



Memorandum

TO: Whatcom County Planning Commission

FROM: Peter Gill, Senior Planner

DATE: January 26, 2012

**SUBJECT: Birch Bay Watershed Action Plan Public Hearing
File #PLN2011 - 0012**

The work session scheduled for January 26, 2012 is regarding the new stormwater management options, Birch Bay specific rules for buffer widths, buffer mitigation, and wetland impacts.

We have seen significant input from the public, interest groups, and recently public agencies. Now the department is seeking specific input from the Planning Commission. An information session was provided to Planning Commission in 2010, and followed in 2011 with three work sessions and a public hearing. Looking for outside feedback Planning Commission asked for a technical stakeholder group to refine the program and see how it aligned with new State stormwater regulations available for review in the summer of 2011. The results of this work were made public on November 3, and are now available for your review (first provided on Dec. 8, and a tracked changes version provided on January 12, 2012). Meeting summaries from the six Birch Bay Ad hoc Stakeholder meetings are included in your packet. Finally, a public hearing on these changes was held on December 8, 2012, and the public record was left open until January 12, 2012. Thank you for your persistence in working through this important program for the Birch Bay watershed.

Comments Summary

With nearly 150 individual written comments submitted on the program since December, we have attempted to provide a summary of the most persistent and widely shared feedback that we have received below. The list included in this memo only provides highlights, there are many individual comments, not included below, that should be reviewed prior to taking action. All comments were sent to Planning Commissioners via email. Planning and Development Services has provided some code changes to address the comments we have received since November. These have been included in the packet for discussion during the work session.

Do not allow for reduced buffer widths or an in-lieu-fee option for development associated with the proposed Gateway Pacific

Terminal. There were over a hundred comments based on the concern that this program could help facilitate the building of the port terminal on Cherry Point and reduce critical area buffers. Clarifying changes are included to specifically prohibit the use of the WCC 16.16.900 in any part of the Cherry Point Industrial UGA.

The boundaries of the program are not clear, and there needs to be clarity on parcels that straddle the boundaries of the watershed. References to the adopted Birch Bay subzone boundary are now consistent in the LID code and Critical Area sections. With the proposed changes a parcel that is on the boundary can utilize the LID program, but not the CAO, unless the impacts are within the watershed.

The proposal does not go far enough to discourage development in the "Restoration" and "Protection" subbasins, or provide mitigation in areas prioritized through the Pilot Study. While the disincentive for impacts in sensitive subbasins is built into the fee structure and avoidance criteria, the mitigation site selection has been restated in the PDS submitted changes to prioritize mitigation receiving sites in areas identified in the Pilot Study.

The mitigation program will allow for ecological loss, if construction impacts occur prior to restoration work at mitigation receiving sites. We have added that the Habitat Mitigation Fund sponsors will work to pre-capitalize the program with a mitigation site once the mechanism is in place to recover the investment. PDS changes to Appendix F also add as reporting requirement to the "Credit Fulfillment Schedule," the time differential between impact and mitigation. And further, temporal loss has been added to the program evaluation criteria for 16.16.900.

Many of the comments voice concern that this program will lower the protection of critical areas, so it is worth noting that the Washington State Department of Ecology has expressed their support for this program moving forward, noting in the letter received January 12th, "It is clear that critical area regulations alone are not adequate to protect our state's natural resources. Incentive programs and creative, watershed-based solutions to development pressures help foster ownership of the land by the development community." There is a movement to refine natural resource protection and mitigation based on site specific assessments like the Pilot Study, the letter hints at this here, "There are several other Puget Sound communities seeking a similar pathway as Birch Bay. Whatcom County is the furthest along in the planning process for this type of program and could serve as a model for those communities coming into the process."

In your packet you will find:

- **PDS Suggested Changes** – Code changes in response to public comments.
- **Ad Hoc Stakeholder Meeting Summaries** – Notes, materials, and attendance record for the six meetings June through October 2011.
- **Code and Plans** [Previously distributed on Jan. 12]– Same documents as in Dec. 8 packet, but they show tracked changes.
 - Low Impact Development, Zoning Code (WCC 20.50).
 - Birch Bay specific Critical Areas Ordinance amendment.
 - Operation and Management of the Habitat Mitigation Fund.