

**ARTICLE 9  
BIRCH BAY WATERSHED-BASED MANAGEMENT PLAN –  
HABITAT MITIGATION FUND**

**16.16.910 Purpose**

The purpose of this article is to provide a watershed-based management plan, pursuant to the requirements of WCC 16.16.260.E, that provides an alternative approach to mitigating impacts to wildlife habitat functions resulting from alterations to stream buffers and/or wetland buffers established in Articles 6 and 7 of WCC Chapter 16.16 (see Appendix F). The Birch Bay watershed-based management plan, hereby called the Habitat Mitigation Fund (HMF), provides a framework for the management and operation of an off-site buffer habitat mitigation program. The HMF is specifically designed achieve all of the following:

- A. Provide for a landscape-based approach to mitigation that restores watershed processes as a whole, with an emphasis on restoring and provides high-quality wildlife habitat;
- B. Create an in-lieu fee program whereby permit applicants can pay into an off-site buffer mitigation fund as an alternative to implementing on-site and/or permittee-responsible mitigation on-site;
- C. Enable the County, together with the HMF co-sponsor, to collect and use buffer mitigation fees to implement buffer mitigation in a way that creates greater wildlife habitat benefits to the Birch Bay watershed than could be achieved through on-site, permittee-responsible mitigation;
- D. Restore habitat functions in areas that can provide the most greatest ecological lift, as described in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (2007);
- E. Encourage development practices that minimize impacts to critical areas, habitat and water quality;
- F. Establish provisions for administering the HMF off-site mitigation program;
- G. Establish a mitigation-HMF fund contribution schedule;
- H. Establish a project review procedure.

**16.16.920 Application**

- A. The provisions contained in this Article are specific to the mitigation of wetland and stream buffer impacts and are provided as an alternative to the following buffer mitigation requirements within this Chapter:
  - 1. Mitigation Monitoring and Maintenance (WCC 16.16.260.C)
  - 2. Mitigation assurance bonding requirements (WCC 16.16.260.D)
  - 3. Wetland buffer maximum reduction standards (WCC 16.16.640.B & 16.16.640.C)
  - 4. Wetland buffer reduction planting requirement (WCC 16.16.640.D.7)
  - 5. Wetland Buffer Averaging (WCC 16.16.650)
  - 6. Compensatory Wetland Mitigation Plan (WCC 16.16.690)
  - 7. Stream buffer reduction requirements (WCC 16.16.740.D.1)
  - 8. Stream buffer maximum reduction standard (WCC 16.16.740.D.2)
  - 9. Stream buffer average requirements (WCC 16.16.740.E)
  - 10. Mitigation Standards for Stream Buffers (WCC 16.16.760)

- B. Use of the HMF is limited to projects that meet the minimum criteria for enrollment in the Birch Bay Low Impact Development program (WCC 20.50). The Technical Administrator may waive this requirement on a case by case basis.
- C. Projects that do not meet the criteria stated in sub section B above must conform to the standard wetland and stream buffer mitigation requirements in Articles 6 and 7 of WCC 16.16.
- D. The HMF applies to the unincorporated areas of the Birch Bay watershed (Res. 2008-049 § 1 (Exh. A § 2)). ~~Projects within the~~ Cherry Point Industrial District that impact stream and/or wetland buffers adjacent to the watershed may utilize the HMF for buffer habitat mitigation with approval of the Director of Planning and Development Services.
- A-E. The HMF cannot be used to mitigate for direct wetland or stream channel impacts.
- ~~B. Use of the HMF is limited to applicants enrolled in the Birch Bay Low Impact Development program (WCC 20.50). The Technical Administrator may waive this requirement on a case by case basis.~~
- F. Applicants that do not qualify for the Low Impact Development program must conform to the standard buffer mitigation requirements in WCC 16.16, unless otherwise stated in sub-sections A and B, above. ~~The HMF cannot be used for to mitigate impacts to shoreline buffers regulated under the Shoreline Management Program (WCC Article 23).~~

~~Standard wetland buffer and stream buffer widths shall be determined based on the criteria in WCC 16.16.6340 and 16.16.740. Under the HMF, buffers may not be reduced greater than the following:~~

**16.16.930 Minimum Buffer Widths**

- A. Projects which meet the application criteria in WCC 16.16.920 and which utilize the HMF for off-site habitat mitigation shall be considered low impact development projects and as such shall be afforded greater relief from the standard wetland and stream buffer requirements in WCC 16.16.630 and 16.16.740. The buffer reduction allowances and minimum on-site wetland and stream buffer widths for such projects shall be as follows:
  - 1. The buffer of a Category I or II wetland may be reduced to 65 percent of the standard buffer or 40 feet, whichever is greater.
  - 2. The buffer of a Category III or IV wetland may be reduced to 40 percent of the standard buffer, or 25 feet, whichever is greater
  - 3. Stream buffers may be reduced to 65 percent of the standard buffer, or 33 feet, whichever is greater
- ~~1. The buffer of a Category I or II wetland shall not be reduced to less than 75 percent of the required buffer or 50 feet, whichever is greater (WCC 16.16.640.A)~~
- ~~2. The buffer of a Category III or IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater (WCC 16.16.640.B)~~
- ~~3. Stream buffers shall not be reduced to less than 75 percent (WCC 16.16.740.D.2)~~
- ~~4. The HMF cannot be used for as mitigation for shoreline buffer impacts regulated under the Shoreline Management Program.~~

~~B. Projects that impact the buffer of the mainstem of Terrell Creek or the mainstem of Fingalson Creek shall be subject to the following requirements in addition to the requirements in 16.16.930.A:~~

~~1. If the impacts are to the Terrell Creek main stem buffer, the HMF mitigation site must be located within the main stem Terrell Creek buffer.~~

~~2. If the impacts are to the Fingalson Creek main stem buffer, the HMF mitigation site must be located within either the main stem Terrell or Fingalson Creek buffers.~~

~~4.3. In the event that the HMF co-sponsors have not secured suitable restoration sites to meet the above criteria, the applicant must mitigate stream buffer impacts on site, per WCC 16.16.16.760~~

~~B. The provisions contained in this Article are specific to the use of wetland and stream buffers and are offered to the applicant as an alternative to only the following sections within this Chapter:~~

~~1. Mitigation Monitoring and Maintenance (WCC 16.16.260.C)~~

~~— Mitigation ~~a~~Assurance bonding requirements (WCC 16.16.260.D)~~

~~2. Wetland buffer maximum reduction standards (WCC 16.16.640.B & 16.16.640.C)~~

~~3. Wetland buffer reduction planting requirement (WCC 16.16.640.D.7)~~

~~4. Wetland Buffer Averaging (WCC 16.16.650)~~

~~5. Compensatory Wetland Mitigation Plan (WCC 16.16.690)~~

~~— Stream buffer reduction requirements (WCC 16.16.740.D.1)~~

~~6. Stream buffer maximum reduction standard (WCC 16.16.740.D.2)~~

~~7. Stream buffer average requirements (WCC 16.16.740.E)~~

~~8. Mitigation Standards for Stream Buffers (WCC 16.16.760)~~

#### **16.16.940 Location of Mitigation.**

~~Mitigation for loss of wetland and stream buffer habitat functions shall be located at priority sites within the watershed that have been identified as having the greatest mitigation value. The HMF co-sponsors shall maintain a list of possible mitigation sites within the Birch Bay watershed using the best available information about site conditions. The HMF co-sponsors shall select from the list one or more mitigation sites for each wetland and/or stream buffer impact according to the following criteria, which are listed in order of priority: —actions shall be conducted on the same site as the alteration except when all of the following apply:~~

~~The project does not reduce tree canopy coverage within the buffers of the main stems of Terrell Creek and/or Fingalson Creek.~~

~~A. The off-site Off-site mitigation provides has a greater likelihood of providing equal or improved buffer wildlife habitat functions than the on-site impacted buffer mitigation;~~

~~B. The mitigation site helps to achieve the watershed Watershed goals for water quality, flood or conveyance, habitat, or wetland functions established through the Birch Bay Watershed Characterization Pilot Study (ESA Adolfson, 2007 XXXXX) justify location of mitigation at another site.~~

~~B.C. The mitigation site is located as close as possible to the impact site.~~

#### **16.16.950 Mitigation Requirements**

~~Unavoidable impacts to stream buffers or wetland buffers must comply with (a) or (b) below:~~

~~— Projects that meet the criteria for off-site mitigation in WCC 16.16.920 and 16.16.930, and choose to mitigate through the HMF (Appendix F) shall pay the appropriate fee, as detailed in WCC 16.16.950.~~

~~a) Mitigation on site according to the mitigation requirements of WCC 16.16.~~

~~b) Projects that meet the criteria for off-site mitigation in WCC 16.16.930, and choose to mitigate through the HMF (Appendix F) shall pay the appropriate fee, as detailed in WCC 16.16.950.~~

**16.16.950 Mitigation Fund Contribution Schedule**

~~A. Projects that meet the criteria for off-site mitigation in WCC 16.16.920 and 16.16.930, and choose to mitigate through the HMF (Appendix F) shall pay a base fee of \$2.90 per square foot of buffer impact.~~

~~A.B. The base fee for the HMF is \$2.90 per square foot of buffer impact.~~ In order to reflect the findings of the Birch Bay Watershed Characterization Pilot Study (~~ESA, 2007XXXX~~) and provide equivalent or greater habitat quality at the mitigation receiving site, the base fee will be increased under these situations:

1. For buffer impacts that occur within a “protection” or “restoration” sub-basin, as identified in the Birch Bay watershed planning study (~~ESA-Adolfson, 2007XXXX~~), the base fee will be increased by 20%.
2. If a buffer impact area crosses sub-basin boundary line, only that portion of impact area that lies within a “protection” or “restoration” sub-basin is subject to the 20% base fee increase.

~~3.~~ 3. The base fee will be increased by an additional 20% for buffer alterations that result in ~~removal of tree canopy~~ removal of trees greater than 4 inches DBH.

~~3.4.~~ 3.4. The additional 20% is calculated based upon the Sf square feet of areal tree canopy reduction resulting from tree removal.

A. To simplify the cost structure and accounting, the County will require a minimum fee to of ~~\$XXX-2,250 for any area of buffer impact up to 750 square feet.~~

B. 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

**16.16.960 Submittal and Review Process.**

If enrolled in the Birch Bay Low Impact Development program (WCC 20.50), applicants have the option of paying into the HMF to mitigate development-related habitat 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 WCC 16.16.255.

- C. When designing the proposed development site plan, follow the avoidance criteria listed in WCC 16.16.260(A).
- D. If the proposed development results in ~~unavoidable~~ buffer impacts, the assessment report 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 calculations for alteration resulting in tree canopy removal separate from areas lacking in tree canopy. 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 permit application, pay appropriate fee into Fund.
- G. Proceed with development project upon issuance of permit.

#### **16.16.970 Wetland Mitigation Sequencing**

~~For applicants~~ Projects enrolled in the Birch Bay Low Impact Development program (WCC 20.50), shall be considered to have met the impact a avoidance and requirements “avoidance” mitigation sequencing criterion defined in WCC 16.16.260.A. Such projects shall be allowed to compensate for ~~interpreted to allow~~ impacts to certain low-functioning wetland areas by providing appropriate replacement wetlands in accordance with the requirements of WCC 16.16.680. This allowance shall only apply to Category III or IV wetlands, with habitat function scores of less than 20 points, which are located within a “development” sub-basin as identified in the Birch Bay watershed planning study (XXXX), providing the following provisions are met:

- ~~A. The impact area is located within a “development” sub-basin, as identified in the Birch Bay watershed planning study (ESA Adolfson, 2007).~~
- ~~B. The wetland impacts are limited to Category III or IV wetlands, with habitat function scores of less than 20.~~
- ~~C. Mitigation for wetland impacts is provided offsite within a “protection” or “restoration” sub-basin, or at a certified mitigation bank which service area includes the wetland impact area~~ [mclancy1].
- ~~D.A. \_\_\_\_\_ The Birch Bay Habitat Mitigation Fund (WCC 16.16., Article 9) cannot be utilized to mitigate for direct wetland impacts. Offsite wetland mitigation is the responsibility of the applicant, and is subject to the standards of WCC 16.16.680 and 16.16.690~~ [mclancy2]

#### **16.16.980 Program Evaluation and Re-Authorization Criteria**

The HMF (~~WCC 16.16, Article 9~~) shall be evaluated by the County no later than January 1, 2017, with an option to renew, modify, or remove the standards. Criteria used by the County to evaluate the HMF shall include, but not be limited to:

- A. Feedback from LID program enrollees, County staff, and Birch Bay Watershed residents.

- B. Total number of applicants that have utilized the HMF for wetland and/or stream buffer mitigation, as compared to number of applicants that met the application criteria of WCC 16.16.920 but chose not to utilize the Fund.
- C. Effectiveness of LID stormwater controls to retain and treat stormwater flowing into wetlands and streams with alterations permitted under the HMF, as indicated by water quality trends and changes in flooding extent and frequency.
- D. Wildlife usage of mitigation receiving areas, as determined by wildlife observation data collected during mitigation site monitoring visits.
- E. Advances in habitat restoration science, and changes in relevant federal and state regulations.
- F. Adequateness of fee structure to provide sufficient funds for restoring mitigation receiving sites, which results in no net loss of habitat functions.

**16.16.990 Definitions.**

“DBH” means diameter breast height, which means the outside bark diameter at breast height. Breast height is defined as four and one-half feet (1.27m) above ground on the uphill side of the tree.

“Tree canopy” means the area of cover provided by conifer or hardwood tree(s) greater than four inches DBH (diameter at breast height). Tree canopy excludes the portion of the tree cover that overlies impervious surface areas.