

AGENDA
LACEY PLANNING COMMISSION MEETING
Tuesday, October 18, 2016 – 7:00 p.m.
Lacey City Hall Council Chambers, 420 College Street SE

Call to Order: 7:00 p.m.

- A. Roll Call
- B. Approval of Agenda & Consent Agenda Items*
Approval of the October 4, 2016, Planning Commission Meeting Minutes

*Items listed under the consent agenda are considered to be routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

Public Comments: 7:01 p.m.

Commission Members Reports: 7:03 p.m.

Director's Report: 7:05 p.m.

New Business: 7:10 p.m.

Impact Fees: Christy Osborn, Associate Planner. The Planning Commission will be briefed on proposed amendments to the City's regulations pertaining to assessment and collection of impact fees.

Critical Areas Ordinance Update Introduction: Ryan Andrews, Planning Manager. The Planning Commission will hear an introductory briefing on the state-mandated update to the City's critical areas regulations to comply with best available science requirements.

Communications and Announcements: 8:55 p.m.

Next Meeting: November 1, 2016.

Adjournment: 9:00 p.m.

CITY OF LACEY PLANNING COMMISSION WORK SCHEDULE

**Planning Commission Meeting
October 18th, 2016**

1. **Work Session:** Impact Fees
2. **Work Session:** Critical Areas Ordinance Update Intro

Packets due: October 13th

**Planning Commission Meeting
November 1st, 2016**

1. **Work Session:** DG&PWS Final Draft
2. **Work Session:** Critical Areas Ordinance--Wetlands

Packets due: October 27th

**Planning Commission Meeting
November 15th, 2016**

1. **Public Hearing:** Impact Fees
2. **Public Hearing:** Development Guidelines and Public Works Standards
3. **Work Session:** Critical Areas Ordinance

Packets due: November 10th

**Planning Commission Meeting
December 6th, 2016**

1. **Public Hearing:** Critical Areas Ordinance
2. **Work Session:** DG&PWS (follow-up, if needed)
3. **Work Session:** Impact Fees (follow-up, if needed)

Packets due: December 1st

MINUTES

Lacey Planning Commission Meeting
Tuesday, October 4, 2016 – 7:00 p.m.
Lacey City Hall Council Chambers, 420 College Street SE

Meeting was called to order at 7:00 p.m. by Mike Beehler.

Planning Commission members present: Mike Beehler, Carolyn Cox, Mark Morgan, Paul Enns, Peg Evans-Brown, and Michael Goff. Staff present: Ryan Andrews, Christy Osborn, Rick Walk, and Leah Bender.

Mike Beehler noted a quorum present.

Carolyn Cox made a motion, seconded by Mark Morgan, to approve the agenda for tonight's meeting. All were in favor, the motion carried. Mark Morgan made a motion, seconded by Paul Enns, to approve the September 20 meeting minutes. All were in favor, the motion carried.

1. **Public Comments:** None.

2. **Commission Member's Report:**

- Carolyn Cox reported on her attendance at the Planning Short Course.
- Paul Enns reported on his attendance at the Planning Short Course and the September 22 Council meeting. He also noted that he interviewed Colonel Morgan for Panorama TV.
- Mike Beehler reported on his attendance at the Planning Short Course.

3. **Director's Report:**

- Rick Walk announced that there is an opening on the Council meeting sign-up sheet and distributed the sheet.
- Rick noted that there were two articles recently in the Olympian regarding growth and development in northeast Lacey, and the recent merger of Bass Pro and Cabela's.
- Rick discussed some budget items: \$50,000 has been approved for a consultant for the Depot District; implementation of the Woodland District Plan – the steering committee has suggested changing the name of the district to a more suitable name; and an additional building department inspector for stormwater inspections.
- The Economic Development website is in the final stage and will be launched after all content has been uploaded.

4. **New Business:**

Public Participation Discussion:

- Ryan Andrews went over the three high-priority Comp Plan Amendments that were identified in the 2016/2017 work program: Pedestrian/Bike Plan, Depot District sub-area plan, and update of the Comp Plan for Outdoor Recreation.
- Planning Commissioners identified stakeholders for each item, prioritized possible choices for representatives on advisory boards, and listed methods of engaging and informing the stakeholders.

5. **Communications and Announcements:** Rick noted that October is National Planning Month.

6. **Next meeting:** October 18, 2016.

7. **Adjournment:** 8:33 p.m.



PLANNING COMMISSION STAFF REPORT

October 18, 2016

SUBJECT: Work session on proposed addition of an Impact Fee Chapter and amendments to the Traffic Mitigation and Concurrency Chapter to the LMC related to the collection of impact fees.

RECOMMENDATION: Hold a work session to discuss a proposed addition and amendments to the City's municipal code for the collection of impact fees.

TO: Lacey Planning Commission

STAFF CONTACTS: Rick Walk, Community Development Director
Ryan Andrews, Planning Manager *RA*
Christy Osborn, Associate Planner *CO*

ATTACHMENT(S): LMC Chapter 14.** - Impact Fees
LMC Chapter 14.21 Traffic Mitigation and Concurrency

**PRIOR COUNCIL/
COMMISSION/
COMMITTEE REVIEW:**

There has been no previous review on the impact fee chapter or changes to the traffic mitigation and concurrency chapter. The Planning Commission previously held a public hearing on proposed amendments to Chapter 14.24, Environmental Policy and Chapter 16.53 Historic Preservation & Cultural Resources in August, 2015.

BACKGROUND:

One of the primary framework goals contained in the recently adopted Comprehensive Plan is to provide diverse housing types for affordability and choice by encouraging higher density development. The implementation of higher density development is being encouraged in part by raising the minimum density requirements for Moderate and High Density Residential zoning districts and focusing on infill and redevelopment within the city to accommodate projected growth of the city over the next twenty year planning period.

In August of 2015, the Planning Commission held a public hearing to review proposed changes to the city's environmental regulations due to legislative amendments to the State Environmental Policy Act (SEPA) intended reduce redundancy in the environmental permitting process. Proposed changes to the city's SEPA rules included increasing categorical threshold exemptions for multifamily housing to implement goals contained in the Comprehensive Plan. The current environmental provisions allow an exemption from environmental review for 12 to 20 units in the Moderate Density and High Density Residential zones, respectively. Changes

recommended by the Planning Commission would allow for up to 60 multi-family dwellings being exempt from the SEPA process. The provisions to allow for up to 30 single family residential units were not included as part of the proposed amendments due to the stated need of encouraging multi-family and infill development in the limited available land remaining in the city's urban growth area.

Recommended changes to the Environmental Policy chapter and Historic Preservation & Cultural Resources chapters of the LMC were not forwarded to the council due to an oversight by staff in respect to the collection of impact fees. The city currently requires the collection of school impact fees for the North Thurston School District through the SEPA process. If SEPA exemption levels are increased for multi-family development, the school district would be unable to collect fees associated with these developments.

PROPOSED IMPACT FEE PROVISIONS

Impact fees are charges paid by new development to reimburse local governments for capital cost of public facilities that are needed to serve new development as provided for under the provisions of the state Growth Management Act. Impact fees can be collected as part of the funding for public facilities including streets and roads, publically owned parks, open space, recreation facilities, school facilities, and fire protection facilities. Fees cannot be used to correct existing deficiencies in public facilities and are based on adopted capital facilities plans and a rate schedule that specifies the fee associated with each type of type of system improvement which is based on a formula for calculating fees.

The collection of impact fees to fund public infrastructure is not new to the City of Lacey. Impact fees are currently assessed for mitigating impacts for transportation and school facilities. Transportation mitigation fees are currently assessed for development projects that increase the number of PM peak hour trip generated by new development on identified improvement projects in provisions contained in LMC Chapter 14.21. School fees are assessed through the SEPA process for single and multi-family development. The proposed addition of an impact fee chapter would change the mechanism for collecting school impact fees and provide for the collection of fire impact fees.

City staff has been working with representatives from the North Thurston School District and Fire District 3 regarding the proposed changes for the collection of impact fees. The fire district has expressed interest in collecting impact fees for fire facilities and is currently in the process of adopting a capital facilities plan and an impact fee rate study. The school district is in the process of reviewing their fee rates.

The proposed impact fee chapter has been drafted in accordance with state law and provides for certain exemptions, including a partial exemption of 80% for low-income housing for school impact fees. Recently enacted legislation also requires the deferral of impact fee payments for a minimum of 20 single-family attached and detached units per contractor for up to eighteen months from the date of building permit issuance. The deferral process is intended to assist defer development costs when submitting a building permit application. LMC chapter 14.21, Transportation Mitigation and Concurrency, has been amended to include the required deferral process.

DISCUSSION

Planning staff has prepared a proposed chapter to the code to provide for the collection of impact fees and proposed amendments to Chapter 14.21 for review by the Planning

Commission. Planning staff has reviewed several impact fee ordinances for reference and coordination; including the City of Olympia and Thurston County. The proposed changes to the collection of impact fees is in compliance with state law and will provide a process based on capital facility planning and implementation of goals contained in the Comprehensive Plan.

RECOMMENDATION:

The Planning Commission is requested to review the suggested inclusion of an Impact Fee chapter to Title 14 of the Lacey Municipal Code and the amendment LMC Chapter 14.21 Traffic Mitigation and Concurrency. These chapters would be adopted in conjunction with proposed changes to Environmental Protection; Chapter 15.53, Historic Preservation; the Draft Inadvertent Archaeological and Historic Resources Discovery Plan previously reviewed and recommended for approval by the Planning Commission.

Chapter 14.**
IMPACT FEES

Sections:

14.**.010	Title
14.**.020	Authority
14.**.030	Additional definitions
14.**.040	Service areas
14.**.050	Assessment of impact fees
14.**.060	School impact fees
14.**.070	Fire impact fees
14.**.080	Independent fee calculations
14.**.090	Exemptions
14.**.100	Credits
14.**.110	Tax adjustments
14.**.120	Appeals
14.**.130	Authorization for school interlocal agreement and the establishment of the school impact account
14.**.140	Authorization for fire interlocal agreement and the establishment of the fire impact account
14.**.150	Refunds
14.**.160	Deferral of impact fees
14.**.170	Use of funds
14.**.180	Administrative guidelines
14.**.190	Review
14.**.200	Administrative fees

14..010 Title.**

The ordinance from which this chapter is derived shall be known and may be cited as the “Impact Fee Ordinance of the city of Lacey.”

14..020 Authority.**

This chapter is adopted to assess impact fees for school and fire facilities pursuant to Chapter 82.02 RCW. Traffic mitigation and concurrency requirements are outlined in Chapter 14.21 LMC.

14..030 Additional definitions.**

The following words and terms when used in this chapter shall mean as follows, unless a different meaning clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to Chapter 16.06 LMC and RCW 82.02, or given their usual and customary meaning.

- A. “Act” means the Growth Management Act, as codified in RCW 36.70A, as now in existence or as hereafter amended.
- B. “Building permit” means an official document or certification which is issued by the Building Official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, change of use, demolition, moving, or repair of a building or structure or any portion thereof.
- C. “Capital facilities” means the facilities or improvements included in a capital budget or capital facilities plan.
- D. “Capital Facilities Plan” means the capital facilities plan element of a comprehensive plan adopted by the City of Lacey.
- E. “City” means the City of Lacey.
- F. “Council” means the City Council of the City of Lacey.

- G. “Concurrent” or “Concurrency” means that the improvements are in place at the time the impacts of development occur, or that the necessary financial commitments are in place, which shall include the impact fees anticipated to be generated by the development, to complete the improvements necessary to meet the specified and defined standards of service within six (6) years of the time the impacts of development occur.
- H. “County” means Thurston County.
- I. “Department” means the Lacey Community and Economic Development Department.
- J. “Development activity” means any construction, expansion, or change in the use of a building or structure that creates additional demand and need for public facilities.
- K. “Development approval” means any written authorization from the City of Lacey which authorizes the commencement of a development activity.
- L. “Director” means the Director of the Community and Economic Development Department or designee, unless specified in this chapter.
- M. “Encumbered” means to reserve, set aside, or otherwise earmark the impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for public facilities.
- N. “Feepayer” is a person, collection of persons, corporation, partnership, an incorporated association, or other similar entity, or department or bureau of any governmental entity or municipal corporation commencing a land development activity which creates the demand for additional system improvements, and which requires the issuance of a building permit. “Feepayer” includes an applicant for an impact fee credit.
- O. “Hearing examiner” means the Examiner who acts on behalf of the Council in considering and applying land use regulatory codes as provided under Chapter 2.30 of the Lacey Municipal Code. Where appropriate, “Hearings examiner” also refers to the office of the hearing examiner.
- P. “Impact fee” means a payment of money imposed by the City of Lacey on development activity pursuant to this title as a condition of granting development approval in order to pay for the public facilities needed to serve new growth and development. “Impact fee” does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling school and fire impact fees, the cost of reviewing independent fee calculations, or the fee for deferring payment of impact fees.
- Q. “Impact fee account” or “Account” means the account(s) established for each type of public facility for which impact fees are collected. The accounts shall be established pursuant to Section 14.**.130 and 14.**.140 of this title, and comply with the requirements of RCW 82.02.070.
- R. “Independent fee calculation” means the school impact calculation, fire impact calculation, and/or economic documentation prepared by a feepayer, to support the assessment of an impact fee other than by the use of the City’s impact fee schedule, or the calculations prepared by the director where none of the fee categories or fee amounts in the City’s impact fee schedule accurately describe or capture the impacts of the new development on public facilities.
- S. “Interest” means the average interest rate earned by the City of Lacey.
- T. “Interlocal agreement” or “Agreement” means an agreement between the City and a governmental agency, department or district authorized under this title as authorized in Section 14.**.130 and 14.**.140 herein.
- U. “Occupancy permit” means the permit issued by the City of Lacey where development activity results in a change in use of a pre-existing structure.
- V. “Open space” means for the purposes of this title undeveloped public land that is permanently protected from development (except for the development of trails or other passive public access or use).

- W. "Owner" means the owner of record of real property, or a person with an unrestricted written option to purchase property; provided that, if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.
- X. "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development or users of the project, are necessary for the use and convenience of the occupants or users or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan adopted by the Council shall be considered a project improvement.
- Y. "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.
- Z. "Public facilities" means the following capital facilities owned or operated by the City of Lacey or other governmental entities; (1) public school facilities; (2) public fire facilities.
- AA. "Residential" or "Residential development" means all types of construction intended for human habitation. This shall include, but is not limited to, single-family, duplex, triplex, and other multifamily development.
- BB. "Senior housing development" means a residential development of 10 units or more that is occupied exclusively by residents 55 years of age or older. In order to qualify for the Senior Development impact fee rate, a restrictive covenant is required to be placed on the deed limiting the development to residents 55 years of age and older.
- CC. "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development in the area. Service areas shall be designated on the basis of sound planning or engineering principles.
- DD. "Square footage" means the square footage of the gross floor area of the development.
- EE. "System improvements" means public facilities that are included in the City of Lacey's capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.
- FF. "Use or use area" means the portion of property or a building that is physically occupied or used by the land use activity.

14..040 Service areas.**

- A. The service area for school impact fees is the portions of the boundary of the North Thurston School District within the incorporated city limits of Lacey.
- B. The service area for fire impact fees is the portions of the boundary of Lacey Fire District 3 within the incorporated city limits of Lacey.
- C. The service areas in the capital facilities plan for North Thurston School District and Lacey Fire District 3, as amended, are hereby found to be reasonable and established on the basis of sound planning and engineering principles and are consistent with RCW 82.02.

14..050 Assessment of impact fees.**

- A. The city shall collect impact fees based on the adopted city impact fee schedule or an independent fee calculation as provided for in Section 14.**.080, from any applicant seeking development approval from the city for development activity within the city limits of Lacey, where such development activity requires the issuance of a building or occupancy permit. This shall include but is not limited to, the development of residential, commercial, retail, office, and industrial land, and includes the expansion of existing uses that creates a demand for additional public facilities, as well as a change in existing use that creates a demand for additional facilities.
- B. When an impact fees applies to a change in use permit, the impact fee shall be the applicable impact fee for the land use category of the new use, less any impact fee previously paid for the land use category of the prior use. For

purposes of this provision, a change in use will be reviewed based on the land use category that best captures the use or development activity of the property under development or being changed. Changes in use or tenancy that are consistent with the general character of the building or building aggregations will not be considered a change in use that is subject to an impact fee. If no impact fee was paid for the prior use, the impact fee for the new use shall be reduced by an amount equal to the current impact fee rate for the prior use. Vacant buildings shall be assessed as if occupied by the most recent legally established use as shown on a business license or development permit document.

C. For mixed-use developments, impact fees shall be imposed for the proportionate share of each land use, based on the applicable measurement in the impact fee rates in the city impact fee schedule.

D. Impact fees shall be assessed at the time the complete building permit application is submitted for each unit in the development, using either the impact fee schedules in effect or an independent fee calculation, at the election of the applicant and pursuant to the requirements set forth in Section 14.**.080. The city shall not accept an application for a building permit if short plat, final plat, binding site plan, site plan review or planned community approval is needed and has not yet been granted by the city. Furthermore, the city shall not accept an application for a building permit unless prior to submittal or concurrent with submittal, the feepayer submits complete applications for all other discretionary reviews needed.

E. Applicants that have been awarded credits prior to the submittal of the completed building permit application pursuant to Section 14.**.100, shall submit, along with the complete building permit application, a copy of the letter or certificate prepared by the director pursuant to Section 14.**.100 setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the feepayer at the time the building permit is issued for each unit in the development.

F. A feepayer may identify in the application information regarding fees that the feepayer has paid or will be required to pay under the State Environmental Policy Act (Ch. 43.21 RCW), or that are being assessed upon the feepayer by other municipalities, in either case which the feepayer believes would duplicate the impact fee. The director will respond to the information in writing, determining whether collection of the impact fee under the circumstances would be lawful under RCW 82.02.100 or other applicable law, and the determination may be appealed through procedures provided under this title.

G. Impact fees, as determined after the application of appropriate credits, shall be collected from the feepayer at the time the building permit is issued for each unit in the development, unless payment of fees was deferred pursuant to Section 14.**.160.

H. Where the impact fees imposed are determined by the square footage of the development, the impact fee shall be based on the size and type of structure proposed to be constructed on the property. If the final square footage of the development is in excess of the initial square footage set forth in the building permit, any adjustment will be adjusted at the time that a certificate of occupancy is issued or the time the of permit application.

14..060 School impact fees.**

For complete building or development permit applications submitted after the effective date of this title, the following shall apply:

The school impact fees set forth in the city impact fee schedule are generated from the formula for calculating impact fees set forth in the capital facilities plan for the North Thurston School District, as amended, which is incorporated herein by reference. Except as otherwise provided in Sections 14.**.080 through 14.**.100, all new identified residential development in Lacey's incorporated area of the North Thurston School District shall be charged school impact fees from the City impact fee schedule.

14..070 Fire impact fees.**

For complete building or development permit applications submitted after the effective date of this title, the following shall apply:

The fire impact fees set forth in the city impact fee schedule are generated from the formula for calculating impact fees set forth in the capital facilities plan for Lacey Fire District 3, as amended, which is incorporated herein by reference. Except as otherwise provided in Sections 14.**.080 through 14.**.100, all new identified development in the incorporated area of Lacey Fire District 3 shall be charged the fire impact fees from the city impact fee schedule.

14..080 Independent fee calculations.**

A. If the school or fire district for which the impact fee is being charged believes in good faith that none of the fee categories or fee amounts set forth in the city's impact fee schedule accurately describe or capture the impacts of a new development on schools or fire, the school or fire district may conduct independent fee calculations and submit such calculations to the director. The director may impose alternative fees on a specific development based on the calculations of the school or fire district, or may impose alternative fees based on the calculations of the department. The alternative fees and the calculations shall be set forth in writing and shall be mailed to the applicant.

B. An applicant may elect to prepare and submit an independent fee calculation for the development activity for which a building permit is sought. The applicant must make the election between fees calculated under the city's impact fee schedule and an independent fee calculation prior to issuance of the building permit for the development. If the applicant elects to prepare his/her own independent fee calculation, the applicant must submit documentation showing the basis upon which the independent calculation was made. An independent fee calculation shall use the same methodology used to establish the district's fee schedule for the school and fire district.

C. While there is a presumption that the calculations set forth in the city's impact fee schedule based on school and fire calculations are valid, the director shall consider the documentation submitted by the applicant but is not required to accept such documentation or analysis which the director reasonably deems to inapplicable, inaccurate, incomplete, or not reliable, and may modify or deny the request, or, in the alternative, require the applicant to submit additional or different documentation for consideration. The director is authorized to adjust the impact fees on a case by case basis based on the independent fee calculation, the specific characteristics of the development, and/or principles of fairness. The director's decision shall be set forth in writing and shall be mailed to the fee payer.

14..090 Exemptions.**

A. The following shall be exempted from the payment of impact fees:

1. Alteration of an existing nonresidential structure that does not expand the usable space or add any dwelling units;
2. Miscellaneous improvements, including but not limited to, fences, walls, residential swimming pools, mining, dredging, filling, grading, paving, excavation, or drilling operations, storage of equipment or materials, and signage;
3. Demolition or moving of a structure, or dwelling unit;
4. Expansion of an existing structure that results in the addition of one hundred twenty (120) square feet or less of gross floor area shall be exempt from paying all impact fees;
5. Replacement of a structure with a new structure of the same size and use at the same site or lot when such replacement occurs within six (6) years of the demolition or destruction of the prior structure. Replacement of a structure with a new structure shall be interpreted to include any structure for which the gross square footage of the building will not be increased by more than one hundred twenty (120) square feet;
6. Dwelling units located in housing developments intended for and solely occupied by persons fifty five (55) years and older, including nursing homes and retirement centers, shall be exempt from the payment of school impact fees as long as those uses are maintained, and the necessary covenants or declarations of restrictions in a form approved by the city attorney and the school district attorney, required to ensure the maintenance of such uses, are recorded on the property;

7. The creation of an accessory dwelling unit including but not limited to family member units, shall be exempt from the payment of school impact fees;
8. A single room occupancy dwelling shall be exempt from the payment of school impact fees;
9. A person required to pay a fee pursuant to RCW 43.21.060 for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same system improvements;
10. A person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the impact fee. The exempted fire operations impact fee shall not include the proportionate share related to the delivery of emergency medical services.
11. A partial exemption of not more than eighty (80) percent of school impact fees for any form of low-income housing occupied by households whose income when adjusted for size, is at or below eighty (80) percent of the area median income, as annually adjusted by the U.S. Department of Housing and Urban Development provided that a covenant approved by the school district to assure continued use for low-income housing is executed, and that the covenant is an obligation that runs with the land upon which the housing is located and is recorded against the title of the property.

Comment [CO1]: # 9 and 10 are exemptions in RCW 82.02. I did not find this language in other codes. Not sure if proposed 14.**.050(A) adequately covers this provision?

Comment [CO2]: Policy Decision: If exempt 80% or less then exempted portion of fees can be paid from impact fee account. If exempt over 80% then the remaining percentage of the fees must be paid from public funds other than impact fee accounts.

B. The director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section. Determinations of the director shall be subject to the appeals procedures set forth in Section 14.**.120.

14..100 Credits.**

A. A feepayer may request that a credit or credits for impact fees be awarded to him/her for the total value of system improvements, including dedications of land and improvements, and/or construction provided by the feepayer. The application for credits shall be presented by the feepayer shall include documentation, such as receipts, to establish the amount of credit requested by the feepayer. Credits will be given only if the land, improvements, and/or the facility constructed are:

1. Included in the capital facilities plan as projects providing capacity to serve new growth;
2. Determined by the city to be suitable sites and constructed at acceptable quality;
3. Serve to offset impacts of the feepayer's development activity; and
4. Are for one or more of the projects listed in the fire district's or school district's capital facilities plan as the basis for calculating the impact fee.

B. For each request for a credit, the director shall determine the value of dedicated land by using available documentation or selecting an appraiser who is a member of the American Institute of Appraisers and be licensed in good standing under Chapter 18.40 RCW in the category for the property to be appraised. A description of the appraiser's certification shall be included with the appraisal and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised. The feepayer shall pay the cost of the appraisal and shall deposit on account the estimated cost of the appraisal as determined by the city at the time the feepayer requests consideration for a credit.

C. Where the dedicated land, improvements, and/or construction is for the benefit of the school district or fire district, the request will be directed to the appropriate agency to determine the general suitability of the land, improvements, and/or construction for district purposes. The district shall determine whether the land, improvements, and/or the facility constructed are included within the district's adopted capital facilities plan or the board of directors of the school district or fire commissioners make a finding that such land, improvements, and/or

facilities would serve the goals and objectives of the capital facilities plan. The district shall forward its determination to the director, including cases where the district determines that the dedicated land, improvements, and/or construction are not suitable for district purposes. The director may adopt the determination of the district and may award or decline to award a credit, or the director may make an alternative determination and set forth in writing the rationale for the alternative determination.

D. After receiving the appraisal, the director shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, where applicable, the legal description of the site donated, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a notarized duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate and return such signed document to the director before the impact fee credit will be awarded. The failure of the applicant to sign, date, and return such document within sixty (60) days shall nullify the credit.

E. Any claim for credit must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

F. In no event shall the credit exceed the amount of the impact fees that would have been due for the proposed development activity.

G. No credit shall be given for project improvements.

H. Determinations made by the director pursuant to this section shall be subject to the appeals procedures set forth in Section 14.**.120.

14..110 Tax Adjustments.**

Pursuant to and consistent with the requirements of RCW 82.02.060, the school study and fire study have provided adjustments for future taxes to be paid by the new development which are earmarked or proratable to the same new public facilities which will serve the new development. The impact fees on the City's impact fee schedule have been reasonably adjusted for taxes and other revenue sources which are anticipated to be available to fund these public improvements.

14..120 Appeals.**

A. Determinations of the director with respect to the applicability of the impact fees imposed by this title to a given development activity, the availability or value of a credit, or the director's decision concerning the independent fee calculation, or exemptions, or any other determination which the director is authorized to make pursuant to this title, can be appealed to the hearing examiner subject to the procedures set forth in LMC 2.30 and Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards within fourteen (14) days of the written determination.

B. Any feepayer may pay the impact fees imposed by this title under protest in order to obtain a building permit or certificate of occupancy permit. No appeal submitted under protest shall be permitted unless and until the impact fees have been paid. Alternatively, any feepayer may appeal the impact fees determined by the director without first paying the fees, providing the applicant is willing to postpone issuance of the building permit until after the appeal process when the final fee is known.

C. Appeals regarding the impact fees imposed on any development shall only be filed by the feepayer of the property where such development activity will occur.

D. Any feepayer aggrieved by a decision of the hearing examiner regarding a decision rendered under this title may appeal the hearing examiner's final decision to the city council as provided in LMC 2.30 and Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards within fourteen (14) days of the hearing examiner written decision.

14..130 Authorization for school interlocal agreement and establishment of school impact account.**

- A. The city manager is authorized to execute , on behalf of the city, an interlocal agreement for the collection, expenditure, and reporting of school impact fees; provided that such interlocal agreement complies with the provisions of this section.
- B. As a condition of the interlocal agreement, a school district impact fund will be established with the finance department of the City of Lacey, who will serve as the treasurer for the school district funds. The fund shall be an interest-bearing fund invested in a manner consistent with the investment policies of the school district.
- C. Funds withdrawn from the school impact fund for the school district must be used in accordance with the provisions of Section 14.**.170 of this title. The interest earned shall be retained in this fund and expended for the purposes for which the school impact fees were collected.
- D. On an annual basis, pursuant to the interlocal agreement, the school district shall provide a report to the city council on the school impact account, showing the source and amount of all monies collected, earned, or received, and the public improvements that were financed in whole or part by impact fees.
- E. School impact fees shall be expended or encumbered within ten (10) years of receipt, unless the council identifies in written findings an extraordinary and compelling reason or reasons for the school district to hold the fees beyond the ten-year period. Under such circumstances, the council shall establish the period of time within which the fees shall be expended or encumbered, after consultation with the school district.

14..140 Authorization for fire interlocal agreement and establishment of fire impact account.**

- A. The city manager is authorized to execute , on behalf of the city, an interlocal agreement for the collection, expenditure, and reporting of fire impact fees; provided that such interlocal agreement complies with the provisions of this section.
- B. As a condition of the interlocal agreement, a fire district impact fund will be established with the finance department of the City of Lacey, who will serve as the treasurer for the fire district funds. The fund shall be an interest-bearing fund invested in a manner consistent with the investment policies of the fire district.
- C. Funds withdrawn from the school impact fund for the fire district must be used in accordance with the provisions of Section 14.**.170 of this title. The interest earned shall be retained in this fund and expended for the purposes for which the fire impact fees were collected.
- D. On an annual basis, pursuant to the interlocal agreement, the fire district shall provide a report to the city council on the fire impact account, showing the source and amount of all monies collected, earned, or received, and the public improvements that were financed in whole or part by impact fees.
- E. Fire impact fees shall be expended or encumbered within ten (10) years of receipt, unless the council identifies in written findings an extraordinary and compelling reason or reasons for the fire district to hold the fees beyond the ten-year period. Under such circumstances, the council shall establish the period of time within which the fees shall be expended or encumbered, after consultation with the fire district.

14..150 Refunds.**

- A. If the school or fire district fails to expend or encumber the impact fees within ten (10) years of when the fees were paid, or where extraordinary or compelling reasons exist, such other time periods established pursuant to Sections 14.**.130 or 14.**.140, the current owner of the property on which impact fees have been paid may receive a refund of such fees. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first in, first out basis.
- B. The city shall notify claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants. The potential claimant must be the current owner of record of the property for which the impact fee was paid.

C. Current owner(s) seeking a refund of impact fees must submit a written request for a refund of the fees to the school district or fire district within one (1) year of the date that the right to claim the refund arises or the date that notice is given, whichever is later.

D. Any impact fees for which no application for a refund has been made by the claimant within this one (1) year period shall be retained by the school district or the fire district and expended on the appropriate public facilities. Claimants shall have no right to refund if not timely requested pursuant to Section 14.**.150(C).

E. Refunds of impact fees under this section shall include any interest earned on the impact fees by the school district or fire district.

F. When the city seeks to terminate any or all components of the impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the city shall place notice of such termination and the availability of refunds in the newspaper of general circulation at least two (2) times and shall notify all potential claimants by first class mail at the last known address of the claimants. All funds available for refund shall be retained for a period of one (1) year. At the end of one (1) year, any remaining funds shall be retained but must be expended for the appropriate public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

G. The school district and/or fire district shall also refund the current owner of property for which impact fees have been paid all impact fees paid, including interest earned on the impact fees, if the development activity for which the impact fees were imposed did not occur; provided that if the school district or fire district has expended or encumbered the impact fees in good faith prior to the application for a refund, the school district or fire district can decline to provide the refund. If within a period of three (3) years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner can petition the school or fire district for an offset against the actual impact fee amounts paid. The petitioner must provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof. In the case of school or fire district impact fees, the school or fire district shall forward its determination to the director, and the director may adopt the determination of the school or fire district and may grant or decline to grant an offset, or the director may make an alternative determination and set forth rationale for the alternative determination. Determinations of the director shall be in writing and shall be subject to the appeals procedures set forth in Section 14.**.120(A).

14..160 Deferral of impact fees.**

A. Each applicant for single-family residential attached and detached construction permit, in accordance with his or her contractor registration number or other identification number may request a deferral for the full impact fee(s) (schools and fire) payment up to twenty (20) permits for a period not to exceed eighteen (18) months from the date of building permit issuance.

B. The amount of impact fees deferred are determined by the fees in effect via ordinance, interlocal agreement or other schedule as adopted by the City Council at the time of building permit application.

C. The City of Lacey may withhold any final inspection and/or certification for occupancy until all applicable impact fees have been paid in full.

D. An applicant seeking deferral shall grant and record a “deferred impact fee lien release” in a form approved by the city against the subject property and in favor of the city, for the full amount of the impact fee(s) being deferred. Said deferred impact Fee lien release form shall include:

1. The legal description, tax account number, and address of the property;
2. A signature by the listed owner(s) of the property, with all signatures acknowledged as required for a deed and recorded with the Thurston County Auditor’s Office;
3. Shall indicate that the lien is binding on all successors in title;

Comment [C03]: The city may elect to defer more than 20 permits per applicant per year.

4. Shall indicate that the lien is junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

E. If impact fees are not paid in accordance with the terms of this section; the city is authorized and may choose to institute foreclosure proceedings. (The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority shall not affect the obligation to pay impact fees as a condition of final inspection, certificate of occupancy, or equivalent certification, or at the time of closing of the first sale.)

F. If the city does not institute foreclosure proceedings for unpaid school impact fees within forty-five (45) days after receiving notice from a school district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid school impact fees. The city shall remain responsible for collection of all remaining impact fees.

G. Upon receipt of full payment of all outstanding impact fees deferred under this section, the city shall execute a "deferred impact fee lien release" for the subject property. The property owner at the time of the release shall be responsible for recording the lien release at his or her own expense.

14..170 Use of funds.**

A. Pursuant to this title, impact fees:

1. Shall be used for public improvements that will reasonably benefit the new development; and
2. Shall not be imposed to make up for deficiencies in public facilities; and
3. Shall not be used for maintenance or operation.

B. School impact fees may be spent for public improvements, including, but not limited to, school planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees, or mitigation costs, capital equipment pertaining to educational facilities, and any other expenses which can be capitalized.

C. Fire impact fees may be spent for public improvements, including, but not limited to, fire protection planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, capital equipment pertaining to fire facilities, and any other similar expenses which can be capitalized.

D. Impact fees may also be used to recoup public improvement costs previously incurred by the school district or fire district to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

E. In the event that bonds or similar debt instruments are or have been issued for advanced provision of public improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section and are used to serve the new development.

14..180 Administrative guidelines.**

The director shall be authorized to adopt forms, applications, brochures, and guidelines for the implementation of this title which may include the adoption of a procedures guide for impact fees.

14..190 Review.**

A. The city's impact fee schedule shall be reviewed by the City Council as it may deem necessary and appropriate in conjunction with the annual update of the capital facilities plan element of the city's comprehensive plan.

B. The City's Community and Economic Development Department shall maintain and preserve records of impact fee deferrals in conformance with RCW 44.28.812 and RCW 43.31.980 including:

1. The number of deferrals requested and issued;
2. The type of impact fee deferred;
3. The monetary amount of deferrals;
4. The number of deferrals that were not fully, and timely paid; and
5. The cost to the city for collecting both timely and delinquent fees.

14..200 Administrative fees.**

A. For each request for the deferral of payment of residential impact fees requested per the provisions contained in Section 14.**160, administrative fees will be imposed per the city's fee schedule, as amended. Fees shall be paid in conjunction with the submission of the deferral request.

B. Any feepayer filing an appeal of impact fees per Section 14.**.120 shall pay the fee set forth by the city for appeals of administrative decisions set forth in LMC 2.30 and Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards. The appeal fee shall be paid at the time of filing an appeal.

C. Administration fees shall be deposited into a separate administrative fee account that is established by the city separate from any impact fees paid by the feepayer. Administrative fees shall be used to defray the actual costs associated with reviewing the permit/request.

D. Administrative fees shall not be refundable, shall not be waived, and shall not be credited against the impact fees.

CHAPTER 14.21

TRAFFIC MITIGATION AND CONCURRENCY

Sections:

- 14.21.010 Definitions
- 14.21.020 Application and administration
- 14.21.022 Plan area
- 14.21.024 Transportation improvement plan
- 14.21.026 Transportation improvements
- 14.21.030 Review of development proposals
- 14.21.035 Deferral of transportation mitigation fees
- 14.21.040 Methods of providing transportation improvements
- 14.21.050 Prior plats

14.21.010 Definitions.

For purposes of this chapter, the terms contained herein shall be defined as follows:

- A. Affected Transportation Improvement Project. "Affected Transportation Improvement Project" means a Transportation Improvement Project identified in the manner set forth in LMC 14.21.026 to which the proposed development is projected to add at least one PM Peak Hour Trip. Distribution of PM Peak Hour Trips shall be made in accordance with the latest adopted revision of the Thurston Regional Planning Council's Traffic Distribution Model or such other method as is specifically approved by the city.
- B. Background Traffic. "Background Traffic" means that volume of traffic that is projected to occur on the street system or through an intersection as of the anticipated date of completion of a development but not including the traffic generated from such development. "Background Traffic" shall include anticipated traffic from all other approved developments located inside or outside of the city except those developments where governmental approval has lapsed.
- C. Capacity. "Capacity" means the maximum number of vehicles that can be accommodated in the area of a transportation improvement project at a specified level of service. "Capacity" shall be calculated according to the most recent Highway Capacity Manual, a signal warrant analysis, or alternative method approved by the city.
- D. Completion of Development. "Completion of Development" is achieved:
 - 1. In residential developments other than multifamily residential and planned community development, upon final plat approval.
 - 2. In planned community developments and village centers upon final city approval of the phase of the development which caused the traffic mitigation measures to be required.
 - 3. In all other developments, when a certificate of occupancy has been issued by the city.
- E. Comprehensive Plan. "Comprehensive Plan" means the city of Lacey Comprehensive Plan, including any joint comprehensive plan adopted by the city and Thurston County.
- F. Development. "Development" means preliminary plat, short plat, proposal to substantially intensify the type of use of existing land or structures, additions to existing structures other than one or two family residential structures and any proposed project requiring site plan review pursuant to LMC 16.84.010. Except for those residential lots within plats described in LMC 14.21.050, the term shall not include individual one or two family residential lots.
- G. Financial Commitment. "Financial Commitment" means funds known or reasonably forecasted to be available and designated for transportation facilities or strategies and/or funds that are deposited or assured by an applicant in a form approved by the city.

H. Level of Service (LOS). “Level of Service” means the capacity standard for traffic flow through a specified area defined in the latest edition of the Highway Capacity Manual. Subject to the provisions for Strategy Corridors set forth in Subsection M of this Section, the adopted levels of service for the city of Lacey are as follows:

1. Lacey Core Area = Level E

The Lacey Core Area is defined as that area bounded by the northerly right-of-way line of Martin Way on the north, the southerly right-of-way line of Lacey Boulevard on the south, the westerly city limit line on the west and the easterly right-of-way line of Carpenter Road on the east.

2. All areas other than the Lacey Core Area = Level D

I. Mitigation. “Mitigation” shall mean facility improvements constructed or financed either directly by a developer or in conjunction with the construction or financing of such improvements by other developers and/or the city.

J. PM Peak Hour. “PM Peak Hour” shall mean the sixty-minute period between 4:00 p.m. and 6:00 p.m. with the greatest sum of traffic volumes on a roadway segment or passing through the area of a transportation improvement project.

K. PM Peak Hour Trips. “PM Peak Hour Trips” means total vehicular trips entering and leaving a development during the p.m. peak hour of the adjacent streets. The trip generation rate is as defined in the most recent ITE Trip Generation Manual, published by the Institute of Transportation Engineers. Other trip generation rate sources approved by the city may be used where ITE data are based on a limited survey base or where there may be special trip generating characteristics of the proposal.

L. Plan Area. “Plan Area” means that geographic area described in LMC 14.21.022 as generally benefited by the transportation improvements identified in the manner specified in LMC 14.21.026 and within which transportation mitigation fees may be imposed.

M. Strategy Corridors. “Strategy Corridors” are those streets or intersections which typically have been constructed or improved to 4 or 5 lanes in width between intersections, or are streets or intersections bounded by existing land use or environmental features that preclude further widening. Such Strategy Corridors are in areas where, pursuant to other policies of the City, growth is encouraged and typically coincides with the designation of a High Density Corridor, City Centers, Core Areas or Activity Centers where a concentration of commercial and other uses is desired, especially when that growth increases densities and proximity of different types of land use. Peak hour vehicular congestion in these corridors is likely to exceed levels of service which would otherwise be acceptable within the transportation system. Such corridors should be identified in the City’s Transportation Plan. Such Strategy Corridors shall be exempt from the level of service standards set forth in Subsection H of this Section. However, strategies tailored to each of such corridors may be required in accordance with the procedures and authority set forth in LMC 14.21.030. Such strategies should include an appropriate mix of:

1. High quality and fully integrated bike, pedestrian, carpool, vanpool, and transit facilities and services.
2. Complete and connected street grids.
3. Transportation technology measures that improve overall system operating efficiency and safety.
4. Access management.
5. Parking management.
6. Aggressive travel demand management strategies; and/or
7. Land use intensification.

N. Transportation Improvement Project. “Transportation Improvement Project” means any and all transportation improvement projects identified as specified in LMC 14.21.026 to be designed and constructed in accordance with

the city's Development Guidelines and Public Works Standards or by the requirements of the state of Washington for transportation improvement projects controlled and regulated by the state of Washington.

O. Transportation Mitigation Fee. "Transportation Mitigation Fee" means the monetary charge imposed on a development within the plan area for the purpose of providing that portion of the funding for identified transportation improvement projects which is reasonable and necessary to mitigate the cumulative impacts of growth and development upon such identified transportation improvement projects. (Ord. 1268 §1, 2006; Ord. 1059 §1, 1997; Ord. 1033, 1996).

14.21.020 Application and administration.

A. General Application. This chapter shall apply to all applications hereafter filed for a development which will add at least one new PM Peak Hour Trip to the area of an individual identified traffic improvement project.

B. Phased Development. A Phased Development is any development involving multiple buildings where issuance of building permits will occur for individual buildings. In determining general application of this chapter to a particular building or buildings in such a development, the city shall consider the generation of all traffic from buildings approved for construction within six years prior to the date upon which the consideration of applicability is determined except for that traffic to which this chapter has been previously applied.

C. Building Enlargement and Intensification of Use. In determining general application of this chapter to developments consisting of substantial intensification of use or additions to existing structures, the city shall consider the generation of all traffic from buildings constructed or enlarged and uses intensified within six years prior to the date upon which the consideration of applicability is determined. Mitigation shall not be required for trip impacts previously mitigated either under this ordinance or under the requirements in effect at the time of the previous development.

D. Reconstruction of Destroyed Buildings. If a building is destroyed by fire, explosion or act of God or war, and is reconstructed in accordance with city code, it will not be required to comply with this chapter unless the reconstructed building is anticipated to produce trips in excess of those produced by the destroyed building.

E. SEPA and other code requirements. This chapter establishes minimum standards which are to be applied to all developments in order to provide street capacity improvements to minimize traffic congestion on the streets and highways in the city. Nothing herein is intended to limit the further application of the State Environmental Policy Act to specific developments. Each development shall be reviewed and may be conditioned or denied under the authority of the State Environmental Policy Act and Chapter 14.24 LMC. Provided, however, a transportation mitigation fee shall not be required for a development when mitigation of the same off-site transportation impacts caused by the development is required by any other government agency. Further, nothing herein shall limit or modify requirements contained within this code, including the city's Development Guidelines and Public Works Standards, relating to frontage improvements or improvements interior to the development.

F. Administration. The Site Plan Review Committee shall be responsible for the administration of this chapter. The information to be provided by applicants and the criteria for determining traffic generation and impact of development shall be in accordance with section 1G.040 of the city's Development Guidelines and Public Works Standards, provided however, that in case of conflict between the terms of this chapter and the provisions of said section 1G.040, the provisions of this chapter shall prevail. (Ord. 1059 §2, 1997; Ord. 1033, 1996).

14.21.022 Plan Area.

The transportation improvement plan area established in this chapter shall be that portion of Thurston County lying easterly of Lilly Road NE and Wiggins Road SE, extended, northerly of 93rd Avenue SE, extended and westerly of a line running north and south and located one thousand three hundred twenty feet east of the line of the Willamette Meridian. The location of Meridian Road is generally the same as the line of the Willamette Meridian. (Ord. 1059 §3, 1997).

14.21.024 Transportation Improvement Plan.

The city's transportation improvement plan consists of those certain plans and documents designated herein as the same now exist or are hereafter amended or updated:

- A. City of Lacey 1994 Comprehensive Transportation Plan.
- B. Transportation Element - 1996-2016 Capital Facilities Plan, City of Lacey, Washington.
- C. Six-Year Comprehensive Transportation Improvement Program for the City of Lacey. (Ord. 1059 §4, 1997).

14.21.026 Transportation Improvements.

The transportation improvements reasonably necessary to mitigate the cumulative impacts of growth and development in the plan area are set forth on Table 14T-15. The transportation improvements so designated shall be reviewed annually at the time of review of the city's Six-Year Transportation Improvement Program. After such review, the city council may modify such list of transportation improvements and if revisions are made, adopt such revised list by resolution or ordinance. Provided, however, the council shall not include on such list any transportation improvement project that is incapable of being reasonably carried out because of lack of public funds or other foreseeable impediment. (Res. 1013, 2014, amends 14T-15; Res. 996, 2013, amends 14T-15; Res. 985, 2012, amends 14T-15; Res. 962, 2010, amends Table 14T-15; Res. 948, 2009, amends Table 14T-15; Res. 943, 2009, amends Table 14T-15; Res. 939, 2008, amends Table 14T-15; Res. 928, 2007, amends Table 14T-15; Res. 912, 2006, amends Table 14T-15; Res. 897, 2005, amends Table 14T-15; Res. 884, 2004, amends Table 14T-15; Res. 874, 2003, amends Table 14T-15; Res. 856, 2002, amends Table 14T-15; Res. 821, 2000, amends Table 14T-15; Ord. 1059 §5, 1997).

14.21.030 Review of development proposals.

A. Traffic Impacts. Subject to the provisions of subsection B of this section, approval of a proposed development will be conditioned upon the mitigation of the traffic impacts of such development, pursuant to LMC 14.21.040.

B. Concurrency Requirement. A proposed development will not be approved under this chapter if traffic generated by such development, when added to the background traffic volumes, causes the level of service on a transportation facility to decline below the level of service standard set forth in LMC 14.21.010(H), unless transportation improvements or strategies to cure such decline are made concurrent with the development. The city may require the submittal of supplementary information and studies by a developer for any development which may reasonably cause a transportation facility to decline below such level of service standard. Further, for identified Strategy Corridors, the City may require a combination of those strategies set forth in LMC 14.21.010(M) to be constructed or instituted. Such transportation improvements or strategies may be provided by the following method or combination of methods:

1. Public transportation projects which are initially funded and in support of which the proponent has paid or agreed to pay a mitigation fee pursuant to LMC 14.21.040(B)(2);
2. Transportation improvements which are under contract as part of the completion of other approved developments and in support of which the proponent has paid or agreed to pay a mitigation fee pursuant to LMC 14.21.040(B)(2);
3. Transportation improvements constructed by the proponent or to the costs of which the proponent has paid a dollar amount or dedicated land of a fair market value equal to or in excess of the mitigation fee which would otherwise have been paid by such proponent pursuant to LMC 14.21.040(B)(2). The proponent shall be given credit against the development's total obligation for transportation mitigation fees to the extent that such construction, contribution or dedication to a particular transportation improvement project exceeds the transportation mitigation fee which would otherwise have been due for that transportation project. If the value of such construction, contribution, or dedication exceeds the total of the transportation impact fee obligation for the proponent's development, the proponent shall be entitled to reimbursement from transportation mitigation fees attributable to that particular transportation improvement project and paid by subsequent developers within the plan area. Such reimbursement shall be made to the proponent in the same proportion as the proponent's construction, payment or dedication bears to the total of the new development portion of the costs of such project;
4. Planned transportation improvements or strategies for which there is in place a financial commitment to assure completion within six years after completion of the development and in support of which the proponent has paid or agreed to pay a mitigation fee pursuant to LMC 14.21.040(B)(2).

C. Decision and Appeal Process.

1. The Site Plan Review Committee shall determine if concurrency required under this chapter is met.
2. If concurrency is met but mitigation is required, the committee shall require mitigation in accordance with the requirements of LMC 14.21.040. Notice of the committee's decision and the mitigation required shall be provided in written form to the proponent.
3. Any decision of the city of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards.

D. Review of Developments Outside City Limits.

The city shall review developments which are within the plan area but located outside of the city limits in the same manner as it reviews developments located within the city limits. The city shall further cooperate with Thurston County and other cities within the county to expeditiously review the transportation impacts of developments located within such jurisdiction. Such cooperation shall include the exercise of all powers under existing contractual agreements, the promotion of future contractual agreements, and the adoption by the county of common development standards. All cooperative efforts shall be directed towards evaluating and mitigating the actual impacts of development projects upon the transportation improvement projects located within the respective jurisdictions. If the projected transportation impacts on Lacey transportation improvement projects of those developments located outside the city but within the plan area are not required to be mitigated by the jurisdiction in which such development is located or voluntarily mitigated by the developer in a manner equal to the requirements of this ordinance, the city shall not extend utility services to such development unless required to do so by prior agreement or force of law. (Ord. 1268 §2, 2006; Ord. 1192 §13, 2002; Ord. 1059 §6, 1997; Ord. 1033, 1996).

14.21.035 Deferral of transportation mitigation fees.

A. Each applicant for single-family residential attached and detached construction permit, in accordance with his or her contractor registration number or other identification number may request a deferral for the full impact fee(s) (Transportation) payment up to twenty (20) permits for a period not to exceed eighteen (18) months from the date of building permit issuance.

Comment [CO1]: The city may elect to defer more than 20 permits per applicant per year.

B. The amount of impact fees deferred are determined by the fees in effect via ordinance, interlocal agreement or other schedule as adopted by the City Council at the time of building permit application.

C. The City of Lacey may withhold any final inspection and/or certification for occupancy until all applicable impact fees have been paid in full.

D. An applicant seeking deferral shall grant and record a "Deferred Impact Fee Lien Release" in a form approved by the city against the subject property and in favor of the city, for the full amount of the impact fee(s) being deferred. Said Deferred Impact Fee Lien Release form shall include:

1. The legal description, tax account number, and address of the property;
2. A signature by the listed owner(s) of the property, with all signatures acknowledged as required for a deed and recorded with the Thurston County Auditor's Office;
3. Shall indicate that the lien is binding on all successors in title;
4. Shall indicate that the lien is junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

E. If impact fees are not paid in accordance with the terms of this section; the city is authorized and may choose to institute foreclosure proceedings. (The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority shall not affect the obligation to pay impact fees as a condition of final inspection, certificate of occupancy, or equivalent certification, or at the time of closing of the first sale.)

F. If the city does not institute foreclosure proceedings for unpaid school impact fees within forty-five (45) days after receiving notice from a school district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid school impact fees. The city shall remain responsible for collection of all remaining impact fees.

G. Upon receipt of full payment of all outstanding impact fees deferred under this section, the city shall execute a "Deferred Impact Fee Lien Release" for the subject property. The property owner at the time of the release shall be responsible for recording the lien release at his or her own expense.

14.21.040 Methods of providing transportation improvements.

A development proponent may be required to directly mitigate the transportation impacts of such proposed development or be required to pay transportation mitigation fees. Such mitigation methods shall be carried out as follows:

A. Direct Mitigation. Construction of traffic improvements which are required of a proponent as direct mitigation under LMC 14.10.030 must be completed by the time of completion of development or an assurance device to guarantee completion of such improvements must be deposited with the city. The assurance device shall be in an amount equal to one hundred fifty percent of the estimated improvement cost. Such assurance device shall be deposited with the city at the time of building permit issuance, final plat approval or other approval to proceed. The direct payment of a lump sum for signal timing shall be considered a direct mitigation under this subsection.

B. The transportation impacts from each development within the plan area except those impacts directly mitigated as provided in subsection A of this section shall be mitigated by the payment of a transportation mitigation fee. Such fee shall be determined, paid and expended as follows:

1. The city shall determine, the number of PM Peak Hour Trips generated from or to such development which impact each transportation improvement project listed in the transportation improvement program. In making such determination, the city shall consider all relevant factors, including the developer's participation in public transportation, ride sharing and other transportation demand management programs and services. Further, in order to recognize the increased tax revenue to be received by the city to offset transportation improvement project costs from nonresidential developments to be located within the city and the jobs created by such developments the city shall divide the number of PM Peak Hour Trips generated from or to such nonresidential development which impact each transportation improvement project by a factor of two. Provided, however, that such division shall not be made of those PM Peak Hour Trips generated which impact that transportation improvement project designated as Marvin and I-5 interchange improvements.

2. The number of PM Peak Hour Trips determined in subsection B.1. for each transportation improvement project shall be multiplied by the cost per trip as set forth on Table 14T-15 as the same may annually be hereafter modified for each transportation improvement project included within the program. Such cost per trip is determined by dividing the total estimated or actual cost of the transportation improvement project by the consistent denominator of traffic volume set forth for each such project. The cost per trip is determined by such calculation in order to provide a reasonable portion of the funding of such projects to solve the cumulative impacts of planned growth and development within the plan area. A cost per trip which is less than the cost determined by such calculation may be approved by the city council as part of its periodic review of the transportation improvement program in order to assure that such transportation mitigation fees do not exceed those fees reasonably necessary as a direct result of a proposed development. If the cost per trip as set forth changes between the date of development approval and the date of mitigation fee payment or first payment pursuant to the installment method due to projected construction cost increases or decreases, the fee due shall be in accordance with the cost per trip in effect at the date of such payment or first installment. Provided, however, that the average cost per trip for a residential development not generating trips to or from that transportation improvement project designated as Marvin and I-5 interchange improvements shall not exceed the sum of \$1,040.00. The average cost per trip for those residential developments generating trips which impact the transportation improvement project designated as Marvin and I-5 interchange improvements shall not exceed the sum of \$1,040.00 plus a sum equal to the per trip cost exceeding \$1,040.00 for those trips generated by the development and impacting the Marvin and I-5 interchange improvements project. The

\$1,040.00 limitation set forth herein shall be increased on July 1 of 1998 and July 1 or each year thereafter in an amount equal to the increase in the Engineering News Record Construction Cost Index over a date one year earlier.

3. The transportation mitigation fee determined shall be payable for those designated transportation improvement projects constructed or to be constructed after the passage of this ordinance. The requirement to pay such fees shall apply even though the transportation project has been completed prior to development application or the due date of mitigation fee payments. Such requirement shall continue until the trips generated for a particular transportation improvement project from developments which have paid mitigation fees for that project equal the number of trips shown as mitigated volume on the transportation improvement mitigation list.

4. The city shall maintain accurate accounting records showing the amount of mitigation fees paid for each transportation improvement project, the source of the funds, the date the funds were contributed and the date, amount and purpose of all expenditures of such fees. The accounting records shall be public records and open to inspection.

5. Transportation mitigation fees collected as a result of a particular new development shall be used to pay for transportation improvements mitigating the impacts of such development within six years after actual receipt of such funds. Mitigation fees paid towards more than one transportation improvement may be pooled and expended on any one of the improvements impacted by the development. Application of fees received to reimburse the public or other developers for designated transportation improvement projects previously completed shall be deemed to be an expenditure of such fees for purposes of this subsection. Any funds not expended in the manner set forth in this subsection within six years of collection of such funds shall be refunded in full to the property owner of record at the time of the refund.

6. The transportation mitigation fee as so determined, shall be due and payable at the time of issuance of a building permit. In all cases except residential subdivisions, the property owner may pay the transportation mitigation fee in a lump sum upon building permit issuance or, at the owner's option, by annual installments, with interest, over a period of five years. In the case of residential subdivisions or short subdivisions, if the developer chooses to pay the transportation mitigation fee at the time of final plat approval, such developer shall have the same installment option as set forth for non residential developments. If the option to pay by installment is chosen, the property owner or developer shall be required to pay twenty percent of the total fee at the time the building permit is issued or in the case of residential subdivisions, at the time the final plat is approved and the remaining balance in equal installments over a period of five years with interest at the rate set by the State Treasurer and published in the Washington State Register pursuant to RCW 19.52.025 for the month December of the year immediately preceding the calendar year in which the promissory note is provided to the city. The developer or property owner may pay the outstanding balance with accumulated interest at any time without penalty. If any installment is not paid within ten days of the date it is due, the total outstanding balance shall immediately be due and payable. The installment method of payment may only be used if additional security, satisfactory to the city is provided to guarantee such payment. For those developments not requiring a building permit, the initial development or construction permit issued shall be treated as a building permit for purposes of determining the due date and manner of payment of the transportation mitigation fee. Payment of a mitigation fee is intended to mitigate the transportation impacts for a particular location. Therefore, mitigation fee credit cannot be transferred to any other location.

7. Nothing herein shall prevent the city from approving local improvement districts, proposed transportation latecomer agreements or other means of financing transportation improvements. Provided, however, that the developer or owner of properties shall be given credit against such other means of financing for mitigation fees paid under this chapter for the specific transportation improvement project to be financed. (Ord. 1141 §1, 2000; Ord. 1059 §7, 1997; Ord. 1048 §1, 1996; Ord. 1033, 1996).

14.21.050 Prior plats.

Notwithstanding anything in this chapter to the contrary, the provisions herein shall apply upon the issuance of building permits within plats, the approval of which was made contingent upon addressing the issue of traffic impacts at the time of building permit application. (Ord. 1059 §8, 1997).



PLANNING COMMISSION STAFF REPORT

October 18, 2016

SUBJECT: Critical Areas Ordinance Update Introductory Briefing

RECOMMENDATION: Conduct an introductory work session on the state-mandated update to the City's Critical Areas Ordinance.

TO: Lacey Planning Commission

STAFF CONTACTS: Ryan Andrews, Planning Manager *RA*

ATTACHMENT(S):

1. Current Critical Areas Regulations (LMC 14.28, 14.33, 14.34, 14.36, 14.37)
2. Wetland Guidance for CAO Updates for Western Washington

**PRIOR COUNCIL/
COMMISSION/
COMMITTEE REVIEW:**

None. The CAO update is identified in the 2016/2017 work program.

BACKGROUND:

RCW 36.70A.130 requires every Washington city and county fully planning under the Growth Management Act to periodically review and, if needed, revise its comprehensive plan and development regulations every eight years. According to this state law, local governments are also required to review and revise their policies and regulations on critical areas to incorporate best available science using the same update schedule. State law was amended so that jurisdictions have one year from the statutory deadline to complete the revisions to critical areas regulations. For Lacey, the deadline to update our critical areas ordinance is June 30, 2017.

The Growth Management Act identifies five critical areas for protection. They are:

1. Wetlands
2. Critical Aquifer Recharge Areas
3. Fish and Wildlife Habitat Conservation Areas
4. Frequently Flooded Areas
5. Geologically Hazardous Areas

The focus of the City's best available science update to the critical areas regulations will be on wetlands. Of the five critical areas, wetlands greatly outnumber any other critical area within the Lacey city limits. To assist in the update, the Department of Ecology has drafted the attached "Wetland Guidance for CAO Updates". The guidance, which has utilized best available science, contains a model ordinance which will be used to guide the update. The City last conducted an update to the wetland regulations in 2014 to adjust the methodology for determining buffer widths.

Some minor revisions to other sections will be necessary to address best available science requirements.

The Critical Aquifer Recharge Areas section of the CAO will be reviewed by Water Resources staff to address any changes to the City's regulations for protection of groundwater—particularly City of Lacey drinking water wells. Adjustments may be made to “time of travel” zones and associated uses within those zones to ensure adequate protection.

For Fish and Wildlife Habitat Conservation Areas, an update is needed to the Washington Department of Natural Resources stream typing. This system has changed to now designate stream type based on fish or non-fish bearing streams. This is different from our current system that bases the system on stream flows. Additionally, stream buffers associated with Woodland Creek will need to be addressed to ensure adequate protections are in place within this section of the CAO. This will also allow the removal of stream buffer zone requirements from the Lacey Historic Neighborhood zoning district. This was an implementation measure identified in both the Land Use and Environmental Elements of the 2016 Comprehensive Plan.

No updates to the Frequently Flooded Areas or Geologically Hazardous Areas sections of the CAO are anticipated. The Frequently Flooded Areas regulations were last updated in 2012 to meet Federal Emergency Management Agency (FEMA) requirements associated with new Flood Insurance Rate Maps (FIRM maps). The science associated with Geologically Hazardous Areas regulations have not changed since the last update. Additionally, Lacey has very few (if any) identified geologic hazards.

At the next meeting, the Planning Commission will begin reviewing draft amendments to the CAO update to incorporate best available science requirements.

RECOMMENDATION:

The Planning Commission will conduct an introductory work session on the state-mandated update to the Critical Areas Ordinance. Draft amendments to the CAO will be brought to the Planning Commission at a future work session.

CHAPTER 14.28
WETLANDS PROTECTION

Sections:

- 14.28.010 Findings of fact
- 14.28.020 Purpose
- 14.28.030 Definitions
- 14.28.040 Abrogation and greater restrictions
- 14.28.050 Interpretation
- 14.28.060 Qualified professional or technical wetland consultant or scientist
- 14.28.065 Listing of qualified professional or technical wetlands consultants or scientists
- 14.28.067 Contracting with qualified professional wetland consultants or scientists
- 14.28.070 Applicability
- 14.28.080 Maps and inventory
- 14.28.090 Determination of regulatory wetland boundary
- 14.28.100 Wetlands rating system
- 14.28.110 Regulated activities
- 14.28.120 Allowed activities
- 14.28.130 Special uses
- 14.28.140 Exempt activities
- 14.28.150 Repealed
- 14.28.160 Wetland development permit extensions
- 14.28.170 Request for determination of applicability
- 14.28.180 Repealed
- 14.28.190 Application information requirements
- 14.28.200 Repealed
- 14.28.210 Repealed
- 14.28.220 Notice on title
- 14.28.230 Consolidated application process
- 14.28.240 Repealed
- 14.28.250 Repealed
- 14.28.260 Repealed
- 14.28.270 Standards for wetland decisions--Generally
- 14.28.280 Wetland buffers--Standard buffer zone widths
- 14.28.290 Increased wetland buffer zone width
- 14.28.300 Reduction of standard wetland buffer zone width
- 14.28.310 Standard wetland buffer width averaging
- 14.28.320 Permit processing--Retention of natural buffer zones
- 14.28.330 Permit processing--Permitted uses in a wetland buffer zone
- 14.28.340 Permit processing--Building setback lines
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- 14.28.455 Wetland mitigation banks and in-lieu fee

- 14.28.460 Application approval--Compensatory mitigation--Wetlands enhancement
- 14.28.465 Wetland preservation as mitigation
- 14.28.470 Repealed
- 14.28.480 Repealed
- 14.28.490 Application approval--Compensatory mitigation--Timing
- 14.28.500 Application approval--Compensatory mitigation--Cooperative restoration, creation or enhancement projects
- 14.28.510 Application approval--Mitigation plans
- 14.28.520 Appeals
- 14.28.530 Modification of wetland approvals
- 14.28.540 Resubmittal of denied permit applications
- 14.28.550 Temporary emergency approval
- 14.28.560 Enforcement
- 14.28.570 Non-conforming activities
- 14.28.580 Repealed
- 14.28.590 Amendments
- 14.28.600 Severability
- 14.28.610 Assessment relief

14.28.010 Findings of fact.

The city council of the city of Lacey hereby finds that:

- A. Wetlands and their buffer areas are valuable and fragile natural resources with significant development constraints due to flooding, erosion, soil liquefaction potential, and septic disposal limitations.
- B. In their natural state, wetlands provide many valuable social and ecological services, including:
 - 1. Controlling flooding and stormwater runoff by storing or regulating natural flows;
 - 2. Protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation;
 - 3. Providing areas for ground water recharge;
 - 4. Preventing shoreline erosion by stabilizing the substrate;
 - 5. Providing habitat areas for many species of fish, wildlife, and vegetation, many of which are dependent on wetlands for their survival, and many of which are on Washington State and Federal Endangered Species lists;
 - 6. Providing open space and visual relief from intense development in urbanized area;
 - 7. Providing recreation opportunities; and
 - 8. Serving as areas for scientific study and natural resource education.
- C. Development in wetlands results in:
 - 1. Increased soil erosion and sedimentation of downstream water bodies, including navigable channels;
 - 2. Increased shoreline erosion;
 - 3. Degraded water quality due to increased turbidity and loss of pollutant removal processes;
 - 4. Elimination or degradation of wildlife and fisheries habitat;
 - 5. Loss of fishery resources from water quality degradation, increased peak flow rates, decreased summer low flows, and changes in the stream flow regimen;

6. Loss of stormwater retention capacity and slow release detention resulting in flooding, degraded water quality, and changes in the stream flow regimen of watersheds;
7. Loss of ground water recharge areas;
8. Loss or degradation of open space and natural aesthetics of wetland areas;
9. Loss or degradation of natural recreation opportunities provided by wetland areas;
10. Loss of opportunities for scientific study of wetland areas.

D. Buffer areas surrounding wetlands are essential to maintenance and protection of wetland functions and values. Buffer areas protect wetlands from degradation by:

1. Stabilizing soil and preventing erosion;
2. Filtering suspended solids, nutrients and harmful or toxic substances;
3. Moderating impacts of stormwater runoff;
4. Moderating system microclimate;
5. Protecting wetland wildlife habitat from adverse impacts;
6. Maintaining and enhancing habitat diversity and/or integrity;
7. Supporting and protecting wetlands plant and animal species and biotic communities; and
8. Reducing disturbances to wetland resources caused by intrusion of humans and domestic animals.

E. The loss of the social and ecological services provided by wetlands results in a detriment to public safety and welfare; replacement of such services, if possible at all, can require considerable public expenditure.

F. A considerable acreage of these important natural resources has been lost or degraded by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Remaining wetlands are in jeopardy of being lost, despoiled, or impaired by such acts.

G. It is therefore necessary for the city of Lacey to ensure maximum protection for wetland areas by discouraging development activities in wetlands and those activities at adjacent sites that may adversely affect wetland functions and values, to encourage restoration and enhancement of already degraded wetland systems, and to encourage creation of new wetland areas. (Ord. 912 §1 Sec. 1.1, 1991).

14.28.020 Purpose.

A. It is the policy of the city of Lacey to require site planning to avoid or minimize damage to wetlands wherever possible; to require that activities not dependent upon a wetland location be located at upland sites; and to achieve no net loss of wetlands by requiring restoration or enhancement of degraded wetlands or creation of new wetlands to offset losses that are unavoidable.

B. In addition, it is the intent of the city of Lacey that activities in or affecting wetlands not threaten public safety, cause nuisances, or destroy or degrade natural wetland functions and values by:

1. Impeding flood flows, reducing flood storage capacity, or impairing natural flood control functions, thereby resulting in increased flood heights, frequencies, or velocities on other lands;
2. Increasing water pollution through location of domestic waste disposal systems or stormwater systems in wetlands; unauthorized application of pesticides and herbicides; disposal of solid waste at inappropriate sites; creation of unstable fills; or the destruction of wetland soils and vegetation;
3. Increasing erosion;

4. Decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
5. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;
6. Decreasing habitat for fish and other forms of wildlife;
7. Adversely altering the recharge or discharge functions of wetlands, thereby impacting ground water or surface water supplies;
8. Significantly altering wetland hydrology and thereby causing either short- or long-term changes in vegetational composition, soils characteristics, nutrient cycling, or water chemistry;
9. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
10. Interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird watching, photography and other passive uses; or
11. Destroying or damaging aesthetic and property values, including significant public view sheds.

C. The purposes of this chapter are to protect the public health, safety and welfare by preventing the adverse environmental impacts of development enumerated in LMC 14.28.010, and by:

1. Preserving, protecting and restoring wetlands by regulating development within wetlands and wetland buffers;
2. Protecting the public against losses from:
 - a. Unnecessary maintenance and replacement of public facilities, including the dredging of ports and navigation channels;
 - b. Publicly funded mitigation of avoidable impacts;
 - c. Cost for public emergency rescue and relief operations; and
 - d. Potential litigation from improper construction practices authorized for wetland areas;
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of wetlands;
4. Providing city of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;
5. Adopting Governor Booth Gardner's interim goal to achieve no overall net loss in acreage and functions of Washington's remaining wetland base and the long-term goal to increase the quantity and quality of Washington's wetland resource base;
6. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter 43.21C RCW, Puget Sound Water Quality Management Plan, Washington State Executive Order 90-04, the City Comprehensive Land Use Plan, the City Comprehensive Plan for Outdoor Recreation, the City Zoning Code (LMC Title 16), the City Environmental Policy Ordinance (Chapter 14.24 LMC), Shoreline Master Program (Chapter 14.26 LMC), Tree Protection and Preservation Ordinance (Chapter 14.32 LMC), and all other present and future city of Lacey functional, environmental and community plans and programs. (Ord. 912 §1 Sec. 1.2, 1991).

14.28.030 Definitions.

For the purposes of this chapter, the following definitions shall apply:

- A. “Applicant” means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- B. “Best management practices” means conservation practices or systems of practices and management measures that:
1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and
 2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands; and
 3. Protect trees and vegetation designated to be retained during the following site construction; and
 4. Provide standards for proper use of chemical herbicides within critical areas.
- C. “Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined in WAC 365-195-900 through 365-195-925. Sources of best available science are included in “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas” published by the State Office of Community Development.
- D. “Compensation project” means actions necessary to replace project-induced wetland and wetland buffer losses, including land acquisition, planning, construction plans, monitoring and contingency actions.
- E. “Compensatory mitigation” means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:
1. “Restoration” - Actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities, or catastrophic events within an area which no longer meets the definition of a wetland.
 2. “Creation” - Actions performed to intentionally establish a wetland at a site where it did not formerly exist.
 3. “Enhancement” - Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.
 4. “Preservation” - actions taken to ensure the permanent protection of existing high quality wetlands.
- F. “Department” means the Washington State Department of Ecology.
- G. “Developable area” means an area of land outside of wetlands and wetland buffers.
- H. “Emergent wetland” means a regulated wetland with at least thirty percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.
- I. “Essential habitat” means habitat necessary for the survival of federally listed threatened, endangered, and sensitive species and state listed priority species.
- J. “Existing and ongoing agriculture” includes those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless

the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.

K. “Exotic” means any species of plants or animals that are foreign to the planning area.

L. “Extraordinary hardship” means strict application of this chapter and/or programs adopted to implement this chapter by the city of Lacey would prevent all reasonable economic use of the parcel.

M. “Financial security” means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or other financial guarantee approved by the city attorney.

N. “Forested wetland” means a regulated wetland with at least twenty percent of the surface area covered by woody vegetation greater than twenty feet in height.

O. “Functions,” “beneficial functions,” or “functions and values” means the beneficial roles served by wetlands including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.

P. “High intensity land use” includes land uses which are associated with moderate or high levels of human disturbance or substantial wetland habitat impacts including, but not limited to, urban residential densities, active recreation uses, and commercial and industrial land uses.

Q. “High quality wetlands” are those regulated wetlands which meet the following criteria:

1. No, or isolated, human alteration of the wetland topography;
2. No human-caused alteration of the hydrology or else the wetland appears to have recovered from the alteration;
3. Low cover and frequency of exotic plant species;
4. Relatively little human-related disturbance of the native vegetation, or recovery from past disturbance;
5. If the wetland system is degraded, it still contains a viable and high quality example of a native wetland community; and
6. No known major quality problems.

R. “Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the “Federal Manual for Identifying and Delineating Jurisdictional Wetlands.”

S. “Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the “Federal Manual for Identifying and Delineating Jurisdictional Wetlands.”

T. “In-kind compensation” means to replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not necessarily mean replacement “in-category.”

U. “Isolated wetlands” means those regulated wetlands which:

1. Are outside of and not contiguous to any one-hundred-year floodplain of a lake, river, or stream; and

2. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

V. “Lot of record” means a lot legally established by survey or legal description and recorded at the county auditor’s office prior to adoption of the city of Lacey subdivision ordinance or a lot legally established after adoption of the city of Lacey subdivision regulations by recording of a building site plan, subdivision or short subdivision at the county auditor’s office. The definition of lot shall be that definition used in the Lacey subdivision ordinance (LMC 15.08.020(E)).

W. “Low intensity land use” includes land uses which are associated with low levels of human disturbance or low wetland habitat impacts, including, but not limited to, passive recreation, open space, agricultural, or forest management land uses.

X. “Mitigation” includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation in the following order of preference is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
 3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
 5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
 6. Monitoring the impact and the compensation project and taking appropriate corrective measures.
- Mitigation for individual actions may include a combination of the above measures.

Y. “Native vegetation” means plant species which are indigenous to the area in question.

Z. “Off-site compensation” means to replace wetlands away from the site on which a wetland has been impacted by a regulated activity.

AA. “On-site compensation” means to replace wetlands at or adjacent to the site on which a wetland has been impacted by a regulated activity.

BB. “Out-of-kind compensation” means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity. It does not refer to replacement “out-of-category.”

CC. “Practicable alternative” means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to regulated wetlands. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

DD. “Priority habitats” are a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.

EE. “Priority species” are those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened, and sensitive species as well as other species of concern and game species.

FF. “Puget Sound” means all salt waters of the state of Washington inside the international boundary line between the state of Washington and the province of British Columbia, lying east of one hundred twenty-three degrees, twenty-four minutes west longitude.

GG. “Qualified professional or technical wetlands consultant or scientist” means an individual or team that has both the academic qualifications and field experience to provide the technical expertise for making competent wetland delineations and recommendations necessary to implement the goals and requirements of this chapter. Said persons must have previously demonstrated competence in wetland work by having successfully prepared complex wetland studies that have been approved and accepted by the State Department of Ecology, and must be accepted by the city of Lacey pursuant to the requirements of LMC 14.28.065 and 14.28.067.

HH. “Regulated activities” means any of the following activities which are directly undertaken or originate in a regulated wetland or its buffer:

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
2. The dumping, discharging, or filling with any material;
3. The draining, flooding, or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition, or expansion of any structure;
7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland or any other activity taking place in a wetland or buffer involving the modification of vegetation falling under the jurisdiction of the city’s Tree and Vegetation Protection and Preservation Ordinance;
8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.

II. “Regulated wetlands” means all wetlands as defined herein and wetlands which fall waterward of the ordinary high water mark of lakes; except that all isolated Category III and IV wetlands less than one thousand square feet are exempt from the provisions of this chapter; provided, that:

1. They are not associated with riparian areas or buffers;
2. They are not part of a wetland mosaic;
3. They do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance.

A preliminary site review and assessment should be performed prior to the modification of any small wetland, under the thresholds described above, to consider the probable functions and values of the wetland. A wetland permit or other mitigation will be required unless the applicant adequately demonstrates that the wetland functions and values provided by the small wetland are sufficiently limited enough that consideration during development of the property is not warranted. If the preliminary review indicates the values and functions are sufficiently limited, considering other goals and policies of the Comprehensive Land Use Plan to develop an urban community, the small wetland may be exempted from full wetland permit review.

JJ. “Repair or maintenance” means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter additional regulated wetlands are not included in this definition.

KK. “Scrub-shrub wetland” means a regulated wetland with at least thirty percent of its surface area covered by woody vegetation less than twenty feet in height as the uppermost strata.

LL. “Serviceable” means presently usable.

MM. “Unavoidable and necessary impacts” are impacts to regulated wetlands that remain after a person proposing to alter regulated wetlands has demonstrated that no practicable alternative exists for the proposed project.

NN. “Water-dependent” means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.

OO. “Wetlands” are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. For identifying and delineating a regulated wetland, local government shall use the approved federal wetland delineation manual and applicable regional supplements.

PP. “Wetlands site plan review approval” means any approval issued, conditioned or denied to implement the standards of this chapter.

QQ. “Wetland buffers” or “wetland buffer zones” is an area that surrounds and protects a wetland from adverse impacts to the functions and values of a regulated wetland.

RR. “Wetland classes,” “classes of wetlands” or “wetland types” means descriptive classes of the wetlands taxonomic classification system of the United States Fish and Wildlife Service (Cowardin, et al., 1978).

SS. “Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in this chapter. (Ord. 1449 §1, 2014; Ord. 1215 §2, 2003; Ord. 935 §4, 1992; Ord. 912 §1 Sec. 2, 1991).

14.28.040 Abrogation and greater restrictions.

It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 912 §1 Sec. 3.1, 1991).

14.28.050 Interpretation.

The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 912 §1 Sec. 3.2, 1991).

14.28.060 Qualified professional or technical wetland consultant or scientist.

It is expected that most applications for wetland approval will require a qualified professional or technical wetland consultant or scientist to provide the information necessary to fulfill the requirements of this chapter. It shall be the responsibility of the applicant to purchase the services of a qualified consultant or scientist. (Ord. 912 §1 Sec. 3.3, 1991).

14.28.065 Listing of qualified professional or technical wetlands consultants or scientists.

The city of Lacey, in consultation with adjacent local jurisdictions and the State Department of Ecology, shall review the qualifications and experience of available wetland consultants and scientists. The city shall prepare a list of such individuals and firms that can satisfy the needs and requirements of the wetland protection ordinance to prepare boundary surveys, mitigation reports, wetland classifications and other reports, complex studies, and recommendations that adequately protect the city wetland resources. The evaluation of these professionals shall consider such things as academic background, relevant experience, past performance in development of wetland reports, studies and recommendations, considering the accuracy and quality of said reports, studies and

recommendations, and the success of such reports, studies and recommendations in meeting staff needs for implementation of ordinance requirements and purposes. The city and adjacent jurisdictions may use the required list of qualified consultants and scientists to contract for both public and private projects, pursuant to the requirements of LMC 14.28.067. The list shall be reviewed on an annual basis. (Ord. 935 §5 (part), 1992).

14.28.067 Contracting with qualified professional wetland consultants or scientists.

The city shall, at its option, contract with qualified professional or technical wetland consultants or scientists or require an applicant to contract with one of the listed professionals on the approved list for providing the information and services required of a qualified wetland consultant described herein. If the city contracts with said professionals, such consultants shall be chosen for work on a rotational basis.

Individual applicants will be responsible for payment of costs of the professional for projects necessitating work to be performed by the professional; provided, however, that the city shall be responsible for billing and collecting costs charged to the applicant and transferring said payment to the professional unless the city has opted for some other mechanism of providing for the cost, such as inclusion of cost in application fees. The applicant shall also be responsible for the city's administrative fees in carrying out this service. The director of community development is authorized to prepare administrative guidelines for carrying out the requirements of this section. (Ord. 935 §5 (part), 1992).

14.28.070 Applicability.

A. When any provision of any other ordinance of the city of Lacey conflicts with this chapter, that which provides more protection to wetlands and wetland buffers shall apply unless specifically provided otherwise in this chapter.

B. The city of Lacey is authorized to adopt written administrative procedures for the purpose of carrying out the provisions of this chapter.

C. The city of Lacey shall not grant any approval or permission to conduct a regulated activity in a wetland or wetland buffer until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 912 §1 Sec. 4.1, 1991).

14.28.080 Maps and inventory.

This chapter shall apply to all lots or parcels on which wetlands and/or wetland buffers are located within the jurisdiction of the city of Lacey. The approximate location and extent of wetlands in the city of Lacey is displayed on the city zoning map and wetland maps created by Regional Planning based upon National Wetland Inventory maps and local aerial photograph studies. The city zoning map and inventory maps are to be used as a guide to the general location and extent of wetlands. Wetlands not shown on the zoning map, or National Wetlands Inventory are presumed to exist in the city of Lacey and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control. (Ord. 1215 §3, 2003; Ord. 912 §1 Sec. 4.2, 1991).

14.28.090 Determination of regulatory wetland boundary.

A. The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation applying the wetland definition provided in LMC 14.28.030. Qualified professional and technical scientists shall perform wetland delineations using the approved federal wetland delineation manual and applicable regional supplements. The applicant is required under LMC 14.28.190 to show the location of the wetland boundary on a scaled drawing as a part of the permit application.

B. The city of Lacey, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The city of Lacey shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant may be charged for the costs incurred.

C. Where the city of Lacey performs a wetland delineation at the request of the applicant, such delineation shall be considered a final determination.

D. Where the applicant has provided a delineation of the wetland boundary, the city of Lacey shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the city of Lacey shall, at the applicant's expense, obtain expert services to render a final delineation. (Ord. 1449 §2, 2014; Ord. 1215 §4, 2003; Ord. 1192 §25, 2002; Ord. 912 §1 Sec. 4.3, 1991).

14.28.100 Wetlands rating system.

The following system shall be used to rate, establish and administer buffer widths, and replacement ratios for wetlands. For a detailed explanation of this system, refer to Washington State Wetland Rating System for Western Washington: 2014 Update (Revised, Publication No. 14-06-029, October 2014), or as hereafter amended.

A. Category I. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than one acre; (2) wetlands with high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than one acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (7) wetlands that perform many functions well (scoring twenty-three points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

B. Category II. Category II wetlands are: (1) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (2) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between twenty and twenty-two points).

C. Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between sixteen and nineteen points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between one-tenth and one acre. Wetlands scoring between sixteen and nineteen points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

D. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than sixteen points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

E. The city of Lacey shall have the authority to re-evaluate Category II and III wetlands when the calculation from the rating manual results in point values from seven to three habitat points, or the point value described in the wetland rating manual as hereafter amended. This re-evaluation shall be documented in writing and the city may use the descriptions of these wetland categories as guidance in determining the appropriate wetland rating.

F. Wetland rating categories shall be applied as the wetland exists on the date of adoption of the ordinance codified in this chapter; as the wetland may naturally change thereafter; or as the wetland may change in accordance with permitted activities. Wetland ratings shall not be altered to recognize illegal modifications. (Ord. 1449 §3, 2014; Ord. 1215 §5, 2003; Ord. 935 §5 (part), 1992).

14.28.110 Regulated activities.

A wetland development permit shall be obtained from the city of Lacey pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the city of Lacey Development Guidelines and Public Works Standards prior to undertaking the following activities in a regulated wetland or its buffer.

A. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;

B. The dumping, discharging, or filling with any material;

- C. The draining, flooding, or disturbing of the water level or water table;
- D. The driving of pilings;
- E. The placing of obstructions;
- F. The construction, reconstruction, demolition, or expansion of any structure;
- G. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland;
- H. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants. (Ord. 1192 §26, 2002; Ord. 912 §1 Sec. 5.1, 1991).

14.28.120 Allowed activities.

A wetland development permit shall be obtained from the city of Lacey pursuant to the full administrative review procedures contained in Section 1C.040 of the City of Lacey Development Guidelines and Public Works Standards prior to undertaking the following activities, except where such activities result in the conversion of a regulated wetland or wetland buffer to a use to which it was not previously subjected.

- A. Construction of a single family residence within the normal required wetland buffer on any legally established lot of record; provided it is not possible to locate said single family residence on said lot without reduction of the normally required buffer area and provided the site plan review committee shall require as large a buffer from the wetland as can reasonably be accommodated on said lot. In no case shall a dwelling be permitted to be developed in the wetland area except through the provisions and procedures of LMC 14.28.350;
- B. Efforts of public and private organizations, clubs or memberships for the conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;
- C. Outdoor recreational activities developed for the public or private organizations, clubs or memberships, including hunting, fishing, bird watching, hiking, boating, swimming, and canoeing, provided they do not adversely impact the wetland or wetland buffer;
- D. The maintenance of drainage ditches. Maintenance shall not include construction of such drainage ditches except pursuant to subsections K and L of this section;
- E. Development of nature trails;
- F. Boat mooring buoys;
- G. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road; and
- H. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions;
- I. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less when required by a local governmental agency;
- J. Relocation of natural gas, cable communications, and telephone facilities, lines, pipes, mains, equipment or appurtenances when required by a local governmental agency.
- K. Improvement of existing stormwater treatment facilities provided such activities are designed to improve or enhance wetlands by reduction of existing stormwater drainage impacts.

L. Construction of new publicly owned stormwater treatment facilities designed to improve or enhance wetlands by reduction of existing drainage impacts due to older substandard drainage infrastructure or design. Provided further such facilities shall be included in an adopted regional drainage basin plan or other adopted surface water improvement plan.

M. Stormwater management facilities. Stormwater management facilities, limited to stormwater dispersion outfalls and bioswales, may be allowed within the outer twenty-five percent of the buffer of a category III or IV wetlands only, provided that:

1. No other location is feasible, and
2. The location of such facilities will not degrade the functions or values of the wetland. (Ord. 1215 §6, 2003; Ord. 1192 §27, 2002; Ord. 1012 §1, 1995; Ord. 935 §6, 1992; Ord. 912 §1 Sec. 5.2, 1991).

14.28.130 Special uses.

Any activity other than those specified in LMC 14.28.120 and 14.28.140 may not be conducted in wetlands or wetland buffers except upon wetland development approval from the city of Lacey pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192, §28, 2002; Ord. 912 §1 Sec. 5.3, 1991).

14.28.140 Exempt activities.

The following activities shall be exempt from the review requirements of this chapter provided such activities are undertaken using best management practices in a manner that does not adversely impact the wetland or wetland buffer. A permit exemption shall be required to review best management practices applied to the activity. Activities that may be exempted include:

- A. Conservation or preservation of soil, water, native vegetation, fish, shellfish and other wildlife in consultation with the State Department of Wildlife and when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;
- B. Nonpublic outdoor recreation activities such as fishing, bird watching, hiking, boating and swimming when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;
- C. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources;
- D. Existing and ongoing agricultural activities including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations;
- E. Navigation aids and boundary markers;
- F. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, wetland impacts shall be minimized and disturbed areas shall be immediately restored; and
- G. Wetland educational activities and scientific research;
- H. Normal and routine maintenance or repair of existing utility structures or right-of-way;
- I. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way;

J. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way. (Ord. 1215 §7, 2003; Ord. 935 §7, 1992; Ord. 912 §1 Sec. 5.4, 1991).

14.28.150 Repealed

(Ord. 1192 §29, 2002; Ord. 912 §1 Sec. 6.1, 1991).

14.28.160 Wetland development permit extensions.

A. Approvals of a wetland development permit shall normally be valid for a period of eighteen months from the date of issue and shall expire at the end of that time pursuant to requirements of Chapter 16.84 LMC unless an underlying action such as subdivision approval has a longer approval period, in which case the longer approval period shall apply.

B. An extension of an original approval may be granted upon written request submitted to the city of Lacey at least thirty days prior to the permit expiration date, by the original permit holder or the successor in title. Prior to the granting of an extension, the city of Lacey shall require updated studies and/or additional hearings if, in its judgment, the original intent of the permit is altered or enlarged by the renewal, if the circumstances relevant to the review and issuance of the original permit have changed substantially, or if the applicant failed to abide by the terms of the original permit. (Ord. 1192 §30, 2002; Ord. 912 §1 Sec. 6.2, 1991).

14.28.170 Request for determination of applicability.

Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request in writing a determination from the city of Lacey. Such a request for determination shall contain plans, data, and other information as may be specified by the city. Determination of applicability shall be valid for a period of one year from the date of issuance. (Ord. 1192 §31, 2002; Ord. 912 §1 Sec. 6.3(a), 1991).

14.28.180 Repealed

(Ord. 1192 §32, 2002; Ord. 912 §1 Sec. 6.3(b), 1991).

14.28.190 Application information requirements.

A. An application for wetland development shall be determined complete only when it contains all the information described in Section 1B.050(2) of the City of Lacey Development Guidelines and Public Works Standards and the following information and materials:

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the entire parcel of land owned by the applicant and the exact boundary pursuant to LMC 14.28.090 of the wetland on the parcel;
2. A description of the vegetative cover of the wetland and adjacent area including dominant species;
3. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations within the wetland and its buffer;
4. The exact sites and specifications for all regulated activities including the amounts and methods;
5. Elevations of the site and adjacent lands within the wetland and its buffer at contour intervals of no greater than five feet;
6. Top view and typical cross section views of the wetland and its buffer to scale;
7. The purposes of the project and an explanation why the proposed activity cannot be located at other sites including an explanation of how the proposed activity is dependent upon wetlands or water-related resources as described in LMC 14.28.350; and
8. Specific means to mitigate any potential adverse environmental impacts of the applicant's proposal.

B. The city of Lacey may require additional information, including, but not limited to, an assessment of wetland functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic, or other values of a wetland; a study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter. The city of Lacey shall maintain and make available to the public, all information applicable to any wetland and its buffer. (Ord. 1192 §33, 2002; Ord. 912 §1 Sec. 6.3(c), 1991).

14.28.200 Repealed

(Ord. 1192 § 34, 2002; Ord. 912 §1 Sec. 6.3(d), 1991).

14.28.210 Repealed

(Ord. 1192 §35, 2002; Ord. 912 §1 Sec. 6.3(e), 1991).

14.28.220 Notice on title.

A. The owner of any property with field verified presence of wetland or wetland buffer pursuant to LMC 14.28.090 on which a development proposal is submitted shall file for record with the Thurston County Auditors Office a notice in the form set forth in subsection B of this section. Such notice shall provide in the public record the presence of a wetland or wetland buffer, the application of this chapter to the property, and that limitations on actions in or affecting such wetlands and their buffers may exist. The applicant shall submit proof that the notice has been filed for record before an activity is commenced on the subject property. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.

B. Form of Notice:

WETLAND AND/OR WETLAND BUFFER NOTICE

Legal Description: _____

Present owner: _____

NOTICE: This property contains wetlands or their buffers as defined by the city of Lacey Ordinance. The property was the subject of a development proposal for (type of permit) application # _____ filed on (date). Restrictions on use or alteration of the wetlands or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of wetlands or wetland buffers and restrictions on their use through setback areas. A copy of the plan showing such setback areas is attached hereto.

Signature of owner

STATE OF WASHINGTON)

COUNTY OF _____)

On this day personally appeared before me to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein stated.

Given under my hand and official seal this _____ day of _____, 19___. NOTARY PUBLIC in and for the

state of Washington, residing at _____.

(Ord. 1192 §36, 2002; Ord. 912 §1 Sec. 6.3(f), 1991).

14.28.230 Consolidated application process.

When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time in conformance with Section 1B.030 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §37, 2002; Ord. 912 §1 Sec. 6.4(a), 1991).

14.28.240 Repealed

(Ord. 1192 §38, 2002; Ord. 912 §1 Sec. 6.4(b), 1991).

14.28.250 Repealed

(Ord. 1192 §39, 2002; Ord. 912 §1 Sec. 6.4(c), 1991).

14.28.260 Repealed

(Ord. 1192 §40, 2002; Ord. 1012 §2, 1995; Ord. 912 §1 Sec. 6.4(d), 1991).

14.28.270 Standards for wetland decisions--Generally.

A. An approval shall only be granted if, as conditioned, the decision is consistent with the provisions of this chapter including the following:

1. A proposed action avoids adverse impacts to regulated wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
2. The proposed activity results in no net loss;
3. Denial of a permit would cause an extraordinary hardship on the applicant.

B. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal. (Ord. 1192 §41, 2002; Ord. 912 §1 Sec. 7, 1991).

14.28.280 Wetland buffers--Standard buffer zone widths.

Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field pursuant to the requirements of LMC 14.28.090. The width of the wetland buffer zone shall be determined according to wetland category, the proposed land use and the wetland's identified functions and values.

Criteria for determination of the appropriate category of wetland and functions and values shall be as identified in the publication used by the Department of Ecology for wetland protection and impact mitigation; Wetlands in Washington State Volume 2 - Protecting and Managing Wetlands Appendix 8-C. The specific strategy to be applied from this section shall be the "Modified Buffer Widths in Alternative 3 Using a Graduated Scale for the Habitat Functions (Alternative 3A)". This methodology shall be applied except when the community development director, through consultation with the Department of Ecology, determines that another methodology better addresses best available science and/or the specific circumstances of the wetland and wetland protection needs.

Where an area of a wetland may be classified under more than one category, the category having the greatest buffer area shall apply. These buffer widths presume that buffer area is comprised of relatively intact native vegetation community adequate to protect the wetland functions at values at the time of the proposed activity. If the vegetation is not adequate, then the buffer width may need to be increased or planted to maintain the standard width. Buffer width required for points identified pursuant to the Department of Ecology wetland rating system. (See *Table 14T-19*).

(Ord. 1449 §7, 2014; Ord. 1295 §1, 2007; Ord. 1215 §8, 2003; Ord. 912 §1 Sec. 7.1(a), 1991).

Points for Habitat from Wetland Rating Form	3	4	5	6	7	8	9
Alternative 3A High Intensity	80	100	140	180	220	260	300
Alternative 3A Low Intensity	40	55	75	95	115	135	150

14.28.290 Increased wetland buffer zone width.

The city of Lacey shall require increased standard buffer zone widths on a case-by-case basis when a larger buffer is necessary to protect wetlands functions and values based on local conditions. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the regulated wetland. Such determination shall be attached as a condition and shall demonstrate that:

- A. A larger buffer is necessary to maintain viable populations of existing species; or
- B. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
- C. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
- D. The adjacent land has minimal vegetative cover or slopes greater than fifteen percent. (Ord. 912 §1 Sec. 7.1(b), 1991).

14.28.300 Reduction of standard wetland buffer zone width.

A. The city of Lacey may reduce the standard buffer zone widths for Category II, III, and IV, wetlands up to twenty-five percent on a case-by-case basis, and it shall be shown that the activities described below are in the best interest of wetland protection. The full twenty-five percent reduction may be allowed when all of the activities listed below are undertaken and deemed adequate to protect the wetland. A ten percent reduction may be permitted when three of the five activities listed below are undertaken and deemed adequate to protect the wetland.

- 1. Buffer Restoration. This means improving the quality of the buffer so that it provides for increased visual screening or increased vegetative diversity.
- 2. Shielding High Intensity Land Uses. This means providing berms and/or permanent solid fences at the edge of the buffer. It may also include orientation of the building so that the building itself acts as a shield to buffer the wetland.
- 3. Hydrologic Restoration. This means providing permanent improvements to the site hydrology, which may include removal of a ditch that is draining a wetland.
- 4. Habitat Restoration. This means substantial improvements to the fish and wildlife habitat of a wetland or its buffer such as importing snag or meandering a channelized stream.
- 5. Wetland Restoration. This means improving other functions and values of a wetland. Wetland enhancement is not allowed in a Class I wetland.

B. Whenever any of the activities listed in subsection A of this section are used to reduce buffer widths, it shall be in accordance with a written plan provided by the qualified professional or technical wetlands consultant or scientist substantiating that the activity will result in improved protection of the wetland and wetland functions and values.

C. Any wetland created, restored, or enhanced as compensation for approved wetland alterations shall have the standard buffer required for the category of the created, restored, or enhanced wetland. (Ord. 1215 §9, 2003; Ord. 1012 §3, 1995; Ord. 935 §5 (part), 1992).

14.28.310 Standard wetland buffer width averaging.

Standard wetland buffer zones may be modified by averaging buffer widths. Wetland buffer width averaging shall be allowed only where the applicant demonstrates all of the following:

- A. That averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property;
- B. That the wetland contains variations in sensitivity due to existing physical characteristics;
- C. That low intensity land uses would be located adjacent to areas where buffer width is reduced, and that such low intensity land uses are guaranteed in perpetuity by covenant, deed restriction, easement, or other legally binding mechanism;
- D. That width averaging will not adversely impact the wetland functional values; and
- E. That the total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging. In no instance shall the buffer width be reduced by more than fifty percent of the standard buffer or be less than twenty-five feet. (Ord. 912 §1 Sec. 7.1(d), 1991).

14.28.320 Permit processing--Retention of natural buffer zones.

Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation may be required. (Ord. 912 §1 Sec. 7.1(e), 1991).

14.28.330 Permit processing--Permitted uses in a wetland buffer zone.

Regulated and special use activities shall not be allowed in a buffer zone except for the following:

- A. Activities having minimal adverse impacts on buffers and no adverse impacts on regulated wetlands. These may include low intensity, passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing or hunting;
- B. With respect to Category III and IV wetlands, stormwater management facilities having no reasonable alternative on-site location; or
- C. With respect to Category III and IV wetlands, development having no feasible alternative location. (Ord. 912 §1 Sec. 7.1(f), 1991).

14.28.340 Permit processing--Building setback lines.

A building setback line corresponding to the required yard area setback for the underlying zone is required from the edge of any wetland buffer. The setback shall be identified on a site plan which is filed as an attachment to the notice on title required by LMC 14.28.220. (Ord. 912 §1 Sec. 7.1(g), 1991).

14.28.350 Avoiding wetland impacts.

- A. Regulated activities and special uses shall not be authorized in a regulated wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied.
- B. With respect to Category I wetlands, an applicant must demonstrate that denial would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.
- C. With respect to Category II and III wetlands, the following provisions shall apply:
 - 1. For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences.
 - 2. Where nonwater-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:

- a. The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and
- b. A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and
- c. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.

D. With respect to Category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the applicant's objectives.

E. Reasonable Use. If an applicant for a development proposal demonstrates to the satisfaction of the city of Lacey that application of these standards would deny all reasonable economic use of the property, development as conditioned shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the city of Lacey:

1. That the proposed project is water-dependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative pursuant to this section;
2. That no reasonable use with less impact on the wetland and its buffer is possible (e.g., agriculture, aquaculture, transfer or sale of development rights or credits, sale of open space easements, etc.);
3. That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to wetlands and wetland buffers;
4. That the proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;
5. That disturbance of wetlands has been minimized by locating any necessary alteration in wetland buffers to the extent possible;
6. That the proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, rare, sensitive, or as documented priority species or priority habitats;
7. That the proposed activities will not cause significant degradation of ground water or surface water quality;
8. That the proposed activities comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
9. That any and all alterations to wetlands and wetland buffers will be mitigated as provided in LMC 14.28.510;
10. That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and
11. That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter.

If the city of Lacey determines that alteration of a wetland and/or wetland buffer is necessary and unavoidable, the city of Lacey shall set forth in writing in the file it maintains regarding a permit application its findings with respect to each of the items listed in this subsection. (Ord. 1215 §10, 2003; Ord. 912 §1 Sec. 7.2, 1991).

14.28.360 Minimizing wetlands impacts.

A. After it has been determined by the city of Lacey pursuant to LMC 14.28.350 that losses of wetland are necessary and unavoidable or that all reasonable economic use has been denied, the applicant shall take deliberate measures to minimize wetland impacts.

B. Minimizing impacts to wetlands shall include but is not limited to:

1. Limiting the degree or magnitude of the regulated activity;
2. Limiting the implementation of the regulated activity;
3. Using appropriate and best available technology and best available science;
4. Taking affirmative steps to avoid or reduce impacts;
5. Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;
6. Involving resource agencies early in site planning; and
7. Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities. (Ord. 1215 §11, 2003; Ord. 912 §1 Sec. 7.3, 1991).

14.28.370 Limited density transfer and open space credit.

A. For development proposals on lands containing wetland buffers, the city of Lacey shall determine allowable dwelling units for residential development proposals based on the formulas below. Provided the minimum lot size stated in the zoning code shall always be maintained in the Low Density Residential 1-4 zone. The following density transfer shall be applicable only for parcels adjacent to wetlands with wetland buffer requirements.

The following formula for density calculations is designed to provide incentives for the preservation of wetlands and wetland buffers, flexibility in design, and consistent treatment of different types of development proposals. The formula shall apply to all properties within existing residential zones on which wetlands and wetland buffers are located.

The maximum number of dwelling units (DU) for a lot or parcel which contains wetlands and wetland buffers shall be equal to:

The buffer density credit + upland non-buffer area density computed as follows:

the buffer density credit;

(acres in wetland buffer) (DU/acre) (Density credit)

added to

the upland non-buffer area density;

(acres out of wetland buffer) (DU/acre)

The density credit figure is derived from the following table:

Percentage of site in buffers	Density Credit
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Percentage of site in buffers	Density Credit
1-10%	100%
11-20%	90%
21-30%	80%
31-40%	70%
41-50%	60%
51-60%	50%
61-70%	40%
71-80%	30%
81-90%	20%
91-99%	10%

The density credit can only be transferred within the development proposal site. To the extent that application of the formula may result in lot sizes and other zoning standards less than the minimum allowed by the underlying district, they may be authorized up to a fifty percent reduction of said standards provided that the resultant lot is of sufficient size to reasonably accommodate the intended use with room for adequate setbacks, private yard areas and other provisions deemed important to neighborhood quality and that any reduced standards result in a more innovative and superior design and provided further that uses allowed within the zoning district shall not be varied. Provided further, no lot size reduction shall be permitted in the Low Density 0-4 zone. Additionally, lots must be of sufficient size to meet applicable health requirements. In cases where reduced lot sizes or departure from other standards is requested, the minimum standards shall be up to the sole discretion of the site plan review committee according to the processes in Section 1C.040 of the City of Lacey Development Guidelines and Public Works Standards or city hearings examiner and city council through the review process of Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.

The city of Lacey shall not allow credit for density for the portions of the site occupied by wetlands.

B. Up to fifty percent of a development's open space requirement may be satisfied by wetland and wetland area buffers in consideration of the significant passive recreation opportunities provided by said lands. The remaining fifty percent open space requirement must be set aside outside of the wetland and wetland buffer area to provide for and accommodate proposed or potential future active (high intensity) recreational use. (Ord. 1243 §9, 2005; Ord. 1215 §11, 2003; Ord. 1192 §42, 2002; Ord. 912 §1 Sec. 7.4(b), 1991).

14.28.380 Acting on the application-- Special conditions.

A. Sensitive Area Tracts. As a condition of any approval issued pursuant to this chapter, the applicant shall be required to create a separate sensitive area tract or tracts containing the areas determined to be wetland and/or wetland buffer in field investigations performed pursuant to LMC 14.28.090. Sensitive area tracts are legally created tracts containing wetlands and their buffers that shall remain undeveloped in perpetuity. Sensitive area tracts are an integral part of the lot in which they are created, are not intended for sale, lease or transfer, and shall be included in the area of the parent lot for purposes of subdivision.

1. Protection of Sensitive Area Tracts. The city of Lacey shall require, as a condition of any approval issued pursuant to this chapter, that the sensitive area tract or tracts created pursuant to this section be protected by one of the following methods determined by the city of Lacey:

- a. The applicant shall convey an irrevocable offer to dedicate to the city of Lacey or other public or non-profit entity specified by the city of Lacey the wetland and buffer area for the protection of the wetland and its buffer to ensure management of the wetland resource in the best interest of the public; or
 - b. The applicant shall establish and record a permanent and irrevocable deed restriction on the property title and where a division of property is involved on the subdivision, short subdivision or binding site plan map, and in home or lot owners association agreements, covenants and articles of incorporation. All such tracts within a subdivision, short subdivision or binding site plan shall be designated as common open space separate and distinct from private lot areas. Such deed restriction(s) shall prohibit in perpetuity the development, alteration, or disturbance of vegetation within the sensitive area tract except for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from the city of Lacey, and any other agency with jurisdiction over such activity.
2. Specific Language for Deed Restrictions. Deed restrictions required in subsection (A)(1)(b) of this section shall be set forth in substantially the following form:

- a. "Before beginning and during the course of any grading, building construction, or other development activity adjacent to a common open space subject to this deed restriction, the common boundary between the area subject to the deed restriction and the area of development activity must be fenced or otherwise marked to the satisfaction of the city of Lacey."
- b. Responsibility for maintaining open space tracts shall be held by a lot or homeowners association, or other appropriate entity as approved by the city of Lacey.
- c. The following note shall appear on the face of all plats, short plats, PUDs, binding site plans, or other approved site plans containing separate sensitive area tracts to be managed by a lot or homeowners association, and shall be recorded on the title of record for all lots within the development:

NOTE: The association shall be responsible for maintenance and protection of the tracts. Maintenance includes insuring that no alterations occur within the separate tract and that all vegetation remains undisturbed unless the express written authorization of the city of Lacey has been received.

3. Signing and Fencing. The common boundary between a separate sensitive area tract and the adjacent land must be permanently identified. This identification shall include permanent wood or metal signs on treated or metal posts. Signs shall be worded as follows:

"Protection of this natural area is in your care. Alteration or disturbance is prohibited by law. Please call the city of Lacey for more information."

Sign locations and size specifications shall be approved by the city of Lacey. The city of Lacey shall require permanent fencing of the sensitive area tract or tracts when there is a substantial likelihood of the presence of domestic animals within the development proposal that may disrupt the wetland buffer area or wetland.

B. Additional Conditions.

1. The location of the outer extent of the wetland buffer and the areas to be disturbed pursuant to an approval shall be marked in the field by a qualified professional or technical wetland consultant or scientist, and such field marking shall be approved by the city of Lacey prior to the commencement of approved activities. Such field markings shall be maintained throughout the duration of the approval.
2. The city of Lacey may attach such additional conditions to the granting of approvals as deemed necessary to assure the preservation and protection of affected wetlands and to assure compliance with the purposes and requirements of this chapter. (Ord. 912 §1 Sec. 7.5(a), 1991).

14.28.390 Acting on the application-- Financial security.

- A. Financial Security for Performance. The city of Lacey shall require the applicant of a development proposal to provide financial security acceptable to the city of Lacey in an amount and with surety and conditions sufficient to fulfill the requirements of LMC 14.28.430 through 14.28.510 and, in addition, to secure compliance with other

conditions and limitations set forth in the approval. The amount and the conditions of the financial security shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such financial security, the city of Lacey may utilize the financial security to fulfill obligations of the approval and take any other steps necessary to gain compliance with approval conditions including instituting an appropriate action in a court of competent jurisdiction. The city of Lacey shall release the financial security upon determining that:

1. All activities, including any required compensatory mitigation, have been completed in compliance with the terms and conditions of the approval and the requirements of this chapter;
2. Upon the posting by the applicant of financial security for maintenance of required improvements for two years.

Until such written release of the financial security by the city such security cannot be released to the applicant.

B. **Maintenance Security.** The city of Lacey shall require the holder of an approval issued pursuant to this chapter to post financial security acceptable to the city of Lacey in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The city of Lacey shall release the financial security upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or compensatory mitigation have been satisfactorily met for the required period. For compensation projects, the performance standards shall be those contained in the mitigation plan developed and approved during the review process pursuant to LMC 14.28.510. The maintenance security applicable to a compensation project shall not be released until the city of Lacey determines that performance standards established for evaluating the effect and success of the project have been met. (Ord. 912 §1 Sec. 7.5(b), 1991).

14.28.400 Application approval--Other laws and regulations.

No approval granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 912 §1 Sec. 7.5(c), 1991).

14.28.410 Application approval-- Suspension, revocation.

In addition to other penalties provided for elsewhere, the city of Lacey may suspend or revoke an approval if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 912 §1 Sec. 7.5(d), 1991).

14.28.420 Notice of final decision.

The city of Lacey shall provide notice of its actions pursuant to the requirements of Section 1C.070 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §43, 2002; Ord. 912 §1 Sec. 7.5(e), 1991).

14.28.430 Application approval-- Compensating for wetlands impacts.

As a condition of any approval allowing alteration of wetlands and/or wetland buffers, or as an enforcement action pursuant to LMC 14.28.560, the city of Lacey shall require that the applicant engage in the restoration, creation or enhancement of wetlands and their buffers in order to offset the impacts resulting from the applicant's or violator's actions. The applicant shall develop a plan that provides for land acquisition, construction, maintenance and monitoring of replacement wetlands that recreate as nearly as possible the original wetlands in terms of acreage, function, geographic location and setting, and that are larger than the original wetlands. The overall goal of any compensatory project shall be no net loss of wetlands function and acreage and to strive for a net resource gain in wetlands over present conditions. Compensation shall be completed prior to wetland destruction, where possible.

Compensatory mitigation shall follow an approved mitigation plan pursuant to LMC 14.28.510 and shall meet the following minimum performance standards set forth in LMC 14.28.440 through 14.28.510. (Ord. 912 §1 Sec. 7.5(f), 1991).

14.28.440 Application approval-- Compensatory mitigation--Applicant requirements.

Given the uncertainties in scientific knowledge and the need for expertise and monitoring, wetland compensatory projects may be permitted only when the city of Lacey finds that the compensation project is associated with an activity or development otherwise permitted and that the restored, created, or enhanced wetland will be as persistent as the wetland it replaces. Additionally, applicants shall:

- A. Demonstrate sufficient scientific expertise, supervisory capability, and financial resources to carry out the project;
- B. Demonstrate the capability for monitoring the site and to make corrections during this period if the project fails to meet projected goals; and
- C. Protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for long-term persistence of the compensation area.
- D. Projects shall meet requirements of best available science. (Ord. 1215 §12, 2003; Ord. 912 §1 Sec. 7.5(f)(1), 1991).

14.28.445 Performance Standards--Mitigation requirements.

A. Mitigation shall achieve equivalent or greater biological functions. Mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions and shall be consistent with the Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, 1994, as revised.

B. Mitigation shall result in no net loss. Wetland mitigation actions shall not result in a net loss of wetland area except when the following criteria are met.

1. The lost wetland area provides minimal functions and the mitigation action(s) results in net gain in wetland functions as determined by a site-specific function assessment; or
2. The lost wetland area provides minimal functions as determined by a site-specific function assessment and other protected or enhanced habitats provide greater benefits to the functioning of the watershed, such as riparian habitat protection and enhancement.

C. Mitigation for Lost Functions and Values. Mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement, and shall provide similar wetland functions as those lost except when:

1. The lost wetland provides minimal functions as determined by a site-specific function assessment and the proposed mitigation action(s) will provide equal or greater functions or will provide function shown to be limiting within a watershed through a formal watershed assessment protocol; or
2. Out of kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types.

D. Preference of Mitigation Actions. Mitigation actions that require compensation by replacing, enhancing, or substitution, shall occur in the following order of preference:

1. Restoring wetlands on upland sites that were formerly wetlands.
2. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.
3. Enhancing significantly degraded wetlands.
4. Preserving high-quality wetlands that are under imminent threat. (Ord. 1215 §13, 2003).

14.28.447 Type and location of mitigation.

Mitigation actions shall be conducted within the same sub-drainage basin and on the site as the alteration except when the following apply:

1. There are no reasonable on-site opportunities or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;
2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
3. Off-site locations shall be in the same sub-drainage basin and the same Water Resource Inventory Area (WRIA) unless;
 - a. The impact is located near the boundary of a WRIA;
 - b. Established regional or watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation at another site; or
 - c. Credits from a city certified wetland mitigation bank are used as mitigation, and the use of credits is consistent with the terms of the banks certification. (Ord. 1215 §14, 2003).

14.28.450 Application approval--Compensatory mitigation--Wetlands restoration and creation.

A. Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses.

B. Where feasible, restored or created wetlands shall be a higher category than the altered wetland.

C. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self-sustaining and projected success. Wetland functions and values shall be calculated using the best professional judgment of a qualified wetland ecologist using the best available techniques. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss.

D. Acreage Replacement Ratio. The following ratios apply to creation or restoration which is in-kind, on-site, the same category, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from illegal alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a wetland bank approved by the city, the Department of Ecology or the U.S. Corps of Engineers. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered.

Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Re-establishment	Restoration
Category I: Bog, Natural Heritage Site	Not considered possible	Case by case
Category I: Mature Forested	6:1	12:1
Category I: Based on Functions	4:1	8:1
Category II	3:1	6:1
Category III	2:1	4:1
Category IV	1.5:1	3:1

1. Increased Replacement Ratio. The city of Lacey may increase the ratios under the following circumstances:
 - a. Uncertainty as to the probable success of the proposed restoration or creation;
 - b. Significant period of time will elapse between impact and replication of wetland functions; or
 - c. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
 - d. The impact was an unauthorized impact.
2. Decreased Replacement Ratio. The city of Lacey may decrease these ratios under the following circumstances:
 - a. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;
 - b. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or
 - c. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.
3. A minimum acreage replacement ratio of 1:1 shall be required except as provided by LMC 14.28.445(B). (Ord. 1449 §4, 2014; Ord. 1215 §15, 2003; Ord. 935 §8, 1992; Ord. 912 §1 Sec. 7.5(f)(2), 1991).

14.28.455 Wetland mitigation banks and in-lieu fee.

- A. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
 1. The bank is approved by the city, the Department of Ecology, or the U.S. Army Corps of Engineers.
 2. The city determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 3. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
- B. Replacement ratios for projects using bank credits shall be consistent with the replacement ratios specified in the bank's certification.
- C. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one Water Resource Inventory Area (WRIA) for specific wetland functions.
- D. To aid in the implementation of off-site mitigation, the city may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved in-lieu fee program may be used when the following apply:
 1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts; and
 2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu fee program instrument; and

3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument; and
4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale; and
5. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu fee program; and
6. Credits from an approved in-lieu fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu fee instrument. (Ord. 1449 §5, 2014; Ord. 1215 §16, 2003).

14.28.460 Application approval--Compensatory mitigation--Wetlands enhancement.

A. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

B. At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under LMC 14.28.450. The ratios shall be greater than double the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland. (Ord. 1215 §17, 2003; Ord. 912 §1 Sec. 7.5(f)(3), 1991).

14.28.465 Wetland preservation as mitigation.

Impacts to wetlands may be mitigated by preservation of wetland areas when used in combination with other forms of mitigation such as creation, restoration, or enhancement at the preservation site or at a separate location. Preservation may also be used by itself, but more restriction, as outlined below, will apply.

A. Preservation in Combination with Other Forms of Compensation. Preservation as mitigation is acceptable when done in combination with restoration, creation or enhancement providing that a minimum of 1-to-1 acreage replacement is provided by restoration or creation and the criteria below are met:

1. The impact area is small, and/or impacts are to a category III or IV wetland;
2. Preservation of a high quality system occurs in the same Water Resource Inventory Area (WRIA) or watershed basin as the wetland impact; and
3. Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

B. Preservation as a Sole Means of Mitigation for Wetland Impacts. Preservation of at risk, high quality habitat may be considered as the sole means of mitigation of wetland impacts when all of the following criteria are met:

1. Preservation is used as a form of mitigation only after the standard sequencing of mitigation (avoid, minimize, and then compensate) has been applied;
2. Creation, restoration, and enhancement opportunities have also been considered, and preservation is the best mitigation option;
3. The impact to the area is small and/or impacts are to a Category III or IV wetland;
4. Preservation of a high quality system occurs in the same Water Resource Inventory Area or a watershed where the wetland impact occurs;
5. Preservation sites include areas adequate to protect the habitat and its functions from encroachment and degradation;

6. The preservation site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on or off-site activities; “potential” includes permitted, or planned, or perceived actions; and
7. The area proposed for the preservation is of a high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of high quality areas;
 - a. Category I or II wetland rating;
 - b. Rare wetland type for example, bogs, estuaries;
 - c. Habitat for threatened or endangered species;
 - d. Wetland type that is rare in the area;
 - e. Provides biological and/or hydrological connectivity;
 - f. High regional or watershed importance for example, listed as a priority site in watershed plan; and
 - g. Large size with species diversity (plants and/or animals) and/or high abundance.

C. Mitigation Ratios for Preservation as a Sole Means of Mitigation. Mitigation ratios for preservation as the sole means of mitigation shall range from 10-to-1 to 20-to-1, as determined by the city, depending on the quality of wetlands being mitigated and the quality of the wetlands being preserved. (Ord. 1215 §18, 2003).

14.28.470 Repealed

(Ord. 1215 §1, 2003; Ord. 912 §1 Sec. 7.5(f)(4), 1991).

14.28.480 Repealed

(Ord. 1215 §1, 2003; Ord. 912 §1 Sec. 7.5(f)(5), 1991).

14.28.490 Application approval--Compensatory mitigation--Timing.

Where feasible, compensatory projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora. The city may authorize a one time temporary delay, up to one-hundred-twenty days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the city, and include a financial guarantee. (Ord. 1215 §19, 2003; Ord. 912 §1 Sec. 7.5(f)(6), 1991).

14.28.500 Application approval--Compensatory mitigation--Cooperative restoration, creation or enhancement projects.

A. The city of Lacey may encourage, facilitate, and approve cooperative projects wherein a single applicant or other organization with demonstrated capability may undertake a compensation project with funding from other applicants under the following circumstances:

1. Restoration, creation or enhancement at a particular site or wetland type may be scientifically difficult or impossible; or
2. Creation of one or several larger wetlands may be preferable to many small wetlands.

B. Persons proposing cooperative compensation projects shall:

1. Submit a joint permit application;

2. Demonstrate compliance with all standards;
3. Demonstrate the organizational and fiscal capability to act cooperatively; and
4. Demonstrate that long term management can and will be provided. (Ord. 1449 §6, 2014; Ord. 912 §1 Sec. 7.5(f)(7), 1991).

14.28.510 Application approval-- Mitigation plans.

All wetland restoration, creation and/or enhancement projects required pursuant to this chapter either as an approval condition or as the result of an enforcement action shall follow a mitigation plan prepared by a qualified professional or technical wetlands consultant or scientist approved by the city of Lacey. The applicant or violator shall receive written approval of the mitigation plan by the city of Lacey prior to commencement of any wetland restoration, creation or enhancement activity. Unless the city of Lacey, in consultation with a qualified professional or technical wetland consultant or scientist, determines, based on the size and nature of the development proposal, the nature of the impacted wetland, and the degree of cumulative impacts on the wetland from other development proposals, that the scope and specific requirements of the mitigation plan may be reduced from what is listed below, the mitigation plan shall contain at least the following components:

- A. Baseline Information. A written assessment and accompanying maps of the:
 1. Impacted wetland including, at a minimum, wetland delineation; existing wetland acreage; vegetative, faunal and hydrologic characteristics; soil and substrate conditions; topographic elevations; and
 2. Compensation site, if different from the impacted wetland site, including at a minimum: existing acreage; vegetative, faunal and hydrologic conditions; relationship within watershed and to existing water bodies; soil and substrate conditions, topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership.
- B. Environmental Goals and Objectives. A written report shall be provided identifying goals and objectives and describing:
 1. The purposes of the compensation measures including a description of site selection criteria, identification of compensation goals; identification of target evaluation species and resource functions, dates for beginning and completion, and a complete description of the structure and functional relationships sought in the new wetland. The goals and objectives shall be related to the functions and values of the original wetland or if out-of-kind, the type of wetland to be emulated; and
 2. A review of the available literature and/or experience to date in restoring or creating the type of wetland proposed shall be provided. An analysis of the likelihood of success of the compensation project at duplicating the original wetland shall be provided based on the experiences of comparable projects, if any. An analysis of the likelihood of persistence of the created or restored wetland shall be provided based on such factors as surface and ground water supply and flow patterns, dynamics of the wetland ecosystem; sediment or pollutant influx and/or erosion, periodic flooding and drought, etc., presence of invasive flora or fauna, potential human or animal disturbance, and previous comparable projects, if any.
- C. Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the project have been met and for determining whether additional remedial action or contingency measures must be undertaken. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.
- D. Detailed Construction Plans. Written specifications and descriptions of compensation techniques shall be provided including the proposed construction sequence, grading and excavation details, erosion and sediment control features needed for wetland construction and long-term survival, a planting plan specifying plant species, quantities, locations, size, spacing, and density; source of plant materials, propagules, or seeds; water and nutrient requirements for planting; where appropriate, measures to protect plants from predation; specification of substrate stockpiling techniques and planting instructions; descriptions of water control structures and water-level

maintenance practices needed to achieve the necessary hydrocycle/hydroperiod characteristics; etc. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. The plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data.

E. **Monitoring Program.** A program outlining the approach for monitoring construction of the compensation project and for assessing a completed project shall be provided. Monitoring may include, but is not limited to:

1. Establishing vegetation plots to track changes in plant species composition and density over time;
2. Using photo stations to evaluate vegetation community response;
3. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);
4. Measuring base flow rates and stormwater runoff to model and evaluate water quality predictions, if appropriate;
5. Measuring sedimentation rates, if applicable; and
6. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity.

A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the compensation project. A monitoring report shall be submitted annually, at a minimum, documenting milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years.

F. **Contingency Plan.** Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

G. **Approval Conditions.** Any compensation project prepared pursuant to this section and approved by the city of Lacey shall become part of the application for approval.

H. **Financial Security and Demonstration of Competence.** A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training and experience with comparable projects. In addition, financial security ensuring fulfillment of the compensation project, monitoring program, and any contingency measure shall be posted pursuant to LMC 14.28.380 through 14.28.520 in the amount of one hundred fifty percent of the expected cost of compensation.

I. **Regulatory authorities** are encouraged to consult with and solicit comments of any federal, state, regional, or local agency, including tribes, having any special expertise with respect to any environmental impact prior to approving a mitigation proposal which includes wetlands compensation. The compensation project proponents should provide sufficient information on plan design and implementation in order for such agencies to comment on the overall adequacy of the mitigation proposal.

J. **Compensatory mitigation** is not required for regulated activities:

1. For which an approval has been obtained that occur only in the buffer or expanded buffer and which have no adverse impacts to regulated wetlands; or
2. Allowed activities pursuant to LMC 14.28.120 provided such activities utilize best management practices to protect the functions and values of regulated wetlands. (Ord. 968 §15, 1993; Ord. 912 §1 Sec. 7.5(g), 1991).

14.28.520 Appeals.

Any decision of the city of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §44, 2002; Ord. 912 §1 Sec. 7.6, 1991).

14.28.530 Modification of wetland approvals.

An applicant may request modification of a previously issued wetland approval by applying and going through the appropriate review process as described in Chapter 1 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §45, 2002; Ord. 912 §1 Sec. 7.7, 1991).

14.28.540 Resubmittal of denied permit applications.

A wetland application which has been denied may be modified and resubmitted no earlier than one hundred eighty days following action on the original application. An application shall be considered a resubmittal if the site proposed for development was the subject of a wetland application within the previous one hundred eighty days. (Ord. 912 §1 Sec. 7.8, 1991).

14.28.550 Temporary emergency approval.

A. Notwithstanding the provisions of this chapter or any other laws to the contrary, the city of Lacey pursuant to the site plan review process described under LMC 14.28.120 may issue a temporary emergency wetlands approval if:

1. The city of Lacey determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and
2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.

B. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act and shall:

1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days; and
2. Require, within this ninety-day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the ninety days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

C. Issuance of an emergency permit by the city of Lacey does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities.

D. The emergency permit may be terminated at any time without process upon a determination by the city of Lacey that the action was not or is no longer necessary to protect human health or the environment. (Ord. 912 §1 Sec. 8.1, 1991).

14.28.560 Enforcement.

A. The city of Lacey shall have authority to enforce this chapter, any rule or regulation adopted, and any permit or order issued pursuant to this chapter, against any violation or threatened violation thereof. The city of Lacey is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.

B. Enforcement actions shall include civil penalties, administrative orders and actions for damages and restoration.

1. The city of Lacey may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a regulated wetland or their buffers which are inconsistent with this chapter or an applicable wetlands protection program.

2. The city of Lacey may serve upon a person a cease and desist order if an activity being undertaken on regulated wetlands or its buffer is in violation of the act, these rules or a local wetlands protection program. Whenever any person violates this chapter or any permit issued to implement this chapter, the city of Lacey may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

a. Content of order. The order shall set forth and contain:

(1) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(2) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order.

(3) Effective date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

(4) Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

3. Any person who undertakes any activity within a regulated wetland or its buffer without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection (B)(2) of this section shall incur a penalty allowed per violation. In the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the superior court within the subject jurisdiction.

4. Aiding or Abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty.

5. Notice of Penalty. Civil penalties imposed under this section shall be imposed by a notice to the person incurring the same from the city of Lacey. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

6. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the city of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the city of Lacey by action of the city hearings examiner under the provision of the Chapter 2.30 LMC may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC 14.28.520.

8. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to a wetland permit. (Ord. 912 §1 Sec. 8.2, 1991).

14.28.570 Non-conforming activities.

A regulated activity that was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval but which is not in conformity with the provisions of this chapter may be continued subject to the following:

- A. No such activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its non-conformity without a permit issued pursuant to the provisions of this chapter;
- B. Except for cases of discontinuance as part of normal agricultural practices, if a non-conforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter;
- C. If a non-conforming use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter;
- D. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as non-conforming activities. (Ord. 912 §1 Sec. 9, 1991).

14.28.580 Repealed

(Ord. 1192 §46, 2002; 912 §1 Sec. 10, 1991).

14.28.590 Amendments.

These regulations and the city of Lacey zoning map may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning wetland location, soils, hydrology, flooding, or wetland plants and wildlife become available. (Ord. 912 §1 Sec. 11, 1991).

14.28.600 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 912 §1 Sec. 12, 1991).

14.28.610 Assessment relief.

The assessors of the city of Lacey shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a perpetual conservation restriction with the city of Lacey or a nonprofit organization to permanently control some or all regulated activities in the wetland shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the controlled wetland to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 912 §1 Sec. 13, 1991).

CHAPTER 14.33

HABITAT CONSERVATION AREAS PROTECTION

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14.33.020 Purpose/intent.

A. It is the policy of the city of Lacey to require site planning and habitat management planning to avoid or minimize damage to habitat conservation areas wherever possible;

B. It is the intent of the city of Lacey that activities in or affecting habitat conservation areas not degrade habitat conservation areas functions and values by:

1. Decreasing breeding, nesting, and feeding areas for many species of birds, including those rare and endangered;
2. Decreasing habitat for fish and other forms of wildlife, including those rare and endangered;
3. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;

C. The purpose of this chapter is to protect the public health, safety and welfare by preventing the adverse environmental impacts of development by:

1. Preserving, protecting and restoring habitat conservation areas by regulating development within habitat conservation areas;
2. Protecting the public against losses from publicly funded mitigation of avoidable impacts;
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of habitat conservation areas;
4. Providing city of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;
5. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter 43.21C RCW, the city Environmental Protection and Resource Conservation Plan, the city Comprehensive Land Use Plan, the city Zoning Code (LMC Title 16), the city Environmental Policy Ordinance (Chapter 14.24 LMC), the city Tree Protection and Preservation Ordinance (Chapter 14.32 LMC), and all related environmental and community plans and programs. (Ord. 935 §9 (part), 1992).

14.33.030 Definitions.

For the purposes of this chapter, the following definitions shall apply:

- A. “Anadromous fish” means fish that spawn and rear in freshwater and mature in the marine environment.
- B. “Applicant” means a person who files an application for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- C. “Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. Sources of best available science are included in “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas” published by the state Office of Community Development.
- D. “Best management practices” means conservation practices or systems of practices and management measures that:
 1. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;
 2. Minimize adverse impacts to surface water and ground water flow, circulation, patterns, and to chemical, physical, and biological characteristics of wetlands;
 3. Protect trees and vegetation designated to be retained during and following site construction; and
 4. Provide standards for proper use of chemical herbicides within critical areas.
- E. “Buffer or buffer zone” means an area contiguous to and that protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area.
- F. “Channel migration zone (CMZ)” means the lateral extent of likely movement along a stream or river during the next one hundred years as determined by evidence of active stream channel movement over the past one hundred years. Evidence of active movement over the one hundred year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics. The time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is less than two bankfull widths, is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is no field evidence of secondary channels with recent scour from stream flow or progressive bank erosion at meander bends. Areas separated from the active channel by legally existing artificial channel constraints that limit bank erosion and channel avulsion without hydraulic connections shall not be considered within the CMZ.

G. “Critical area tract” means land held in private ownership and retained in an open condition in perpetuity for the protection of critical areas.

H. “Exotic” means any species of plants or animals which are foreign to the planning area.

I. “Fish and wildlife habitat conservation areas” also referred to as “Habitat Conservation Area” means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated sub-populations are not created as designated by WAC 365-190-080(5). These areas include:

1. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
2. Habitats and species of local importance, including but not limited to areas designated as priority habits or priority species by the Department of Fish and Wildlife;
3. Commercial and recreational shellfish areas;
4. Kelp and eelgrass beds, herring and smelt spawning areas;
5. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds;
6. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington;
7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
8. State natural area preserves and natural resource conservation areas; and
9. Land essential for preserving connections between habitat blocks and open spaces.

J. “Extraordinary hardship” means strict application of this chapter and/or programs adopted to implement this chapter by the city of Lacey that would prevent all reasonable economic use of the parcel.

K. “Financial security” means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or other financial guarantee approved by the city attorney.

L. “Functions and values” - the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority

M. “In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement “in-category”.

N. “Mitigation” means avoiding, minimizing or compensating for adverse critical area impacts. Mitigation, in the following order of preference, is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

3. Rectifying the impact to habitat conservation areas by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
6. Compensating for the impact to habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
7. Monitoring the required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

O. “Native vegetation” means plant species that are indigenous to the area in question.

P. “Ordinary high water mark (OHM)” means that mark which is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

Q. “Priority habitats” means a seasonal range or habitat element with which a given species has a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.

R. “Priority species” means those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state listed endangered, threatened, and sensitive species, as well as other species of concern, and game species.

S. “Qualified professional” means a person with experience and training in the applicable critical area. A qualified professional for habitats must have obtained a Bachelor of Science or Bachelor of Arts or equivalent degree in biology, and at least two years of work experience related to the subject species or habitat.

T. “Restoration” means measures taken to restore an altered or damaged natural feature including:

1. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
2. Actions performed to re-establish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

U. “Riparian habitat” means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife.

V. “Species” means any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

W. “Species, endangered” means any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

X. “Species, threatened” means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

- Y. “Water typing system” means waters classified according to WAC 222-16-031 as follows:
1. Type 1 water - all waters, within their ordinary high water mark, as inventoried as “shorelines of the state” under Chapter 90.58 RCW and the rule promulgated pursuant to Chapter 90.58 RCW, but not including waters’ associated wetlands as defined in Chapter 90.58 RCW.
 2. Type 2 water - segments of natural waters that are not classified as Type 1 water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:
 - a. Are used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish population:
 - (1) Stream segments having a defined channel twenty feet or greater in width between the ordinary high water mark and having a gradient of less than four percent.
 - (2) Lakes, ponds, or impoundments having a surface area of one acre or greater at seasonal low water.
 - b. Are used by salmonids for off-channel habitat. These areas are critical to the maintenance of optimum survival of juvenile salmonids. This habitat shall be identified based on the following criteria:
 - (1) The site must be connected to a stream bearing salmonid and accessible during some period of the year; and
 - (2) The off-channel water must be accessible to juvenile salmonids through a drainage channel with less than a five percent gradient.
 3. Type 3 water - segments of natural waters that are not classified as Type 1 or 2 waters and have a moderate to slight fish, wildlife and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:
 - a. Are used by significant numbers of anadromous fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have significant anadromous fish use:
 - (1) Stream segments having a defined channel of five feet or greater in width between the ordinary high water marks; and having a gradient of less than twelve percent and not upstream of a falls of more than ten vertical feet.
 - (2) Ponds or impoundments having a surface area of less than one acre a seasonal low water and having an outlet to an anadromous fish stream.
 - b. Are used by significant numbers of resident game fish. Waters with the following characteristics are presumed to have significant resident game fish use:
 - (1) Stream segments having a defined channel of ten feet or greater in width between the ordinary high water marks; and a summer low flow greater than 0.3 cubic feet per second; and a gradient of less than twelve percent.
 - (2) Ponds or impoundments having a surface area greater than 0.5 acres a seasonal low water.
 - c. Are highly significant for the protection of down stream water quality. Tributaries which contribute greater than twenty percent of the flow to a Type 1 or 2 water are presumed to be significant for 1,500 feet from their confluence with the Type 1 or 2 water or until their drainage area is less than fifty percent of their drainage area at the point of confluence, whichever is less.

4. Type 4 water - this classification shall be applied to segments of natural waters which are not classified as Type 1, 2, or 3, and for the purpose of protecting water quality downstream are classified as Type 4 water upstream until the channel width becomes less than two feet in width between the ordinary high water marks. Their significance lies in the influence on water quality downstream in Type 1, 2, and 3 waters. These may be perennial or intermittent.

5. Type 5 water - this classification shall be applied to all natural waters not classified as Type 1, 2, 3, or 4; including streams with or without well defined channels, areas of perennial or intermittent seepage, ponds, natural sinks and drainage ways having short periods of spring or storm runoff. (Ord. 1215 §1, 20, 2003; Ord. 935 §9 (part), 1992).

14.33.040 Qualified professional habitat biologist.

It is expected that applications will require a qualified professional habitat biologist to provide the information necessary to fulfill the requirements of this chapter. A qualified professional habitat biologist is a person who makes his or her livelihood performing this type of work with the appropriate academic and field experience to provide the services required by this chapter. It shall be the responsibility of the applicant to acquire the services of a qualified habitat biologist. (Ord. 935 §9 (part), 1992).

14.33.050 Applicability.

A. When any provision of any other chapter of the city of Lacey conflicts with this chapter, that which provides more protection to habitat conservation areas shall apply unless specifically provided otherwise in this chapter.

B. The city of Lacey is authorized to adopt written administrative procedures for the purposes of carrying out the provisions of this chapter.

C. The city of Lacey shall not grant any approval or permission to conduct a nonexempt activity in a habitat conservation area until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan review; conditional use permit; franchise right-of-way construction permit; grading and land clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 1192 §56, 2002; Ord. 935 §9 (part), 1992).

14.33.060 Designation, maps and inventory.

A. This chapter shall apply to all lots or parcels on which habitat conservation areas are located within the jurisdiction of the city of Lacey.

B. Fish and wildlife habitat conservation areas include:

1. Areas with which state or federally designated endangered, threatened, and sensitive species have primary association.

a. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted as necessary for current listing status.

b. State designated endangered, threatened, and sensitive species native to the state of Washington identified by the Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered, or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, sensitive species are periodically recorded in WAC 232-12-014 (state endangered species), and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted as necessary for current listing status.

2. State priority habitats and areas associated with state priority species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat areas or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.
3. Habitat and species of local importance. Habitats and species of local importance are those identified by the city of Lacey, including those that possess unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators.
4. Kelp and eelgrass beds, and herring and smelt spawning areas.
5. Naturally occurring ponds under twenty acres. Naturally occurring ponds are those ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.
6. Waters of the state. Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-030 or 222-16-031 depending upon the classification used.
7. Type 1 through 5 waters as designated by the state Department of Natural Resources. Type 1 through 5 waters are those water bodies designated by the Department of Natural Resources stream typing pursuant to WAC 222-13-031.
8. State natural area preserves and natural resource conservation areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the state Department of Natural Resources.

C. All areas within the city of Lacey meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this title.

The approximate location and extent of habitat conservation areas in the city of Lacey is shown in maps provided in the city of Lacey Environmental Protection and Resource Conservation Plan and on the city zoning map. The city Environmental Protection and Resource Conservation Plan maps and zoning maps are to be used as a guide to the general location and extent of habitat conservation areas. Other maps to be used to identify these areas include the following:

1. Department of Fish and Wildlife Priority Habitat and Species Maps;
2. Department of Natural Resources Official Water Type Reference Maps, as amended;
3. Department of Natural Resources Puget Sound Intertidal Habitat Inventory Maps;
4. Department of Natural Resources Shorezone Inventory;
5. Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors;
6. Reports published by the Washington Conservation Commission; and
7. Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area Maps.

Habitat conservation areas not shown on the maps are presumed to exist in the city of Lacey and are protected under all the provisions of this chapter. In the event that any of the habitat conservation area designations shown on the maps conflict with the criteria set forth in this chapter, the criteria shall control. (Ord. 1215 §21, 2003; Ord. 935 §9 (part), 1992).

14.33.070 Determination of habitat conservation area.

A. The exact location of the fish and wildlife habitat conservation area shall be determined by the applicant through the performance of a field investigation applying specific habitat or species recommendations pursuant to the Department of Fish and Wildlife. A qualified professional wildlife habitat biologist shall perform habitat conservation area delineations using the methodology prescribed by the State of Washington Department of Wildlife. Provided that if no methodology is available the consultant shall use best available science to delineate the site for the Department of Fish and Wildlife's review. The applicant is required under LMC 14.33.120 to show the location of the habitat conservation area on a scaled drawing as a part of the approval application.

B. The city of Lacey shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the city of Lacey shall, at the applicant's expense, obtain expert services to render a final delineation. (Ord. 1215 §22, 2003; Ord. 935 §9 (part), 1992).

14.33.080 Exempt activities.

The following activities shall be exempt from the review requirements of this chapter provided such activities are undertaken using best management practices in a manner that does not adversely impact the habitat conservation area:

A. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife in consultation with the state Department of Fish and Wildlife and when undertaken by a property owner on his or her property for his or her personal, noncommercial purposes;

B. Nonpublic outdoor recreation activities such as fishing, bird watching, hiking, boating and swimming when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;

C. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the habitat conservation area by changing existing topography, water conditions or other natural parameters important to the conservation area;

D. Navigation aids and boundary markers;

E. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, habitat impacts shall be minimized and disturbed areas shall be immediately restored; and

F. Educational activities and scientific research;

G. Normal and routine maintenance or repair of existing utility structures or right-of-way;

H. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way;

I. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way. (Ord. 1215 §23, 2003; Ord. 935 §9 (part), 1992).

14.33.090 Repealed

(Ord. 1192 §57, 2002; Ord. 935 §9 (part), 1992).

14.33.100 Site plan review.

Site plan review approval shall be obtained from the city of Lacey prior to any use or activity, except exempt activities described in LMC 14.33.080 occurring in a fish and wildlife habitat conservation area or buffer. (Ord. 1215 §24, 2003; Ord. 1192 §58, 2002; Ord. 935 §9 (part), 1992).

14.33.110 Application information requirements.

A. An application for site plan review within a habitat conservation area or its buffer shall be determined complete only when it contains all of the information described in Section 1B.050 of the City of Lacey Development Guidelines and Public Works Standards.

B. The application shall also have the following information and materials:

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the entire parcel of land owned by the applicant and the exact boundary of the habitat conservation area pursuant to guidelines established in this chapter;
2. A description of the vegetative cover of the site and adjacent area including dominant species;
3. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations within the site;
4. The exact sites and specifications for all proposed activities including the amounts and methods;
5. Elevations of the site and adjacent lands within the habitat conservation area at contour intervals of no greater than five feet;
6. Top view and typical cross section views of the habitat conservation area to scale;
7. Specific means to mitigate any potential adverse environmental impacts of the applicant's proposal;
8. A critical area report containing information required in LMC 14.33.115.
9. A priority habitat and priority species management plan prepared by a qualified habitat biologist based upon best available science information provided in the critical area report. The plan shall detail how the designated fish and wildlife habitat conservation area and any priority species found within said area shall be protected. The plan shall follow all recommendations provided by the Department of Fish and Wildlife in its priority habitat and priority species program according to its publication "Management Recommendations of Washington Priority Habitats and Species" or based on site specific recommendations made by the Department of Fish and Wildlife based on review of the project site. (Ord. 1215 §25, 2003; Ord. 1192 §59, 2002; Ord. 935 §9 (part), 1992).

14.33.115 Critical area report requirements.

A. Qualified habitat biologist. A critical area report shall be prepared by a qualified professional habitat biologist as identified in LMC 14.33.040.

B. Area considered. The following physical areas shall be addressed in the critical area report for habitat conservation areas:

1. The project area of the proposed activity;
2. All habitat conservation areas and recommended buffers within two hundred feet of the project area; and
3. All shoreline areas, flood plains, and other critical areas, and related buffers within two hundred feet of the project area.

C. Habitat assessment. A habitat assessment is an investigation of the project area to evaluate the presence or absence of a potential fish or wildlife species or habitat that is protected under this ordinance. A critical area report

for a habitat conservation area shall contain an assessment of habitats including the following minimum site and proposal related information:

1. Detailed description of vegetation on and adjacent to the project area;
2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, an assessment of potential project impacts to the use of the site by the species;
3. A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
4. A discussion of measures, including avoidance, minimization and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with “mitigation sequencing”; and
5. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

D. Additional information may be required. When appropriate due to the type of habitat or species present or the project area conditions, the site plan review committee may also require the habitat management program include:

1. An evaluation by the Department of Fish and Wildlife or qualified expert regarding the applicant’s analysis and effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
2. An evaluation by the local Native American Indian Tribe;
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site; and
4. Any other information or review necessary to meet expectations of the growth management act, to provide adequate best available scientific information to make an informed decision on the identified environmentally sensitive site. (Ord. 1215 §26, 2003).

14.33.116 Performance standards.

A. Alterations shall not degrade the functions and values of habitat. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas except in accordance with this title.

B. Non-indigenous species shall not be introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

C. Mitigation shall result in contiguous corridors. Mitigation sites shall be located to achieve continuous wildlife corridors in accordance with a mitigation plan that is part of an approved critical area report, to minimize the isolating effects of development on habitat areas. Mitigation of aquatic habitat shall be located within the same aquatic ecosystem as the area disturbed.

D. Approvals of activities may be conditioned. The city shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

1. Establishment of buffer zones;
2. Preservation of critically important vegetation;
3. Limitation of access to the habitat area, including fencing to deter unauthorized access;

4. Seasonal restriction of construction activities;
5. Establishment of duration and timetable for periodic review of mitigation activities;
6. Implementation of management recommendations for the species of animal or habitat in literature published or recommended by the Department of Fish and Wildlife for priority species and habitat;
7. All other conditions and management recommendations based upon best available science that are deemed necessary to meet expectations of the Growth Management Act for protection of sensitive areas;
8. Requirement of a performance bond, to ensure completion and success of proposed mitigation.

E. Mitigation shall achieve equivalent or greater biological functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biological functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

F. Approvals shall be supported by the best available science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science.

G. Buffers.

1. Establishment of buffers. The city shall require the establishment of buffer areas for activities in, or adjacent to, habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation, or areas identified for restoration, established to protect the integrity, functions and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the state Department of Fish and Wildlife.

2. Seasonal restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

3. Habitat buffer averaging. The city may allow the recommended habitat area buffer to be reduced in accordance with the critical area report, the best available science, and the management recommendations issued by the Department of Fish and Wildlife, only if;

- a. It will not reduce stream or habitat functions;
- b. It will not adversely affect salmonid habitat;
- c. It will provide natural resource protection, such as buffer enhancement;
- d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
- e. The buffer area width is not reduced by more than fifty percent in any location; and
- f. The buffer area width is not less than fifty feet.

H. Signs and fencing of habitat conservation areas.

1. Temporary markers and fencing for construction activity. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be fenced, with temporary construction fencing, and marked in such a way as to ensure that no unauthorized intrusion will occur. These shall be maintained throughout construction, and shall not be removed until permanent fencing or signs, if required, are in place.

2. Permanent signs. As a condition of any permit or authorization the city may require that the applicant install permanent signs along the boundary of a habitat conservation area or buffer.

Permanent signs shall be made of a metal face and attached to a metal post, or other material of equal durability. Signs must be posted at an interval of no less than one per lot or every fifty feet, whichever is less, and must be maintained by the property owner or homeowners association in perpetuity. The sign shall be worded as follows or with alternative wording approved by the city; "habitat conservation area - do not disturb - contact City of Lacey - regarding restrictions and uses."

3. Fencing.
 - a. The city may condition any permit or authorization to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.
 - b. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.
 - c. Fencing installed as part of a proposed activity or as required in this section shall be designed as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

I. Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:

1. Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
2. Land that is located partially within a habitat conservation area or its buffer may be divided, provided an accessible and contiguous portion of each new lot is located outside of the habitat conservation area or its buffer, and meets other requirements of the city zoning code. Provided further, that clustering, smaller lots, and other techniques can be used to protect the conservation area while providing reasonable density opportunities for the land owner.
3. Access roads and utilities serving the proposed may be permitted within the habitat conservation area and associated buffers only if the city determines that no other feasible alternative exists and when consistent with this title. (Ord. 1215 §27, 2003).

14.33.117 Performance standards for specific habitats.

A. Endangered, threatened, and sensitive species.

1. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association.
2. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified habitat biologist and approved by the city. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Department of Fish and Wildlife and the appropriate federal agency.
3. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Rules in WAC 2322-12-292. Whenever activities are proposed adjacent to a verified nest territory or communal roost, a qualified professional shall develop a habitat management plan. Activities are adjacent to bald eagle sites when they are within eight hundred feet, or within a quarter mile (2,640 feet) and in a shoreline foraging area. The city shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Department of Fish and Wildlife.

B. Anadromous fish.

1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

- a. Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
- b. An alternative alignment or location for the activity is not feasible;
- c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and
- d. Any impacts to the functions and values of the habitat conservation area are mitigated in accordance with an approved critical area report.

2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

3. Fills may only intrude into water bodies used by anadromous fish when consistent with the Lacey shoreline management program and the applicant demonstrates that the fill is for a water-dependent use that is in the public interest.

C. Wetland habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall, at a minimum, conform to the wetland development performance standards set forth in LMC Title 14.28 (Wetlands Protection).

D. Riparian habitat areas. Unless otherwise allowed in this title, all structures and activities shall be located outside of the riparian habitat area.

1. Establishment of riparian habitat areas. Riparian habitat areas shall be established for habitats that include aquatic systems.

2. Riparian habitat area widths. Recommended riparian habitat area widths are shown in the table below. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to LMC 14.33.117(D)(3), or a lesser width is allowed pursuant to LMC 14.33.117(D)(4). Widths shall be measured outward, on the horizontal plane, from the ordinary high water mark or from the top of the bank if the ordinary high water mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of in stream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

Table of Riparian Habitat Area Widths

Type 1 and 2 streams	250 feet
Type 3 streams-5 to 20 feet wide	200 feet
Other Type 3 streams	150 feet
Type 4 and 5 streams	150 feet

3. Increased riparian habitat area widths. The recommended riparian habitat area widths shall be increased as follows:

- a. When the Lacey Site Plan Review Committee determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;

- b. When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
 - c. When the channel migration zone exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the channel migration zone;
 - d. When the habitat area is in an area of high blowdown potential, the riparian habitat area shall be expanded an additional fifty feet on the windward side; and
 - e. When the habitat area is within an erosion or landslide hazard area, or buffer, the riparian habitat area shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.
4. Riparian habitat area width averaging. The city may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if all of the following requirements are satisfied:
- a. The width reduction will not reduce stream or habitat functions including those of non fish habitat;
 - b. The width reduction will not degrade the habitat, including habitat for anadromous fish;
 - c. The proposal will provide additional habitat protection;
 - d. The total area contained in the riparian habitat area of each stream on the development proposal site in not decreased;
 - e. The recommended riparian habitat area width is not reduced by more than fifty percent in any one location;
 - f. The recommended riparian habitat area width is not reduced to less than seventy-five feet;
 - g. The width reduction will not be located within another critical area or associated buffer;
 - h. The reduced riparian habitat area width is supported by best available science;
 - i. All undeveloped lands within total area will be left undeveloped in perpetuity by covenant, deed restriction, easement or other legally binding mechanism;
 - j. The buffer averaging plan shall be conducted in consultation with a qualified biologist and the plan shall be submitted to the Washington Department of Fish and Wildlife for comment; and
 - k. The Site Plan Review Committee shall use the recommendations of the qualified experts in making its decision on a plan that uses buffer width averaging.
5. Riparian habitat mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values, on a per function basis, and be located in the same sub drainage basin as the habitat impacted.
6. Alternative mitigation for riparian habitat areas. The requirements set forth in this section may be modified at the city's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub -drainage basin as a result of alternative mitigation measures.
- E. Riparian habitat areas, ponds, lakes, waters of the state, and marine habitat. The following specific activities may be permitted within a riparian habitat area, pond, lake, water of the state, marine habitat or associated buffer when the activity complies with the provisions set forth in the Lacey shoreline management program and subject to the following standards:
1. Clearing and grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:

- a. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year, provided the city may extend or shorten the dry season on a case by case basis, determined on actual weather conditions.
 - b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
 - c. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
 - d. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or re-establishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
 - e. Erosion and sediment control that meets or exceeds the standards set forth in the Lacey Development Guidelines and Public Works Standards shall be provided.
2. Shoreline erosion control measures. New replacement, or substantially improved, shoreline erosion control measures may be permitted in accordance with an approved area report that demonstrates the following:
 - a. Natural shoreline processes will be maintained. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the project area.
 - b. The shoreline erosion control measures will not degrade fish or wildlife habitat conservation areas or associated wetlands.
 - c. Adequate mitigation measures ensure that there is no net loss of the functions or values of intertidal habitat or riparian habitat as a result of the proposed shoreline erosion control measures.
 - d. The proposed shoreline erosion control measures do not result in alteration of intertidal migration corridors.
 3. Stream-bank stabilization to protect new structures from future stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.
 4. Launching ramps - public or private. Launching ramps may be permitted in accordance with an approved critical area report that has demonstrated the following:
 - a. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the site;
 - b. The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands;
 - c. Adequate mitigation measures ensure that there is no net loss of the functions or values of intertidal habitat or riparian habitat as a result of the ramp; and
 - d. No alteration of intertidal migration will occur as a result of the ramp.
 5. Docks. Repair and maintenance of an existing dock or pier may be permitted in accordance with an approved critical area report subject to the following:
 - a. There is no increase in the use of materials creating shade for predator species or eelgrass;
 - b. There is no expansion in over-water coverage;
 - c. There is no new spanning of waters between three and thirteen feet deep;
 - d. There is no increase in the size and number of pilings; and

- e. There is no use of toxic materials, such as creosote, that come in contact with the water.
6. Roads, trails, bridges, and rights-of-way. Construction of trails, roadways, and minor road bridging, less than or equal to thirty feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:
 - a. There is no other feasible alternative route with less impact on the environment;
 - b. The crossing minimizes interruption of downstream movement of wood and gravel;
 - c. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;
 - d. Road bridges are designed according to the Department of Fish and Wildlife Fish Passage Design at Road Culverts, March 1999, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000; and
 - e. Trails and associated viewing platforms shall not be made of continuous impervious materials.
 7. Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report if they comply with the following standards:
 - a. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
 - b. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;
 - c. The utilities shall cross at an angle greater than sixty degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
 - d. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
 - e. The utility route shall not parallel the stream, or locate in adjacent ravines; and
 - f. The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.
 8. Public flood protection measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the city's review and approval of a critical area report, and the approval of a Federal Biological Assessment, by the federal agency responsible for reviewing actions related to a federally listed species.
 9. In-stream structures. In-stream structures, such as, but not limited to, high flow bypasses, sediment ponds, in-stream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the city and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.
 10. Storm-water conveyance facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:
 - a. No other feasible alternatives with less impact exist;
 - b. Mitigation for impacts is provided;
 - c. Storm-water conveyance facilities shall incorporate fish habitat features; and

d. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.

11. On-site sewage systems and wells.

a. New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system.

b. Repairs to failing on-site systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact;

(1) Connection to an available public sanitary sewer system;

(2) Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the Thurston County Health Department; or

(3) Repair to the existing on-site septic system. (Ord. 1215 §28, 2003).

14.33.120 Site plan review approval and extensions.

A. Activities proposed within a habitat conservation area or its buffer shall be reviewed and approved in accordance with the full administrative review process enumerated in Section 1C.040 of the City of Lacey Development Guidelines and Public Works Standards and Chapter 16.84 LMC.

B. An extension of an original approval may be granted upon written request submitted to the city of Lacey by the original approval holder or the successor in title at thirty days prior to the expiration date. (Ord. 1192 §60, 2002; Ord. 935 §9 (part), 1992).

14.33.130 Repealed

(Ord. 1192 §61, 2002; Ord. 935 §9 (part), 1992).

14.33.140 Repealed

(Ord. 1192 §62, 2002; Ord. 935 §9 (part), 1992).

14.33.150 Interagency coordination for habitat conservation area applications.

Upon receipt of a complete application for approval authorizing activities within a habitat conservation area, the city of Lacey shall submit the application to the Washington State Department of Fish and Wildlife and other state and local agencies having jurisdiction over or an interest in such applications for review and comment. When such applications are submitted, said agencies should submit comments or should request an extension of the review period within fifteen days. Extensions may be granted by the city of Lacey where complex issues necessitate a longer review period. When submitted, no approval shall be issued under this subsection prior to receipt of such comments or the expiration of the time period for any extension. (Ord. 1192 §63, 2002; Ord. 935 §9 (part), 1992).

14.33.160 Criteria for habitat conservation area approvals.

A. An approval shall only be granted if the approval, as conditioned, is consistent with the provisions of this chapter. Additionally, approvals shall only be granted if:

1. A proposed action avoids adverse impacts to fish and wildlife habitat conservation areas, protecting identified priority habitats and priority species pursuant to recommendations from the Washington State Department of Fish and Wildlife and the required priority habitat and priority species management plan.

2. Denial of an approval would cause an extraordinary hardship on the applicant.

B. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal.

C. Except as otherwise specified, habitat conservation areas and buffer zones as required in a priority habitat or priority species management plan shall be retained in their natural condition. (Ord. 1215 §29, 2003; Ord. 1192 §64, 2002; Ord. 935 §9 (part), 1992).

14.33.170 Uses allowed in a designated buffer zone.

Non-exempt activities shall not be allowed in a buffer zone recommended in a habitat management plan except for the following:

A. Activities having minimal adverse impacts on the designated priority habitat or priority species present as determined in the management plan. These may include low intensity, passive recreational activities such as previous trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing or hunting;

B. Denial of a use in a buffer zone would cause extraordinary hardship on the applicant. (Ord. 1192 §65, 2002; Ord. 935 §9 (part), 1992).

14.33.190 Permit processing--Building setback lines.

A building setback line corresponding to the required yard area setback for the underlying zone is required from the edge of any designated priority habitat or species buffer. The setback shall be identified on the site plan filed with the city. (Ord. 935 §9 (part), 1992).

14.33.200 Special conditions.

A. Sensitive Area Tracts. As a condition of any approval issued pursuant to this chapter, the applicant shall be required to create a separate sensitive area tract or tracts containing the areas determined to be habitat conservation areas for priority habitats or priority species in field investigations performed pursuant to LMC 14.33.070 and 14.33.100. Sensitive area tracts are legally created tracts containing priority habitats or species and their required buffers that shall remain protected in perpetuity. Sensitive area tracts are an integral part of the lot or land division in which they are created, are not intended for sale, lease or transfer, and shall be included in the area of the parent lot when a land division is not part of the application. When a land division is part of the application, the tract shall designate the habitat conservation area as a separate tract.

B. Protection of Sensitive Area Tracts. The city of Lacey shall require, as a condition of any approval issued pursuant to this chapter, that the sensitive area tract or tracts created pursuant to this section be protected by one of the following methods determined by the city of Lacey:

1. The applicant shall convey an irrevocable offer to dedicate to the city of Lacey or other public or nonprofit entity specified by the city of Lacey the habitat conservation area and its buffer to ensure management of the habitat conservation area resource in the best interest of the public; or

2. The applicant shall establish and record a permanent and irrevocable deed restriction on the property title and where a division of property is involved on the subdivision, short subdivision or binding site plan map, and in home or lot owners association agreements, covenants and articles of incorporation. All such tracts within a subdivision, short subdivision or binding site plan shall be designated as common open space separate and distinct from private lot areas. Such deed restriction(s) shall prohibit in perpetuity the development, alteration, or disturbance of vegetation within the sensitive area tract except for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from the city of Lacey, and any other agency with jurisdiction over such activity.

C. Specific Language for Deed Restrictions. Deed restrictions required in subsection (B)(2) of this section shall be set forth in substantially the following form:

1. "Before beginning and during the course of any grading, building construction, or other development activity adjacent to a common open space subject to this deed restriction, the common boundary between the area subject to the deed restriction and the area of development activity must be fenced or otherwise marked to the satisfaction of the City of Lacey."

2. Responsibility for maintaining open space tracts shall be held by a lot or homeowners association, or other appropriate entity as approved by the city of Lacey.

3. The following note shall appear on the face of all plats, short plats, PUDs, binding site plans, or other approved site plans containing separate sensitive area tracts to be managed by a lot or homeowners association, and shall be recorded on the title of record for all lots within the development:

NOTE: The association shall be responsible for maintenance and protection of the tracts. No alteration shall occur and all vegetation should remain undisturbed unless the express written authorization of the city of Lacey has been received.

D. **Signing and Fencing.** The common boundary between a separate sensitive area tract and the adjacent land must be permanently identified. This identification shall include permanent wood or metal signs on treated or metal posts. Signs shall be worded as follows:

“Protection of this natural area is in your care. Alteration or disturbance is prohibited by law. Please call the city of Lacey for more information.”

Sign locations and size specifications shall be approved by the city of Lacey. The city of Lacey may require permanent fencing of the sensitive area tract or tracts when there is a substantial likelihood of the presence of domestic animals within the development proposal that may disrupt the priority habitat area or priority species existing therein.

E. **Additional Conditions.**

1. The location of the outer extent of the priority habitat area or priority species site pursuant to an approval shall be marked in the field by a qualified habitat biologist, and such field marking shall be approved by the city of Lacey prior to the commencement of approved activities. Such field markings shall be maintained throughout the duration of the approval.

2. The city of Lacey may attach such additional conditions to the granting of approvals as deemed necessary to assure the preservation and protection of affected priority habitat or species and to assure compliance with the purposes and requirements of this chapter. (Ord. 1192 §66, 2002; Ord. 935 §9 (part), 1992).

14.33.210 Financial security.

A. The city of Lacey shall require the applicant of a development proposal to provide financial security acceptable to the city of Lacey in an amount of one hundred fifty percent of the estimated cost of improvements sufficient to fulfill the requirements of this chapter and to secure compliance with conditions and limitations set forth in the approval. The amount and the conditions of the financial security shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such financial security, the city of Lacey may utilize the financial security to fulfill obligations of the approval and take any other steps necessary to gain compliance with approval conditions including instituting an appropriate action in a court of competent jurisdiction. The city of Lacey shall release the financial security upon determining that:

1. All activities, including any required mitigating conditions, have been completed in compliance with the terms and conditions of the approval and the requirements of this chapter;
2. Upon the posting by the applicant of financial security for maintenance of required improvements for two years.

Until such written release of the financial security by the city such security cannot be released to the applicant.

B. The city of Lacey shall require the holder of an approval issued pursuant to this chapter to post financial security acceptable to the city of Lacey in an amount of twenty percent of the cost of improvements sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The city of Lacey shall release the financial security upon determining that performance standards established for evaluating the effectiveness and

success of the structures, improvements, and/or mitigation have been satisfactorily met for the required period. (Ord. 935 §9 (part), 1992).

14.33.220 Other laws and regulations.

No approval granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 1192 §67, 2002; Ord. 935 §9 (part), 1992).

14.33.230 Suspension, revocation.

In addition to other penalties provided for elsewhere, the city of Lacey may suspend or revoke an approval if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 1192 §68, 2002; Ord. 935 §9 (part), 1992).

14.33.240 Notice of final decision.

The city of Lacey shall provide notice of its final decision pursuant to the requirements of Section 1C.070 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §69, 2002; Ord. 935 §9 (part), 1992).

14.33.250 Appeals.

Any decision of the city of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §70, 2002; Ord. 935 §9 (part), 1992).

14.33.260 Enforcement.

A. The city of Lacey shall have authority to enforce this chapter, any rule or regulation adopted, and any permit or order issued pursuant to this chapter, against any violation or threatened violation thereof. The city of Lacey is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.

B. Enforcement actions shall include civil penalties, administrative orders and actions for damages and restoration.

1. The city of Lacey may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a habitat conservation area which are inconsistent with this chapter or an applicable habitat or species protection program.

2. The city of Lacey may serve upon a person a cease and desist order if an activity being undertaken on sites with habitat conservation areas or required buffer is in violation of this chapter. Whenever any person violates this chapter or any permit issued to implement this chapter, the city of Lacey may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

a. Content of Order. The order shall set forth and contain:

(1) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(2) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order.

(3) Effective Date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

- (4) Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.
3. Any person who undertakes any activity within a habitat conservation area without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection (B)(2) of this section shall incur a penalty allowed per violation. In the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the superior court within the subject jurisdiction.
4. Aiding or Abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty.
5. Notice of Penalty. Civil penalties imposed under this section shall be imposed by a notice to the person incurring the same from the city of Lacey. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.
6. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the city of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the city of Lacey by action of the city hearings examiner under the provision of Chapter 2.30 LMC may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.
7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC 14.33.250.
8. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to an approval. (Ord. 935 §9 (part), 1992).

14.33.270 Non-conforming activities.

A nonexempt activity that was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval but which is not in conformity with the provisions of this chapter may be continued subject to the following:

- A. No such activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its non-conformity without a permit issued pursuant to the provisions of this chapter;
- B. If a non-conforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter;
- C. If a non-conforming use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter;
- D. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as non-conforming activities. (Ord. 935 §9 (part), 1992).

14.33.280 Repealed

(Ord. 1192 §71, 2002; Ord. 935 §9 (part), 1992).

14.33.290 Amendments.

These regulations and the city of Lacey zoning map may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning priority habitats, species location, management techniques or wildlife become available. (Ord. 968 §16, 1993; Ord. 935 §9 (part), 1992).

14.33.300 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 935 §9 (part), 1992).

14.33.310 Assessment relief.

The assessors of the city of Lacey shall consider priority habitats or priority species regulations in determining the fair market value of land. Any owner of an undeveloped area designated as habitat conservation area who has dedicated an easement or entered into a perpetual conservation restriction with the city of Lacey or a nonprofit organization to permanently control some or all regulated activities in said area shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the controlled area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 935 §9 (part), 1992).

CHAPTER 14.34
FLOOD HAZARD PREVENTION

Sections:

- 14.34.005 Intent
- 14.34.010 Definitions
- 14.34.020 Lands to which this chapter applies
- 14.34.030 Basis for establishing the areas of special flood hazard
- 14.34.040 Compliance required and penalties for non-compliance
- 14.34.050 Abrogation and greater restrictions
- 14.34.060 Interpretation
- 14.34.070 Warning and disclaimer of liability
- 14.34.080 Establishment of development permit
- 14.34.082 Prohibition on development within areas of special flood hazard
- 14.34.084 General requirements applicable to exemptions permitted in LMC 14.34.082
- 14.34.086 Administrative requirements
- 14.34.090 Designation of the building official
- 14.34.100 Duties and responsibilities of the building official
- 14.34.110 Variance procedures
- 14.34.120 General standards for flood hazard protection applicable to exemptions of LMC 14.34.082 and 14.34.084
- 14.34.130 Specific standards for pre-existing use exemptions
- 14.34.135 AE zones with base flood elevations but no floodways
- 14.34.140 Floodways
- 14.34.145 Coastal high hazard--Zone VE
- 14.34.150 Wetlands management
- 14.34.160 Severability

14.34.005 Intent.

It is the intent of this ordinance to:

- A. Adopt policy and regulation restricting development within designated flood hazard areas where such development would put life and property at risk because of flood hazard;
- B. Identify those areas at risk for flood hazard by reference to appropriate maps and studies that represent the best scientific information available to the city of Lacey;
- C. Adopt policy and regulation for Lacey's flood hazard areas that is coordinated and consistent with Lacey's sensitive area ordinances. These ordinances protect designated environmentally sensitive area resources that generally overlap with flood hazard areas.
- D. Adopt policy and regulation restricting development within designated flood hazard areas that would adversely impact the function and value of critical/sensitive area resources by reducing flood water retention capacity of wetlands or impacting critical habitat.
- E. Coordinate designation and use of land under requirements of the state Growth Management Act (GMA), recognizing adequate developable land resources have been identified and zoned to accommodate forecasted growth outside of designated flood hazard areas.
- F. Coordinate regulation and management of flood hazard areas and other sensitive/critical areas according to the concepts under GMA and the City Comprehensive Land Use Plan;
- G. Promote the natural function and values of flood hazard areas and other critical area resources that are not compatible with urbanization and need special consideration and protection.

H. Recognize there is no compelling public need to justify the adverse impacts to the public's interest that would result from development within flood hazard areas. (Ord. 1375, §17, 2011).

14.34.010 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application:

- A. "Appeal" means a request for a review of the building official's interpretation of any provisions of this chapter or a request for a variance.
- B. "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A and V.
- C. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "one-hundred-year flood." Designated on flood insurance rate maps by the letters A or V.
- D. "Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.
- E. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard or removal of substantial amounts of vegetation, or alteration of the natural site characteristics.
- F. "Elevation certificate" means the official form (FEMA Form 81-31) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by community officials.
- G. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
1. The overflow of inland or tidal waters; and/or
 2. The unusual and rapid accumulation of runoff of surface waters from any source.
- H. Flood Hazard Area. See "Area of special flood hazard."
- I. "Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
- J. "Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles and the water surface elevation of the base flood.
- K. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- L. "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements.
- M. "New construction" means structures for which the "start of construction" commenced on or after the effective date of this chapter.
- N. "Protected area" means the lands that lie within the boundaries of the floodway, and the riparian habitat zone, and the channel migration area. Because of the impact that development can have on flood heights and velocities and habitat, special rules apply in the protected area.

O. “Start of construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site beyond the state of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

P. “Structure” means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground.

Q. “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

R. “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

S. “Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter. (Ord. 1398 §1, 2012; Ord. 1375, §18, 2011; Ord. 1265 §1, 2006; Ord. 861 §2 (part), 1989).

14.34.020 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of Lacey. Areas of special flood hazards include zones A, AE and VE as designated on referenced flood insurance rate maps. (Ord. 1398 §2, 2012; Ord. 861 §2 (part), 1989).

14.34.030 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Thurston County, Washington and Incorporated Areas” dated October 16, 2012, and any revisions thereto, with accompanying flood insurance rate maps (FIRM) dated October 16, 2012, and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study and the FIRM are on file at the Lacey City Hall, 420 College Street S.E. The best available information for flood hazard area identification as outlined in LMC 14.34.100 shall be the basis for regulation until the new FIRM is issued that incorporates data utilized under LMC 14.34.100. (Ord. 1398 §3, 2012; Ord. 1265 §2, 2006; Ord. 861 §2 (part), 1989).

14.34.040 Compliance required and penalties for non-compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than ninety days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 861 §2 (part), 1989).

14.34.050 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easement, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 861 §2 (part), 1989).

14.34.060 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 861 §2 (part), 1989).

14.34.070 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of Lacey, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 861 §2 (part), 1989).

14.34.080 Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in LMC 14.34.030. The permit shall be for all structures permitted as an exemption under LMC 14.34.082 and for all other development including fill and other activities, also as set forth in the "definitions." Application for a development permit shall be made on forms furnished by the building official and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, or drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures recorded on a current elevation certificate (FEMA Form 81-31) with Section B completed by the local official;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in LMC 14.34.130(B); and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Ord. 1398 §4, 2012; Ord. 1375, §19, 2011; Ord. 861 §2 (part), 1989).

14.34.082 Prohibition on development within areas of special flood hazard.

Because of the potential hazard to life and property and the restrictions already in place related to sensitive areas on those lands designated as flood hazard within the city of Lacey, development as defined in LMC 14.34.010 shall be

prohibited on lands designated as flood hazard areas with only a few exemptions. Exemptions are listed below and must meet requirements of LMC 14.34.084:

- A. Trails and recreational improvements for public access to water bodies consistent with the City Comprehensive Plan for Outdoor Recreation and the City Shoreline Master Program, if applicable.
- B. Public works projects involving the provision or transmission of a utility where no alternative routing options are reasonable.
- C. Public works projects consistent with the City Transportation Plan where no alternative routing options are reasonable.
- D. Maintenance activities and improvements to pre-existing structures that do not increase the footprint of the structure.
- E. Public activities and improvements approved by the city of Lacey determined to be in the public's best interest. (Ord. 1398 §5, 2012; Ord. 1375, §20, 2011).

14.34.084 General requirements applicable to exemptions permitted in LMC 14.34.082.

All exemptions to the siting prohibitions listed in LMC 14.34.082 shall meet the following requirements:

- A. All applicable requirements of this chapter are satisfied.
- B. It does not increase the risk of flood hazard or displace flood waters to adjacent sites.
- C. The improvement has no impact to critical habitat or any impacts are fully mitigated as determined by the Washington State Department of Fish and Wildlife.
- D. Any impact to the riparian habitat zone (RHZ) is fully mitigated and all critical area buffers and standards of Chapters 14.28 (Wetlands Protection), 14.32 (Tree and Vegetation Protection and Preservation) and 14.33 LMC (Habitat Conservation Areas Protection) are satisfied. This includes a two-hundred-foot buffer along Woodland Creek which exceeds the distance of Woodland Creek's channel migration zone (CMZ) by a distance greater than fifty feet.
- E. Stormwater and drainage feature shall incorporate low impact development techniques that mimic pre-development hydrological conditions, when technically feasible.
- F. Creation of new impervious surfaces shall not exceed ten percent of the surface area of the portion of the lot in the floodplain unless mitigation is provided.
- G. Any loss of floodplain storage shall be avoided, rectified or compensated for. Any compensation off site must be in a priority floodplain restoration area identified in the associated ESU Recovery Plan for listed species.
- H. Uses that are not permitted in the protected area because they can adversely affect water quality, habitat and other natural values and functions include:
 - 1. Septic tanks and drainfields;
 - 2. Dumping of any materials;
 - 3. Hazardous or sanitary waste landfills;
 - 4. Receiving areas for toxic or hazardous waste;
 - 5. Other contaminants.

I. Uses shall comply with the city's tree and vegetation protection and preservation ordinance (Chapter 14.32 LMC) which prohibits the removal of vegetation within critical areas or associated buffers. Minimal unavoidable disturbances may be permitted if fully mitigated.

J. Development may not adversely impact water quality, water quantity, flood volume, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids. Any project with impacts to these elements of the environment that are not fully mitigated will be prohibited.

K. Where an area is under the jurisdiction of the Shoreline Master Program (SMP) all requirements for protection of the natural functions and values shall be satisfied. This includes prohibition on location of new development requiring armoring for protection against natural shoreline processes and flooding.

L. New road crossing over streams in the floodplain or buffers associated with wetlands within designated flood hazard areas is prohibited. (Ord. 1398 §6, 2012; Ord. 1375, §21, 2011).

14.34.086 Administrative requirements.

Any application or permit for exemption under the provisions of LMC 14.34.082 and 14.34.084 shall meet the following process and tracking requirements:

A. The application for a permit to develop in the affected area must include the elevations of the ten-, fifty- and one-hundred-year floods, where such data is available.

B. The applicant must record a notice of title that the property contains land within the RHZ and/or area of special flood hazard, if applicable, before a permit may be issued.

C. The permit will be tracked to consider cumulative impacts to flood storage capacity and fish habitat and mitigation shall be required for all identified impacts. If the proposed project is in an area of special flood hazard and will increase the base flood elevation, a conditional letter of map revision shall be submitted on an MT-2 form by the applicant. After project completion, if the base flood elevation increases or decreases, a letter of map revisions (LOMR) shall be submitted on an MT-2 form by the applicant. (Ord. 1398 §7, 2012; Ord. 1375, §22, 2011).

14.34.090 Designation of the building official.

The building official is appointed to administer and implement this chapter by granting or by denying development permit applications in accordance with its provisions. (Ord. 861 §2 (part), 1989).

14.34.100 Duties and responsibilities of the building official.

Duties of the building official shall include, but not be limited to:

A. Permit Review.

1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;
2. Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;
3. Review all development permits to determine if the proposed development is located in the area of special flood hazard or floodway. If located in the area of special flood hazard or floodway, assure that permits are denied or meet exemption requirements according to the provisions of this chapter. If located in a floodway, assure that the encroachment provisions of LMC 14.34.140 are met.

B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with LMC 14.34.030, the building official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer LMC 14.34.130 and 14.34.140.

C. Information to Be Obtained and Maintained.

1. Where base flood elevation data is provided through the flood insurance study, FIRM or is required under subsection B of this section, obtain and record the actual (as-built) elevation in relation to mean sea level of the lowest floor (including basement) of all new and substantially improved structures and whether or not the structure has a basement. The information shall be recorded on a current elevation certificate with Section B completed by the local official.
2. For all new or substantially improved floodproofed nonresidential structures where base flood elevation data is provided through the FIRM, FIS, or as required in subsection B of this section:
 - a. Verify and record the actual elevation (in relation to mean sea level) to which the structure was floodproofed.
 - b. Maintain the floodproofing certification required in LMC 14.34.130(B).
3. Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Alteration of Watercourses.

1. Except in cases where the city or state or federal government undertakes public works projects for the benefit of the general public, alteration or relocation of any watercourses is prohibited;
2. In cases where a city, state, or federal government entity undertakes such a project all appropriate city, state, and federal permits and approvals shall be required. All identified impacts shall be fully mitigated;
3. In cases of city, state, or federal government project the building official shall notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
4. In the case of a city, state, or federal government project the building official shall require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished and all habitat functions maintained.

E. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1398 §8, 2012; Ord. 1375, §23, 2011; Ord. 1265 §3, 2006; Ord. 1197 §3, 2002; Ord. 861 §2 (part), 1989).

14.34.110 Variance procedures.

Variations from the terms of this chapter will be issued only in accordance with 44 CFR Section 60.6 of the Rules and Regulations and the variance procedures and requirements of LMC 16.90.005 as well as the additional variance provisions:

- A. Generally, the only condition under which a variance from the elevation standard may be issued is for substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
- B. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- D. Variances shall only be issued upon:
 1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

E. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.

F. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection A of this section, and otherwise complies with LMC 14.34.120(A), (C), and (D) (general standards).

G. Any applicant to whom a variance is granted shall be given written notice that the (substantially improved structure) permitted structure will be built with its lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk.

H. The provisions of this chapter which are for the protection of the safety, health and welfare of the general public are demonstrated to not be applicable to the subject property and therefore should not be applied. (Ord. 1398 §8, 2012; Ord. 1375, §24, 2011; Ord. 861 §2 (part), 1989).

14.34.120 General standards for flood hazard protection applicable to exemptions of LMC 14.34.082 and 14.34.084.

In all areas of special flood hazards, the following standards are required:

- A. Anchoring.
 1. All new construction permitted under LMC 14.34.082 and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- B. Construction Materials and Methods.
 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
 3. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- C. Utilities.
 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
 2. Water wells shall be located on high ground that is not in the floodway;
 3. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
 4. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals.

1. Subdivision of areas of special flood hazard for the purpose of developing residential structures is prohibited. Where special flood hazard areas are part of an ownership with an area outside of the special flood hazard area that can be subdivided, flood hazard areas shall be designated and deeded as open space. Open space areas within a flood hazard area shall be deeded to either the subdivision lot owners association, the city of Lacey, or other public entity for protection and preservation, at the sole discretion and determination of the city of Lacey.
2. All subdivision proposals shall be consistent with the need to minimize flood damage.
3. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed outside of the area of special flood hazard.
4. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
5. Where base flood elevation data has not been provided or is not available from another authorized source, it shall be generated for subdivision proposals and other proposed developments which contain at least fifty lots or five acres (whichever is less). (Ord. 1398 §9, 2012; Ord. 1375, §25, 2011; Ord. 1265 §4, 2006; Ord. 861 §2 (part), 1989).

14.34.130 Specific standards for pre-existing use exemptions.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in LMC 14.34.030 or 14.34.100(B), the following provisions are required:

A. Residential Construction.

1. Substantial improvement of any pre-existing residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation (BFE) and shall not be permitted in the floodway (see LMC 14.34.140(B)).
 - a. The substantial improvement will not increase the footprint of the structure.
 2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.
 3. Substantial improvements are only allowed as permitted by listed exemptions in LMC 14.34.082. Where a pre-existing structure is involved, maintenance or improvements shall not increase the footprint of the structure (LMC 14.34.082).

B. Nonresidential Construction.

1. Substantial improvement of any pre-existing commercial, industrial or other nonresidential structure and new structures permitted as an exemption identified in LMC 14.34.082 and 14.34.084 shall have either the lowest floor, including basement, elevated to or above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- a. Be floodproofed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans;
 - d. Nonresidential structures that are elevated but not floodproofed must meet the same standards for space below the lowest floor as described in subsection (A)(2) of this section;
 - e. The footprint of a pre-existing structure shall not be increased (LMC 14.34.082);
 - f. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to one foot above the base flood level will be rated at the base flood level).
2. Substantial improvements are only allowed as permitted by listed exemptions in LMC 14.34.082. Where a pre-existing structure is involved, maintenance or improvements shall not increase the footprint of the structure (LMC 14.34.082).
- C. **Manufactured Homes.**
1. All manufactured homes are prohibited in the area of special flood hazard.
- D. **Recreational Vehicles.**
1. Recreational vehicles placed on sites in areas of special flood hazard shall be fully licensed and ready for highway use, on wheels or jacking systems, attached to the site by only quick disconnect type utilities and security devices and have no permanently attached additions. (Ord. 1398 §10, 2012; Ord. 1375, §26, 2011; Ord. 1265 §5, 2006; Ord. 861 §2 (part), 1989).

14.34.135 AE zones with base flood elevations but no floodways.

In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within zone AE on the community's FIRM, except as permitted by LMC 14.34.082 (exemptions). Prior to issuing a permit, it must be demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. (Ord. 1398 §11, 2012; Ord. 1375, §27, 2011; Ord. 1265 §6, 2006).

14.34.140 Floodways.

Located within areas of special flood hazard established in LMC 14.34.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Encroachments, including fill, new construction, substantial improvements, and other development, are prohibited; except as permitted by LMC 14.34.082 (exemptions). Prior to permitting, the proposed encroachment must be certified by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. Construction, reconstruction, or substantial improvement of residential structures is prohibited within designated floodways.

C. If subsection A of this section is satisfied, all new construction and substantial improvements shall comply with LMC 14.34.120 and 14.34.130. (Ord. 1398 §12, 2012; Ord. 1375, §28, 2011; Ord. 1265 §7, 2006; Ord. 861 §2 (part), 1989).

14.34.145 Coastal high hazard--Zone VE.

A. All new construction and substantial improvements shall be prohibited, with the exception of exemptions provided for under LMC 14.34.082 and 14.34.084 and Lacey's Shoreline Master Program, and must meet the following requirements:

1. All new construction and substantial improvements shall be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated one foot or more above the base flood level.
2. The pile or column foundation and structure attached thereto are anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).
3. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections (A)(1) and (2) of this section.
4. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures and whether or not such structures contain a basement. The building official shall maintain a record of all such information.

B. All new construction permitted as an exemption in LMC 14.34.082 and 14.34.084 shall be located landward of the reach of mean high tide.

C. Provide that all new construction and substantial improvements, permitted as an exemption listed in LMC 14.34.082, have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of twenty pounds per square foot (by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the design proposed meets the following conditions:

1. Breakaway wall collapse shall result from water load less than that which would occur during the base flood.
2. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).
3. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

D. Prohibit the use of fill for structural support of buildings.

E. Prohibit manmade alteration of sand dunes which would increase potential flood damage.

F. Manufactured homes are prohibited.

G. Recreational vehicles shall be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions. (Ord. 1398 §13, 2012).

14.34.150 Wetlands management.

In order to avoid, to the maximum extent possible, the short and long term adverse impacts associated with the destruction or modification of wetlands, especially those activities which limit or disrupt the ability of the wetland to alleviate flooding impacts, the city will:

A. Review proposals for development within base floodplains for their possible impacts on wetlands located within the floodplain;

B. Ensure that development activities in or around wetlands do not negatively affect public safety, health, and welfare by disrupting the wetlands' ability to reduce flood and storm drainage;

C. Require compliance with the city wetland protection ordinance, habitat protection ordinance, tree and vegetation protection ordinance and applicable environmental plans and regulations. (Ord. 1375, §29, 2011; Ord. 861 §2 (part), 1989).

14.34.160 Severability.

If any section, clause, sentence or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this chapter. (Ord. 1398 §14, 2012).

CHAPTER 14.36

CRITICAL AQUIFER RECHARGE AREAS PROTECTION

Sections:

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- 14.36.030 Critical aquifer recharge areas--Definitions
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- 14.36.060 Maps and inventory
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14.36.020 Purpose/intent.

The purpose of this chapter is to protect the public health, safety, and welfare by protecting the city's water resources. Specifically, the purpose of this chapter is to implement the following goals of the Environmental Protection and Resource Conservation Plan:

- A. To protect the quality and to manage the quantity of ground water for all uses in the present and in the future.
- B. To prevent ground water contamination by protecting the entire resource as effectively as possible, but within the limits of what is acceptable and affordable to the community.
- C. To prevent contamination of drinking water supplies, and if efforts fail, to have a contingency plan to provide additional sources should existing sources become unusable.
- D. To assure that preventive actions are taken to protect water quality from further degradation and, in cooperation with the Department of Ecology, promote corrective actions in areas where degradation has occurred so that the net effect is a gradual improvement of the ground and surface water quality.

E. To provide legislation regulating land uses within aquifer sensitive areas generally and more precise standards and regulations for designated wellhead protection areas. (Ord. 1109 §1, 1999; Ord. 935 §10 (part), 1992).

14.36.030 Critical aquifer recharge areas--Definitions.

A. "Applicant" means a person who files an application for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

B. "Application" as defined in Section 1.030(A) of the City of Lacey Development Guidelines and Public Works Standards.

C. "Critical aquifer recharge areas" means those areas of Thurston County which have a significant aquifer under them and which allow water to enter the soil and geological materials in ways and in quantities that replenish natural ground water systems and aquifers.

D. "Equivalent residential unit (ERU)" means the average quantity of wastewater generated from a single family residence, or for other than single family residences, the water quantity of 900 cubic feet per month at average waste strength, biochemical oxygen demand and suspended solids.

E. "Health expert" means a person employed or contracted by the city of Lacey and licensed by the state as a registered sanitarian and with the necessary expertise and experience to provide information required by this chapter relating to health issues and concerns.

F. "Health officer" means the Thurston County health officer as defined in Chapter 70.05 RCW or his or her authorized representative.

G. "Wellhead protection areas designated" means the surface and subsurface area surrounding a well or well field, supplying a public water system with over 1000 connections, through which contaminants are reasonably likely to move toward and reach such water well or well field. A designated wellhead protection area is an area approved by the Washington State Department of Health. (Ord. 1192 §72, 2002; Ord. 1109 §2, 1999; Ord. 935 §10 (part), 1992).

14.36.040 Critical aquifer recharge areas--Rating system.

The following system shall be used to group soil series listed in the Thurston County Soil Survey into four categories. A listing of the soil series by categories is contained in LMC 14.36.210:

A. "Category I, extreme aquifer sensitivity" means those areas which provide very rapid recharge with little protection, contain coarse soil textures and soil materials, and are derived from glacial outwash materials.

B. "Category II, high aquifer sensitivity" are those areas which provide slightly lower recharge, also provide little protection, and are from materials of glacial deposit.

C. "Category III, moderate aquifer sensitivity" are those areas with aquifers present but which have a surface soil material that encourages run-off and slows water entry into the ground.

D. "Category IV, low aquifer sensitivity" are those areas of low ground water availability and whose soil series are derived from Basaltic or Andesitic rock or ancient glacial till (more consolidated, more clays at surface), and which have not formed geological formations that provide abundant ground water.

E. "Aquifer fringe" means the area adjacent to (within fifty feet) and upgradient (topographically or hydrologically) which contributes drainage to an aquifer recharge area. Aquifer fringe areas shall be evaluated on a case by case basis where the down gradient is of greater sensitivity.

F. "Disputed Areas".

1. In cases of disputed soil series, or series boundary, and resulting category, the city of Lacey in consultation with the health officer, and the Soil Conservation Service, shall determine the category.

2. In areas that have been disturbed or the surface soil removed as in gravel pits, the city of Lacey in consultation with the health officer and the Soil Conservation Service shall determine the most appropriate category with geological and hydrological information.
3. "AKART" means all known, available, and reasonable methods of prevention, control, and treatment. AKART may include, but not be limited to, pollution prevention plan development and implementation, engineering solutions, and practices deemed necessary to prevent release.
4. "MPCs" means reasonable methods of prevention and control. Examples of MPCs include, but are not limited to pollution prevention plan development and implementation, routine maintenance, secondary containment, and measures to eliminate contaminant pathways to the source water.
5. "Pollution prevention plan" means a site-specific plan that addresses the avoidance of unplanned chemical release in the air, water, or land. It is based upon deliberate waste management planning, site design, and operational practices. (Ord. 1109 §3, 1999; Ord. 935 §10 (part), 1992).

14.36.050 Applicability.

- A. When any provision of any other chapter of the city of Lacey conflicts with this chapter, the most restrictive will prevail.
- B. The city of Lacey is authorized to adopt written administrative procedures for the purposes of carrying out the provisions of this chapter.
- C. The city of Lacey shall not grant any approval or permission to conduct a nonexempt activity in an area classified as a wellhead protection area or Category I or II aquifer sensitive area until the requirements of this chapter have been fulfilled including but not limited to action on the following: limited administrative review, full administrative review, quasi-judicial review, legislative review pursuant to Chapter 1C of the City of Lacey Development Guidelines and Public Works Standards, or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 1192 §73, 2002; Ord. 1109 §4, 1999; Ord. 935 §10 (part), 1992).

14.36.060 Maps and inventory.

Maps have been developed classifying the aquifer sensitivity of areas within Thurston County and classifying wellhead protection areas. The map relating to the Lacey Area is identified as Map 5 of the Environmental Protection and Resource Conservation Plan titled "City of Lacey Critical Aquifer Protection Areas and Wellheads." The standards of this chapter shall apply to all lots or parcels on which aquifer sensitive areas classified as Category I or II or wellhead areas, are located within the jurisdiction of the city of Lacey. In the event that any of the aquifer sensitive area designations or wellhead areas shown on the maps conflict with the criteria set forth in this chapter the criteria shall control. (Ord. 1109 §5, 1999; Ord. 935 §10 (part), 1992).

14.36.070 Determination of aquifer sensitive area and wellheads.

- A. The exact presence and location of the aquifer sensitive area or wellhead area shall be determined by a field investigation applying specific criteria described by the health officer or health expert. A professional soil scientist or geohydrological expert shall perform soils analysis necessary to make determinations. Hiring the services of a soil scientist or geohydrological expert shall be the responsibility of the applicant. The applicant is required under LMC 14.36.115 to show the location of the aquifer sensitive area on a scaled drawing as a part of the application.
- B. The city of Lacey in consultation with the health officer shall verify the accuracy of, and may render changes to, the geological sensitive area determinations or delineations and technical information provided by the applicant and his/her consultant. In the event the changes are contested by the applicant, the city of Lacey shall, at the applicant's expense, obtain its own expert services to render a final determination. (Ord. 1109 §6, 1999; Ord. 935 §10 (part), 1992).

14.36.080 Exempt activities.

The following activities shall be exempt from the review requirements of this chapter provided such activities are undertaken using best management practices in a manner that does not adversely impact the aquifer sensitive or wellhead area:

- A. Building projects for individual single family residence or duplex;
- B. Boundary line adjustments;
- C. Franchise right-of-way construction permit;
- D. Grading permit for less than five hundred cubic yards of material;
- E. Conservation or preservation of soil, water, vegetation and wildlife in consultation with the Soil Conservation Service, State Department of Wildlife, or other appropriate federal or state agency;
- F. Noncommercial outdoor recreation activities that have no impact on aquifer recharge, such as bird watching or hiking, but shall not include such things as golf courses that may impact aquifer recharge;
- G. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the aquifer sensitive area by changing existing topography, water conditions or other natural parameters important to the aquifer sensitivity;
- H. Location of boundary markers;
- I. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be immediately restored;
- J. Nondevelopment educational activities and scientific research; and
- K. Normal and routine maintenance or repair of existing utility structures or right-of-way, except situations involving the application of chemical substances;
- L. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way, except situations involving the application of chemical substances;
- M. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way, except situations involving the application of chemical substances. (Ord. 1109 §7, 1999; Ord. 935 §10 (part), 1992).

14.36.090 Review standards--General review requirements.

- A. No nonexempt action shall be undertaken by any person which results in any alteration of an aquifer or wellhead sensitive area except in compliance with the requirements, goals, purposes and objectives of this chapter.
- B. In association with normal permit requirements every nonexempt activity will require a written authorization or notation on the application of compliance with this chapter prior to undertaking the activity.
- C. The city may approve, approve with conditions or deny any development proposal in order to comply with the requirements and carry out the goals, purposes and objectives of this chapter. (Ord. 1192 §76, 2002; Ord. 1109 §8, 1999; Ord. 935 §10 (part), 1992).

14.36.100 Consolidated application process.

When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time in conformance with Section 1B.030 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §75, 2002; Ord. 935 §10 (part), 1992).

14.36.110 Interagency coordination for aquifer sensitive and wellhead area applications.

Upon receipt of a complete application for approval authorizing activities within an aquifer sensitive or wellhead area, the city of Lacey shall submit the application to the health officer. When such applications are submitted, said health officer should submit comments or should request an extension of the review period within fourteen days. Extensions may be granted by the city of Lacey where complex issues necessitate a longer review period. When

submitted, no approval shall be issued under this subsection prior to receipt of such comments or the expiration of the time period for any extension. (Ord. 1192 §76, 2002; Ord. 1109 §9, 1999; Ord. 935 §10 (part), 1992).

14.36.115 Information requirements.

Unless the city of Lacey waives one or more of the following information requirements, nonexempt applications for activities undertaken in an aquifer sensitive or wellhead area must provide the following information:

- A. A description and maps overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the entire parcel of land owned by the applicant and the exact boundary and description of the aquifer sensitive features of the site;
- B. A description of the vegetative cover of the site and adjacent area including dominant species;
- C. A site development plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations at the site;
- D. The exact sites and specifications for all proposed activities including the amounts and methods;
- E. Elevations of the site and adjacent lands within the aquifer sensitive area at contour intervals of no greater than five feet;
- F. A report describing the aquifer sensitive features with an analysis of specific limitations of the site, including soils and geology with a description of the methods of analysis and special means used to make such determination and recommendations. The report shall indicate what engineering steps are required to overcome soils and geological limitations at the site for proper aquifer protection. See requirements in special reports, LMC 14.36.160. (Ord. 1109 §10, 1999; Ord. 935 §10 (part), 1992).

14.36.120 Critical aquifer recharge areas--Uses and activities in critical aquifer recharge areas that are not in wellhead protection zones.

- A. To protect the public health and safety, prevent aquifer contamination, and preserve the ground water resource for continual beneficial use, uses shall be most limited in those areas which have the highest degree of risk.
- B. Stormwater Runoff. Stormwater impacts shall be mitigated through the application of the Drainage Design and Erosion Control Manual for the Thurston region. In addition to this manual, spill prevention and contamination shall be considered during project review to avoid accidental release of pollutants.
- C. Agricultural Activities. Agricultural impacts shall be mitigated through implementation of the Northern Thurston County Ground Water Management Plan (1991), where applicable. In areas not covered by this plan, the city of Lacey in consultation with the health officer or other qualified health expert shall employ methods that result in protection from aquifer contamination.
- D. Solid Waste. Solid waste disposal facilities shall comply with Chapters 173-304 and 173-200 WAC. Solid waste landfills, and other solid waste disposal facilities likely to produce leachate shall be prohibited in Critical Aquifer Recharge Area Categories I and II. Handling and transfer facilities within these two categories may be placed with source control measures appropriate to the facility. Special care shall be employed to avoid the impacts of spills and leachate.
- E. Hazardous Materials.
 - 1. Review for presence and containment of hazardous materials shall be performed and conditions set by the city in consultation with others having expertise and jurisdiction.
 - 2. Persons that possess hazardous materials as defined in SARA III (the Superfund Amendments) shall provide a secondary containment method.
 - 3. These standards may be modified by the adoption of a ground water management plan under Chapter 173-100 WAC, or adoption of other regulations.

4. The city of Lacey in consultation with the health officer or other qualified health expert is authorized to permit facilities with methods that show a reasonable association between the material possessed and the containment strategy proposed.

F. Fertilizer and Pesticides. Reserved. (Ord. 1109 §11, 1999; Ord. 935 §10 (part), 1992).

14.36.130 Critical aquifer recharge areas--Residential density.¹

A. Residential densities are intended to limit the amount of sewage effluent and other pollutants associated with human activities, at levels which will achieve compliance with Chapters 173-200, the state ground water quality standards, 246-272, the state on-site sewage disposal regulations, and 246-272 WAC and Article IV of the Thurston County Sanitary Code governing sewage disposal.

B. All sewage system proposals must comply with Article IV of the Thurston County Sanitary Code, adopted sewerage general plans and all applicable local, state and federal regulations.

C. Residential densities for temporary on-site sewage systems are contained in Table 14T-8. Densities for projects other than residential shall use a sewage volume equivalent (equivalent residential unit - ERU) to achieve a similar level of control of sewage application per unit area. These densities shall govern until amended or replaced by a system of allowable density by a ground water management plan or similar analysis. "Temporary on-site sewage systems" includes those systems constructed in areas where there is an adopted sewerage general plan which contains a strategy for the interception of the on-site systems.

D. Residential densities for permanent on-site sewage systems are contained in Table 14T-9. Densities for projects other than residential shall use a sewage volume equivalent (equivalent residential unit - ERU) to achieve a similar level of control of sewage application per unit area. These densities shall govern until amended or replaced by a system of allowable density by a ground water management plan or similar analysis. "Permanent on-site sewage systems" includes those on-site sewage disposal systems constructed in areas for which no sewerage general plan has been adopted.

E. Achievement of the densities contained in Tables 14T-8 and 14T-9 depends on review and approval of the proposed projects. The approval of such projects will depend on review of the Geohydrological Report, when required and whether the project is temporarily or permanently on-site disposal, and compliance with existing public health and environmental laws and standards. Maximum density in critical aquifer recharge area Category I, also known as Type I soils, are limited to a maximum of two units per acre with enhanced treatment.

F. The standard for compliance for review and approval of projects for which a geohydrological report has been required, shall be a maximum of doubling of the background nitrate concentration or five milligrams per liter whichever is lower. For projects which do not meet a nitrate loading and concentration model, they must meet the standards contained in Chapter 173-200 WAC. The city in consultation with the health officer or other health expert shall require reasonably available treatment and containment methods in the performance of these tasks. (Ord. 935 §10 (part), 1992).

14.36.140 Critical aquifer recharge areas--Wellhead protection areas-- Designation.

A. Wellhead protection areas shall be designated as provided in Map 5 of the Environmental Protection and Resource Conservation Plan.

B. Special protection standards of LMC 14.36.215 shall apply in the one, five and ten-year time of travel zones of their wellhead protection areas and shown on Map 5 of the Environmental Protection and Resource Conservation Plan which address local ground water conditions based upon information and analysis instituted under a comprehensive wellhead protection study. (Ord. 1109 §12, 1999; Ord. 935 §10 (part), 1992).

14.36.150 Critical aquifer recharge areas and wellhead protection areas--Departmental cooperation.

The city of Lacey may coordinate with the health officer in the enforcement of these regulations. (Ord. 1109 §13, 1999; Ord. 935 §10 (part), 1992).

14.36.160 Critical aquifer recharge areas--Special reports.

A. A geohydrological report shall be required for a project located in a Category I or II critical aquifer recharge or wellhead area by the city if:

1. There is insufficient ground water information to perform an adequate review to assure aquifer protection; or
2. The project is likely to possess, store, use, transport, or dispose of hazardous materials.

B. The city of Lacey may waive the geohydrological report requirements if the nature of the project and its impacts are generally known, or the impacts of the project have been mitigated by source control strategies. (Ord. 1109 §14, 1999; Ord. 935 §10 (part), 1992).

14.36.170 Geohydrological reports-- General comments.

A. A geohydrological report for critical areas shall include maps of the development proposal site as required under LMC 14.36.115 and a written report.

B. The special report shall identify and characterize the aquifer recharge area as it relates to the development site, assess impacts of the development proposal on the aquifer protection and assess the impacts of any alteration proposed for the aquifer recharge or wellhead area.

C. The special report shall propose adequate protection mechanisms and include mitigation, maintenance and monitoring plans and financial security measures if appropriate.

D. The special report shall be prepared by experts as described in the following sections.

E. The city of Lacey may retain health experts and other consultants with applicable expertise at the applicant's expense to assist in the review of special studies outside the range of staff expertise. (Ord. 1109 §15, 1999; Ord. 935 §10 (part), 1992).

14.36.180 Geohydrological reports-- Reimbursement for costs.

The developer shall pay for or reimburse the city for the cost incurred in the conduct of such special reports or tests and for the costs incurred by the city to engage technical consultants for review and interpretation of data and findings submitted by or on behalf of the developer.

A. This report shall identify the proposed development plan and the risks associated with on-site septic systems and other on-site activities which may potentially degrade the ground water aquifer beneath the site.

B. This report shall be prepared by a licensed professional engineer, licensed in the state of Washington, with expertise in geohydrology, qualified to analyze geological and hydrological information and ground water systems, or prepared by a geologist, schooled and trained in geology and ground water or a hydrologist schooled and trained in geohydrological information and systems.

C. A geohydrological report shall contain:

1. A description of the general geological and hydrological characteristics of the area under permit application consideration;
2. A description of the local characteristics associated with site drainage and water movement;
3. A description of conditions prior to project development;
4. A description of conditions as they are likely to exist after complete development of the proposed project, and their impact on ground water quantity and quality;
5. The post development description shall include the effects of the activities likely to occur as a result of the complete development and use of the project, at final equilibrium;

6. As part of item 5 above, the effects of sewage disposal, lawn and yard activities, agricultural and animal husbandry, stormwater impacts and any other impact reasonably associated with the project type shall be described.

D. Review and evaluation of the report may be delegated to other city departments and to qualified private consultants at the applicant's expense. (Ord. 935 §10 (part), 1992).

14.36.210 Criteria for aquifer protection categories.

A. Category I--Extreme Aquifer Sensitivity. Typified by the presence of usable aquifer(s), moderate to rapid drainage, coarse soil materials (sands and gravels, fine sands and silts), examples of aquifer contamination incidents in similar soils and geology, and a general estimate of run-off versus run-in. This last point is best illustrated by the simple test question, "Are there streams and other surface water run-off channels in an area?" thus indicating whether rainwater runs off instead of absorbing through the soil, into the aquifer systems below.

Category I Soil Series

Series Name	SCS Map Symbol #
Baldhill	5, 6, 7, 8
Cagey	20
Everett	32, 33, 34, 35
Grove	42
Indianola	46, 47, 48
Newberg	71, 72
Nisqually	73, 74
Pilchuk	84
Pits, gravel	85
Puyallup	89
Spanaway	110, 111, 112, 113, 114
Sultan	115
Tenino	117, 118, 119

B. Category II--High Aquifer Susceptibility. Typified by the presence of an aquifer or aquifers below the surface, with surface soils acting as a slowing layer for water absorption. Soils are generally described as having slow, impeded, or poor drainage. An undetected fuel spill of the same magnitude would not absorb as quickly deeply into the soil, would not travel quickly through the soil to the aquifer, but if undetected would travel to the aquifer below. These soil series still pass water on to the aquifers below, but at a lower rate than Category I soils.

Category II Soil Series

Series Name	SCS Map Symbol #
Alderwood	1, 2, 3, 4
Chehalis	26
Delphi	27, 28
Eld	31

Series Name	SCS Map Symbol #
Giles	38, 39, 40
Maytown	64
Spanaway	109
Yelm	126, 127, 128

C. Category III--Moderate Aquifer Sensitivity. Typified by the presence of an aquifer or aquifers below the surface, these soil series contribute to recharge, but more run-off occurs where topography and drainage patterns allow it to do so. These soil series contribute substantially to local aquifers of lower available quantity. The soils are generally described as having slow, impeded, or poor drainage.

Category III Soil Series

Series Name	SCS Map Symbol #
Bellingham	14
Dupont	29
Everson	36
Galvin	37
Godfrey	41
Hoogdal	43, 44
Kapowsin	50, 51, 52, 53, 54, 55
Mashel	62, 63
McKenna	65
Mukilteo	69, 70
Norma	75, 76
Puget	88
Scammen	100, 101
Semiamoo	104
Shalkar	105
Shalkar Variant	106
Skipopa	107, 108
Tacoma	116
Tisch	120

D. Category IV--Low Aquifer Susceptibility. Soil areas in Category IV are typified by the absence of abundant ground water, with soils developed from basaltic, andesitic or sedimentary bedrock or ancient glacial till. This has produced conditions not conducive to rapid aquifer recharge or to abundant quantities of ground water. Water wells when found are usually adequate for single family use only and usually produce below ten gallons per minute, commonly in the two to seven GPM range. A fuel spill may not be absorbed into the soil if wet and when dry, will not travel rapidly laterally or vertically. Run-off and stream channel development is much more pronounced than is associated with prairie or lowlands soils and geology.

Category IV Soil Series

Series Name	SCS Map Symbol #
Baumgard	9, 10, 11, 12, 13
Boistfort	15, 16
Bunker	17, 18, 19
Cathcart	21, 22
Centralia	23, 24, 25
Jonas	49
Katula	56, 57
Lates	58, 59
Mal	60, 61
Melbourne	66, 67, 68
Olympic	77, 78
Pheeneey	78, 79, 80, 81, 82, 83, 96
Prather	86, 87
Rainier	90, 91, 92
Raught	93
Salkum	97, 98, 99
Schneider	102, 103
Vailton	121, 122
Wilkeson	123, 124

SCS Soil Series, and Critical Aquifer Recharge Area Categories

Series Name	Map Symbol #	Category
Alderwood	1, 2, 3, 4	II
Baldhill	5, 6, 7, 8	I
Baumgard	9, 10, 11, 12, 13	IV
Bellingham	14	IV
Boistfort	15, 16	IV
Bunker	17, 18, 19	IV
Cagey	20	I
Cathcart	21, 22	IV
Centralia	23, 24, 25	IV
Chehalis	26	II
Delphi	27, 28	II

Series Name	Map Symbol #	Category
Dupont Muck	29	III
Dystric Xerochrepts	30	III
Eld	31	II
Everett	32, 33, 34, 35	I
Everson	36	III
Galvin	37	III
Giles	38, 39, 40	II
Godfrey	41	III
Grove	42	I
Hoogdal	43, 44	III
Hydraquents, tidal	45	III
Indianola	46, 47, 48	I
Jonas	49	IV
Kapowsin	50, 51, 52, 53, 54, 55	III
Katula	56, 57	IV
Lates	58, 59	IV
Mal	60, 61	IV
Mashel	62, 63	III
Maytown	64	II
McKenna	65	III
Melbourne	66, 67, 68	IV
Mukilteo muck	69, 70	II
Newberg	71, 72	I
Nisqually	73, 74	I
Norma fine	75, 76	III
Olympic	77, 78	IV
Pheeny	79, 80, 81, 82, 83, 96	IV
Pilchuk	84	I
Pits, gravel	85	I
Prather	86, 87	IV
Puget	88	III
Puyallup	89	I
Rainier	90, 91, 92	IV
Raught	93, 94	IV
Riverwash	95	I

Series Name	Map Symbol #	Category
Rock outcrop	96	IV
Salkum	97, 98, 99	IV
Scammen	100, 101	III
Schneider	102, 103	IV
Semiamoo	104	III
Shalkar muck	105	III
Skipopa	107, 108	III
Spana	109	II
Spanaway	110, 111, 112, 113, 114	I
Sultan	115	I
Tacoma	116	III
Tenino	117, 118, 119	I
Tisch	120	III
Vailton	121, 122	IV
Wilkeson	123, 124	IV
Xerorthents	125	II
Yelm	126, 127, 128	II

(Ord. 935 §10 (part), 1992).

14.36.215 Wellhead protection area standards for new uses.

A. The following uses shall be prohibited within the designated one-year time of travel zone:

1. Land spreading disposal facilities (as defined by Chapters 13-304 and 173-308 WAC - disposed above agronomic rates);
2. Animal operations with over 200 animal units. For purposes of this section, one animal unit is the equivalent number of livestock and/or poultry as defined by the U.S. Department of Agriculture Natural Resource Conservation Service Animal Waste Field Handbook;
3. Gas Stations, petroleum products refinement, reprocessing, and storage (except underground storage of heating oil or agricultural fueling in quantities less than 1,100 gallons for consumptive use on the parcel where stored), and liquid petroleum products pipelines;
4. Automobile wrecking yards;
5. Wood waste landfills; and
6. Dry cleaners, excluding drop-off only facilities.

B. The following uses shall be prohibited within the designated one, five and ten-year time of travel zones;

1. Landfills (municipal sanitary solid waste and hazardous waste);
2. Hazardous waste transfer, storage and disposal facilities;

3. Wood and wood products preserving; and
4. Chemical manufacturing.

C. For any use proposed within the designated one, five and ten-year time of travel zone which uses, stores, handles or disposes of hazardous materials above the minimum quantities listed below, the applicant shall submit for review and approval documentation that AKART are proposed to be used to prevent impact to the source water. The health officer, in consultation with the water purveyor, will review this documentation to determine whether the application shall be approved, denied or approved with conditions to ensure adequate protection of the source water supply.

Notwithstanding the minimum quantity thresholds listed below, the health officer may, at the health officer's discretion and with reasonable expectation of risk to ground water, require pollution prevention plans and MPCs on any use proposed within the one, five, and ten-year time of travel zones.

1. Types of chemical substances regulated by the Hazardous Materials provisions of the city's adopted Fire Code, and as subsequently amended. Minimum cumulative quantity; 60 pounds (or the equivalent 20 gallons).
2. Cleaning substances for janitorial use or retail sale present in the same size, packaging, and concentrations as a product packaged for use by the general public. Chlorinated solvents and no n-chlorinated solvents which are derived from petroleum or coal tar will not be considered a cleaning substance under this subsection, but rather a chemical substance under subsection (C)(1) of this section. Minimum cumulative quantity: 800 pounds (or the equivalent 100 gallons, not to exceed 55 gallons for any single package).
3. Businesses which use, store, handle or dispose of chemicals listed in WAC 173-303-9903 as "P" chemicals. Minimum cumulative quantity: 2.2 pounds. (Ord. 1208 §57, 2003; Ord. 1109 §16, 1999).

14.36.217 Special management areas - Wellhead protection area standards for expansion of existing uses.

The following shall apply to expansion of use of facilities located within the designated wellhead protection areas defined in LMC 14.36.140. In this section, "expansion" shall be defined as any addition, remodel, or structural change that requires a building permit.

A. Expansion of the following uses will be prohibited within the designated one-year time of travel zone:

1. Land spreading disposal facilities (as defined by Chapters 173-304 and 173-308 WAC - disposal above agronomic rates);
2. Gas stations (fuel related uses), petroleum products refinement, reprocessing, and storage (except underground storage of heating oil or agricultural fueling in quantities less than 1,100 gallons for consumptive use on the parcel where stored,) and liquid petroleum products pipelines;
3. Automobile wrecking yards;
4. Wood waste landfills;
5. Dry cleaners, excluding drop-off only facilities;
6. Confined animal feeding operations with less than 200 animal units cannot expand to over 200 animal units. For purposes of this section, one animal unit is the equivalent number of livestock and/or poultry as defined by the U.S. Department of Agriculture Natural Resource Conservation Service Animal Waste Field Handbook.

B. Expansion of the following uses shall be prohibited within the designated one, five and ten-year time of travel zones:

1. Landfills (municipal sanitary solid waste and hazardous waste);
2. Hazardous waste transfer, storage and disposal facilities;

3. Wood and wood products preserving; and
4. Chemical manufacturing.

C. For any expansion of an existing use proposed within the designated one, five and ten-year time of travel zones which uses, stores, handles or disposes of hazardous materials above the minimum quantities listed below, the applicant shall submit for review and approval, documentation that AKART is proposed to be used to prevent impact to source water. The health officer will review this documentation to determine whether the expansion shall be approved, denied, or approved with conditions to ensure adequate protection of the source water supply.

Notwithstanding the minimum quantity thresholds listed below, the health officer at the health officer's discretion and with reasonable expectation of risk to ground water, may require pollution prevention plan development and implementation of MPCs on any use located within the one, five and ten-year time of travel zones. The health officer will review the documentation to determine whether the expansion shall be approved, denied or approved with conditions to ensure adequate protection of the source water supply.

1. Types of chemical substances regulated in Table 8001.15-a.b.c.d. of the Uniform Fire Code, and as subsequently amended. Minimum cumulative quantity: 160 pounds (or the equivalent 20 gallons);
2. Cleaning substances for janitorial use or retail sale present in the same packaging and concentrations as products packaged for use by the general public. Chlorinated solvents and non-chlorinated solvents which are derived from petroleum or coal tar will not be considered a cleaning regulated substance under this category but rather a chemical substance under subsection (C)(1) of this section. Minimum cumulative quantity: 800 pounds (or the equivalent 100 gallons), not to exceed 55 gallons for any single package.
3. Businesses which use, store, handle or dispose of chemicals listed in WAC 173-303-9903 as "P" chemicals. Minimum cumulative quantity: 2.2 pounds. (Ord. 1109 §17, 1999).

14.36.219 Special Management Areas - Wellhead protection area standards for existing uses.

The following shall apply to existing uses located within the designated wellhead protection areas defined in LMC 14.36.140.

A. For any existing use identified by the pollution source inventory in approved wellhead protection plans, within the one, five and ten-year time of travel zones which uses, stores, handles or disposes of hazardous materials above the minimum quantity thresholds listed in LMC 14.36.215(C)(1) through (3), the owner, upon request of the health officer shall submit a pollution prevention plan that will ensure adequate protection of the source water supply. The health officer, in consultation with the water purveyor in which the use is located, shall review this plan to determine whether the plan shall be approved, or approved with conditions to ensure adequate protection of the source water supply.

Notwithstanding the minimum quantity thresholds listed in LMC 14.36.215(C)(1), the health officer at the health officer's discretion, for good cause and with reasonable expectation of risk to ground water, may require pollution prevention plans and MPCs on any use proposed within the one, five, and ten-year time of travel zones.

B. For any existing agricultural use located within the designated one, five and ten-year time of travel zones, the owner, upon request of the health officer, at the health officer's discretion, for good cause and with reasonable expectation of risk to ground water and with consultation with the Thurston Conservation District, shall develop a farm conservation plan in conformance with the U.S. Natural Resources Conservation Service Field Office Technical Guide and obtain approval of the Thurston Conservation District Board of Supervisors. (Ord. 1109 §18, 1999).

14.36.220 Other laws and regulations.

No approval granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 1192 §77, 2002; Ord. 935 §10 (part), 1992).

14.36.230 Suspension, revocation.

In addition to other penalties provided for elsewhere, the city of Lacey may suspend or revoke an approval if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 1192 §78, 2002; Ord. 935 §10 (part), 1992).

14.36.240 Appeals.

Any decision of the city of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §79, 2002; Ord. 935 §10 (part), 1992).

14.36.250 Enforcement.

A. The city of Lacey shall have authority to enforce this chapter, any rule or regulation adopted and any permit or order issued pursuant to this chapter, against any violation or threatened violation thereof. The city of Lacey is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.

B. Enforcement actions shall include civil penalties, administrative orders and actions for damages and restoration.

1. The city of Lacey may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of an aquifer sensitive area which are inconsistent with this chapter or an applicable habitat or species protection program.
2. The city of Lacey may serve upon a person a cease and desist order if an activity being undertaken on sites with a geologically sensitive feature or required buffers is in violation of this chapter. Whenever any person violates this chapter or any permit issued to implement this chapter, the city of Lacey may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.
 - a. Content of Order. The order shall set forth and contain:
 - (1) A description of the specific nature, extent, and time of violation and the damage or potential damage; and
 - (2) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order;
 - (3) Effective Date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed;
 - (4) Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.
3. Any person who undertakes nonexempt activity within an aquifer sensitive area without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection B of this section shall incur a penalty allowed per violation. In the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the Superior Court within the subject jurisdiction.
4. Aiding or Abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty.

5. Notice of Penalty. Civil penalties imposed under this section shall be imposed by a notice to the person incurring the same from the city of Lacey. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

6. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the city of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the city of Lacey by action of the city hearings examiner under the provision of Chapter 2.30 LMC may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC 2.24.250.

8. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to an approval. (Ord. 935 §10 (part), 1992).

14.36.260 Non-conforming activities.

A. All nonexempt activities that were approved prior to the passage of this chapter shall be subject to the provisions of LMC 14.36.219.

B. No activity specified in subsection A of this section shall be expanded, changed, enlarged or altered in any way unless it complies with all of the provisions of LMC 14.36.217.

C. When in conflict, provisions of this section shall supersede the normal nonconforming use provisions of Chapter 16.93 LMC. Activities or adjuncts thereof that are nuisances shall not be entitled to continue. (Ord. 1109 §19, 1999; Ord. 935 §10 (part), 1992).

14.36.270 Repealed.

(Ord. 1192 §80, 2002; Ord. 935 §10 (part), 1992).

14.36.280 Amendments.

These regulations and the city of Lacey Environmental Protection and Resource Conservation Plan maps may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning becomes available. (Ord. 935 §10 (part), 1992).

14.36.290 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 935 §10 (part), 1992).

¹ Code reviser's note: Ord. 935 §10 added two sections numbered 14.36.140; this section has been renumbered to 14.36.130.

CHAPTER 14.37

GEOLOGICALLY SENSITIVE AREAS PROTECTION

Sections:

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14.37.260	Non-conforming activities
14.37.270	Repealed
14.37.280	Amendments
14.37.290	Severability
14.37.300	Assessment relief

14.37.020 Purpose/intent.

The purposes of this chapter are to protect the public health, safety and welfare by preventing the adverse environmental impacts of development by:

- A. Developing specific requirements for analysis and performance standards related to identification and protection from erosion hazard and landslide hazard;
- B. Protecting the public against losses from publicly funded mitigation of avoidable impacts;
- C. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of geologically sensitive areas;
- D. Providing city of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;
- E. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter 43.21C RCW, the city Environmental Protection and Resource Conservation Plan, the city Comprehensive Land Use Plan, the city Zoning Code (LMC Title 16), the city Environmental Policy Ordinance (Chapter 14.24 LMC), the city Tree Protection and Preservation Ordinance (Chapter 14.32 LMC), and all related environmental and community plans and programs. (Ord. 935 §11 (part), 1992).

14.37.030 Definitions.

For the purposes of this chapter, the following definitions shall apply:

- A. “Applicant” means a person who files an application for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- B. “Artificially created hazard area” means artificially created areas of potential hazard such as fills and steep cuts. Such areas are reviewed during application for building permits or excavation and grading permits through a process provided in the Grading Chapter of the city’s adopted Building Code, which allows application of specific conditions to insure the public health, safety and welfare. Such areas are not subject to review under this chapter.
- C. “Bluff” means a steeply rising, near vertical slope which abuts and rises from Puget Sound. Bluffs occur in the area at the extreme north end of Lacey’s long term growth area north of the Beachcrest area. The toe of a bluff is the beach of Puget Sound. The top of a bluff is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is either the line of vegetation separating the unvegetated steep slope from the vegetated uplands plateau or, when the bluff is vegetated, the point where the bluff slope diminishes to less than fifteen percent.
- D. “Buffer” means an area adjacent to hillsides which provides the margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic, and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being or property damage resulting from natural disasters.
- E. “Clearing” means the destruction and removal of vegetation by burning, mechanical, or chemical methods.
- F. “Director” means the director of community development or his/her designee.
- G. “Erosion hazard area” means an area designated by the city of Lacey Environmental Protection and Resources Conservation Plan which, according to the United States Department of Agriculture Soil Conservation Service Soil Survey of Thurston County, Washington, have severe erosion hazard potential. These soil map units are described in Table 11 of the Environmental Protection and Resource Conservation Plan.
- H. “Financial security” means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or other financial guarantee approved by the city attorney.
- I. “Geologically sensitive area” means an area that because of its susceptibility to erosion, sliding, earthquake or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Geologically sensitive areas do not include artificially created hazard areas.
- J. “Hillsides” means geological features of the landscape having slopes of fifteen percent and greater. To differentiate between levels of hillside protection and the application of development standards, the city of Lacey categorizes hillsides into four groups: hillsides of at least fifteen percent but less than twenty-five percent slope; hillsides of twenty-five percent but less than forty percent slope; hillsides of forty percent slope and greater; and hillsides which are defined as ravine sidewalls or bluffs.
- K. “Landslide” means an episodic downslope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, and earthflows.
- L. “Landslide hazard area” means an area potentially subject to landslides because of the combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors, including bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors. The following areas are considered to be subject to landslide hazard:
 - 1. Any area with a combination of:
 - a. Slopes greater than fifteen percent; and

- b. Impermeable soils (usually silt and clay) frequently interbedded with granular permeable soils (usually sand and gravel); and
 - c. Springs or ground water seepage.
2. Steep slopes of forty percent or greater.
 3. Any area which has shown movement during the Holocene epoch (from ten thousand years ago to present) or which is underlain by mass wastage debris of that age.
 4. Any area potentially unstable as a result of rapid stream incision, stream bank erosion, or undercutting by wave action.
 5. Any area with slope stability designated as “I”, “U”, “Urs” or “Uos” by the Coastal Zone Atlas of Washington.

M. “Native vegetation” means plant species which are indigenous to the area in question.

N. “Ravine sidewall” means a steep slope which abuts and rises from the valley floor of a stream and which was created by the wearing action of the stream. Ravine sidewalls contain slopes predominantly in excess of forty percent, although portions may be less than forty percent. The toe of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is where the slope diminishes to less than fifteen percent. Minor natural or manmade breaks in the slope of ravine sidewalls shall not be considered as the top. Benches with slopes less than fifteen percent and containing developed or developable areas shall be considered as the top.

O. “Seismic hazard areas” means those areas subject to severe risk of earthquake damage as a result of seismically induced settlement or soil liquefaction. These conditions occur in areas underlain by cohesionless soils of low density usually in association with a shallow ground water table.

P. “Slope” means an inclined ground surface, the inclination of which is expressed as a ratio (percentage) of vertical distance to horizontal distance by the following formula:

$$\frac{\text{vertical distance}}{\text{horizontal distance}} \times 100 = \% \text{ slope.}$$

Another method of measuring the inclination of the land surface is by measuring the angle, expressed in degrees, of the surface above a horizontal plane. The following chart shows the equivalents between these two methods of measurement for several slopes:

Slope in Percent	Angle in Degrees
8.7	5.0
15.0	8.5
25.0	14.0
30.0	16.7
40.0	21.8
50.0	26.6
100.0	45.0

Q. “Soil Survey of Thurston County Washington” is a soil survey published by the U.S. Department of Agriculture Soil Conservation Service. The survey contains information that can be applied in land use management.

All the soils of the Thurston County Area are shown on detailed maps and described in text. (Ord. 1208 §58, 2003; Ord. 935 §11 (part), 1992).

14.37.040 Qualified professional geotechnical engineer.

It is expected that applications will require a qualified professional geotechnical engineer to provide the information necessary to fulfill the requirements of this chapter. A qualified professional geotechnical engineer is an engineer in the practice of geotechnical work and capable of providing the services required by this chapter. It shall be the responsibility of the applicant to purchase the services of a qualified geotechnical engineer. (Ord. 935 §11 (part), 1992).

14.37.050 Applicability.

A. When any provision of any other chapter of the city of Lacey conflicts with this chapter, the most restrictive will prevail.

B. The city of Lacey is authorized to adopt written administrative procedures for the purposes of carrying out the provisions of this chapter.

C. The city of Lacey shall not grant any approval or permission to conduct a nonexempt activity in a geologically sensitive area until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, tree and vegetation protection and preservation approval, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 935 §11 (part), 1992).

14.37.060 Maps and inventory.

This chapter shall apply to all lots or parcels on which geologically sensitive areas are located within the jurisdiction of the city of Lacey. The approximate location and extent of geologically sensitive areas in the city of Lacey is shown on map 6 as shown in the city of Lacey Environmental Protection and Resource Conservation Plan. The city zoning map also shows such areas as environmentally sensitive pursuant to Chapter 16.54 LMC. The city Environmental Protection and Resource Conservation Plan map and zoning map are to be used as a guide to the general location and extent of geologically sensitive areas. Geologically sensitive areas not shown on the maps are presumed to exist in the city of Lacey and are protected under all the provisions of this chapter. In the event that any of the geologically sensitive area designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control. (Ord. 935 §11 (part), 1992).

14.37.070 Determination of geologically sensitive area.

A. Where staff identifies a potential geologically sensitive area, the exact presence and location of the geologically sensitive area shall be determined by a field investigation applying specific criteria described in this chapter. A qualified professional geotechnical engineer shall perform geologically sensitive area determinations. Hiring the services of a geotechnical engineer shall be the responsibility of the applicant. The applicant is required under LMC 14.37.110 to show the location of the geologically sensitive area on a scaled drawing as a part of the application.

B. The city of Lacey shall verify the accuracy of, and may render changes to, the geological sensitive area determinations or delineations and technical information provided by the applicant and his/her consultant in consultation with other agencies with expertise in the geologically sensitive areas field. In the event the changes are contested by the applicant, the city of Lacey shall, at the applicant's expense, obtain its own expert services to render a final determination. (Ord. 935 §11 (part), 1992).

14.37.080 Exempt activities.

The following activities shall be exempt from the review requirements of this chapter and Chapter 1C of the City of Lacey Development Guidelines and Public Works Standards provided such activities are undertaken using best management practices in a manner that does not adversely impact the geologically sensitive area:

- A. Nonpublic outdoor recreation activities such as bird watching or hiking, when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;
- B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the geologically sensitive area by changing existing topography, water conditions or other natural parameters important to the geological sensitivity;
- C. Boundary markers;
- D. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be restored immediately after investigative work has been completed;
- E. Educational activities and scientific research; and
- F. Normal and routine maintenance or repair of existing utility structures or right-of-way;
- G. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way;
- H. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way. (Ord. 1192 §81, 2002; Ord. 935 §11 (part), 1992).

14.37.090 Geologically sensitive areas-- Presubmission consultation.

Any person intending to undertake nonexempt activities in a geologically sensitive area is required to meet with the city of Lacey at a presubmission conference during the earliest possible stages of project planning in order to discuss impact avoidance and minimization in accordance with the process outlined in Section 1B.020 of the City of Lacey Development Guidelines and Public Works Standards.(Ord. 1192 §82, 2002; Ord. 935 §11 (part), 1992).

14.37.100 Geologically sensitive area applications.

No nonexempted use shall occur or be permitted to occur within a geologically sensitive area without full administrative review or quasi-judicial review of the application pursuant to Chapter 1C of the City of Lacey Development Guidelines and Public Works Standards, whichever is applicable. (Ord. 1192 §83, 2002; Ord. 935 §11 (part), 1992).

14.37.110 Geologically sensitive areas --Information requirements.

- A. Application to conduct any activity not specifically exempted by LMC 14.37.080 within a geologically sensitive area shall be made to the department of community development on forms furnished by that office.
- B. Unless the city of Lacey waives one or more of the following information requirements, applications for activities undertaken in a geologically sensitive area must provide the following information:
 - 1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the entire parcel of land owned by the applicant and the exact boundary and description of the geologically sensitive features of the site;
 - 2. A description of the vegetative cover of the site and adjacent area including dominant species;
 - 3. A site development plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations at the site;
 - 4. The exact sites and specifications for all proposed activities including the amounts and methods;

5. Elevations of the site and adjacent lands within the geologically sensitive area at contour intervals of no greater than five feet;
6. Top view and typical cross section views of the geologically sensitive features at the site to scale, and specific means to mitigate any potential adverse environmental impacts of the applicant's proposal relative to the geologically sensitive features of the site;
7. A soils engineering report including data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading, including the stability of slopes. Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.
8. An engineering geology report including an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading. Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.
9. A full drainage study identifying special precautions necessary to avoid erosion hazard at the site. (Ord. 1192 §84, 2002; Ord. 935 §11 (part), 1992).

14.37.120 Geologically sensitive areas-- Approval and extensions.

- A. Approvals shall normally be valid for a period of eighteen months from the date of issue and shall expire at the end of that time pursuant to requirements of Chapter 16.84 LMC unless an underlying action has a longer approval period, in which case the longer approval period shall apply.
- B. An extension of an original approval may be granted upon written request to the city of Lacey by the original approval holder or the successor in title at least thirty days prior to the expiration. Prior to the granting of an extension, the city of Lacey shall require updated studies if, in its judgment, the original intent of the approval is altered or enlarged by the renewal, or if the circumstances relevant to the review and issuance of the original approval have changed substantially. (Ord. 1192 §85, 2002; Ord. 935 §11 (part), 1992).

14.37.130 Geologically sensitive areas-- Filing fees.

At the time of an application, the applicant shall pay a filing fee as determined by the city of Lacey. Sufficient fees shall be charged to the applicant to cover the costs of evaluation of the application. These fees may be used by the city of Lacey to retain expert consultants to provide services pertaining to technical issues relative to a site's geological sensitivity and evaluation of mitigation measures. As deemed necessary by the city of Lacey, the city of Lacey may assess additional reasonable fees as needed to monitor and evaluate approval compliance and mitigation measures, such as but not limited to erosion control. (Ord. 1192 §80, 2002; Ord. 935 §11 (part), 1992).

14.37.140 Consolidated application process.

When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time in conformance with Section 1B.030 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §87, 2002; Ord. 935 §11 (part), 1992).

14.37.150 Interagency coordination for geologically sensitive area applications.

Upon receipt of a complete application for approval authorizing activities within a geologically sensitive area, the city of Lacey shall submit the application to the U.S. Department of Agriculture Soil Conservation Service and other state and local agencies having jurisdiction over or an interest in such applications for review and comment. When such applications are submitted, said agencies should submit comments or should request an extension of the review period within fourteen days. Extensions may be granted by the city of Lacey where complex issues necessitate a longer review period. When submitted, no approval shall be issued under this subsection prior to receipt of such comments or the expiration of the time period for any extension. (Ord. 1192 §88, 2002; Ord. 935 §11 (part), 1992).

14.37.160 Standards for geologically sensitive area approvals--Generally.

- A. An approval shall only be granted if the approval, as conditioned, is consistent with the provisions of this chapter.
- B. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal.
- C. Except as otherwise specified, buffer zones as required in a geologically sensitive area shall be retained in their natural condition. (Ord. 935 §11 (part), 1992).

14.37.170 Geologically sensitive areas-- Uses allowed in a designated buffer zone.

Nonexempt activities shall not be allowed in a buffer zone recommended in a geologically sensitive area development plan except for activities having minimal adverse impacts on the geological sensitivity as determined in the development plan. These may include low intensity, passive recreational activities such as previous trails. (Ord. 935 §11 (part), 1992).

14.37.180 Standards for geologically sensitive areas--Specific.

- A. Undevelopable Geologically Sensitive Areas. Ravine sidewalls, bluffs and their buffers and hillsides with a slope greater than forty percent shall remain undeveloped except as otherwise provided in this chapter. The top, toe, and edges of ravine sidewalls, bluffs and the outside edge of their buffers and hillsides with forty percent slope or greater shall be determined and field marked by a qualified geotechnical engineer.
- B. Landslide Hazard Areas. Hillsides containing or adjacent to landslide hazard areas shall be altered only when the site plan review committee concludes, based on required reports, the following:
1. There will be no increase in surface water discharge or sedimentation to adjacent properties; and
 2. There will be no decrease in slope stability on adjacent properties; and
 3. The alteration conforms to all other requirements of subsection E of this section; and
 4. Either:
 - a. There is no hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a quantitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or
 - b. The landslide hazard area can be modified or the development proposal can be designed so that the landslide hazard is eliminated or mitigated so that the site is as safe as a site without a landslide hazard; or
 - c. The alteration is so minor as not to pose a threat.
- C. Ravine Sidewalls and Bluffs.
1. Buffers. A fifty-foot undisturbed buffer of native vegetation shall be established from the top, toe, and sides of all ravine sidewalls and bluffs.
 2. Buffer Reduction. The buffer may be reduced when expert verification and environmental information demonstrate to the satisfaction of the site plan review committee or hearings examiner, whichever is applicable, that the proposed construction method will:
 - a. Not adversely impact the stability of ravine sidewalls and bluffs; and
 - b. Not increase erosion and mass movement potential of ravine sidewalls and bluffs; and
 - c. Use construction techniques which minimize disruption of the existing topography and vegetation; and

d. Include measures to overcome any geological, soils, and hydrological constraints of the site. The buffer may be reduced by no more than fifty percent.

3. Additional Buffers. The site plan review committee may require increased buffers if environmental studies indicate such increases are necessary to mitigate landslide, seismic and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare.

4. Building Setback Lines. A building setback line of ten feet is required from the edge of any buffer of a ravine sidewall or bluff. Minor structural intrusions into the area of the building setback line may be allowed if it is determined that such intrusions will not negatively impact the geologically sensitive area.

5. All buffers shall be measured from the top, toe, and sides of all ravine sidewalls or bluffs.

D. Developable Geologically Sensitive Areas. Hillsides other than ravine sidewalls and bluffs and their buffers and hillsides greater than forty percent slope are developable pursuant to the provisions of this chapter. The applicant shall clearly and convincingly demonstrate to the satisfaction of the site plan review committee or hearings examiner, whichever is applicable, that the proposal incorporates measures protecting the public health, safety, and welfare.

E. Hillsides of Fifteen Percent Slope and Greater--Disturbance Limitations. Development on hillsides shall comply with the following requirements regarding disturbance limitations, development location, development design, construction techniques and landscaping.

1. Amount of Disturbance Allowed. The following chart sets forth the maximum slope disturbance allowed on a development site:

Slope	Amount of Slope Which Can be Disturbed	Factor
0-15%	100%	1.00
15-25%	60%	.60
25-40%	45%	.45
40%+	0%	.00

The overall amount of disturbance allowed on development sites which have any combination of the above slope categories shall be determined by the following formula:

$$(\text{Square footage of site having 0-15\% slopes}) \times 1.00 + (\text{Square footage of site having 15-25\% slopes}) \times .60 + (\text{Square footage of site having 25-40\% slopes}) \times .45 = \text{Total Amount of Allowable Site Disturbance.}$$

The intent of this section shall be to provide reasonable flexibility in site development while promoting the intent of working with existing topography as opposed to against it.

2. Development Location.

a. Structures and improvements shall be clustered to retain as much open space as possible and the natural topographic character of the slope; and

b. Structures and improvements shall conform to the natural contour of the slope, foundations must be tiered to generally conform to the existing topography of the site; and

c. Structures and improvements shall be located to preserve the most sensitive portion of the site and its natural land forms and vegetation.

3. Development Design.

- a. The footprint of buildings and other disturbed areas shall be minimized. The least number of buildings is desirable in order to consolidate the development; and
 - b. Use of common access drives and utility corridors is required where feasible; and
 - c. Impervious lot coverage shall be minimized. With the exception of detached single family structures, under-structure parking and multi-level structures shall be incorporated where feasible; and
 - d. Roads, walkways and parking areas shall be designed to parallel the natural contours of the hillsides while maintaining consolidated areas of natural topography and vegetation. Access shall be located in the least sensitive area feasible; and
 - e. Use of retaining walls which allow the maintenance of existing natural slope areas is preferred over graded artificial slopes.
4. Construction Techniques.
- a. Use of foundation walls as retaining walls is preferable to rock or concrete walls built separately and away from the building. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation; and
 - b. Structures shall be tiered to conform to existing topography and to minimize topographic modification.
5. Excavation and Grading.
- a. All requirements of the Grading Chapter of the city's adopted Building Code shall be satisfied. Requirements under this chapter shall be consolidated with review requirements of the Grading Chapter of the Building Code to provide a coordinated review process.
6. Landscaping. The disturbed area of a development site not used for buildings and other improvements shall be landscaped according to a landscape design which will achieve a minimum forty percent coverage by the canopy of trees and shrubs within ten years to provide habitat desirable to native western Washington birds. The trees and shrubs shall be a mix of shade, flowering, and coniferous and broad-leaf evergreens that are either native to the Puget Sound region or are valuable to western Washington birds. The Department of Wildlife "Plants for Wildlife in Western Washington" shall be used as a general guide.
- a. Trees shall be the following size at time of planting and shall conform to the "American Standard for Nursery Stock":
 - (1) Single-stem shade and flowering trees shall be a minimum one and one-half inch to two inch caliper trunk as measured six inches above the ground.
 - (2) Multi-stem shade and flowering trees shall be a minimum height of eight feet as measured from the ground level to the average uppermost point of growth of the plant.
 - (3) Coniferous evergreen trees shall be a minimum height of six feet as measured from the ground to the midpoint between the uppermost whorl and the tip of the leader. For species of trees without whorls, minimum height shall be measured to the uppermost side growth. The ratio of height to spread shall not be less than five to three.
 - (4) Broad-leaf evergreen trees shall be a minimum height of four feet as measured from the ground level to where the main part of the plant ends, not to the tip of a thin shoot.
 - b. Shrubs shall be the following size at time of planting and shall conform to the "American Standard for Nursery Stock":

- (1) Dwarf and semi-dwarf deciduous shrubs shall be a minimum height of two to two and one-half feet above grade, and either a number three container size for container grown plants, ten inch diameter root ball for balled and burlapped plants, or eleven inch root spread for bare root plants.
- (2) Strong-growing deciduous shrubs shall be a minimum height of two to three feet above grade, and either a number three container size for container grown plants, ten inch diameter root ball for balled and burlapped plants, or eleven inch root spread for bare root plants.
- (3) Coniferous and broad-leaf evergreen shrubs (Types 1, 2, and 3) shall be a minimum height of two to two and one-half feet spread or height, and either a minimum number three container size for container grown plants or twelve inch diameter root ball for balled and burlapped plants.

7. Erosion Control. A special drainage and erosion control plan shall be prepared outlining measures being taken to effectively control drainage and erosion. Landscaping activities and grading and excavation activities may be limited to specific times of the year based upon an analysis of soil types, proximity of wetlands, or other factors that may indicate an unacceptable risk of erosion hazards and related impacts.

F. Seismic Hazard Areas. The city of Lacey acknowledges it is in a seismic hazard zone and shall pursue more specific identification of those areas in the city at the greatest risk. Once said areas are identified, specific criteria designed to protect the public safety shall be developed. (Ord. 1208 §59, 2003; Ord. 935 §11 (part), 1992).

14.37.190 Special conditions.

A. The location of the outer extent of the geologically sensitive area with buffers pursuant to an approval shall be marked in the field by a qualified geotechnical engineer, and such field marking shall be approved by the city of Lacey prior to the commencement of approved activities. Such field markings shall be maintained throughout the duration of the approval.

B. The city of Lacey may attach such additional conditions as deemed necessary to assure protection of property or safety of its citizens, mitigation of environmental impacts related to the geological sensitivity present at the site, and compliance with other purposes and requirements of this chapter. (Ord. 1192 §89, 2002; Ord. 935 §11 (part), 1992).

14.37.200 Financial security.

A. The city of Lacey shall require the applicant of a development proposal to provide financial security acceptable to the city of Lacey in an amount of one hundred fifty percent of the estimated cost of improvements sufficient to fulfill the requirements of this chapter and to secure compliance with conditions and limitations set forth in the approval. The amount and the conditions of the financial security shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such financial security, the city of Lacey may utilize the financial security to fulfill obligations of the approval and take any other steps necessary to gain compliance with approval conditions including instituting an appropriate action in a court of competent jurisdiction. The city of Lacey shall release the financial security upon determining that:

1. All activities, including any required mitigating conditions, have been completed in compliance with the terms and conditions of the approval and the requirements of this chapter;
2. Upon the posting by the applicant of financial security for maintenance of required improvements for two years.

Until such written release of the financial security by the city, such security cannot be released to the applicant.

B. The city of Lacey shall require the holder of an approval issued pursuant to this chapter to post financial security acceptable to the city of Lacey in an amount of twenty percent of the cost of improvements sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The city of Lacey shall release the financial security upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or mitigation have been satisfactorily met for the required period. (Ord. 935 §11 (part), 1992).

14.37.210 Other laws and regulations.

No approval granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 1192 §90, 2002; Ord. 935 §11 (part), 1992).

14.37.220 Suspension, revocation.

In addition to other penalties provided for elsewhere, the city of Lacey may suspend or revoke an approval if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 1192 §91, 2002; Ord. 935 §11 (part), 1992).

14.37.230 Notice of final decision.

The city of Lacey shall provide notice of its actions pursuant to the requirements of Section 1C.070 of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §92, 2002; Ord. 935 §11 (part), 1992).

14.37.240 Appeals.

Any decision of the city of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §93, 2002; Ord. 935 §11 (part), 1992).

14.37.250 Enforcement.

A. The city of Lacey shall have authority to enforce this chapter, any rule or regulation adopted, and any permit or order issued pursuant to this chapter, against any violation or threatened violation thereof. The city of Lacey is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.

B. Enforcement actions shall include civil penalties, administrative orders and actions for damages and restoration.

1. The city of Lacey may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a geologically sensitive area which are inconsistent with this chapter or an applicable habitat or species protection program.
2. The city of Lacey may serve upon a person a cease and desist order if an activity being undertaken on-site with a geologically sensitive feature or required buffers is in violation of this chapter. Whenever any person violates this chapter or any permit issued to implement this chapter, the city of Lacey may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.
 - a. Content of Order. The order shall set forth and contain:
 - (1) A description of the specific nature, extent, and time of violation and the damage or potential damage; and
 - (2) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order;
 - (3) Effective Date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed;
 - (4) Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.
3. Any person who undertakes any activity within a geologically sensitive area without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required

by this chapter or of any order issued pursuant to subsection (B)(2) of this section shall incur a penalty allowed per violation. In the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the superior court within the subject jurisdiction.

4. Aiding or Abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty.

5. Notice of Penalty. Civil penalties imposed under this section shall be imposed by a notice to the person incurring the same from the city of Lacey. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

6. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the city of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the city of Lacey by action of the city hearings examiner under the provision of Chapter 2.30 LMC may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC 2.24.250.

8. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to an approval. (Ord. 935 §11 (part), 1992).

14.37.260 Non-conforming activities.

A nonexempt activity that was approved prior to the passage of the ordinance codified in this chapter and to which significant economic resources have been committed pursuant to such approval but which is not in conformity with the provisions of this chapter may be continued subject to the following:

A. No such activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its non-conformity without a permit issued pursuant to the provisions of this chapter;

B. If a non-conforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter;

C. If a non-conforming use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter;

D. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as non-conforming activities. (Ord. 935 §11 (part), 1992).

14.37.270 Repealed

(Ord. 1192 §94, 2002; Ord. 935 §11 (part), 1992).

14.37.280 Amendments.

These regulations and the city of Lacey zoning map may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning become available. (Ord. 935 §11 (part), 1992).

14.37.290 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the

remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 935 §11 (part), 1992).

14.37.300 Assessment relief.

The assessors of Thurston County shall consider geologically sensitive area regulations in determining the fair market value of land. Any owner of an undeveloped area designated as geologically sensitive shall have that portion of land assessed consistent with applicable restrictions. Such landowner shall also be exempted from special assessments on the controlled area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 935 §11 (part), 1992).



DEPARTMENT OF
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State of Washington



Wetland Guidance for CAO Updates

Western Washington Version

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Wetland Guidance for CAO Updates

Western Washington Version

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Summary

This publication replaces *Wetlands & CAO Updates: Guidance for Small Cities (Western Washington Version)*, Publication No. 10-06-002, January 2010. It also replaces the 1st revision dated July 2011 and the 2nd revision dated October 2012.

This new publication, for the most part, contains the same guidance as the “small cities guidance” referenced above. Over the last few years, it became obvious that the information in that document could apply to all cities and counties, not just small cities. However, the wetland buffer table may be too restrictive for county use because it assumes that adjacent land use intensity is high. Counties and larger cities generally have more staff and resources that allow more sophisticated approaches to assigning wetland buffers.

In addition, these jurisdictions may be able to provide additional protection for habitat function by requiring protected wildlife corridors between the wetland and other priority habitats in exchange for buffer reduction—something that is often impossible in small, urban jurisdictions.

Check with Ecology wetland staff for more information about using this guidance in your particular jurisdiction <http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm>.

Specific changes to this new publication include:

- Reference to the updated 2014 wetland rating system
- Updated definitions based on the updated 2014 wetland rating system
- Buffer tables that include habitat scores from the updated 2014 wetland rating system
- Addition of buffer table to be used if minimizing measures are not used
- Emphasis on the requirement to provide wildlife corridors where possible in exchange for buffer reduction
- Guidance on using wetlands for stormwater management facilities
- Revisions to exemptions for small wetlands
- Recommended language addressing agricultural activities in non-VSP jurisdictions
- Addition of recent mitigation documents and guidance
- Corrected links to resource documents and web pages

Introduction

This document is intended to provide guidance and tools useful in developing a wetland protection program for jurisdictions that are in the process of updating their critical areas ordinances (CAOs) to meet the Growth Management Act (GMA) requirements. Wetlands are one of the five types of critical areas identified in the GMA.

We recognize that many local governments lack the planning staff and resources necessary to develop and implement wetland standards that are both locally appropriate and based on best available science (BAS). Nonetheless, they must comply with the GMA requirement to designate and protect wetlands.

The first part of this document describes the important topics that should be addressed in the wetlands section of your CAO. It includes recommendations for wetland protection based on BAS. Appendix A is a sample CAO chapter for wetlands that incorporates these recommendations into a format similar to that found in many local CAOs. (Please note that the sample CAO will need to be tailored to your jurisdiction's naming and numbering system. There are several generic "XX" references throughout the text.) Appendix B contains definitions that are commonly used in wetlands regulations.

This document does not include the more general provisions typically found in regulations related to all critical areas. These can be found in Appendix A of the *Critical Areas Assistance Handbook* published by the Washington State Department of Commerce (formerly the Department of Community, Trade, and Economic Development) in November 2003 <http://www.commerce.wa.gov/Documents/GMS-Critical-Areas-Appendix-A-Sample-Code-Provisions.pdf>. This document revises the wetland-specific provisions in the *Critical Areas Assistance Handbook*.

The recommendations in this document and the sample ordinance may not be appropriate for use by rural **county** governments. Factors to consider are the county's rate of growth, the nature and intensity of land uses in the county, the wetland resources at risk, and the ability of the county to implement its CAO. We suggest that you contact us to determine whether this guidance is applicable to your county. Please use the following link to find Ecology's wetland specialist for your area:
<http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm>.

Guidance on the Science of Wetland Protection

Ecology has produced several different tools that can help local governments develop a comprehensive wetlands protection program for their jurisdictions. The Washington Departments of Ecology (Ecology) and Fish and Wildlife (WDFW) have published a two-volume guidance document to help local governments protect and manage wetlands:

- ***Wetlands in Washington State, Volume 1: A Synthesis of the Science*** (Washington State Department of Ecology Publication #05-06-006, Olympia, WA, March 2005). This volume is the result of an extensive search of over 17,000 scientific articles and synthesizes over 1,000 peer-reviewed works relevant to the management of Washington's wetlands.
- ***Wetlands in Washington State, Volume 2: Managing and Protecting Wetlands*** (Washington State Department of Ecology Publication #05-06-008, Olympia, WA, April 2005). This volume was developed with the assistance of local government planners and wetland consultants. It can be used to craft regulatory language that is based on BAS. We recommend that you review Chapter 8 and its appendices as you begin to work on updating your existing regulations. (Please note: Appendix 8-C was revised in October 2014.)

In October 2013, Ecology released an update of the science pertaining to wetland buffers. The new information on buffers provides a refinement of our knowledge and revisits the conclusions and key points in the 2005 synthesis.

- ***Update on Wetland Buffers: The State of the Science*** (Washington State Department of Ecology Publication #13-06-011, Olympia, WA, October 2013).

Ecology, in coordination with the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA), has also developed a two-part guidance document aimed at improving the quality and effectiveness of compensatory mitigation in Washington State:

- ***Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 1)*** (Washington State Department of Ecology Publication #06-06-011a, Olympia, WA, March 2006). Part 1 provides a brief background on wetlands, an overview of the factors that go into the agencies' permitting decisions, and detailed guidance on the agencies' policies of wetland mitigation, particularly compensatory mitigation. It outlines the information the agencies use to determine whether specific mitigation plans are appropriate and adequate.
- ***Wetland Mitigation in Washington State–Part 2: Developing Mitigation Plans (Version 1)*** (Washington State Department of Ecology Publication #06-06-011b, Olympia, WA, March 2006). Part 2 provides technical information on preparing plans for compensatory mitigation.

Ecology has also developed a wetland ratings system for western Washington. The rating system is a useful tool for dividing wetlands into groups that have similar needs for protection.

- ***Washington State Wetland Rating System for Western Washington: 2014 Update*** (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

Links to all of these documents can be found at:

<http://www.ecy.wa.gov/programs/sea/wetlands/gma/index.html>.

Relationship between the GMA and the SMA

You may be planning to adopt a Shoreline Master Program (SMP) that will rely on the CAO for protection of wetlands and other critical areas in shoreline jurisdiction. Ecology does not have an approval role in the CAO adoption process; our role is advisory. The SMP, however, is a joint document of Ecology and the local government requiring Ecology approval. Before the SMP can be approved by Ecology, the CAO must meet the “no net loss of ecological functions” requirement (WAC 173-26-186(8)(b)(i)).

You should be aware that the Shoreline Management Act (SMA) may preclude or alter the administration of your CAO. For example, certain activities exempted under the CAO will not qualify for exemption under the SMP. In addition, activities allowed without permits under the CAO may require permits under the SMP.

For assistance with CAO-SMP integration, please use the following link to find the shoreline planner for your area:

<http://www.ecy.wa.gov/programs/sea/sma/contacts/index.html>.

Policy Discussion for Your Wetlands Chapter

Your wetlands chapter will exist as one of several in your critical areas ordinance. Below we describe some of the important subsections in the wetlands chapter and include our recommendations for protecting wetlands based on the best available science.

Purpose

The chapter typically begins with a purpose statement, followed by designation criteria, which include a definition of wetlands and the methods by which they are identified and rated and other details listed below. The purpose statement may also state that this chapter is intended to be consistent with the requirements of 36.70A RCW and to implement the goals and policies of your Comprehensive Plan for protecting wetlands.

Definitions

Your wetlands chapter may include a separate list of definitions, or the definitions may be included in the general definitions section of the CAO. Appendix B is a list of

definitions relevant to your wetlands chapter. This list includes terms identified in state law and agency guidance documents. Clarity and consistency in the use of these terms will make ordinance implementation easier.

Identifying, Designating, and Rating Wetlands

The first steps in regulating wetlands are to define what is being regulated and specify how these areas will be identified. The GMA requires the use of the following definition of wetlands and specifies how to identify and delineate them.

In designating wetlands for regulatory purposes, **counties and cities are required to use the definition of wetlands in RCW 36.70A.030(21):**

“Wetland” or “wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands.

Wetlands are subject to a local government’s regulatory authority if they meet the criteria in this definition. This includes Prior Converted Croplands (PCCs) and isolated wetlands. These wetlands can provide critical functions and habitat and should be regulated. **The GMA does not allow flexibility in adopting a modified definition of wetlands.**

Irrigation practices, such as the Irrigation District ditches in Sequim, can result in human-created wetlands. More frequently, however, irrigation practices may augment natural sources of water to a wetland. Wetlands that form along irrigation ditches that were intentionally created in uplands may be exempted from regulation. However, if a wetland is the unintentional by-product of irrigation activities, the wetland should be regulated. If a wetland disappears as the result of a change in irrigation practice, it will not be regulated in the future. However, most wetlands will not disappear completely as a result of local changes in irrigation practices because of natural sources of water or regional irrigation influences. Please see <http://www.ecy.wa.gov/programs/sea/wetlands/irrigation.html> for more information on how Ecology regulates irrigation-influenced wetlands.

Ecology is most concerned about those changes in land use that would eliminate wetlands as the result of fill or grading, such as a conversion to commercial or residential use. These activities should be regulated by the CAO, and appropriate protection standards

(such as buffers and mitigation) should be required in order to minimize the loss of wetland area and function.

Many jurisdictions use the National Wetland Inventory (NWI) to determine whether wetlands exist within their boundaries. Since the NWI is based on photographs that are over 30 years old and provides only a general approximation of wetland location, it cannot be used alone to designate wetlands. Wetlands are those areas that meet the above definition of “wetland.” Wetlands are also dynamic systems that change over time. It is important to adopt the GMA definition and to have regulations in place to protect wetland functions and values, should wetlands that do not currently appear on the NWI or other maps be identified in the future.

State laws require that wetlands protected under the GMA and the SMA be delineated using a manual that is developed by Ecology and adopted into rules ([RCW 36.70A.175](#); [RCW 90.58.380](#)). The Department of Ecology adopted a wetland delineation manual in 1997 ([WAC 173-22-080](#)) that was based on the original 1987 Corps of Engineers manual and subsequent Regulatory Guidance Letters.

During the last few years the Army Corps of Engineers has updated and expanded their delineation manual with regional supplements. To maintain consistency between the state and federal delineations of wetlands, Ecology has repealed [WAC 173-22-080](#) (the state delineation manual) and replaced it with a revision of [WAC 173-22-035](#) that states that delineations should be done according to the currently approved federal manual and regional supplements. **The changes became effective March 14, 2011.**

The GMA states that “wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to [RCW 90.58.380](#).” RCW 90.58.380 allows the Department of Ecology to adopt rules that incorporate changes to the manual. **Therefore, the currently approved federal manual and regional supplements should be used for delineating wetlands in GMA jurisdiction.** See: <http://www.ecy.wa.gov/programs/sea/wetlands/delineation.html>.

Local governments are not required to rate or classify wetlands when regulating them. However, methods that classify, categorize, or rate wetlands help target the appropriate level of protection to particular types of wetlands and avoid the “one-size-fits-all” approach. If a local government uses a wetland rating system, it must consider the criteria described in [WAC 365-190-090\(3\)](#).

The *Washington State Wetland Rating System for Western Washington: 2014 Update (Effective January 2015)*, (Ecology Publication #14-06-029, October 2014) is a useful tool for dividing wetlands into groups that have similar needs for protection. The revised rating system represents the best available science, as it is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them. It provides a quick “snapshot” characterization of a particular wetland. In many cases, it will provide enough information about existing wetland functions to allow

adequate plan review and land use decisions to be made without the additional expense of a separate wetland functional assessment.

While local governments are not required to use Ecology’s revised rating system, we strongly encourage you to adopt wetland regulations that require its use. Most qualified wetland specialists are using the revised rating system. In cases where state and federal permits are required, the use of this rating system would benefit applicants by eliminating the need to rate wetlands according to a different local standard. If you choose not to use the state’s wetland rating system, you must provide a rationale for this decision according to [WAC 365-190-090\(3\)](#).

We recommend that you include language that describes the four categories of wetlands. This text is different for eastern and western Washington jurisdictions. Please refer to Appendix A, Section XX.020.B.1-4 for the specific category descriptions.

Regulated Uses and Activities

Your wetland section should list those uses and activities that are regulated under the critical areas ordinance. Some of these items include: removal, excavation, grading, or dredging of material of any kind; draining, flooding, or disturbing of the wetland, water level, or water table; the construction, reconstruction, demolition, or expansion of any structure; etc. More extensive examples are provided in the sample ordinance.

Wetlands are often impacted by unauthorized **clearing and grading** that takes place before application for development permits. You should make sure your CAO adequately regulates clearing and grading. If it doesn’t, you should adopt a separate clearing and grading ordinance. The Department of Commerce (formerly Community, Trade and Economic Development) published technical guidance on developing a clearing and grading ordinance: <http://www.commerce.wa.gov/Documents/GMS-Clearing-and-Grading-Technical-Guidance-Final-2005.pdf>.

Most forest practices (as defined in [RCW 76.09](#)) are exempted from the provisions of a wetlands chapter in the CAO. However, those forest practices that are Class IV general should be regulated. These activities constitute a conversion from forestry to some other use. As such, buffers and wetland protections are appropriate.

Exemptions

Your wetlands section should identify those activities in or near wetlands that are regulated and those that are exempt from regulation. Exemptions include activities that will have little or no environmental effect or are an emergency that threatens public health or safety. In the case of emergency response activities that affect wetlands and buffers, the responsible party should be required to obtain after-the-fact permits and to rectify impacts. Some jurisdictions place the exemptions or exceptions in a general exemptions section near the front of the CAO. However, some exemptions or exceptions may apply only to wetlands, so it may be more practical to have these specific exemptions in the wetlands section.

Exempt activities should be limited to those that will not have a significant impact on a wetland's structure and function (including its water, soil, or vegetation) and those that are expected to be very short term. Local governments should, however, also consider the cumulative impacts from exempted activities. They can result in a loss of wetland acreage and function that are not replaced through compensatory mitigation.

The scope, coverage, and applicability of a critical areas ordinance should capture the full range of activities that are detrimental to wetland functions. Therefore, exemptions should be supported by the scientific literature and be carefully crafted to minimize the potential for adverse impacts. However, a local government should not assume that an exemption is appropriate in the absence of science to refute the exemption. The language should clearly state whether a given activity is exempt from applicable standards in the code or whether it is exempt from needing a permit but still must comply with the code. Exemptions should be limited and construed narrowly.

For more information on this topic, please refer to Chapter 8 of *Wetlands in Washington State, Volume 2: Managing and Protecting Wetlands* (Ecology Publication #05-06-008, Olympia, WA, April 2005:

<https://fortress.wa.gov/ecy/publications/summarypages/0506008.html>).

The GMA, in [RCW 36.70a.030\(21\)](#), requires local governments to regulate wetlands that meet the GMA-required definition of “wetland” (see the definition of “wetland” in the previous section). This includes **Prior Converted Croplands (PCCs)** and **hydrologically isolated wetlands**, two types of wetlands that have been exempt from federal regulation at times. PCCs are wetlands that have been ditched and drained for active agricultural use before December 23, 1985. Isolated wetlands are those wetlands that have no surface hydrologic connection to waters of the United States. These wetlands must be regulated by your CAO. Please see <http://www.ecy.wa.gov/programs/sea/wetlands/isolated.html> for more information on how the state of Washington currently regulates isolated wetlands.

The scientific literature does not support exempting wetlands that are below a certain size. While we recognize an administrative desire to place size thresholds on wetlands that are to be regulated, you need to be aware that it is not possible to conclude from size alone what functions a particular wetland may be providing. Ecology has developed a strategy for exempting small wetlands when additional criteria are considered. This language is present in the sample ordinance. **However, impacts to small wetlands are NOT exempt from the requirement to provide compensatory mitigation for those impacts.** If an in-lieu fee (ILF) program or a mitigation bank is available in your area (see page 15), these mitigation alternatives can help prevent a net loss of wetland function from impacts to small wetlands in your jurisdiction.

Exceptions are typically addressed in a CAO in the context of reasonable use of property. For more information about this regulatory tool, see Section VII of the *Critical Areas Assistance Handbook* published by the Washington State Department of Commerce:

<http://www.commerce.wa.gov/Documents/GMS-Critical-Areas-Assist-Handbook.pdf> .

You should keep in mind that the Shoreline Management Act does not allow reasonable

use exceptions, providing instead a variance pathway to afford regulatory relief. **If you decide to incorporate your CAO into your SMP when the latter document is updated, you will need to address this potential inconsistency.**

Forest Practices

Class I, II, and III forest practices should be exempted from the wetlands section of your CAO. These activities are regulated through RCW 76.09, the Forest Practices Act.

Agricultural Activities

In 2011 the Washington Legislature created the Voluntary Stewardship Program (VSP) as an alternative for meeting GMA requirements related to protecting critical areas and agricultural lands. In 2015 the state provided funding for participating counties to begin the VSP planning process. For more information on this program, see <http://www.scc.wa.gov/voluntary-stewardship/>.

For the GMA update cycle beginning 2015, some counties will begin addressing critical area issues related to agriculture through a VSP work plan.

If your jurisdiction is **not** in a participating county or not in a participating watershed, then you must review and revise your development regulations for protecting wetlands as they apply to agricultural activities (see [RCW 36.70A.710](#)).

If your jurisdiction is in a VSP watershed designated by a participating county, your GMA responsibilities to protect critical areas from agricultural activities in or near wetlands will be achieved through the VSP work plan.

However, it is important to keep in mind that federal and state regulations, such as the Clean Water Act and the State Water Pollution Control Act are still applicable in all jurisdictions regardless of participation or non-participation in the VSP. The VSP does not alter the responsibility of property owners to meet water quality standards, protect wetlands, and comply with state and federal environmental regulations.

Ecology recommends the following for non-VSP jurisdictions:

“Existing and ongoing agricultural activities” are often exempted from the provisions of a CAO. These activities should be clearly defined and should not include removing trees, diverting or impounding water, excavation, ditching, draining, culverting, filling, grading, or similar activities that introduce new adverse impacts to wetlands or other aquatic resources. Maintenance of agricultural ditches should be limited to removing sediment in existing ditches to a specified depth at date of last maintenance. Conversion of wetlands that are not currently in agricultural use to a new agricultural use should be subject to the same regulations that govern new development.

Ecology encourages the use of Best Management Practices (BMPs), farm conservation plans, and incentive-based programs to improve agricultural practices in and near wetlands. The goal of the BMPs should be to ensure that ongoing agricultural activities

minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat.

Strategies for Protecting Wetlands from Impacts

Wetlands Inventory

You may wish to pursue accurate identification and rating of all wetlands in your planning area based on the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014) and the approved federal wetland delineation manual and applicable regional supplements. These documents can be downloaded at:

- <http://www.ecy.wa.gov/programs/sea/wetlands/ratingsystems/index.html> (rating systems)
- <http://www.ecy.wa.gov/programs/sea/wetlands/delineation.html> (delineation manual and supplements)

While this approach may initially be more labor intensive and expensive, such information will allow rapid review of development proposals and can help your jurisdiction prioritize areas for preservation or acquisition.

This approach is consistent with BAS. It can help with the development of a landscape-analysis approach to protecting wetlands in your jurisdiction. Landscape analysis for critical areas facilitates and informs long-range planning. The City of Aberdeen used this approach in their CAO update. (See Section XX.050.B in the sample ordinance.)

ABCs

The most basic approach to protecting wetland functions and values can be summarized as the **A-B-C Approach, or Avoid-Buffer-Compensate**. This means that a CAO should contain language to ensure that:

1. Wetlands impacts are **avoided** to the extent practicable.
2. Wetlands are **buffered** to protect them from adjacent land-use impacts.
3. Unavoidable impacts are **compensated**, or replaced.

Your CAO should provide requirements on how to reduce the severity of impacts to wetlands. When an alteration to a wetland is proposed, impacts should be avoided, minimized, or compensated for in the following sequential order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
6. Monitoring the impact and taking appropriate corrective measures.

Buffers

Establishing standards for wetland buffers is usually the most challenging part of developing a CAO. However, developing a predictable, reasonable approach for establishing buffers that includes the best available science is not as difficult as it may seem.

The scientific literature is unequivocal that **buffers are necessary to protect wetland functions** and values. The literature consistently reports that the primary factors to evaluate in determining appropriate buffer widths are:

1. The wetland type and functions needing protection (buffers filter sediment, nutrients, or toxics; screen noise and light; provide forage, nesting, or resting habitat for wetland-dependent species; etc.).
2. The types of adjacent land use and their expected impacts.
3. The characteristics of the buffer area (slope, soils, vegetation).

The widths of buffers needed vary widely, depending on these three factors. For example, providing filtration of coarse sediment from residential development next to a low-quality wetland would require only a relatively flat buffer of dense grasses or forest/shrub vegetation in the range of 20 to 30 feet. However, providing forage and nesting habitat for common wetland-dependent species such as waterfowl, herons, or amphibians in a high-quality wetland adjacent to residential development would require a buffer vegetated with trees and shrubs in the range of 200 to 300 feet. This illustrates the necessity of using an approach to buffers that incorporates wetland type and functions (based on an appropriate rating system), types of land use, and the environmental characteristics of the existing buffer.

Your CAO should require buffers for activities that will impact wetland functions. Ecology's complete buffer recommendations are presented in Appendix 8-C of *Wetlands*

in Washington State, Volume 2 (revised October 2014). We recommend using the tables shown in the sample ordinance.

Tables XX.1 and XX.3 are derived from the more-detailed tables in *Volume 2*. They are easy to use and are based on BAS. This approach provides the important balance of predictability and flexibility. Determination of buffer size is simply a matter of applying the results of the wetland rating system score to the buffer matrix, based on the wetland category and wildlife habitat score. It generally requires smaller buffers for those wetlands that do not have much wildlife use.

Table XX.1 requires the use of the minimizing measures in Table XX.2. These measures are intended to reduce the impacts of the adjacent land use on the wetland. If impacts are reduced, the size of the buffer required to protect the wetland's functions can be reduced. The buffer widths in Table XX.1 represent a 25% reduction in our recommended buffers in *Volume 2*.

Table XX.1 also requires the protection of a wildlife corridor between wetlands that score 5 or more habitat points and any other Priority Habitat. This requirement is particularly applicable in large or rural jurisdictions where species need to have access to other habitats to meet their life needs. A buffer is the usual means of providing this necessary habitat. However, if buffer reduction is allowed, we cannot ensure that these species will have adequate access to habitat without providing a connective corridor. In urban areas, the best solution is a landscape-based approach that takes into account actual species use and spatial arrangement and connectivity of habitats. Without such an approach, jurisdictions should use the guidance provided in the sample wetland chapter.

If your jurisdiction is small and urban, providing a wildlife corridor may not be an option. You should consult with Ecology wetland staff to determine whether using Tables XX.1 and XX.2 alone will provide adequate protection for your wetland functions.

Table XX.3 shows the buffer widths required if the minimizing measures in Table XX.2 are **not** implemented and if a wildlife corridor is **not** protected. These buffers are wider than those in Table XX.1, because the impacts to the wetland functions are potentially greater.

The buffer tables XX.1 and XX.3 do not consider land-use intensity in the buffer calculation, since it is presumed that most urban land uses will be high or moderate intensity. However, if your jurisdiction has an activity that can be considered low intensity, such as a passive recreation area or nature park with undeveloped trails, you may wish to prescribe a smaller buffer **for that area only**. The buffer for an area should be no less than 75% of the otherwise required buffer. Such a "low-intensity" buffer is not appropriate for residential, commercial, or industrial uses. Of course, if your jurisdiction includes rural land uses, you should consider using the buffer tables in Appendix 8-C of *Wetlands in Washington State, Volume 2* (revised October 2014).

Some wetland types listed in the buffer tables may not be present in your jurisdiction (e.g., coastal lagoons, bogs, interdunal wetlands, etc.). If you are certain that these wetlands do not occur within your jurisdiction and would not be introduced by future annexations, you may remove those wetland types from the buffer tables.

You may wish to adopt an even simpler approach to wetland buffers, one based only on wetland category. In this case, buffers must be large enough to protect the most-sensitive wetlands from the most-damaging land-use impacts. Please refer to Table 8C-1 of Appendix 8-C of *Wetlands in Washington State, Volume 2* (revised October 2014) for this example.

Ecology's buffer recommendations are based on a moderate-risk approach to protecting wetland functions. This means that there is a moderate risk that wetland functions will be impacted. Adopting smaller buffers represents a high-risk approach, and you need to be prepared to justify why such an approach is necessary and to offer alternative means of protecting wetland functions that help reduce the risk.

Ecology's buffer recommendations are also based on the assumption that the buffer is well vegetated with native species appropriate to the ecoregion. If the buffer does not consist of vegetation adequate to provide the necessary protection, then either the buffer area should be planted or the buffer width should be increased.

Buffer Averaging

Local governments often wish to allow buffer widths to be varied in certain circumstances. This may be reasonable if your standard buffers are adequate. The width of buffers may be averaged if this will improve the protection of wetland functions, or if it is the only way to allow for reasonable use of a parcel.

We recommend that a request for buffer averaging include a wetland report. The report should be prepared by a qualified professional describing the current functions of the wetland and its buffer and the measures that will be taken to ensure that there is no loss of wetland function due to the buffer averaging. The width of the buffer at any given point after averaging should be no smaller than 75% of the standard buffer.

If you choose to adopt narrower buffer widths than those supported by BAS, then further reductions to the buffer width should not be allowed under any circumstances.

Mitigation

Applicants are required by state and federal permitting agencies to show that they have followed mitigation sequencing and have first avoided and minimized impacts to wetlands wherever practicable. Your CAO should include the definition of mitigation sequencing and require applicants to demonstrate that they have applied avoidance and minimization. For more information and sample checklists, see <http://www.ecy.wa.gov/programs/sea/wetlands/avoidance.html>.

Unavoidable **impacts to wetlands should be offset by compensatory mitigation**. Your CAO should include standards for the type, location, amount, and timing of the mitigation. It should also include clear guidance on the design considerations and reporting requirements for mitigation plans.

Ecology's recommendations for the amount of mitigation (ratios) are based on wetland category, function, and special characteristics. Requiring a greater area for mitigation than the wetland area that will be impacted helps offset both the risk that compensatory mitigation will fail and the temporal loss of functions that may occur. We recommend using the ratio table shown in the sample ordinance. It is derived from the more-detailed tables in Part 1 of the joint agency guidance on mitigation: *Wetland Mitigation in Washington State, Parts 1 and 2* (Ecology Publications #06-06-011a & b, March 2006).

As an alternative to the mitigation ratios found in the joint guidance, Ecology has developed a credit-debit tool for calculating when a proposed wetland mitigation project adequately replaces the functions and values lost when wetlands are impacted. The tool is designed to provide guidance for both regulators and applicants during two stages of the mitigation process:

1. Estimating the functions and values lost when a wetland is altered (debits), and
2. Estimating the gain in functions and values that result from the mitigation (credits).

The Department of Ecology, however, does not require the use of this credit-debit method. It provides one method for determining the adequacy of compensatory wetland mitigation. It does not set any new regulatory requirements. The document and worksheets can be downloaded at:

<http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/creditdebit/index.html>.

In 2008 the Corps and the EPA issued a rule governing compensatory mitigation. The rule establishes performance standards and criteria to improve the quality and success of compensatory mitigation, mitigation banks, and in-lieu fee programs. For more information on the federal rule, see:

http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm.

By adopting mitigation standards based on the state and federal guidance and rules, you will be providing consistency for applicants who must also apply for state and federal permits.

Mitigation Alternatives

Various options are available for mitigation, in addition to the traditional on-site concurrent option. These options include placing the mitigation away from the project site (off-site mitigation), building mitigation in advance of project impacts, and using third-party mitigation providers such as wetland banks and in-lieu-fee programs. Deciding which option should be used depends on what works best for the applicant and

for the environment. Some of these options may not be available in your area at this time. However, we recommend that your CAO allow these options. They can be effective and valuable tools in preventing a net loss of wetland functions.

Some project applicants may propose mitigation that is consistent with sound ecological principles but is located outside of your jurisdiction. You may wish to include language in your CAO that enables your government to allow such out-of-jurisdiction mitigation opportunities.

In addition to the following options, you might want to consider allowing transfer of development rights (TDR) as a tool for protecting wetlands. The Department of Commerce is working with four Puget Sound counties in a pilot TDR program. For more information, contact the Commerce planner for your jurisdiction or see: [Commerce Regional Assistance Teams](#).

Mitigation Banking

A mitigation bank is a site where wetlands, streams, and/or other aquatic resource areas have been restored, established, enhanced, or (in certain circumstances) preserved for the purpose of providing compensation for unavoidable impacts to aquatic resources. A mitigation bank may be created by a government agency, corporation, nonprofit organization, or other entity. The bank sells its credits to permittees who are required to compensate for wetland impacts. Mitigation banks allow a permittee to simply write a check for their mitigation obligation. It is the bank owner who is responsible for the mitigation success. Mitigation banks require a formal agreement with the Corps, Ecology, and the local jurisdiction to be used for federal or state permits.

Ecology adopted the final Wetland Mitigation Banks Rule (WAC 173-700) in 2009. The purpose of the rule is to provide a framework for the certification, operation, and monitoring of wetland mitigation banks. To learn more about wetland banking and the rule, see Ecology's website at <http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/index.html>.

In-Lieu Fee (ILF)

In this approach to mitigation, a permittee pays a fee to a third party in lieu of conducting project-specific mitigation or buying credits from a mitigation bank. ILF mitigation is used mainly to compensate for impacts to wetlands when better approaches to compensation are not available or practicable, or when the use of an ILF is in the best interest of the environment.

An ILF represents the expected costs to a third party of replacing the wetland functions lost or degraded as a result of the permittee's project. Fees are typically held in trust until sufficient funds have been collected to finance a mitigation project. Only a nonprofit organization such as a local land trust, private conservation group, or government agency with demonstrated competence in natural resource management may operate an ILF program. All ILF programs must be approved by the Corps to be used for Section 404

permits. To learn more about ILF programs, see Ecology's website at <http://www.ecy.wa.gov/mitigation/ilf.html>.

Off-Site Mitigation

This refers to compensatory mitigation that is not located at or near the project that generates impacts to wetlands. Off-site mitigation is generally allowed when on-site mitigation is not practicable or environmentally preferable.

The 2008 federal rule on compensatory mitigation requires that some type of watershed approach be used in siting mitigation. Ecology, the Corps of Engineers, and EPA have developed guidance to help applicants select potential off-site mitigation sites. To download a copy of this guidance, *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication #09-06-032, December 2009), please see <https://fortress.wa.gov/ecy/publications/summarypages/0906032.html>.

Advance Mitigation

When compensatory mitigation is implemented before, and in anticipation of, future **known** impacts to wetlands, it is referred to as "advance mitigation." Advance mitigation has been used mostly for large mitigation projects that are constructed in distinct phases where the unavoidable impacts to wetlands are known. Advance mitigation lets an applicant provide all of the compensation needed for the entire project affecting wetlands at one time, which may result in more favorable mitigation ratios.

Although similar to mitigation banking, advance mitigation is different in several ways. Most importantly, advance mitigation is used only to compensate for the permittee's specific project (or projects) with pre-identified impacts to wetlands. Wetland banks provide mitigation for unknown future impacts within a specific "service" area. The advance mitigation can be used only by the permittee. Advance mitigation may not be sold unless it is changed to a wetland bank. Ecology, WDFW, and the Corps have developed guidance to help applicants develop advance mitigation proposals. To download a copy of this guidance, *Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation* (Ecology Publication #12-06-015, December 2012), please see <https://fortress.wa.gov/ecy/publications/SummaryPages/1206015.html>

Conclusion

We hope you find this information helpful. If you have questions about this document or need additional assistance with the wetlands section of your critical areas ordinance update, please call Donna Bunten at (360) 407-7172 or donna.bunten@ecy.wa.gov.

You may also contact one of Ecology's regional wetland specialists. They are available to work with you during your update process. For example, they can offer presentations to elected officials and planning commissions. They can also provide technical assistance including help with wetland delineation, wetland rating, ordinary high water

mark determination, and project review. Please use the following link to find the wetland specialist for your area:

<http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm>.

For assistance with other aspects of your critical areas ordinance update, please contact the Department of Commerce at (360) 725-3000.

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Appendix A - Sample Wetlands Chapter
(Western Washington)

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Subchapter XX.XX Wetlands

Sections:

- XX.010 Purpose
- XX.020 Identification and Rating
- XX.030 Regulated Activities
- XX.040 Exemptions and Allowed Uses in Wetlands
- XX.050 Wetland Buffers
- XX.060 Critical Area Reports
- XX.070 Compensatory Mitigation
- XX.080 Unauthorized Alterations and Enforcement

XX.010 Purpose

The purposes of this Chapter are to:

A. Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.

B. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout (name of jurisdiction).

C. Establish review procedures for development proposals in and adjacent to wetlands.

1. Compliance with the provisions of the Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter.

XX.020 Identification and Rating

A. Identification and Delineation. Identification of wetlands and delineation of their boundaries pursuant to this Chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplement. All areas within the City meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter. Wetland delineations are

valid for five years; after such date the City shall determine whether a revision or additional assessment is necessary.

B. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.

1. Category I. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than 1 acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than 1 acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score 8 or 9 habitat points and are larger than 1 acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.
2. Category II. Category II wetlands are: (1) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; (2) interdunal wetlands larger than 1 acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points).
3. Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between 0.1 and 1 acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

C. Illegal modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

XX.030 Regulated Activities

A. For any regulated activity, a critical areas report (see Chapter XX.060 of this Chapter) may be required to support the requested activity.

B. The following activities are regulated if they occur in a regulated wetland or its buffer:

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
2. The dumping of, discharging of, or filling with any material.
3. The draining, flooding, or disturbing of the water level or water table.
4. Pile driving.
5. The placing of obstructions.
6. The construction, reconstruction, demolition, or expansion of any structure.
7. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
8. "Class IV - General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations," WAC 222-12-030, or as thereafter amended.
9. Activities that result in:
 - a. A significant change of water temperature.
 - b. A significant change of physical or chemical characteristics of the sources of water to the wetland.
 - c. A significant change in the quantity, timing, or duration of the water entering the wetland.
 - d. The introduction of pollutants.

C. Subdivisions. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:

1. Land that is located wholly within a wetland or its buffer may not be subdivided.

2. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
 - a. Located outside of the wetland and its buffer; and
 - b. Meets the minimum lot size requirements of Chapter XX.XX.

XX.040 Exemptions and Allowed Uses in Wetlands

A. The following wetlands may be exempt from the requirement to avoid impacts (Chapter XX.070.A.1), and they may be filled if the impacts are fully mitigated based on the remaining actions in Chapter XX.070.A.2 through 6. If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. In order to verify the following conditions, a critical area report for wetlands meeting the requirements in Chapter XX.060 must be submitted.

1. All isolated Category IV wetlands less than 4,000 square feet that:
 - a. Are not associated with riparian areas or their buffers
 - b. Are not associated with shorelines of the state or their associated buffers
 - c. Are not part of a wetland mosaic
 - d. Do not score 5 or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology)
 - e. Do not contain a Priority Habitat or a Priority Area¹ for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter XX.XX.
2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.

¹See page 6 of “Priority Habitat and Species List,” Washington Department of Fish and Wildlife, 2008, Olympia, Washington. 177 pp.

B. Activities Allowed in Wetlands. The activities listed below are allowed in wetlands. These activities do not require submission of a critical area report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

1. Existing and ongoing agricultural activities, provided that they implement applicable Best Management Practices (BMPs) contained in the latest editions of the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or develop a farm conservation plan in coordination with the local conservation district. BMPs and/or farm plans should address potential impacts to wetlands from livestock, nutrient and farm chemicals, soil erosion and sediment control and agricultural drainage infrastructure. BMPs and/or farm plans should ensure that ongoing agricultural activities minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat.
2. Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.
3. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
4. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
5. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.
6. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately

disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

7. Educational and scientific research activities.
8. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.
9. Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment or Flow Control BMP if ALL of the following criteria are met:
 - a. The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-4 points, and
 - b. There will be “no net loss” of functions and values of the wetland, and
 - c. The wetland does not contain a breeding population of any native amphibian species, and
 - d. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach,” (available here: <http://www.ecy.wa.gov/biblio/0906032.html>); or the wetland is part of a priority restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan, and
 - e. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing, and
 - f. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits, and
 - g. **Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.**

Stormwater LID BMPs required as part of New and Redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site.

XX.050 Wetland Buffers

A. **Buffer Requirements.** The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high.

1. For wetlands that score 5 points or more for habitat function, the buffers in Table XX.1 can be used if both of the following criteria are met:
 - A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>)

The corridor must be protected for the entire distance between the wetland and the Priority Habitat by some type of legal protection such as a conservation easement.

Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, Table XX.1 may be used with the required measures in Table XX.2 alone.²
 - The measures in Table XX.2 are implemented, where applicable, to minimize the impacts of the adjacent land uses.
2. For wetlands that score 3-4 habitat points, only the measures in Table XX.2 are required for the use of Table XX.1
3. If an applicant chooses **not** to apply the mitigation measures in Table XX.2, or is unable to provide a protected corridor where available, then Table XX.3 **must** be used.

² See discussion in the Introduction, page 12 as to whether this applies in small urban jurisdictions.

4. The buffer widths in Table XX.1 and XX.3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

**Table XX.1 Wetland Buffer Requirements for Western Washington
if Table XX.2 is Implemented and Corridor Provided**

Wetland Category	Buffer width (in feet) based on habitat score			
	3-4	5	6-7	8-9
Category I: Based on total score	75	105	165	225
Category I: Bogs and Wetlands of High Conservation Value	190			225
Category I: Coastal Lagoons	150		165	225
Category I: Interdunal				225
Category I: Forested	75	105	165	225
Category I: Estuarine	150 (buffer width not based on habitat scores)			
Category II: Based on score	75	105	165	225
Category II: Interdunal Wetlands	110		165	225
Category II: Estuarine	110 (buffer width not based on habitat scores)			
Category III (all)	60	105	165	225
Category IV (all)	40			

Table XX.2 Required measures to minimize impacts to wetlands
(Measures are required if applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual)
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use best management practices to control dust

**Table XX.3 Wetland Buffer Requirements for Western Washington
if Table XX.2 is NOT Implemented or Corridor NOT provided**

Wetland Category	Buffer width (in feet) based on habitat score			
	3-4	5	6-7	8-9
Category I: Based on total score	100	140	220	300
Category I: Bogs and Wetlands of High Conservation Value	250			300
Category I: Coastal Lagoons	200		220	300
Category I: Interdunal				300
Category I: Forested	100	140	220	300
Category I: Estuarine	200 (buffer width not based on habitat scores)			
Category II: Based on score	100	140	220	300
Category II: Interdunal Wetlands	150		220	300
Category II: Estuarine	150 (buffer width not based on habitat scores)			
Category III (all)	80	140	220	300
Category IV (all)	50			

5. Increased Wetland Buffer Area Width. Buffer widths shall be increased on a case-by-case basis as determined by the Administrator when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:
 - a. The wetland is used by a state or federally listed plant or animal species or has essential or outstanding habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
 - b. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
 - c. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.
6. Buffer averaging to *improve wetland protection* may be permitted when **all** of the following conditions are met:
 - a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.
 - b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.
 - c. The total area of the buffer after averaging is equal to the area required without averaging.
 - d. The buffer at its narrowest point is never less than either $\frac{3}{4}$ of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.
7. Averaging to *allow reasonable use* of a parcel may be permitted when **all** of the following are met:
 - a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.

- b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical areas report from a qualified wetland professional.
- c. The total buffer area after averaging is equal to the area required without averaging.
- d. The buffer at its narrowest point is never less than either $\frac{3}{4}$ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

B. To facilitate long-range planning using a landscape approach, the Administrator may identify and pre-assess wetlands using the rating system and establish appropriate wetland buffer widths for such wetlands. The Administrator will prepare maps of wetlands that have been pre-assessed in this manner.

C. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated in order to be included in buffer area calculations. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

D. Buffers on Wetland Mitigation Sites. All wetland mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

E. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the mitigation bond (Section XX.070.J.2.a.x).

F. Impacts to Buffers. Requirements for the compensation for impacts to buffers are outlined in Section XX.070 of this Chapter.

G. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

H. Allowed Buffer Uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this Chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

- 1. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

2. Passive recreation facilities designed and in accordance with an approved critical area report, including:
 - a. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.
 - b. Wildlife-viewing structures.
3. Educational and scientific research activities.
4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
5. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column would be disturbed.
7. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

8. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

I. Signs and Fencing of Wetlands and Buffers:

1. Temporary markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary “clearing limits” fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
2. Permanent signs. As a condition of any permit or authorization issued pursuant to this Chapter, the Administrator may require the applicant to install permanent signs along the boundary of a wetland or buffer.
 - a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) every fifty (50) feet, or one (1) per lot if the lot is less than fifty (50) feet wide, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the Administrator:

**Protected Wetland Area
Do Not Disturb
Contact [Local Jurisdiction]
Regarding Uses, Restrictions, and Opportunities for Stewardship**

- b. The provisions of Subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.
3. Fencing
 - a. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.
 - b. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

XX.060 Critical Area Report for Wetlands

A. If the Administrator determines that the site of a proposed development includes, is likely to include, or is adjacent to a wetland, a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.

B. Minimum Standards for Wetland Reports. The written report and the accompanying plan sheets shall contain the following information, at a minimum:

1. The written report shall include at a minimum:
 - a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
 - b. A statement specifying the accuracy of the report and all assumptions made and relied upon.
 - c. Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.
 - d. A description of the methodologies used to conduct the wetland delineations, wetland ratings, or impact analyses, including references.
 - e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.
 - f. For each wetland identified on site and within 300 feet of the project boundary, provide: the wetland rating, including a description of and score for each function, per *Wetland Ratings* (Section XX.020.B) of this Chapter; required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion or estimate entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlets/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g.,

algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

- g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.
 - h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.
 - i. A description of reasonable efforts made to apply mitigation sequencing pursuant to *Mitigation Sequencing* (Chapter XX.070.A) to avoid, minimize, and mitigate impacts to critical areas.
 - j. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.
 - k. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.
 - l. An evaluation of the functions of the wetland and its buffer. Include references for the method used and data sheets.
2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:
- a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; and areas of proposed impacts to wetlands and/or buffers (include square footage estimates).
 - b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

XX.070 Compensatory Mitigation.

A. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reduce or eliminate the impact over time by preservation and maintenance operations.
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
6. Monitor the required compensation and take remedial or corrective measures when necessary.

B. Requirements for Compensatory Mitigation:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State—Part 2: Developing Mitigation Plans—Version 1*, (Ecology Publication #06-06-011b, Olympia, WA, March 2006, or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Publication #09-06-32, Olympia, WA, December 2009).
2. Mitigation ratios shall be consistent with Subsection H of this Chapter.
3. Mitigation requirements may also be determined using the credit/debit tool described in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report* (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised) consistent with subsection H of this Chapter.

C. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the

compensatory mitigation to provide similar wetland functions as those lost, except when either:

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.

D. Approaches to Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on the approaches listed below.

1. Wetland mitigation banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument. Use of credits from a wetland mitigation bank certified under Chapter 173-700 WAC is allowed if:
 - a. The approval authority determines that it would provide appropriate compensation for the proposed impacts; and
 - b. The impact site is located in the service area of the bank.
 - c. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument.
 - d. Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.
2. In-Lieu Fee Mitigation: Credits from an approved in-lieu-fee program may be used when all of the following apply:
 - a. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
 - b. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
 - c. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the in-lieu-fee program.

- d. The impacts are located within the service area specified in the approved in-lieu-fee instrument.
3. Permittee-responsible mitigation. In this situation, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. Permittee-responsible mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval authority's satisfaction that the proposed approach is ecologically preferable to use of a bank or ILF program, consistent with the criteria in this section.

E. Types of Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval authority's satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this section.

1. Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:
 - a. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
 - b. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.
2. Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.
 - a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may

authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland professional that:

- i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;
 - ii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and
 - iii. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.
3. **Enhancement.** The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. Applicants proposing to enhance wetlands or associated buffers shall demonstrate how the proposed enhancement will increase the wetland's/buffer's functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.
4. **Protection/Maintenance (Preservation).** Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, or repairing water control structures or fences. This term also includes activities commonly associated with the term *preservation*. Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and associated buffer at risk of degradation can be used only if:
 - a. The approval authority determines that the proposed preservation is the best mitigation option;
 - b. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

- c. The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high-quality sites:
 - i. Category I or II wetland rating (using the wetland rating system for western Washington)
 - ii. Rare or irreplaceable wetland type (for example, bogs, mature forested wetlands, estuarine wetlands) or aquatic habitat that is rare or a limited resource in the area;
 - iii. The presence of habitat for priority or locally important wildlife species; or also list has provides biological and/or hydrological connectivity;
 - iv. Provides biological and/or hydrological connectivity;
 - v. Priority sites in an adopted watershed plan.
- d. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by an appropriate natural land resource manager, such as a land trust.
- e. The approval authority may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site.
- f. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation generally start at 20:1.

F. Location of Compensatory Mitigation. Compensatory mitigation actions shall generally be conducted within the same sub-drainage basin and on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. The following criteria will be evaluated when determining whether the proposal is ecologically preferable. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu-fee program, or advance mitigation.

- 1. There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should

include: anticipated replacement ratios for wetland mitigation, buffer conditions and required widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. On-site mitigation would require elimination of high-quality upland habitat.
3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
4. Off-site locations shall be in the same sub-drainage basin unless:
 - a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; or
 - b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;
 - c. Fees are paid to an approved in-lieu-fee program to compensate for the impacts.
5. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.

G. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will impact wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The Administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the

delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the City.

H. Wetland Mitigation Ratios³:

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

I. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance *Wetland Mitigation in Washington State Parts I and II* (Ecology Publication #06-06-011a-b, Olympia, WA, March 2006), the administrator may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report*, (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised).

³ Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment. See Table 1a, *Wetland Mitigation in Washington State – Part I: Agency Policies and Guidance –Version I*, (Ecology Publication #06-06-011a, Olympia, WA, March 2006 or as revised). See also Paragraph D.4 for more information on using preservation as compensation.

J. **Compensatory Mitigation Plan.** When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional shall be required, meeting the following minimum standards:

1. **Wetland Critical Area Report.** A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in *Minimum Standards for Wetland Reports* (Section XX.060.B) of this Chapter.
2. **Compensatory Mitigation Report.** The report must include a written report and plan sheets that contain, at a minimum, the following elements. Full guidance can be found in *Wetland Mitigation in Washington State– Part 2: Developing Mitigation Plans (Version 1)* (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised).
 - a. The written report must contain, at a minimum:
 - i. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
 - ii. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
 - iii. Description of the existing wetland and buffer areas proposed to be altered. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on *Wetland Ratings* (Section XX.XX) of this Chapter.
 - iv. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. Estimate future conditions in this location if the compensation actions are NOT undertaken (i.e., how would this site progress through natural succession?).
 - v. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas.

Include illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions

- vi. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.
 - vii. A description of the proposed mitigation construction activities and timing of activities.
 - viii. Performance standards (measurable standards for years post-installation) for upland and wetland communities, a monitoring schedule, and a maintenance schedule and actions proposed by year.
 - ix. A discussion of ongoing management practices that will protect wetlands after the development project has been implemented, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).
 - x. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five (5) years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.
 - xi. Proof of establishment of Notice on Title for the wetlands and buffers on the project site, including the compensatory mitigation areas.
- b. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
- i. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.
 - ii. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed in the compensation area(s). Also include existing cross-sections (estimated one-foot intervals) of wetland areas on the development site that are proposed to be altered and for the proposed areas of wetland or buffer compensation.

- iii. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.
- iv. Required wetland buffers for existing wetlands and proposed compensation areas. Also identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Chapter.
- v. A planting plan for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, and timing of installation.

K. Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a minimum 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

L. Protection of the Mitigation Site. The mitigation area and any associated buffer shall be located in a critical area tract or a conservation easement consistent with Chapter XX.XX.

M. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

N. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations consistent with *Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation* (Ecology Publication #12-06-015, Olympia, WA, December 2012).

O. Alternative Mitigation Plans. The Administrator may approve alternative wetland mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter.

The Administrator shall consider the following for approval of an alternative mitigation proposal:

1. The proposal uses a watershed approach consistent with *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication #09-06-32, Olympia, WA, December 2009).
2. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
3. Mitigation according to Section E is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.
4. There is clear potential for success of the proposed mitigation at the proposed mitigation site.
5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in Section J.
6. The plan shall be reviewed and approved as part of overall approval of the proposed use.
7. A wetland of a different type may be justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
8. Mitigation guarantees shall meet the minimum requirements as outlined in Section J.2.a.viii.
9. Qualified professionals in each of the critical areas addressed shall prepare the plan.
10. The City may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

XX.080 Unauthorized Alterations and Enforcement

A. When a wetland or its buffer has been altered in violation of this Chapter, all ongoing development work shall stop, and the critical area shall be restored. The City shall have the authority to issue a “stop-work” order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner’s or other responsible party’s expense to compensate for violation of provisions of this Chapter.

B. Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by the City. Such a plan shall be prepared by a qualified professional using the currently accepted scientific principles and shall describe how the actions proposed meet the minimum requirements described in Subsection C below. The Administrator shall, at the applicant or other responsible party's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or other responsible party for revision and re-submittal.

C. Minimum Performance Standards for Restoration. The following minimum performance standards shall be met for the restoration of a wetland, provided that if the applicant or other responsible party can demonstrate that greater functions and habitat values can be obtained, these standards may be modified:

1. The historic structure, functions, and values of the affected wetland shall be restored, including water quality and habitat functions.
2. The historic soil types and configuration shall be restored to the extent practicable.
3. The wetland and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration.
4. Information demonstrating compliance with other applicable provisions of this Chapter shall be submitted to the Administrator.

D. Site Investigations. The Administrator is authorized to make site inspections and take such actions as are necessary to enforce this Chapter. The Administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

E. Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

1. Each day or portion of a day during which a violation of this Chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this Chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The City may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Chapter. The civil penalty shall be assessed at a maximum rate of \$XX dollars per day per violation.
2. If the wetland affected cannot be restored, monies collected as penalties shall be deposited in a dedicated account for the preservation or

restoration of landscape processes and functions in the watershed in which the affected wetland is located. The City may coordinate its preservation or restoration activities with other cities in the watershed to optimize the effectiveness of the restoration action.

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Appendix B - Wetland Definitions
(Western Washington)

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Appendix B – Wetland Definitions

Agricultural Activities, Existing and Ongoing – Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conversation program.

Alteration – Any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.

Best Available Science – Current scientific information used in the process to designate, protect, or restore critical areas; that is, derived from a valid scientific process as defined by WAC 365-195-900 through 925.

Best Management Practices (BMPs) – Conservation practices or systems of practices and management measures that:

- (a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- (b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- (c) Protect trees, vegetation, and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- (d) Provide standards for proper use of chemical herbicides within critical areas.

Bog – A low-nutrient, acidic wetland with organic soils and characteristic bog plants, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

Buffer or Buffer Zone – The area contiguous with a critical area that maintains the functions and/or structural stability of the critical area.

Coastal Lagoon – A shallow body of water partly or completely separated from the sea by a barrier beach that receives periodic influxes of salt water, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

Critical Areas – Critical areas include any of the following areas or ecosystems: critical aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas, and wetlands, as defined in RCW 36.70A and this Chapter.

Creation – The manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland *hydroperiod* and hydric soils, and support the growth of hydrophytic plant species.

Cumulative Impacts or Effects – The combined, incremental effects of human activity on ecological or critical area functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

Development – A land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulk heading; driving of pilings; or any project of a temporary or permanent nature which modifies structures, land, wetlands, or shorelines and which does not fall within the allowable exemptions contained in the City Code.

Enhancement – The manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in wetland function(s) and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

Estuarine Wetland – A vegetated wetland with a water regime that is predominately tidal, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

Functions and Values – The services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, reducing flooding and erosive

flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

Growth Management Act – RCW 36.70A and 36.70B, as amended.

Hazardous Substances – Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

Impervious Surface – A surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under pre-development or pre-developed conditions. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

In-Kind Compensation – To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

In-Lieu-Fee Program – An agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the mitigation sponsor collects funds from an individual or a number of individuals who are required to conduct compensatory mitigation required under a wetland regulatory program. The sponsor may use the funds pooled from multiple permittees to create one or a number of sites under the authority of the agreement to satisfy the permittees' required mitigation.

Infiltration – The downward entry of water into the immediate surface of soil.

Interdunal Wetland – A wetland that forms in the deflation plains and swales that are geomorphic features in areas of coastal dunes, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology).

Isolated Wetland – A wetland that is hydrologically isolated from other aquatic resources, as determined by the United States Army Corps of Engineers (USACE). Isolated wetlands may perform important functions and are protected by state law (RCW 90.48) whether or not they are protected by federal law.

Mature and Old-Growth Forested Wetland – A wetland having at least 1 contiguous acre of either old-growth forest or mature forest, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

Mitigation – Avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- (c) Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- (d) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- (f) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

Monitoring – Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features. Monitoring includes gathering baseline data.

Native Vegetation – Plant species that occur naturally in a particular region or environment and were present before European colonization.

Off-Site Compensation – To replace critical areas away from the site on which a critical area has been impacted.

On-Site Compensation – To replace critical areas at or adjacent to the site on which a critical areas has been impacted.

Ordinary High Water Mark – That mark which is found by examining the bed and banks of water bodies and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

Preservation – The removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or conservation easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland acres but may result in a gain in functions over the long term.

Project Area – All areas, including those within fifty (50) feet of the area, proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

Prior Converted Croplands – Prior converted croplands (PCCs) are defined in federal law as wetlands that were drained, dredged, filled, leveled, or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985, to enable production of an agricultural commodity, and that: 1) have had an agricultural commodity planted or produced at least once prior to December 23, 1985; 2) do not have standing water for more than 14 consecutive days during the growing season, and 3) have not since been abandoned.

Qualified Professional – A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.

Re-establishment – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

Rehabilitation – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

Repair or Maintenance – An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

Restoration – Measures taken to restore an altered or damaged natural feature, including:

- (a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
- (b) Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

SEPA – Washington State Environmental Policy Act, 43.21C RCW.

Service Area – The geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu-fee program, as designated in its instrument.

Soil Survey – The most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

Species – Any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

Species of Local Importance – Those species of local concern designated by the City in Chapter XX.XX due to their population status or their sensitivity to habitat manipulation.

Species, Listed -- Any species listed under the federal Endangered Species Act or state endangered, threatened, and sensitive, or priority lists (see WAC 232-12-297 or page 6 of “Priority Habitat and Species List,” Washington Department of Fish and Wildlife, 2008, Olympia, Washington. 177 pp.)

Stream – An area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

Unavoidable Impacts – Adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

Washington Administration Code (WAC) – Administrative rules implementing state laws.

Wetlands – Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction

of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

Wetland of High Conservation Value – A wetland that has been identified by scientists from the Washington Natural Heritage Program (WHNHP) as an important ecosystem for maintaining plant diversity in Washington State. See <http://www.dnr.wa.gov/data-information-natural-heritage-features> .

Wetland Mitigation Bank – A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of unavoidable impacts to wetlands or other aquatic resources that typically are unknown at the time of certification to compensate for future, permitted impacts to similar resources.

Wetland Mosaic – An area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50% of the total area of the entire mosaic, including uplands and open water.