs of stormwater management. For example, developers must be subject to consistent regulatory policies and procedures so a level playing field is presented, at least across the governance service area. In most if not all cases, future developers should not be required to make up for the problems created by prior developers simply because they were the last to develop.

On the other hand, as design criteria change, new development projects should have to comply with improved standards, even if those standards are more rigorous and costly than previous ones. New development should generally bear a suitable proportion of the cost of regional as well as local facilities that control or mitigate increases in runoff volumes, peak flows and pollution loadings associated with their projects.

- A rational nexus of fees and service costs should be evident and defensible. Regardless of the governance entity and/or variants in funding mechanism selected, it is important that there be both technical equity and a generally perceivable equity that the public can grasp.

The basics are relatively simple. In the case of service fees, those who impact the cost of services and facilities more than others should pay proportionately higher fees. There needs to be logical association between the cost of services and facilities and the fees, or "rational nexus". This cost causation relationship directly influences the design of funding strategies, rate methodologies, and other funding mechanisms like special assessments, special service fees, and capital recovery charges or fees.

In the case of other funding mechanisms, prevailing legal standards and accepted practices should be applied to ensure that they are consistently and coherently blended into a practical and defensible funding strategy.

- Defined levels of service should be balanced with willingness and ability to pay. The governance and funding requirements of stormwater management are heavily influenced by the proposed program strategy. It is imperative that the community's ability and willingness to pay be considered in formulating the business plan from the outset.

An extremely effective program that imposes an unacceptable financial burden on the community is not a viable long-term approach. There are essential stormwater management services that every citizen should expect – basic flood protection, safe roads, streams free from undue pollution, adequate protection of floodplain areas from development, downstream properties generally protected from the impacts of upstream development, etc. But there is a wide potential range of levels and costs of service that might be incurred in pursuing such objectives.

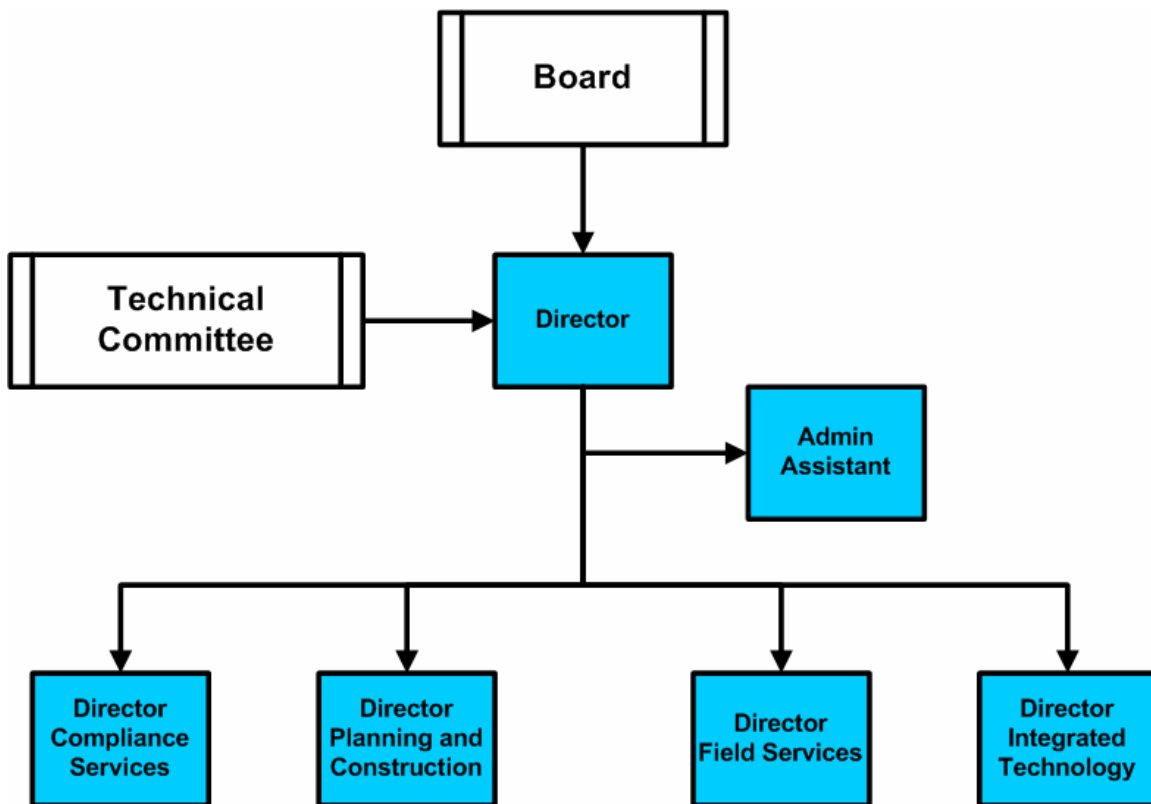
- As presently envisioned, membership in the BCSC by any local community is voluntary in nature. Obviously, any community that opts not to be a member creates an essential difficulty in applying regional programs and meeting needs consistently. In creation of the BCSC every effort has been, and will be, made to provide a level of flexibility; a substantial and realized return on local investment; and financial, efficiency, and assistance inducements to maximize initial and continued participation by every community.

## Organizational Options

For a stormwater program in Baldwin County, several options for governance and organization were reviewed. Research was conducted to consider the many different ways that an organization could be structured to ensure the highest level of efficiency of the organization, the most equitable formula for representation, and the flexibility of the organization to work towards stated goals and objectives.

A review of the various organizational options and models that exist has led to the conclusion that **the establishment of a separate authority, with equal representation from the county and each city, would provide the greatest level of efficiency for the organization.**

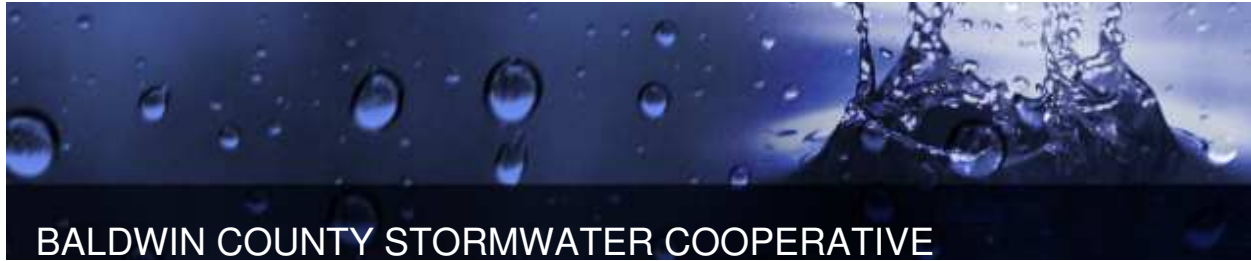
Application of these principles leads to an organization chart for the BCSC similar to the one below.



The blue boxes are part of the internal BCSC structure described previously. It is designed to be lean and to operate as project and program managers using existing resources, contract services, and management approaches. At this point five management and one administrative staff positions are envisioned, though the actual cost of services has yet to be completed. It might even be that one, or more of these positions are filled by local staff members, a non-profit organization or even privatized.

The other boxes show two types of groups:

- The “Board” will be a balance of insuring that each entity is represented with insuring that there is also an influence of population. The actual make up of the board and its by laws has not been completed though a leading suggestion is that each municipality be represented, that voting take into account population or developed acres, and that an executive committee be created for day-to-day decision support and oversight.
- The “Technical Committee” is made up of public service staff from the entities and other non-profit groups or the private sector who have special expertise in stormwater management related areas. They will interface with the BCSC staff in an advisory capacity and will be appointed by the Board of Directors.



## ***Chapter 6 - Funding Concept***

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It has been an assumption of this project that a stormwater user fee is the most equitable method for providing the majority of the funding for a regional stormwater program. This section describes this particular funding method and then gives some details on rate structure. It should be noted at the outset that most stormwater agencies employ a variety of funding and resourcing methods, relying on the user fee as the core of such an array.

### ***Funding Methods***

We have investigated Baldwin County's ability to raise taxes or generate significant revenue by other means and have found current resources and options other than a user fee unable to cope with the demands based on current levels of service. Thus, a foregone conclusion in this project was that if an agency were formed, it would be funded primarily through a user fee system or stormwater "utility." This deserves some discussion.

Functionally, local governments raise funding through three primary source types. "Money" consists of the one-time grants, loans, bonds and other larger sources. But a stormwater program cannot run on money, it needs "revenue." Revenue is the day-to-day flow of funds that adequately support operations and maintenance, regulation and enforcement, remedial maintenance and construction, water quality efforts, engineering and planning, administration and finance, and other ancillary aspects of the program. In most cases the lack of such a dedicated flow of revenue eventually causes a program to fall short. Money supplements revenue, multiplies it, and is leveraged by it. A third area consists of non-monetary "resources" such as cost sharing with neighbors, obtaining free voluntary labor, in-kind donations, and accessing other free sources such as web-based information or materials previously prepared in another locality but applicable locally.

Legally, local governments employ a variety of funding methods, including service charges, several types of taxes, franchises and other fees, fines, and penalties. The various funding methods have distinctive characteristics which separate them legally, technically, and in terms of public perceptions. Four major legal categories of municipal revenue generation methods are taxes, service charges, exactions, and assessments:

- Taxes are intended primarily as revenue generators, and with some exceptions (such as special local option sales or earmarked taxes), without any particular association with the activities or improvements that they fund. They can be used for the general purposes of local government. These include property tax, income tax, sales tax, etc.
- Service charges are not established simply to generate revenue, but must be tied to the objectives of a specific program to which they are associated. For example, water and sewer service charges are structured to cover the cost of those programs, not to simply generate revenue which is used for other purposes as well. Thus the total revenue generated must be tied to the cost of providing services and facilities and the amount

each rate payer is charged must be related to the impact or “use” of the system (rational nexus).

- Exactions are related to the extension of an approval or privilege to use. Franchise fees for the privilege of using the right-of-way for cable and phone companies limited to a certain percentage of revenue by Federal or state laws are an exaction. Licenses, tap fees, impact fees, fees in lieu of detention, capital recovery charges of all kinds and the mandatory dedication of infrastructure during development are also exactions.
- Assessments are geographically or otherwise limited fees levied for improvements or activities of direct and special benefit to those who are being charged. The benefit must be direct – tied to a specific and measurable or estimable property improvement. And it must be special - a benefit which is not realized generally in the community or area.

There are over 125 sources of funds for local governments in the area of stormwater management that fall generally under one of these four categories along with a long list of grants, and credit enhancement tools. Most are one-time only sources of “money.” Few are adequate to meet long-term program needs. Far superior to every other method is the use of a user fee methodology.

## ***Stormwater Utility***

A stormwater utility falls primarily under the second of the four funding categories: a service charge. It is “revenue” – not “money” or “resources” and thus is unique in its capacity to generate a reliable stream of funds. It is based on the premise that the urban drainage system is a public system, similar to a waste water or water supply system. When a demand is placed on either of these two later systems the user pays. In the same way when a forested or grassy area is paved a greater flow of water is placed on the drainage system. This is the demand. The greater the demand (i.e. the more the parcel of land is paved), the greater the user fee should be.

A stormwater utility differs from the other two water-related utilities in several key ways. First of all, there is no way to remove or discontinue services for non-payment. Secondly the service is provided to all citizens without choice (though mandatory water and sewer service makes this difference less of a distinctive). Third, the demand placed on the system can only roughly be measured or approximated. Also, the actual service rendered to a particular property is often difficult to quantify. Despite these drawbacks, the utility concept for stormwater financing is a viable and popular funding method with over 600 utilities in existence across the United States.

The concept has passed legal challenge in Alabama in the Case of Densmore versus Jefferson County. The Densmores argued at the trial court, and then on appeal, that the stormwater fee is an illegal, unconstitutional tax because, they said, the primary purpose of the fee is to raise revenue and there is no relationship between the amount of the stormwater fee and the benefit each property owner receives from the Storm Water Management Authority. Both of these arguments were rejected – though there are several cautions to be understood should a decision be made to go forward with a user fee.

A stormwater utility is seen as an umbrella under which individual communities address their own specific needs in a manner consistent with local problems, priorities and practices. A stormwater utility provides a vehicle for:

- consolidating or coordinating responsibilities that were previously dispersed among several departments and divisions;

- generating funding that is adequate, stable, equitable and dedicated solely to the stormwater function; and
- developing programs that are comprehensive, cohesive and consistent year-to-year.

A stormwater utility is equitable because the cost is borne by the user on the basis of demand placed on the drainage system. It is stable because it is not as dependent on the vagaries of the annual budgetary process as taxes are. And it is adequate because a typical stormwater program can be financed with payments below the normal customer willingness to pay. It is also very flexible, as expressed in the rate structure.

## **Rate Structure**

The program concept discussed in a previous section outlined a stormwater program that might cost in the range of \$850,000 plus funds for capital construction, operations and maintenance and master planning – estimated to be in the range of an additional \$2M annually. In terms of a monthly fee amount per household (with appropriate charges to non-residential property) the range for the proposed BCSC program might be between \$1.75 and \$3.00. Better land use data would narrow this range. Local governments could then add an additional fee to cover their local programs if they wanted to.

**A monthly fee amount per household would be less than \$3.00.**

The flexibility inherent in a stormwater user fee method allows it to be tailored to meet widely variable needs among differing parts of the region. Within this flexibility the funds generation program normally consists of a common format called a rate structure. Because it is a fee, not a tax, all parcels pay – tax exempt status notwithstanding.

### **Components of a Rate Structure**

The rate structure developed for a particular utility is divided into three modules: (1) the basic rate methodology; (2) modification factors which can be applied to any of the rate concepts to enhance equity, reduce costs, and meet other objectives; and (3) the secondary funding methods that can be adopted in concert with the service charges. Typical modification factors include: flat rates for single-family residences, fixed costs per account, a crediting mechanism, location charges or credits, etc. Secondary funding methods are evaluated primarily to ensure that they would be consistent with the basic rate methodology.

The basic rate methodology can depend solely on impervious area or it can also include gross area. It may not use directly measured impervious area but some surrogate of it such as intensity of development factors or fields from the tax file. For the BCSC area the availability of data will be a primary determination factor in the application of technology for master billing account development in support of the rate methodology chosen.

Rate modification factors and secondary funding methods are developed to match the program structure and evolution. A simplified rate for residential properties is probably a good idea – using two tiers to account for the wide range of large and small homes in the County. Capital recovery mechanisms are also important for a fast developing area but might be better executed through local governments.

### **Variations**

Given the large amount of rural area in the BCSC region, and the differing needs of the various cities, there will be a need to stratify the rate to account for differing levels of service. As now envisioned the utility will not charge the full fee in the rural areas, but will account for the relative

lesser density of development and cap the fee at the residential rate regardless of outbuildings for residential properties (such as non-commercial, residential farms), of the County.

It will be necessary to further stratify it to account for differing program needs of the areas or willingness for the agency to operate fully in a particular area. For example, one city may not need a specific service while a small town may want the BCSC to perform much of its local program for it – and pay a corresponding higher rate.

One of the great advantages of a stormwater utility is its great flexibility in configuring charges for all kinds of situations and for its flexibility in offering credits. For example, there can be differing charges for differing programs, for urban and rural areas, and for different watersheds. Towns and cities could enter the agency on a subscription basis with differing charges for different entities.

### **Credits**

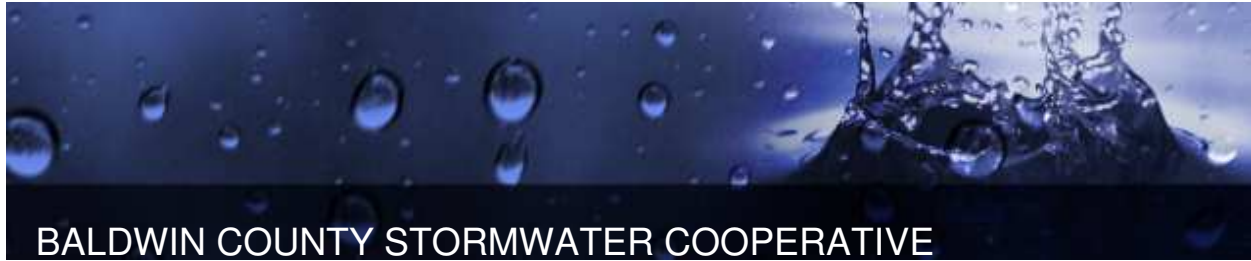
Credits are normally offered for reducing the impact of a specific property through water quality or water quantity controls such as detention ponds or bioretention areas. Credit could be given for performing certain activities on a site such as obtaining and maintaining an industrial stormwater permit. As envisioned the BCSC would focus credits on rewarding or influencing properties to maintain their constructed infrastructure and for performing certain functions on behalf of the BCSC, such as public education.

All of these policies will be developed in the next phase of agency development should the decision be made to go forward.

### **Summary**

In summary the following preliminary determinations have been made about the rate structure in the BCSC area:

- The fee will be based on impervious area, or some surrogate for it, only.
- The fee will probably be billed on the County tax bill.
- Local governments can optionally charge a local user fee to cover their local programs which will be billed and collected by the BCSC and returned to the local governments.
- There will be two tiers of residential rate – two flat rates.
- All other non-single-family-residential properties will be billed on the basis of how many Equivalent Residential Units they comprise.
- Credits will be provided for defined efforts that reduce a property's impact on the downstream system or that reduce the BCSC cost of operations through private efforts that are ongoing.
- No property with impervious area above the threshold (established later) will be exempt from the fee.
- A base fee will be charged throughout the County to cover the cost of the “core” stormwater program.
- Optional additional fee levels will be charged on a local basis to cover the cost of additional programs operated by the BCSC at the request of a local government.
- All revenues collected by the BCSC will be used in execution of its program objectives.



## **Chapter 7 – Next Steps**

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### **Overview**

As stated earlier, there is now general support for the development of the Baldwin County Stormwater Cooperative (BCSC) among staff elements and tentative support expressed among certain legislative and political leaders. Thus the initial objective has been accomplished.

The overall goal is to gain legislative approval for the BCSC as a voluntary public corporation - to present a local bill in the Alabama House and Senate which has strong political support locally and sponsorship from local legislative representatives. The general order of involvement is to first gain the support of the local political leaders, to inform the legislators early and gain their help in drafting legislation, and (to the extent necessary to gain political support) interact with stakeholders and the general public.

There are three phases to be accomplished to see this come into being:

- Support Building Phase
- Legislative Phase
- Implementation Phase

The paragraphs below discuss briefly the key aspects of these three Phases.

### **Support Building Phase**

For political leaders to be generally comfortable supporting this effort they must both be convinced that it is a good idea and that it has been properly vetted and supported among key stakeholders. The goal of this Phase is to insure that there is sufficient support among key stakeholders and general understanding and support in the general public for the idea to move forward. Appendix A of this Chapter gives a media and support building plan developed by the Mobile Bay National Estuary Program staff.

There are several key stakeholder groups that need to be addressed:

- Political leaders
- Local legislators
- Key stakeholders impacted by the user fee
- Through the media to the general public

There will be significant public education prior to the implementation of the user fee so this present effort is targeted exclusively at insuring that there is sufficient and unanimous support among political leaders to go forward with legislation.

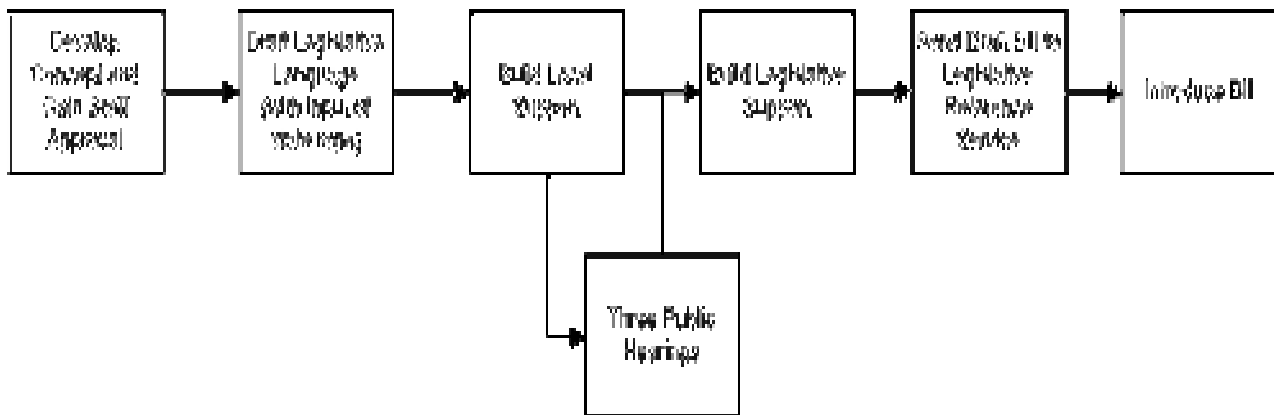
## Legislation Phase

There are several keys to eventual legislative passage but the most important aspect about going forward is that the bill must be a local act and must have one-hundred percent support from local officials and the legislative delegation.

The legislature convenes March 1 and goes 100 calendar days (30 work days). It is the goal of the SWG to introduce the bill the first week of the session or as early as possible.

Prior to the bill being introduced, there must be three public hearings, and the bill must be placed in the proper format. This process could take two to four weeks. The key steps are as given in the list and figure below.

1. Agree on overall approach and draft core language
2. Insure support from local elected officials and key stakeholders – goal 100% support
3. Draft local legislation with local legislator's help and support – goal 100% support
4. Take legislation to Montgomery Legislative Reference Service
5. Build broad local support among County citizens
6. Negotiate final changes
7. Introduce legislation into both houses early in session (March)
8. Be on hand to shepherd it through and answer questions
9. Passed in one house
10. Passed in other house (if changes are needed they must be hammered out)



If the first week in March is the target date, is it able to be accomplished in that time frame? The first block in the figure has been accomplished. This schedule implies that all other activities necessary to introduce the bill in early March must be accomplished December through February. Generally, it is aggressive but it could be accomplished if we:

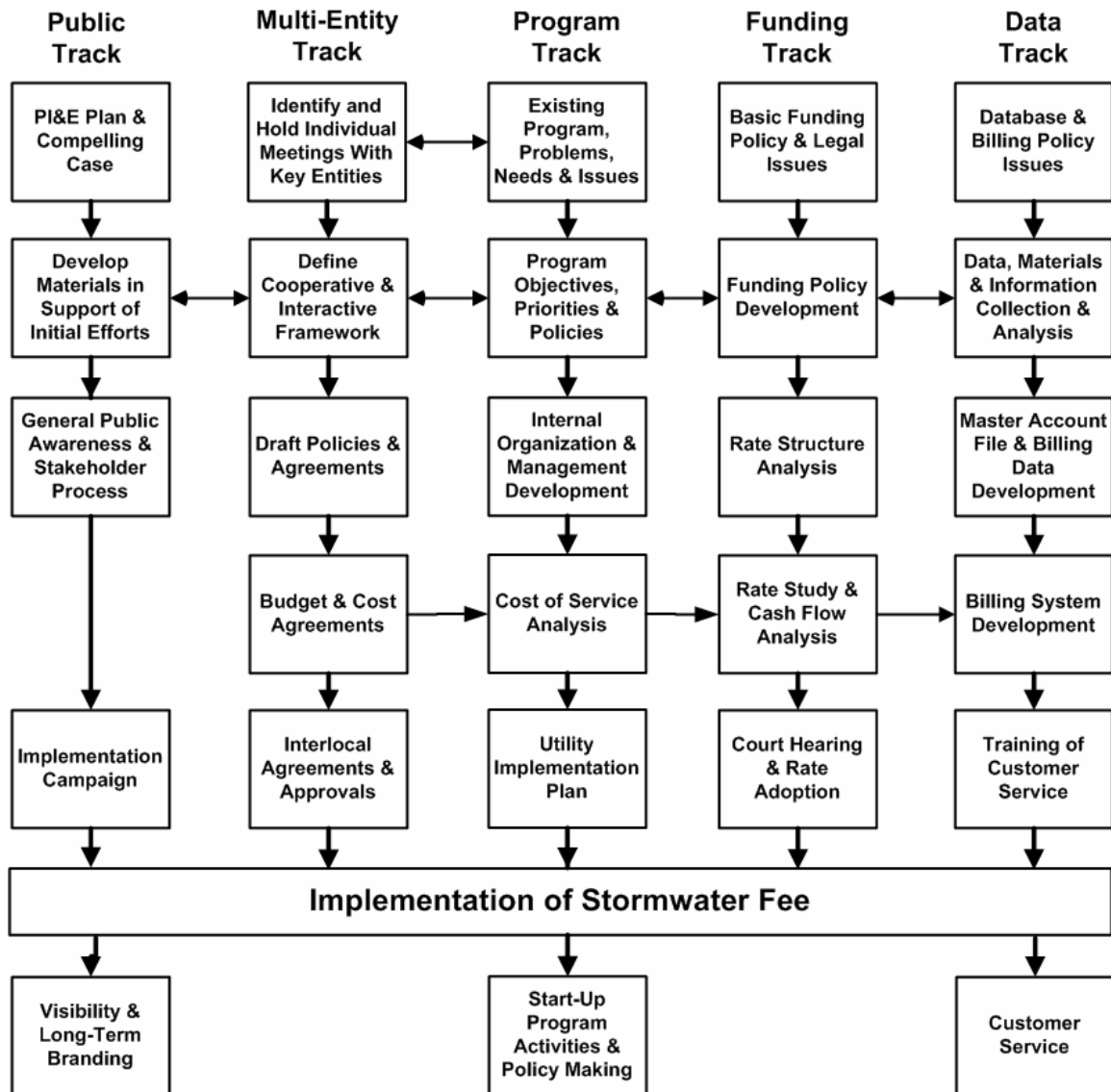
- Draft the legislation in December
- Gain support in January
- Craft the bill for submittal in February

An initial draft of legislation is included in Appendix B. It has not been reviewed by local legislative members or political leaders. It is to be viewed as a starting point only.

## Implementation Phase

The below list demonstrates the typical implementation of a stormwater utility for a multi-jurisdictional entity. There are five “tracks” that flow in parallel. Without going into details, each of the tracks supports the others while building toward implementation in a logical way.

It is the goal of the SWG to begin collecting fees in 2008. However, it is important to the process that everything is done both in proper order and thoroughly – termed “due diligence”.



Due diligence is important along the five tracks:

- ✓ Public – is there appropriate levels of involvement of key stakeholders, is the general public handled correctly, is the media appropriately involved, is customer service

accounted for, are staff and political leadership elements accounted for and handled appropriately?

- ✓ Multi-entity – is there a sense of equity among the members, and do proper accountability controls exist without bogging down the ability of the organization to function efficiently?
- ✓ Program – does the program make sense, is it compelling, is it within ability and willingness to pay, does it meet citizen perceptions, is it action oriented?
- ✓ Funding – are legal tests satisfied, is it simple yet fitted to the local situation, does it have the perception of equity, are proper steps followed, does it support the stormwater program?
- ✓ Data – is the database accurate within legal requirements, is there an appeals process, is it maintainable within reasonable cost constraints, are anomalies accounted for, is customer service appropriate and responsive?

The cost of appropriate due diligence is not insignificant but should be put in perspective. Experience has shown that, should a stormwater utility fail for whatever reason, it normally takes five to seven years for there to be a staff willingness and political forgetfulness to make another attempt. The opportunity cost of failure is then five to seven years' revenue. The cost to do a thorough job in due diligence along the tracks mentioned is rarely more than one to three months' revenue, at the low end of the range for larger utilities.

For example, for a stormwater utility that raises \$2,000,000 per year the opportunity cost of failure is \$10 to \$14 M while the cost to develop the utility in a comprehensive way is often less than \$350,000.

Additional benefits of appropriate due diligence on the front-end include:

- ✓ More efficient long-term database maintenance leading to lower costs and better customer service.
- ✓ Better initial and long-term public knowledge and cooperation leading to greater support and participation.
- ✓ A funding rate structure that matches and meets program needs, both short term and long term leading to stable, adequate funding for program needs.
- ✓ A stormwater program that can meet both the capital and operations needs of the local community leading to better services and ability to meet regulatory demands.

Those communities that have cut corners in due diligence, even if the stormwater user fee should go forward, normally find themselves hampered in ability to manage the database, meet customer expectations, solve flooding problems, meet regulatory needs, and change to meet changing program demands.

## ***Appendix A Media Plan for Outreach and Education***

Baldwin County Stormwater Working Group

Related to the development of a Storm Water Management Authority

Coordinator: Mobile Bay National Estuary Program

Purpose: To create widespread support for the development of a Storm Water Management Authority.

Goal: To build support among citizens, local officials and the Baldwin County Delegation for the need to actively support/ vote in favor of the establishment of a Storm Water Management Authority.

Objectives:

- Clearly define need for regional storm water management
- Introduce storm water management authority concept
- Promote Baldwin County Storm Water Authority proposal
- Generate support for plan of action including legislation
- Mitigate the impacts of any negative reactions

Target Audience:

- Baldwin County Legislative Delegation
- Mayors and City Councilmen for each of the 15 municipalities in Baldwin County
- County Commissioners
- Identified Stakeholders (Deal Breakers- Farmers, real estate/development interests, industry, etc.)
- Citizens

Geography: Throughout Baldwin County

Key Message: Support the development of a Regional Storm Water Management Authority to address county-wide issues of flooding, water quality, and drainage.

Media Materials:

- Basic Explanatory Power Point Presentation of Issue
- FAQ Sheet
- Sample letter of support
- Photo inventory for each municipality (for specific media packets)
- Governance Structure/Board Seats
- Fee Management-Rates set by local Referendum
- Press release
- Op Ed sample piece
- List of media Outlets
- Address list of Baldwin County Delegation
- Address list of Mayors for each municipality
- Address list of Council Members for each municipality
- Address list of County Commissioners

- Schedule of each municipality's work session schedule for December, January, February
- Telephone Script

Foot Soldiers:

- Storm Water Working Group
- League of Women Voters
- Baldwin County Environmental Advisory Board
- Fairhope Environmental Advisory Board
- Weeks Bay Reserve Foundation
- Alabama Coastal Foundation
- Wolf Bay Water Watch
- Chambers of Commerce

Action Plan:

1. Create Press Packet
  - a. PowerPoint
  - b. FAQ Sheet
  - c. Photos of each municipality
  - d. Organizational Structure of Operational Structure
  - e. Fee schedule
  - f. Cover letter requesting support

Deadline: December 11, 2006

2. Create Training Packet
  - a. PowerPoint
  - b. FAQ Sheet
  - c. photos of each municipality
  - d. Organizational Structure of Operational Structure
  - e. Fee Schedule
  - f. Telephone Script
  - g. Op Ed Sample
  - h. List of media Outlets
  - i. Schedule of each municipality's work session schedule for December, January, and February
  - j. Sample letter

Deadline: December 11, 2006

3. Train Volunteers

Deadline: December 13, 2006

4. Media Detail

- a. Telephone tree

Recruit League of Women Voters to assist with telephone campaign to call citizens to educate about stormwater issues; provide with script, FAQ Sheet, and print out of PowerPoint presentation

b. Council Work Session presentations

Members of the stormwater working group, MBNEP, ACF, and WBNERR will schedule presentations for each municipality's work session and follow up with asking each Council to pass a resolution/proclamation of support for the creation of a regional stormwater authority

c. Letter writing campaign

Members of stormwater working group and others will write letters to local officials, Baldwin County Delegation, newspaper in support of the creation of a regional stormwater authority

d. Newspaper letters to the editor

DISL, MBNEP, ACF, WBNERR, Watershed Groups, Chamber of Commerce, Baldwin United, and maybe even Mayor Small will write letters to the editor stating why a regional stormwater authority is important to support

e. Newspaper stories

Recruit Ryan December/Bill Finch to do a story of flooding, development, increases in impervious surface, something related...

f. Newspaper Survey

Investigate, Implement a newspaper survey or online survey with information and three to five questions including "Would you support this"?

g. Mayor meetings

MBNEP (plus possibly Mayor Small or other supportive Mayor) to meet with each Mayor to discuss issue and need for regional solution

h. Press Conference

Recruit Mayors to show solidarity in support for regional solution

5. Schedule

<b>Task</b>	<b>December</b>	<b>January</b>	<b>February</b>
Create Media Packet	12-11-06		
Create Training Packet	12-13-06		
Send out Training Packet	12-15-06		
Train Volunteers		01-03-2007	
Municipal Work Session Presentations		10 pres.	5 pres.
Telephone Bank/Tree		three nights	three nights
Letters to the Editor		1/week	1/week
Newspaper Stories	1	2	2
Newspaper Survey		all month	
Meetings with Mayors		15	
Meetings with Special Interests		as needed	
Press Conference			last week

## ***Appendix B Draft Legislation Establishing the BCSC***

Baldwin County Stormwater Working Group

SBXXX

ENROLLED, An Act,

Relating to unincorporated Baldwin County and all municipalities located within Baldwin County; to authorize the formation of a public corporation which shall have the ability to undertake studies and develop information regarding stormwater runoff quality and quantity, to purchase real and personal property, to construct, operate, and maintain stormwater facilities, to construct, operate and maintain stream stabilization and flood protection facilities, to enter into legal agreements any member governing body for the provision of services relating to any and all aspects of the stormwater management program, including levy and collection of local stormwater service charges, fees, or assessments in support of all local stormwater related programs and activities whether performed by the public corporation or not, and to receive payment from the local government for any such services, to conduct public hearings in the development of plans, pro forma regulations and pro forma ordinances, to immunize the BCSC from civil suit and its employees from liability for official duties, to establish the cost and authorize the levy and collection thereof of stormwater service charges, fees, or assessments necessary to fund operations and activities without referendum unless required by the Constitution of Alabama of 1901, to establish procedures for assessment and collection by the tax assessor and tax collector or revenue commissioner of such cost, stormwater service charges, fees and assessments levied, to require the tax assessor and tax collector or revenue commissioner to assist in the collection of stormwater service charges, fees, and assessments, to establish a lien therefor and a collection commission.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

### **Section 1.**

This act shall be known as "The Baldwin County Stormwater Consortium Act."

### **Section 2.**

#### **Legislative findings and intent.**

(a) The Legislature finds and declares that it is in the public interest and the health, safety, and welfare of the citizens of this state and within the police power of the state, county, and municipal governments to promote effective and efficient management of regional and local stormwater runoff, to provide appropriate and consistent stormwater services and protections to all citizens, and to promote compliance with federal and state laws, rules, regulations, and municipal permits relating to stormwater discharges regulated under stormwater rules.

(b) It is further the intention of the Legislature by passage of this chapter to assist the state, Baldwin County and municipalities therein in their compliance with stormwater laws.

(c) It is further the intention of the Legislature to authorize and promote the inter-cooperation of the Baldwin County governing bodies in implementing the stormwater programs and the purposes of this chapter and to grant the governing bodies of Baldwin County the authority to establish the Baldwin County Stormwater Consortium, a public corporation with the authority to carry out the intent of this Act related to the provision of a regional stormwater program and support to local stormwater programs, to determine their financial needs to fund the stormwater program, to determine the methods to generate and collect the necessary revenue by means of stormwater service charges, fees, or assessments, and to authorize the use of the assessment, billing, and collection capabilities and authority of the county tax assessor and tax collector for that purpose.

(d) It is further the intention of the Legislature to authorize the Baldwin County governing bodies, through the development of a representative board of directors, to determine the methods and procedures they shall use to carry out the stormwater program, to make their respective participation in a public corporation inter-cooperation program optional, and to adopt policies and procedures pertaining to their responsibilities in the program and the procedure for entry into and exit from the program.

### **Section 3.** **Definitions.**

As used in this chapter, the following words and phrases shall have the following meanings:

(1) BOARD OF DIRECTORS. A representative board of individuals appointed and operating according to the procedures and by laws defined in this chapter for the purposes of governing any public corporation formed under this chapter.

(2) IMPERVIOUS AREA. Impervious surface area shall mean developed areas of land that prevent or significantly impede the infiltration of stormwater into the soil. Typical impervious surface areas include, but are not limited to: roofs, sidewalks, walkways, patios, swimming pools, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces containing materials that prevent or significantly impede the natural infiltration of stormwater into the soil

(3) MEMBER GOVERNING BODY. A governing body that joins a public corporation established pursuant to this chapter.

(4) PUBLIC CORPORATION. Any public corporation created pursuant to this chapter..

(5) RULE. Any public corporation regulation or standard of general applicability that prescribes or recommends law, procedure or policy for its member governing bodies specifically including all pro forma ordinances, regulations, resolutions, rules, procedures or remedies adopted and recommended by a public corporation.

(6) SERVICE AREA. The service area of the public corporation shall be areas within the boundaries of Baldwin County. Nothing in this definition shall preclude the inclusion of undeveloped or vacant parcels. Such definition of service area shall be developed pursuant to the establishment of rules and by laws of any public corporation created pursuant to this chapter

(7) SERVICE CHARGE. Service charge shall mean a stormwater service charge, applicable to a land parcel, that generally reflects the impact on or demand for stormwater management

services provided by the public corporation or member governing body to properly control and manage stormwater runoff quantity and/or quality associated with the land parcel. The service charge will vary from one land parcel to another, based on the impervious surface area or intensity of development.

(8) **STORMWATER.** Stormwater shall mean the runoff from precipitation that travels over natural state or developed land surfaces and enters a drainage system.

(9) **STORM WATER LAWS.** Those provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., together with all other and subsequent applicable federal and state laws, rules, regulations, and municipal permits relating specifically to the control of the pollution of stormwater discharges.

(10) **STORM WATER PROGRAM.** An identified set of measures and activities designed to protect, restore and/or manage stormwater quality by controlling and/or reducing pollutants and; to reduce and/or manage stormwater quantity by controlling velocity, volume, and rate, agreed to by the Board of Directors of any public corporation created pursuant to this chapter. Such stormwater program can be amended as determined by the Board of directors. Such program shall consist of a core set of programs and activities applicable to all member governing bodies, and a set of optional programs and activities applicable by individual interlocal agreement with each member governing body.

(11) **TECHNICAL COMMITTEE.** A representative board of individuals appointed and operating according to the procedures and by laws defined by the board of directors for the purpose of providing technical advice and assistance to any public corporation created pursuant to this chapter.

#### **Section 4.**

##### **Public corporation - Procedure for incorporation.**

(a) Three or more natural persons who are either the mayor of a municipality or the chair of the Baldwin County governing body, may file with their respective governing bodies a written application to incorporate a public corporation pursuant to this chapter. If each of the governing bodies adopts a resolution declaring that the formation of a public corporation is wise, expedient, and necessary, and approves the proposed certificate of incorporation, the incorporators shall proceed to incorporate the public corporation pursuant to this chapter by executing and filing for record in either the office of the judge of probate of Baldwin County a certificate of incorporation together with certified copies of the resolution of each approving governing body. Any governing body that fails to approve its participation in the public corporation shall be removed from the certificate of incorporation. The incorporation may proceed with the officials of the remaining three or more governing bodies. The certificate of incorporation shall include the following:

- (1) The names of the incorporators and their official county or municipal office.
- (2) The name of the public corporation which shall be the Baldwin County Stormwater Consortium.
- (3) The duration of the public corporation which shall be perpetual.
- (4) The location of the principal office of the public corporation.
- (5) A statement that the corporation is organized pursuant to this chapter.
- (6) A description of the service area of the public corporation.

(7) Any other matters relating to the corporation that the incorporators may choose to insert and that are not inconsistent with this chapter or the laws of this state.

(b) Upon the filing for record of the certificate of incorporation and required attachments, the corporation shall come into existence and shall constitute a public corporation under the name set forth in the certificate of incorporation. The judge of probate shall send a notice to the Secretary of State that the certificate of incorporation of the public corporation has been filed for record. After filing, the certificate of incorporation may be amended in the manner provided by the board of directors of the public corporation.

## **Section 5.**

### **Powers of public corporation; requirements for development or adoption of rules, procedures, ordinances, etc.**

(a) Any public corporation created pursuant to this chapter shall have the following powers:

(1) To establish, maintain, and operate an organizational structure pursuant to this chapter, its original or amended certification, and its bylaws or other rules of procedure, that will enable it to implement the stormwater programs for and on behalf of any governing body that exercises the option to participate in or with a public corporation, however, authority to enforce the stormwater laws is retained wholly and exclusively to the governing bodies and but may be further delegated to or assumed by the public corporation, its agents or employees through individual interlocal agreement as part of the optional stormwater program.

(2) To establish the procedure by which a member governing body may elect to join and to withdraw from the public corporation.

(3) To establish a board of directors to serve as the governing body of the corporation to establish policy and procedure for the corporation. The board shall consist of one representative from each member governing body. The representative shall be the mayor, if the member governing body is a governing body of a municipality, or a county commissioner, if the member governing body is Baldwin County. The board shall designate at least three members, and no more than five members, to serve as an executive committee to perform the executive and administrative functions of the corporation. The executive committee shall include one county commissioner from Baldwin County if Baldwin County is a member governing body, and at least two mayors, or three mayors if Baldwin County is not a member governing body. The board shall elect one executive committee member as chair, one as co-chair, and one as secretary. Individual board and executive committee members shall serve without compensation, but shall be entitled to reasonable actual expenses that are properly documented and authorized. All other needed organizational matters, bylaws, rules of procedure, and officers shall be determined by the board of directors including establishment and membership in the technical committee.

(4) To employ individuals directly or indirectly through loaned, detailed, or assigned employees from the member governing bodies or other entities. Employees directly employed by the public corporation shall be eligible to participate in the employee benefit programs of any member governing body, including insurance and pension programs, upon approval of the executive committee and the subject member governing body.

(5) To enter into contracts with individuals, governing bodies, member governing bodies, governmental agencies, professional associations, corporations, partnerships, and other legal entities to implement the functions of this chapter.

- (6) To purchase, lease, license, own, or otherwise acquire real and personal property, including easements, rights of way, and all other interests in land, including municipal separate storm sewers, buildings, and other facilities and equipment.
- (7) To construct, inspect, operate, maintain, repair, and replace facilities for stormwater functions through the development of a defined stormwater program containing both core program elements and optional elements.
- (8) To contract with member governing bodies for the construction, improvement, renovation, management, or operation of their municipal separate storm sewer systems, or the execution of any local stormwater program component, including the collection of locally established stormwater service charges, fees, or assessments in support of local stormwater programs.
- (9) To purchase or obtain insurance and other appropriate tangibles and intangibles.
- (10) To apply for, solicit, and otherwise obtain and receive from any governmental, public, or private source, grants, contributions, and donations, of money, all forms of property, equipment, supplies, services, and labor.
- (11) To hold and invest its moneys in all legal forms of investment for fiduciaries.
- (12) To salvage, lend, lease, or sell by cash or installment, with or without interest, its lands, interest in land, facilities, equipment, and other property.
- (13) To undertake or participate in studies, surveys, analyses, or investigations of stormwater runoff and other functions of the stormwater laws and the stormwater program and this chapter.
- (14) To adopt necessary and appropriate policies, procedures, rules, and regulations applicable to the member governing bodies in accordance with EPA and/or ADEM permits and the stormwater program.
- (15) To develop and hold public hearings on pro forma resolutions or ordinances, or both, which may be adopted by any member governing body to implement this chapter.
- (16) To develop pro forma remedies and procedures for the enforcement of resolutions or ordinances, or both, adopted to implement this chapter.
- (17) To sue and be sued, except as immunized hereby, in its own name and to appear in all administrative forums.
- (18) To establish the stormwater service charges, fees, or assessments as required of the member governing bodies for participation in the public corporation, necessary to fund the operation, activities, projects, and facilities of the stormwater program of the public corporation including local program options and local stormwater service charges, fees, and assessments. Such stormwater service charges shall be equitable and based on a parcel's impervious area or intensity of urban development and shall not pertain to undeveloped properties with less than an incidental amount of impervious area thereon.
- (19) To establish the procedure for the assessment and collection by the tax assessor and tax collector of the respective counties or other public official performing those functions, of any fees, stormwater service charges, or assessments levied by a member governing body.
- (20) To authorize any officer, employee, or other agent of the public corporation to enter upon private or public property during normal business hours and upon the presentation of appropriate credentials for the purpose of performing investigations regarding any aspect of the stormwater program requiring such inspections or investigations. Any officer, employee,

or other authorized agent who performs the duties authorized under this section in accordance with provisions hereof shall be immune from arrest and prosecution for trespass in performing any legal duty pursuant to this chapter by presenting identification issued or authorized by the public corporation.

(21) To do any and all things necessary or convenient to implement and administer this chapter.

#### **Section 11-89C-5**

##### **Exemption of public corporation from fees and taxes.**

The property and income of any public corporation, and any conveyance, lease, mortgage, deed of trust, or trust indentures by or to the public corporation shall be exempt from all state and local taxation. The public corporation shall not be obligated to pay any fees, taxes, or costs to the judge of probate of any county for its incorporation, the amendment of its certificate of incorporation, or the recording of any document, including, but not limited to, deeds, leases, and easements.

#### **Section 11-89C-7**

##### **Public corporation to be nonprofit; dissolution.**

Any public corporation shall be a nonprofit corporation, and no part of its net earnings shall inure to the benefit of any individual, firm, or corporation. In the event of dissolution of a public corporation, if the board of directors of the public corporation determines that sufficient provision has been made for the full payment of the expenses and other obligations, then any net earnings thereafter existing shall be paid to the member governing bodies of the public corporation provided, such amounts so paid out shall only be used by the member governing bodies for stormwater purposes and no other purpose.

#### **Section 11-89C-8**

##### **Immunity of corporation, board members, and employees.**

(a) Any public corporation shall be immune from civil suit for damages to the same extent as a department of state government.

(b) No board member, executive committee member, or individual employee, whether employed directly by a public corporation or on loan, detail, or other form of assignment to a public corporation, shall incur any personal, civil, or criminal liability for the performance of any official duty pursuant to this chapter, except for an act involving willful misconduct, illegal activity, gross or wanton negligence, or bad faith.

(c) While in the performance of any employment, duty, or responsibility for and on behalf of the public corporation, no individual employee, board member, or committee member shall be deemed an agent or employee for purposes of civil liability for claims and damages of any county, municipality, or member governing body.

(d) Official acts of public corporations and individuals pursuant to this chapter shall be deemed a governmental function of the state imposed by federal and state laws for the benefit of the public generally, for which the corporations and individuals are immune, and no member governing body shall be legally responsible for any of their official actions, except for an act involving willful misconduct, willful illegal activity, gross or wanton negligence, or bad faith.

(4) Control by interagency or intercooperation agreements among the governing bodies and other entities the discharge of pollutants from one portion of its municipal stormwater system to another portion.

(b) The governing bodies may develop and adopt common and uniform or partly common and partly uniform resolutions, ordinances, contracts, orders, or similar means in their respective actions and procedures to implement this chapter.

(c) Any governing body may join with any other governing body to establish or participate in or with a public corporation, or with any other public corporation, authority, or district authorized by the Legislature to implement this chapter. In furtherance of this objective, any governing body may perform any of the functions and powers provided in Section 11-89C-4 for public corporations, and any function or eligibility requirement provided or required for joining and participating, and to transfer and convey to the public corporation, with or without consideration, any facilities, real or personal property, money, or thing of value, including the services of employees through loan, detail, or assignment.

(d) Any governing body may establish, levy, and impose by resolution or ordinance, any revenue-raising measure within its jurisdiction, including, but not limited to, fees, stormwater service charges, or assessments, without any referendum unless required by the Constitution of Alabama of 1901, deemed necessary to implement this chapter or to comply with all provisions of stormwater laws. Any such fee, stormwater service charge, or assessment may be levied and collected in any manner permissible by law. In addition, any such measure may include incentive provisions including reductions of waiver of all or part of such fee, stormwater service charge, or assessment where the responsible entity constructs, installs, or otherwise employs or utilizes any structure, service, equipment, or system to reduce or eliminate stormwater pollution. Any governing body may call upon and enter into agreements with the respective tax assessor and tax collector or other public official performing the function of the tax assessor and tax collector to assess and collect any such fees, stormwater service charges, or assessments.

#### **Section 11-89C-10**

##### **Assessment, collection, etc., of fees, stormwater service charges, or assessments.**

(a) The tax assessor and the tax collector, or other public official performing the functions of the tax assessor and tax collector, of every county in this state shall, upon request, implement procedures necessary and appropriate in order to assess and collect the fees, stormwater service charges, or assessments levied by any governing body or member governing body, whether or not related to the value of any land.

(b) The fees, stormwater service charges, or assessments shall be a lien upon any land to which it may be levied, and shall be assessed, collected, and enforced as are other ad valorem taxes. Each county collecting such fee, stormwater service charge, or assessment shall receive a two percent commission on all amounts levied and collected which shall be deposited to the county general fund.

#### **Section 11-89C-13**

##### **Liberal construction.**

The purpose of this chapter being remedial in nature, it shall be liberally construed to effect its purpose.

**Section 11-89C-14**  
**Effect of chapter on state entities.**

Nothing in this chapter shall be interpreted as negating, destroying, impairing, preempting, superseding, or conflicting with any statutory or common law, or other legal right, duty, power, or authority of ADEM, the Alabama Department of Conservation and Natural Resources, the Alabama Department of Public Health, or any other agency or department or commission of the State of Alabama. This chapter shall be cumulative to and in furtherance of any statutory or common law or other legal right, duty, power, or authority of any governing body.