

PDS Submitted Changes for Planning Commission Consideration

Critical Areas Ordinance, Section 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 ~~this the HMF Article~~ is voluntary; permit applicants not wishing to participate have the option of meeting the standard critical area buffer requirements.
- C. Use of ~~this Article~~ 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 if s/he has reason to believe that the proposed development project has minimal effects on water quality and quantity.
- D. Projects that do not meet the criteria stated in sub section C above must conform to the standard wetland and stream buffer widths in Articles 6 and 7 of WCC 16.16.
- E. ~~The HMF~~ **This Article** applies to **critical areas within** the unincorporated areas of the Birch Bay watershed **as defined in** Ordinance 2007 – 019 or as amended, **which is the ordinance establishing the Birch Bay Watershed and Aquatic Resources Management sub flood zone district.** ~~Projects within the Cherry Point Industrial District that impact stream and/or wetland buffers may utilize the HMF for off-site buffer habitat mitigation with approval of the Director of Planning and Development Services.~~
- F. The **Habitat Mitigation Fund** cannot be used to mitigate for direct wetland or stream channel impacts.
- G. The **Habitat Mitigation Fund** cannot be used ~~for~~ to mitigate impacts to shoreline buffers regulated under the Shoreline Management Program (WCC Title 23).
- H. **The provisions of this Article cannot be applied within the area mapped as Cherry Point Major Industrial Urban Growth Area, WCC 20.74.**
- I. **The Watershed Management Results of the Birch Bay Watershed Characterization and Planning Pilot Study as mapped in Appendix F, shall not be changed without amending this Article. Areas included in this program without a watershed management recommendation shall be treated as a "Restoration" watershed for the purposes of this article.**

Comment [pgIII1]: Clarification on where the program applies if watershed boundary bisects a parcel.

Comment [pgIII2]: Removes potential for use of Birch Bay CAO use in the industrial UGA.

Comment [pgIII3]: New line. Further clarifies that no development w/in the Industrial UGA can utilize Birch Bay CAO.

Comment [pgIII4]: Clarification, that provides certainty about the areas affected.

16.16.930 Minimum Buffer Widths

- A. Projects which meet the ~~application~~ **Low Impact Development** criteria in WCC ~~16.16.920~~ **20.50** and which utilize the HMF for off-site habitat mitigation shall be afforded greater relief from the

Comment [pgIII5]: Change is in response to comments that industrial projects could get a reduced buffer. Clarifies that reduced buffer is not allowed without LID.

standard wetland and stream buffer requirements in WCC 16.16.630 and 16.16.740. The minimum on-site wetland and stream buffer widths for such projects shall be as follows:

1. The minimum buffer of a Category I or II wetland shall be 65 percent of the standard buffer or 40 feet, whichever is greater.
2. The minimum buffer of a Category III or IV wetland shall be 40 percent of the standard buffer, or 25 feet, whichever is greater.
3. The minimum stream buffer shall be 65 percent of the standard buffer, or 33 feet, whichever is greater.

16.16.950 HMF Contribution Schedule

- A. Projects that meet the application criteria for off-site mitigation in WCC 16.16.920 and off-site mitigation criteria in WCC 16.16.930, and choose to mitigate through the Habitat Mitigation Fund (Appendix F) shall pay a base fee of \$2.90 per square foot of buffer impact, where the area of buffer impact (square feet) is the difference between the minimum buffer allowed per WCC 16.16.630 or 16.16.740 and the reduced buffer allowed per WCC 16.16.930.

Comment [pgIII6]: References the two sections needed to use the fund for mitigation requirements, and fixes the reference to off-site mitigation criteria.

16.16.951 HMF Contribution Schedule

- A. C To simplify the cost structure and accounting, the minimum fee will be the greater of \$2,250.00, or the amount calculated according to the Contribution Schedule.

Comment [pgIII7]: Typo

B. D Mitigation Fund Contribution Schedule

Comment [pgIII8]: Typo

16.16.980 Program Evaluation and Re-Authorization

The HMF shall be evaluated by the County no later than January 1, 2017, with County Council action taken 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.
- D. Wildlife habitat features at mitigation receiving areas, connectivity of sites, diversity of habitat, and any qualitative 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.
- F. G. Net loss of ecological function resulting from the delay between impacts and mitigation as described in credit fulfillment schedule reports.

Comment [pgIII9]: If the time lag from impact to mitigation is resulting in a net ecological loss the program should not be reauthorized.

Low Impact Development (Zoning Code), Section 20.50.030 Area and applicability.

- (1) The LID program applies to development proposals in parcels intersected by the unincorporated areas of the Birch Bay watershed as defined in Ordinance 2007-019 or as amended, which is the ordinance establishing the Birch Bay Watershed and Aquatic Resources Management sub flood zone district Res. 2008-049 § 1 (Ex. A § 2).
- (2) These optional standards apply to development that qualifies under in 20.50.100.
- (3) The benefits are available to residential and commercial development, as well as short subdivisions and long subdivisions, and binding site plans not associated with Heavy Impact Industrial uses (WCC 20.68).
- (4) The provisions of this chapter do not apply within the jurisdiction of the Shoreline Management Program.

Comment [pgi110]: Clarification on where the program applies if watershed boundary bisects a parcel.

Comment [pgi111]: Preferred reference to Birch Bay watershed boundary.

Comment [pgi112]: Clarifies that the flexibility allowed through the LID program are not available to Industrial uses.

Habitat Mitigation Fund – Appendix F of the CAO

6.0 MITIGATION SITE TECHNICAL REVIEW

The Whatcom Conservation District (WCD) will solicit third party technical review of mitigation plans. The third party reviewers will be chosen by RFQ or similar procurement Request for Qualifications or Request for Proposal procedure from the Whatcom County Qualified Professional list.

Comment [pgi113]: Both are open and auditable procedures that would work in this situation.

The third party technical review will be utilized on an as needed basis by the WCD with the specific purposes of:

Comment [pgi114]: Third party review would be a required step prior to building mitigation project, not only "as needed."

- Reviewing mitigation site plans for consistency with site selection and implementation criteria described in Sections 8 and 9;
- Review mitigation site plans for construction, maintenance, and contingencies as required by 16.16.260(B);
- Review mitigation site plans for adequacy of performance measures as described in Section 9.2; and
- Review the potential use of the HMF for preservation in lieu of habitat restoration (see Section 8.2.2).

Comment [pgi115]: Typo

8.0 OFFSETTING IMPACTS THROUGH TARGETED MITIGATION

8.1 No Net Loss

The HMF is designed to achieve “no net loss” of buffer habitat functions, based upon the following assumptions:

- The proposed restoration sites will be well designed and constructed by an experienced organization (i.e., the WCD), and will be monitored and maintained so that the sites will meet their identified restoration goals. The WCD is more likely to meet restoration goals and protect a site in perpetuity, as opposed to typical permittee-responsible mitigation.
- The use of LID stormwater controls will adequately mitigate for water quality and hydrologic impacts resulting from a decreased buffer width.
- As the HMF program is intended to mitigate only for habitat impacts, it would be acceptable to mitigate for stream buffer impacts with wetland buffer restoration, and vice-versa.
- The sponsors of the program will identify the most high-priority wildlife habitat restoration areas within the watershed, based upon the best available information.
- Impacts to non-forested buffers within “development” sub-basins can be adequately compensated for with a 1:1 mitigation ratio.
- Impacts to forested buffers within “development” sub-basins, and impacts to non-forested buffers within “protection” and “restoration” sub-basins, can be adequately compensated for with a 1:1.2 ratio.
- Impacts to forested buffers with within “protection” and “restoration” sub-basins can be adequately compensated for with a 1:1.4 ratio.
- As a pilot program the HMF will be reviewed by County staff and the Council in 5 years, and can be revised if need be.
- As the most important habitat areas in the watershed, Terrell and Fingalson Creek impacts must be mitigated for along Terrell or Fingalson creeks.
- The program sponsors will make the most of state and federal programs, public/private partnerships, and grant funds to establish credits that will precapitalize the program and eliminate any temporal loss.

Comment [pgi116]: Sponsors will work to establish credits once mechanism is in place to pay off the capitol investment. This would eliminate any potential temporal loss.

8.2 Mitigation Receiving Site Selection

One of the primary goals of this watershed-based management plan is to provide wildlife habitat compensation for buffer impacts that result in greater ecological benefit to the Birch Bay watershed than could be achieved through permittee-responsible mitigation. ~~As The methods~~ described in Sections 3.4 and 3.6 of the *Birch Bay Watershed Characterization and Watershed Planning Pilot Study* (ESA Adolfson, 2007) were used to identify sub-basins that are the highest priority for wildlife habitat restoration, and the Merrill study (2010) contains a site-specific identification and prioritization of potential restoration sites in the watershed. ~~According to these studies,~~ The highest-priority candidate restoration sites for restoring wildlife habitat in the watershed:

- Contain a diversity of habitat types (wetland, stream, and upland buffer);
- Contain, or are adjacent to, areas that provide habitat for priority species (e.g. coho salmon and great blue heron);
- Have larger areas, as compared to lower-priority sites;
- Have been significantly altered by previous land uses, but are not developed;
- Contain invasive species infestations (e.g. Himalayan blackberry and reed canary grass); and
- Are located in the Terrell Creek Watershed Assessment Area, as identified in the Birch Bay watershed planning study (ESA Adolfson, 2007).
- Have a high or moderate rated wildlife value as indicated in Table 7-3 of the *Birch Bay Watershed Characterization and Watershed Planning Pilot Study* (ESA Adolfson, 2007)

Comment [pgill17]: Removes reference to using Pilot Study results from this paragraph and inserts it below with the listed criteria.

Comment [pgill18]: Provides added consistency with Pilot Study recommendations.

10.3 Credit Fulfillment Schedule

Restoration activities at the receiving site will begin within 3 growing seasons of collecting impact fees. The co-sponsors, shall submit an annual report to the public which shall include, but not be limited to:

- Total HMF fees and expenditures by category (see Section 10.2);
- Review of mitigation fee and, in the case of a significant positive or negative ledger balance; justification for modifying the fee amount;
- Detail of property rights that have been secured;
- Summary of monitoring results from constructed projects;
- Amount and type of mitigation that has occurred;
- Area of buffer impact, that is to be mitigated through this program, by sub-basin; and
- Mitigation obligations that have yet to be completed, and a schedule for completing the restoration activities.
- Time between construction impacts and mitigation project implementation and/or mitigation credits fulfilled.

Comment [pgill19]: Needed for project evaluation criteria to document no net loss.