

Comments Summary and Potential Resolutions

Topics to be addressed through with Ad Hoc Subgroups

Comments are in response to draft Birch Bay Watershed Action Plan Code, between April – June 2011.

Responses to comments received in February 2011, and written comments by name are online:

http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp#comments

Topics to be Addressed by Code Format, Policies, and Incentives Subgroup

Need an on the ground, workable ordinance and focused guidebooks / Need to simplify the program, and make more clear what homeowners would be asked to do / Tough to balance between clarity and flexibility.

Potential Resolution:

- Guidebook should be focus on Single Family Residential, and describe the permitting process and the simplest means to achieve the overall purposes.
- LID code should remove the point system flexibility and provide more specific requirements for each to the LID categories.
- Purpose section of LID code should be strengthened to resolve potential future disagreements
- Definition sections should be added if not already part of Title 20.

Need incentives that work & motivate

Potential Resolution:

- Work with BBWARM Advisory committee to recommend changes to fee structure for LID projects.
- We will consider a density bonus incentive within the Birch Bay UGA.

How will maintenance costs be paid, and who will do the maintenance?/ It is not clear in the plan who would maintain the LID systems and how that would be documented and recorded. LID stuff is good, but untried / LID limits marketability

Potential Resolution:

- Stormwater facilities will be privately maintained as they currently are.
- An annual reporting requirement to BBWARM could be a result of a stormwater fee reduction. This would provide some assurance that LID facilities are being maintained and working as planned in order to receive discount.
- LID approach has been tried and tested for over a decade in Washington. We could provide a local tour.

Recognizing that not all wetlands are created equal and offering the ability to apply what is learned from past experience makes so much more sense than trying to apply the same strict specific remedy to every situation.

Potential Resolution:

- This is the concept that led us to the flexible scoring criteria for LID. It is also the basis for mitigation through the Habitat Mitigation Fund rather than the current requirement for mitigation on-site. On-site mitigation it does not always make practical improvements nor have a chance for long term success.

Topics to be Addressed by Alternative Mitigation Program Subgroup

How exactly will the mitigation fund be used to protect the integrity, function and value of ecological functions in a manner that is equivalent to what would have been provided by a habitat buffer? In other words, how will No Net Loss be measured? / How can a wetland buffer impact be mitigated on a different wetland? / The In-Lieu-Fee program should include wetland impacts and be certified through Corps of Engineers and State. / It would be best to identify the mitigation receiving site before hand, both to protect this site from future development, and to ensure that quantifiable measurements are used to establish a baseline standard.

Potential Resolution:

- More specificity needs to be added to Habitat Mitigation Fund to describe type of mitigation activities that may occur in exchange for buffer impacts and how this provides needed ecological lift.
- Code and Habitat Mitigation Fund should be clarified to show that out-of-kind mitigation, consistent with the 2007 Pilot Study will be allowed.
- It may be possible to allow for wetland mitigation on sites managed through this program, but getting Federal and State approval will need to happen on a case-by-case basis.
- CAO should be modified to identify off-site mitigation as appropriate in limited circumstances. Zoning code should be modified to allow mitigation as an allowed use in all zones.

Buffer reduction credits are not supported by science / Buffer reduction credits are contradictory / Insure that incentive-based program isn't going against current regulations. (e.g., CAO, SEPA) / If replacing on-site buffers, need to make sure that overall result of off-site mitigation is better.

Potential Resolution:

- Correct, buffer reduction beyond what is currently allowed under the CAO is *not* supported by science. The science does support the current buffer reductions when measures are taken to reduce impacts to the critical area. These measures (including LID, and further described in WCC 16.16.640(D)) are intended to offset the functions provided by the buffer.
- Any reduction in the buffer beyond what is currently allowed requires compensatory mitigation.

- Impacts to buffers are used as a last resort, used when impacts to Habitat Conservation Areas and wetlands have been avoided and minimized. There will continue to be a need for buffer mitigation in the Birch Bay watershed long into the future.
- Mitigating the functions of a buffer, when on site opportunities are limited, is proposed by the Habitat Mitigation Fund.

I was under the impression that the funds might be used to conduct restoration on resources other than buffers (e.g. wetlands and streams), this section of the code seems to imply that the funds will only be used for buffer restoration. / I am not sure I understand how you would accomplish “providing equal or improved buffer functions than the impacted buffer”. Buffer functions are specific to the resource which the buffer is protecting (e.g. Wetland A’s buffer only functions to protect Wetland A). Buffer functions are not transferable to another resource (i.e. you cannot improve buffer functions for Wetland B and say that it is equivalent to improvements to buffer functions for Wetland A).

Potential Resolution:

- Replacing lost buffer functions will be the focus of mitigation, but the Habitat Mitigation Fund proposes a watershed approach, which allows us to focus on replacing watershed processes. This may result in out-of-kind mitigation. The HMF should be clarified.
- The 2007 Pilot Study identifies lost ecological function and ways to restore it.
- The code should be modified to say “mitigation should provide equal or improved ecological function than the impacted buffer.”

Topics to be Addressed by LID Designation and Qualification Subgroup

The Scoring Criteria section is very unclear. Please put more verbiage here so the reader understands how this is applied. / 20.50.510 Percentage of Property Revegetated with Native Trees and Shrubs. Obtaining points for as little as 2% revegetation seems too low. Please adjust this to at least 5%, and give a square footage number for those properties that are very large, where 2% could be considered significant. / 20.50.515 Percentage of Degraded Wetland/Stream Buffer to be Revegetated. The ability to receive points for 0% degraded wetland/ stream buffer revegetated seems absurd. Please change this to a minimum of 5 or 10%. / 20.50.610 Percent Area of Impervious Surface. Redevelopment that decreases the size of impervious surface gets 12 points regardless of the size of reduction. Please break this into 2 tiers to recognize small reductions (for example 1- 5% = 3 points) and greater reductions (> 5% = 12 points) / Open Space is a disincentive, can’t lock up half of site, people won’t go for that. / There are some conflicts with county code (e.g., lot size in manual vs. what’s allowed for a cluster development.) / Remove disincentives (e.g., people won’t want to give up 50% of their property)

Potential Resolution:

- The scoring criteria can be removed in the name of clarity and consistency.
- We can specify a required native growth area that would require revegetation area that is greater than the minimum 2%.
- We can add a threshold area for reduced impervious surface as a result of redevelopment.

- We can remove the open space points (10% in UGA, 50% outside), because zoning already has open space requirements.

It is not clear that a Notice on title will be sufficient to protect the LID features, because it requires both intake of information and willingness to comply. How will these covenants be communicated effectively and enforced?

Potential Resolution:

- Notice on title or on Plat is recorded on the deed, as are stormwater covenants, critical areas, and easements. When development activity occurs in areas identified on the Notice, enforcement action can be taken. These documents are required to be recorded by the Auditor before a permit is issued.

With wetlands and APO rules combined, development is too complicated, impractical and expensive. / The added layers of design complexity and staff review involved in meeting the design criteria will impose an added cost to development. Without economic compensation, it is unlikely that many projects will use the program.

Potential Resolution:

- Agricultural Protection Overlay standards would help achieve the objectives of this program. You would get credit for practices already required, i.e., open space. In addition to what is already required, these short subdivisions would be asked to provide post-construction stormwater facilities.
- We can look at how to minimize revision costs for projects that are truly committed to implementing measures to achieve the purpose.

As a definition for low-impact development, the proposed code identifies projects that “use LID practices to provide for water quality treatment of a 24 hour storm with a six month return frequency, or 91% of annual stormwater runoff volume.” This language is vague and misleading. Essentially all developments are already required to provide water quality treatment to those standards, and “LID practices” are not defined in the code.

Potential Resolution:

- This is the common language to describe the stormwater treatment threshold. Let’s work on better language, please suggest.
- This is the prerequisite standard, to get points as proposed, the 95% threshold would need to be met.
- The difference is using LID stormwater features rather than convention.
- We will define LID practices in the code.

Having a point-of-contact at the Planning Department to review a permit application should be a baseline expectation for every project in Whatcom County, regardless of the site location or design details.

Potential Resolution:

- Will remove this as an incentive.

Current maps show numerous drainages based on 30% existing runoff. When the target runoff is reduced by a factor of 10 to 3% we will have 1/10th of the water going down these drainages. Many of the drainages labeled for protection will go dry as the source of surface hydrology is taken away.

Potential Resolution:

- Current maps don't represent regulated features.
- Effective LID projects will minimize peak runoff times, thereby lowering runoff during storm events and slowly releasing clean water longer into the summer, as in naturally forested conditions.