



Memorandum

TO: Whatcom County Council Planning & Development Committee
FROM: Cliff Strong, Senior Planner
THROUGH: Steve Roberge, Asst. Director
DATE: July 29, 2022
SUBJECT: City of Bellingham's Umbrella Mitigation Bank Prospectus – Initial Review & Notice to Proceed

Note: City of Bellingham staff will provide a more in-depth presentation on their project at the Committee meeting. Additional information can be found at the COB's webpage: <https://cob.org/services/environment/restoration/mitigation-bank>.

Purpose

The City of Bellingham is seeking a Notice to Proceed from the County Council in order to submit a Major Project Permit (MPP) application for an "umbrella" wetland mitigation bank it proposes to develop. Below is an overview of the process, project, and staff's review of the prospectus.

Process

Initial Review/Notice to Proceed

The City of Bellingham (COB) is proposing to develop a wetland mitigation bank consisting of several sites throughout the city and county. Per WCC 20.88.120 (Major Project Permits), an MPP is required for those sites located in the county's jurisdiction. Per WCC 16.16.263 (Mitigation Banking), the first step in the MPP process for mitigation banks is for the Planning and Development Services (PDS) Director to review the bank prospectus and, if complete, technically accurate, and consistent with the purpose and intent of WCC Chapter 16.16 (Critical Areas), forward it to the County Council for initial review.

Based on its initial review, if the County Council determines that the prospectus is valid, it shall issue a notice to proceed to the COB, the bank's sponsor. The notice to proceed is not to be construed as final approval of the bank proposal, but indicates approval to proceed with the development of the mitigation bank *instrument (MBI) and associated technical documents*, which detail all of the physical characteristics, legal requirements, operational procedures, monitoring, and maintenance for the wetland mitigation bank.

Note that through this initial review if the proposed bank involves conversion of agricultural land to nonagricultural uses, the County Council must seek a recommendation from the Agricultural Advisory Committee (AAC) as to whether the conversion should be allowed. The AAC's recommendation is nonbinding; however, the County Council may require mitigation for the loss of agricultural lands.

Staff Review of the Prospectus

County staff has been involved with the COB Umbrella Mitigation Bank early as a Steering Committee member, and later as a participant in the Interagency Review Team (IRT)¹ in advising the U.S. Army Corps and the WA State Dept. of Ecology in their review of the documents for the establishing and operating the bank.

The PDS Director has reviewed the Prospectus, which covers all four proposed mitigation sites under the umbrella, and finds it complete, technically accurate, and consistent with the purpose and intent of WCC Chapter 16.16 (Critical Areas). Furthermore, the proposed bank involves no conversion of agricultural land to nonagricultural uses. Though some areas are currently hayed, there are no areas included in the Prospectus that are zoned Agriculture.

Major Project Permit (MPP) Application

Following receipt of a notice to proceed, in accordance with WCC Chapter 20.88 the COB may then apply for an MPP. Upon its submittal, the Director will review the MPP application and MBI documents in consultation with the state's Mitigation Bank IRT and/or other third-party experts. Following review, the Director will make a recommendation to certify and approve, conditionally certify and approve, or deny the bank proposal and major project permit in accordance with the provisions of WCC Chapters 20.88 and 22.05.

Once PDS has reviewed the application for compliance with the Whatcom County Code, the MPP application goes to the Hearing Examiner for a publicly noticed open record public hearing. The Hearing Examiner will then forward the application with their recommendation (approve, approve with conditions, or deny) to the County Council for review in a public meeting, whereupon they may concur with the Hearing Examiner's recommendation or render a different decision.

The MPP will likely be structured in phases, with one site proposed for each phase. Mitigation bank technical documents will be submitted to the Mitigation Bank IRT for each of the proposed sites as they move forward. No technical documents will be submitted for a site that the City chooses to not pursue under the umbrella. The mitigation bank technical documents will be very detailed regarding site specific information, final restoration or preservation designs, and proposed mitigation credit values. County staff (in consultation with the Mitigation Bank IRT and/or other third-party expert) will review the individual technical documents for conformance with the WCC and the Major Project Permit once it's issued. Whatcom County staff will have the opportunity to request modifications as needed to meet Whatcom County Code.

Project Description & Background

When a landowner or developer has unavoidable impacts to wetlands, they are responsible for fully mitigating for the ecological losses that will result. This typically includes hiring consultants to do a mitigation proposal report, finding and creating a mitigation site, creating a bond or other financial surety for the mitigation, and submitting mitigation monitoring reports for a minimum of 5-10 years. Mitigation banks have the ability to create larger wetland projects with greater ecological functions, sustainability, and ecological success than individually and variably-managed mitigation on smaller sites.

The City of Bellingham is developing an Umbrella Mitigation Bank to provide ecologically functional mitigation to offset permitted wetland and aquatic resource and buffer impacts within its jurisdiction and the region. An Umbrella Mitigation Bank provides the sponsor flexibility to defer certain or add

¹ Comprised of representatives of the Army Corps of Engineers, Washington State Department of Ecology, Whatcom County, the Lummi Nation, and the Nooksack Indian Tribe.

additional bank sites over time once the regulatory framework of the Mitigation Bank is established. The COB will sell compensatory wetland mitigation credits to permittees whose obligation is to provide compensatory mitigation. The responsibility is then transferred to the mitigation bank sponsor (City of Bellingham).

The COB has been actively researching a programmatic approach to mitigation since 2012. Whatcom County staff and County Executive have been involved throughout the process and recognize the ecological and economic importance of having such an option in Whatcom County. The mitigation bank sites proposed in this Prospectus have been selected based on extensive analysis conducted by the COB, Whatcom County, and its consultants, including:

- Detailed research on existing ecological conditions, development patterns, and growth projections within the City and region;
- Future need for mitigation from local governments, utilities, school districts, farmers, and home builders.
- Identification of specific project impacts (both to wetland and aquatic resources and their buffers); and
- Quantification of those impacts by watershed and impacts to wetland and aquatic resource functions.

The proposed service area for the bank is approximately 82,543 acres in size (129 square miles). It represents 9% of Water Resource Inventory Area (WRIA) 1. The proposed service area includes the following watersheds:

- Ten Mile Creek
- Silver Creek
- Squalicum Creek
- Whatcom Creek
- Little Squalicum Creek
- Bellingham Bay
- Padden Creek
- Chuckanut Creek and Bay
- Samish Bay

The COB is proposing four bank sites located on 607 acres to implement its Umbrella Mitigation Bank (Table 1, Figures 1 – 5). Analysis of mitigation demand over the next ten years supports bank site location within these watersheds.

Table 1. Proposed Mitigation Bank Sites

Watershed	Mitigation Bank Site	Site Acreage	Anticipated Credits
Silver Creek	Bear Creek Corridor	95.6	14.70
	McCormick Creek Headwaters	158.7	28.36
Squalicum Creek	Squalicum Lake	271.4	35.19
	Valley of the Forks	81.9	25.91
TOTAL		607.6	104.16

The Prospectus presents conceptual designs for the proposed mitigation bank sites, including proposed credit generation estimates. The proposed credit conversion rates are consistent with the ranges in Washington State’s Wetland Mitigation Banking Rule. The credit generation strategy is also consistent with both state and federal rule considerations for credit generation. The Prospectus documents how the proposed sites will provide ecologically appropriate and functional mitigation and meet the projected mitigation demand over the next decade.

In April 2020 the COB prospectus was deemed complete by Interagency Review Team and co-chairs pursuant to Washington State’s rule on wetland mitigation banks (WAC 173-700) and the federal rule on Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Parts 325 and 332). The COB is currently preparing mitigation bank technical documents for the Bear Creek Corridor Mitigation Bank Site, the first Umbrella Mitigation Bank site.

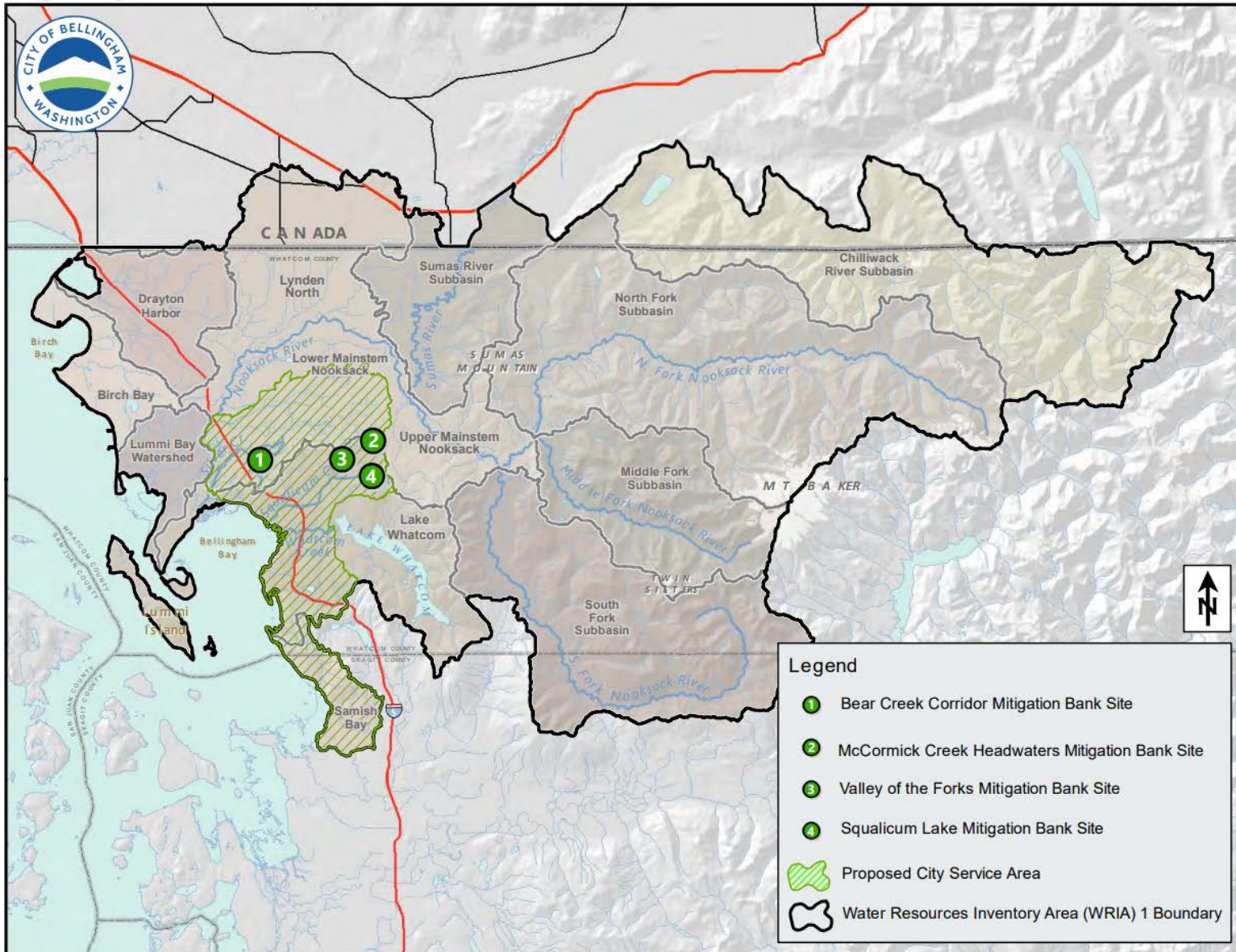
The proposed umbrella bank will create options for both public and private developers to mitigate for impacts to critical areas when mitigation sequencing analysis has determined that impacts to wetlands and buffers cannot be avoided. One bank currently exists within Whatcom County: the Lummi Nation’s Wetland and Habitat Mitigation Bank. This bank does not always have credits available for potential buyers, and it only provides ecological improvement near the mouth of the Nooksack River. The COB’s proposed bank provides an additional mitigation option to our community that removes the burden of mitigation site monitoring and maintenance bonding for a wetland mitigation impact: The bank takes care of these required elements. The COB bank would also provide ecological improvements to areas not served by the Lummi Nation’s bank.

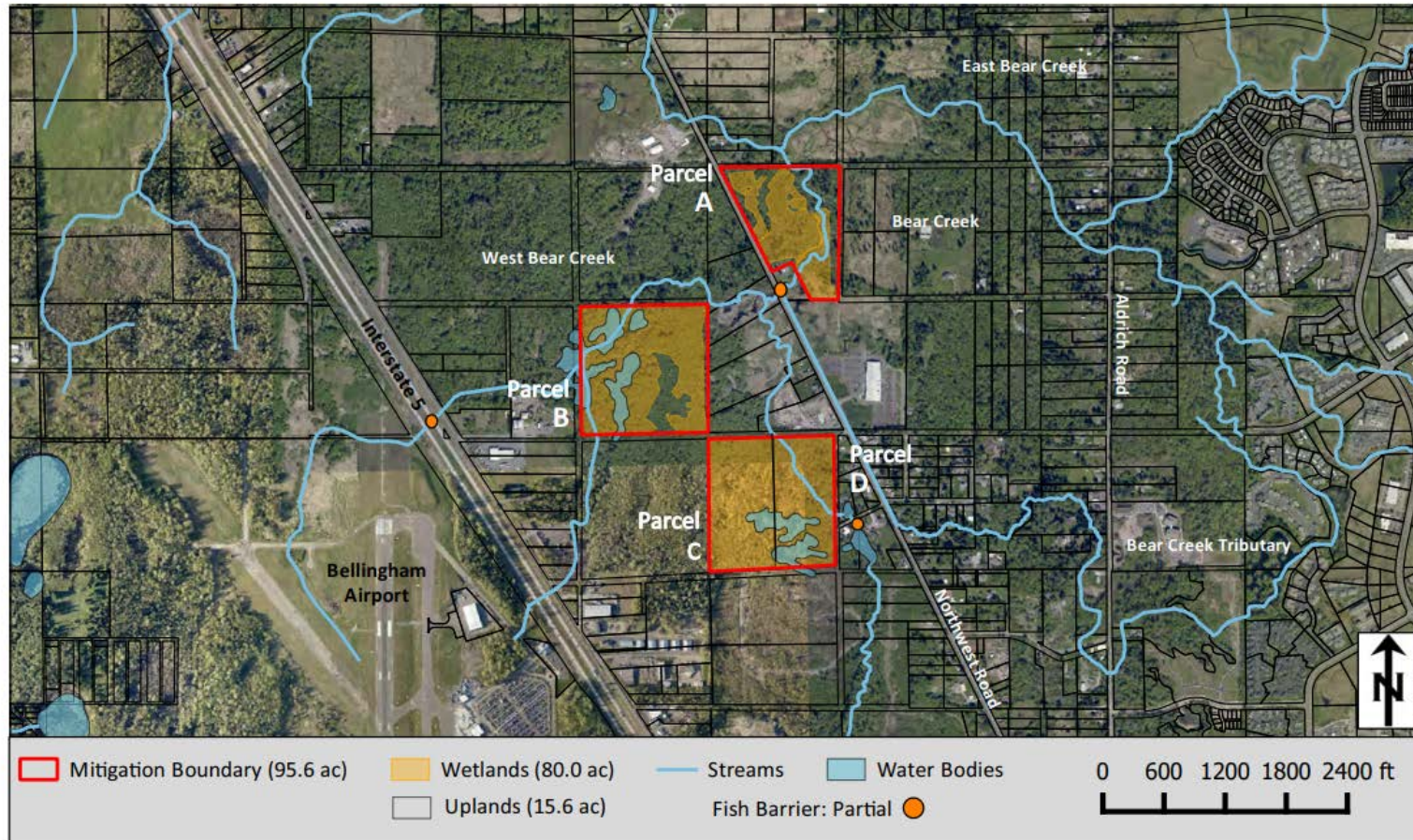
The proposed COB bank would be an option, but not a requirement, for developers in meeting their regulatory obligations. The existence of a bank does not alter regulatory requirements for minimizing and avoiding critical areas impacts under WCC 16.16. Furthermore, the existence of a bank does not hinder the County from pursuing their own bank, advanced mitigation, or other alternative mitigation options. Instead, a bank allows public and private developers in Whatcom County an option that is currently undersupplied in Whatcom County but available in many other parts of the State and nation.

Staff Recommendation

Staff recommends to the Council the following motion:

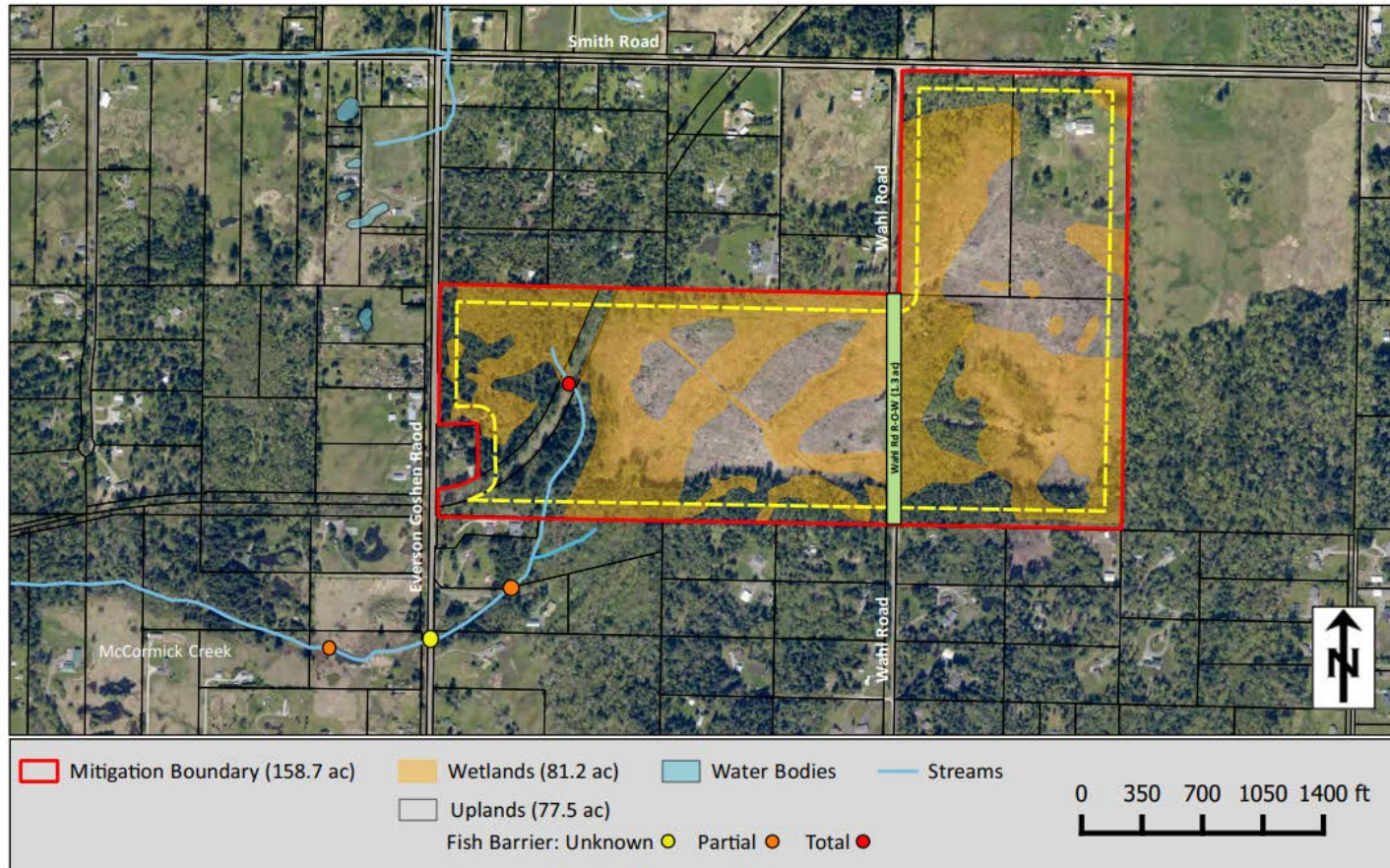
The Whatcom County Council has reviewed the City of Bellingham’s Umbrella Mitigation Bank Prospectus and finds it complete, technically accurate, and consistent with the purpose and intent of WCC Chapter 16.16 (Critical Areas). Furthermore, the proposed bank involves no conversion of agricultural land to nonagricultural uses. We therefore grant the City of Bellingham notice to proceed in applying for a Major Project Permit for the project.





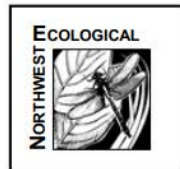
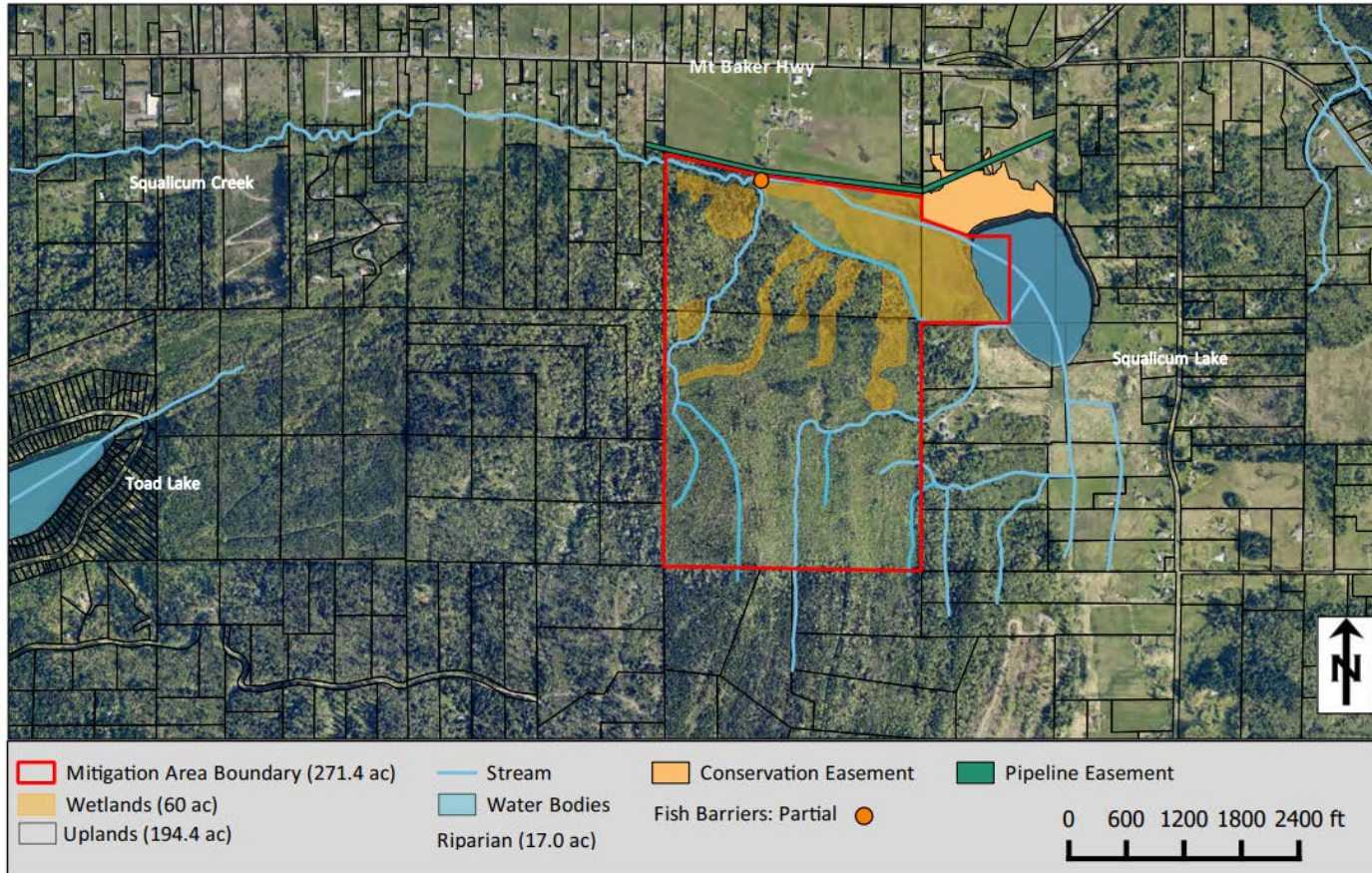
	Existing Conditions	<p>Note: Sizes and locations of features are estimates based on field notes, GPS points, aerial imagery, and LIDAR interpretation. Features have not been formally delineated.</p>
	Bear Creek Corridor Mitigation Bank Site	
	SW Parcels: 380202 064077; 380211 165469, 231475 NE Parcel: 38020 209221 City of Bellingham Mitigation Bank Program	





	<p>Existing Conditions McCormick Creek Headwaters Mitigation Bank 390336 219362, 332340, 367460, 042360, 080340 City of Bellingham Mitigation Bank Program</p>	<p>Note: Sizes and locations of features are estimates based on field notes, GPS points, aerial imagery, and LIDAR interpretation. Features have not been formally delineated.</p>
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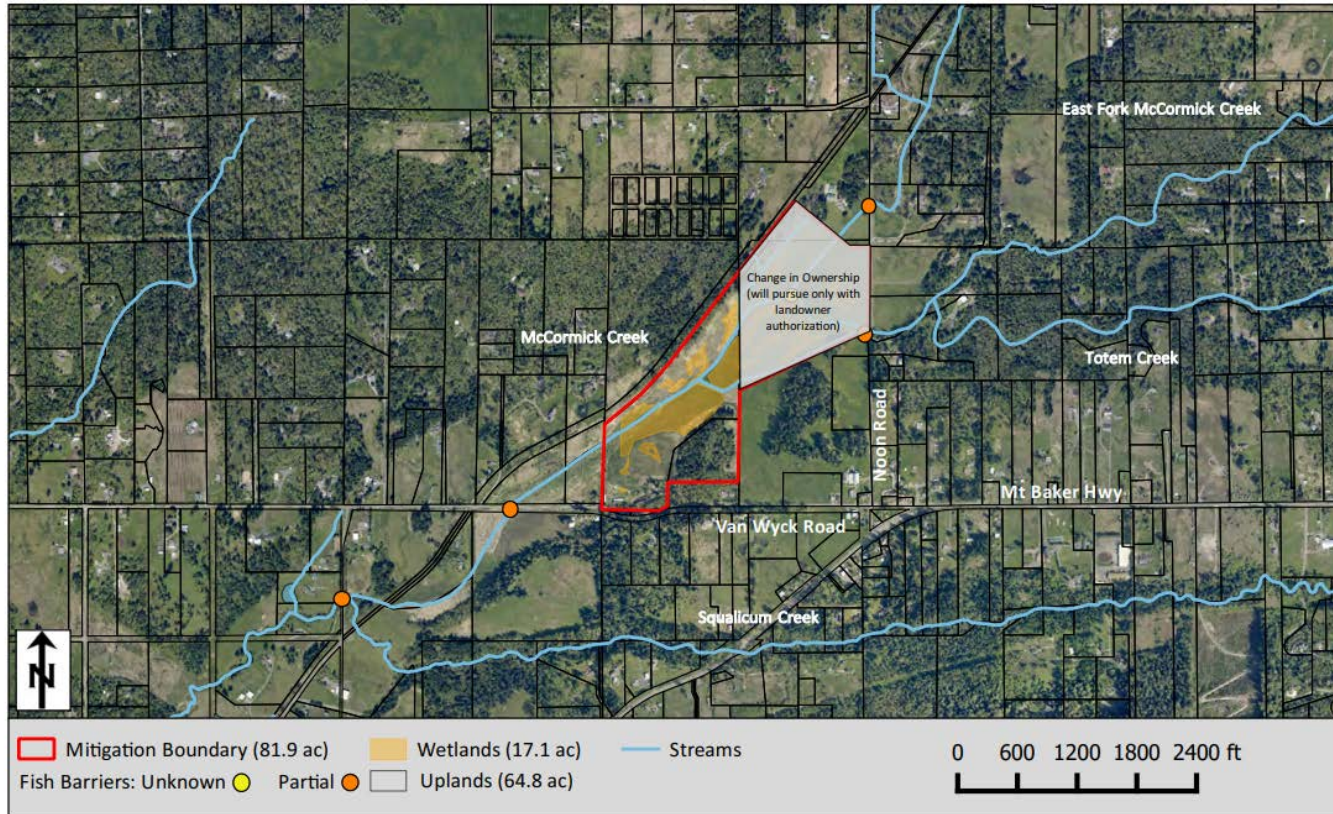




Existing Conditions
Squalicum Lake Mitigation Bank
 380312 400405, 403140; 380407 039319, 051268
City of Bellingham Mitigation Bank Program

Note: Sizes and locations of features are estimates based on field notes, GPS points, aerial imagery, and LiDAR interpretation. Features have not been formally delineated.





	<p>Existing Conditions Valley of the Forks Mitigation Bank 380303 476215, 477224, 330090, 373054 City of Bellingham Mitigation Bank Program</p>	<p><small>Note: Sizes and locations of features are estimates based on field notes, GPS points, aerial imagery, and LIDAR interpretation. Features have not been formally delineated.</small></p>	
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