

**Chapter 16.16.900**  
**BIRCH BAY WATERSHED-BASED MANAGEMENT PLAN - HABITAT**  
**MITIGATION FUND**

**16.16.910 Purpose.**

The Birch Bay Watershed Based Management Plan, hereby called the Habitat Mitigation Fund (HMF) provides an alternative approach to mitigating impacts to Habitat Conservation Area buffers and wetland buffers. The purpose of this section is to establish provisions for the use of the Habitat Mitigation Fund, Appendix F. This watershed-based management plan provides a framework for the management and operation of an off-site buffer mitigation program. The Habitat Mitigation Fund is specifically designed to:

- A. Provide for landscape based approach to mitigation that restores watershed processes as a whole;
- B. Compensate for buffer impacts that result in greater ecological benefit to the Birch Bay watershed than could be achieved through permittee-responsible mitigation;
- C. Restore function in areas that can provide the most ecological lift, as described in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (2007);
- D. Encourage development practices that minimize impacts to Habitat Conservation Area buffers and wetland buffers;
- E. Establish provisions for mitigating impacts off-site;
- F. Establish a mitigation fund contribution schedule;
- G. Establish a project review procedure.

**16.16.920 Application.**

**16.16.930 Area.**

The HMF applies to the unincorporated areas of the Birch Bay watershed (Res. 2008-049 § 1 (Exh. A § 2)). The Cherry Point Industrial District adjacent to the watershed may utilize the Habitat Mitigation Fund with approval of the Director of Planning and Development Services.

**16.16.940 Applicability and Use of This Section.**

- A. This section is applicable to new development and any redevelopment with unavoidable impacts to Habitat Conservation Area buffers or wetland buffers.
- B. Use of the Habitat Mitigation Fund is available to projects that qualify as low impact development according to WCC 20.50. The Technical Administrator may waive this requirement on a case by case basis.
- C. If the provisions of this chapter conflict with the provisions of the Shoreline Management Program, then the Shoreline Management Program shall apply.
- D. The provisions contained in this Section are specific to the use of buffers and are offered as an alternative to only the following sections within this Chapter:
  - 1. WCC 16.16.260 General Mitigation Requirements
  - 2. WCC 16.16.680 Standards – Wetland Mitigation
  - 3. WCC 16.16.760 Mitigation Standards for Habitat Conservation Areas

**16.16.950 Location of Mitigation.**

Mitigation actions shall be conducted on the same site as the alteration except when all of the following apply:

- A. There are no reasonable on-site opportunities, or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;
- B. Off-site mitigation has a greater likelihood of providing equal or improved buffer functions than the impacted buffer;
- C. Watershed goals for water quality, flood or conveyance, habitat, or wetland functions established through the Birch Bay Watershed Characterization Pilot Study (ESA Adolfson, 2007) justify location of mitigation at another site.

**16.16.960 Mitigation Requirements**

Unavoidable impacts to Habitat Conservation Area buffers or wetland buffers must comply with (a) or (b) below:

- a) Mitigation onsite according to the general mitigation requirements of WCC 16.16.260, and:
  - (1) Wetland Mitigation section WCC 16.16.680;
  - (2) Habitat Conservation Areas and buffer mitigation section WCC 16.16.760.
- b) Projects that meet the criteria for off-site mitigation in WCC 16.16.950, and choose to mitigate through the Habitat Mitigation Fund, Appendix F shall pay according to WCC 16.16.970.

**16.16.970 Mitigation Fund Contribution Schedule**

The mitigation fees that will become the basis for the Habitat Mitigation Fund will be based upon the cost that the sponsor incurs to restore the mitigation receiving site, the area (square footage) of buffer that the applicant proposed to alter, and the functional attributes of the buffer impact area.

The base fee reflects the cost of providing buffer restoration at a minimum 1:1 areal ratio, in accordance with the CAO (WCC 16.16). In order to provide mitigation that provides equivalent or greater buffer functioning and also reflects the Birch Bay Watershed Characterization Pilot Study (ESA Adolfson, 2007) management recommendations, the base fee will be increased under these situations:

- A. For buffer impacts that occur within a “protection” or “restoration” sub-basin, as identified in the Birch Bay watershed planning study (ESA Adolfson, 2007), the base fee will be increased by 20%.
- B. The base fee will be increased by an additional 20% for buffer alterations that result in removal of tree canopy. The increase in the base fee will be used to offset the temporal loss in ecological functions that results from forest habitat mitigation.
- C. To simplify the cost structure and accounting, the County will require a minimum fee to cover less than 750 Square Feet of mitigation.
- D. Mitigation Fund Contribution Schedule

	No tree canopy removal	Tree canopy removal
<b>Base fee</b> (for impacts within “development” sub-basins)	\$ 2.90 per SF	\$ 3.48 per SF
<b>Base fee</b> (for impacts with “protection” or “restoration” sub-basins)	\$ 3.48 per SF	\$ 4.05 per SF

**16.16.980 Submittal and Review Process.**

If enrolled in the Birch Bay Low Impact Development program (ESA Adolfson, 2011), applicants have the option of paying into the Birch Bay Habitat Management Fund to mitigate development-related alterations to wetland and stream buffers, in-lieu of typical on-site mitigation. The steps below describe how an applicant would utilize the program:

- A. If there are critical areas onsite contact Whatcom County Planning and Development Services for a predevelopment site inspection to determine if a wetland delineation and/or Habitat Conservation Area assessment report is required (WCC 16.16.250).
- B. Complete an assessment report according to 16.16.255.
- C. When designing the proposed development site plan, follow the avoidance criteria listed in 16.16.260(A)
- D. If the proposed development results in unavoidable buffer impacts, the assessment report, 16.16.255 shall also include the following information:
  1. Submit plans showing the proposed buffer impact area(s) in order to calculate the square footage of buffer impact. Provide separate calculations for impact areas that would result in tree canopy removal (see LID technique #3 in the Birch Bay LID manual [ESA Adolfson, 2011] for instructions on calculating tree canopy areal cover). Clearly designate areas of tree canopy removal (if present) on the site plan.
  2. Determine if the buffer impact area is located in a “development,” “protection,” or “restoration” sub-basin, as identified in Appendix F.
  3. Calculate the dollar contribution to the Fund, based upon the most current Fund fee schedule, available from the County.
- E. Submit a complete development application to WCPDS.
- F. With notice of an approved application, pay appropriate fee into Fund.
- G. Proceed with development project upon issuance of permit.