

**AGENDA**  
LACEY PLANNING COMMISSION MEETING  
Tuesday, December 6, 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 November 15, 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.

**Transportation Benefit District: Scott Egger, Public Works Director.** The Planning Commission will be briefed on the formation of the Transportation Benefit District and the upcoming ballot issue to increase sales tax by 0.2 percent to fund transportation improvements.

**Old Business:** 7:40 p.m.

**Critical Areas Ordinance— Habitat Conservation Areas and Critical Aquifer**

**Recharge Areas: Christy Osborn, Associate Planner.** The Planning Commission will conduct a work session on draft amendments to Lacey Municipal Code 14.33 – Habitat Conservation Areas and Lacey Municipal Code 14.36 – Critical Aquifer Recharge Areas. The purpose of the draft amendments is to meet the state-mandated update to the City's critical areas regulations to comply with best available science requirements.

**Impact Fees Update: Christy Osborn, Associate Planner.** The Planning Commission will hear an update on the status of the proposed amendments to the City's regulations pertaining to assessment and collection of impact fees.

**Communications and Announcements:** 8:55 p.m.

**Next Meeting:** January 3, 2017.

**Adjournment:** 9:00 p.m.

## CITY OF LACEY PLANNING COMMISSION WORK SCHEDULE

**Planning Commission Meeting  
December 6<sup>th</sup>, 2016**

**Packets due: December 1<sup>st</sup>**

1. **Work Session:** Impact Fees
2. **Work Session:** Critical Areas Ordinance—Critical Aquifer Recharge Areas and Habitat Conservation Areas
3. **Work Session:** Transportation Benefit District (Scott E.)

**Planning Commission Meeting  
December 20<sup>th</sup>, 2016**

**Packets due: December 15<sup>th</sup>**

**No Meeting**

**Planning Commission Meeting  
January 3, 2017**

**Packets due: December 29<sup>th</sup>**

1. **Election of Chair and Vice Chair**
2. **Public Hearing:** Impact Fees
3. **Public Hearing:** Critical Areas Ordinance

**Planning Commission Meeting  
January 17, 2017**

**Packets due: January 12<sup>th</sup>**

1. **Work Session:** State of the City (Scott Spence)

## MINUTES

Lacey Planning Commission Meeting  
Tuesday, November 15, 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, Mark Morgan, Paul Enns, Michael Goff, Carolyn St. Claire, Carolyn Cox, Sharon Kophs, and Cathy Murcia. Staff present: Ryan Andrews, Tom Stiles, Christy Osborn, Rick Walk, and Leah Bender.

Mike Beehler noted a quorum present.

**Mark Morgan made a motion, seconded by Carolyn Cox, to approve the agenda for tonight's meeting. All were in favor, the motion carried. Mark Morgan made a motion, seconded by Cathy Murcia, to approve the November 1 meeting minutes. All were in favor, the motion carried.**

1. **Public Comments:** None.

2. **Commission Member's Report:** None.

3. **Director's Report:**

- Rick Walk reported on his attendance at the Community Investment Partnership meeting.
- Rick informed Planning Commission that the Reserve at Lacey affordable senior-housing project has received funding from the Washington Housing Commission, will obtain permits in December, and start construction in January.

4. **Public Hearing:**

**Development Guidelines and Public Works Standards Update:**

- No members of the public were present.
- Tom Stiles noted that the manual must be updated periodically to meet current practices. The last update occurred in 2014.
- Tom went over the major changes to the manual in chapters 3, 4, 6, 7, and 8. Tom noted that chapter 5 (Storm Drainage) is not being revised at this time but will be updated along with the 2017 Storm Drainage manual/Low Impact Development revisions.
- Tom noted that chapter 4 will be revised to reflect the correct street names in the street tree themes table, and that Oregon White Oak will be added to the general tree list.
- **Paul Enns made a motion, seconded by Cathy Murcia, to recommend the Development Guidelines and Public Works Standards manual, to include the addition of Oregon White Oak to the tree list, to Council for approval. All were in favor, the motion carried.**

5. **Old Business:**

**Critical Areas Ordinance - Wetlands:**

- Ryan Andrews explained that according to State law, cities are required to review and revise critical areas regulations to incorporate best available science. The deadline for City of Lacey's update is June 30, 2017.
- The first review focuses on wetlands. Ryan went over the changes to definitions, allowed activities, special uses, buffer widths, signage and fencing, mitigation, and temporary emergency approval.

**6. Communications and Announcements:**

- Rick noted that the next Planning Commission meeting will be held on December 6, 2016; the next Council meeting will be held on December 1, 2016; and Planning Commission appointments will be made at the December 15, 2016, Council meeting.
- It was pointed out that the date of the next meeting is incorrect on tonight's agenda; it should read December 6, 2016.

**7. Next meeting:** December 6, 2016.

**8. Adjournment:** 8:10 p.m.



## What is a Transportation Benefit District?

The Washington State Legislature allows cities to create Transportation Benefit Districts (TBD) to raise revenue to fund transportation maintenance and improvement projects. Revenue generated from a TBD must only be used for transportation infrastructure and related improvements.

## How are TBDs Funded?

A TBD generates revenue primarily through vehicle license fees and/or sales taxes. After thorough consideration, the City Council agreed a sales tax is the best option for our community. Lacey residents will be asked to vote on a 0.2 percent local sales tax increase on February 14, 2017.

## Sales Tax Option:

- Gives **citizens** the opportunity to **decide (vote)**
- **Spreads the cost** between residents and others who shop in Lacey and use City streets

## What are the Main Differences Between a Vehicle License Fee and a Sales Tax?

### Vehicle License Fees:

- **Council approval**
- **\$20 fee** per vehicle/year
- Generates about **\$675,00**
- Requires **hearing** and **ordinance**
- Collection **begins 6 months** after approval

# VS.

### Sales Tax:

- **Voter approval**
- Up to **0.2% increase**
- Generates about **\$1.6 to \$1.8 million**
- Requires **ballot resolution**
- Increase **ends in 10 years**



## What is the Cost to Residents?

### Vehicle License Fees:

- **\$40 per year**, based on an average of two (2) vehicles per household

### Sales Tax:

- About **\$25 per year**, based on a \$50,000 to \$60,000 annual household income
- A **0.2 percent sales tax increase** costs an additional **2¢ on a \$10 taxable purchase**

## Why is Additional Revenue Needed?

The recent recession impacted Lacey's general fund to the point that the City can no longer pay for the street overlay program, which helps maintain its streets. If approved by Lacey voters, the revenue generated by a TBD will allow Lacey to continue its street overlay program. This will help preserve and maintain Lacey's street system and sidewalks and avoid costly infrastructure replacement.



### Pavement Condition Index (PCI)

The PCI rates the condition of pavement. City streets are broken into segments and assigned a PCI rating. The combined PCI for all road segments provides a measure of the overall street system's health.

General PCI condition descriptions include:

**PCI 100-85:**  
Very Good

**PCI 84-60:**  
Good

**PCI 59-40:**  
Fair

**PCI 39-0:**  
Poor/Failed

Lacey's current PCI average: **84.7**

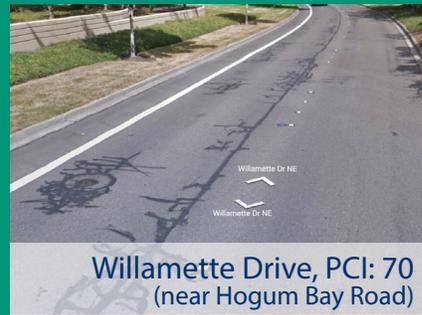
Over **97 percent** of Lacey streets are rated "good" or "very good"

### What is the Current Condition of Lacey Streets?

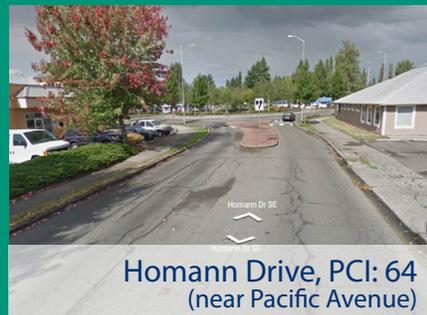
Lacey has made it a priority to protect the public's long-term investment in its transportation infrastructure by funding a street overlay program. Lacey uses the state standard for rating its streets, using a Pavement Condition Index (PCI). Lacey's current PCI is 84.7, one of the highest ratings in the state.



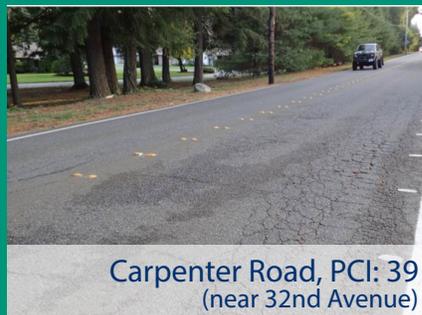
Ruddell Road, PCI: 92



Willamette Drive, PCI: 70  
(near Hogum Bay Road)



Homann Drive, PCI: 64  
(near Pacific Avenue)



Carpenter Road, PCI: 39  
(near 32nd Avenue)

### Quick Facts

Value of Lacey Transportation Infrastructure: **\$400 million**

Center Lane Miles: **165**

Actual Miles: **379**

Current PCI Average: **84.7**

### How Much Revenue will the TBD Generate and How Will it be Used?

The projected revenue from the proposed TBD is \$1.6 – \$1.8 million per year. The City will use the money for street and sidewalk maintenance to help prevent full-scale, costly reconstruction later.

To minimize costs, proper street maintenance must be completed at the appropriate time. The longer maintenance is postponed the more expensive repairs become. For example, delaying maintenance could advance the type of repair from a simple overlay, to a grind and overlay, to a complete street reconstruction.

If approved by voters, the City will also be able to use some of the TBD revenue to further leverage additional state and federal grant opportunities for transportation infrastructure.

### What other Jurisdictions have a TBD?

Currently, approximately 92 Washington cities and counties have formed a TBD, including Olympia and Tumwater. For a complete list, visit <http://mrsc.org/>.

### When Will Lacey Residents Decide?

Lacey residents will be asked to vote on a 0.2 percent local sales tax increase to fund street and sidewalk maintenance on February 14, 2017.

More info:

360.491.5600 • [publicworks@ci.lacey.wa.us](mailto:publicworks@ci.lacey.wa.us)





## PLANNING COMMISSION STAFF REPORT

December 6, 2016

**SUBJECT:** Critical Areas Ordinance Update-LMC 14.33 Habitat Conservation Areas and LMC 14.36 Wellhead Protection and Critical Aquifer Recharge Areas

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**RECOMMENDATION:** Hold a work session to discuss proposed revisions to Lacey's Municipal Code 14.33 Habitat Conservation Areas and LMC 14.36 Wellhead Protection and Critical Aquifer Recharge Areas.

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**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 14.33-Habitat Conservation Areas Protection  
LMC Chapter 14.36-Wellhead Protection and Critical Aquifer Recharge Areas

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

There has been no previous review of proposed revisions to these chapters.

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**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. Local governments are also required to review and revise their policies and regulations on critical areas to incorporate best available science. State law was amended to allow jurisdictions an additional year from the statutory deadline to update critical area regulations. The city's deadline to review and update our critical areas regulations is June 30, 2017.

There are five chapters in Title 14 of the LMC that comprise critical areas regulations; Chapter 14.28, Wetland Protection; Chapter 14.33, Habitat Conservation Areas Protection; Chapter 14.34, Flood Hazard Prevention; Chapter 14.36, Critical Aquifer Recharge Areas Protection; and Chapter 14.37, Geologically Sensitive Areas Protection. The Planning Commission has reviewed the wetland chapter and will begin the review of habitat conservation areas, and wellhead and critical aquifer recharge areas chapters.

The attached draft of LMC 14.33 contains proposed revisions to Lacey's habitat conservation areas protections to comply with the best available science requirement. Planning staff used guidance materials prepared by the Washington Department of Fish and Wildlife for critical areas updates and statutory law requirements. The last update to this chapter was completed in 2003. Comment notes have been included in the right-hand column of the document to detail the intentions behind the proposed revisions. The highlights of changes to the habitat conservation areas include:

1. Inserting additional definitions for revisions to legal definitions and new terminology used in the chapter.
2. Changes to designations in the state water typing system by the Department of Natural Resources.
3. Changes to designated habitat conservation areas by the Department of Fish and Wildlife.
4. Including the U.S Fish & Wildlife Service's self-certification process for bald eagle habitat due to the delisting of eagles from the Endangered Species Act.
5. Requiring a minimum 200-foot buffer along all portions of Woodland Creek as identified as an implementation measure in the Comprehensive Plan.

The attached draft of LMC 14.36 contains proposed revisions to the critical aquifer recharge areas protections to comply with the update requirements contained in the Growth Management Act. Planning staff used guidance materials prepared by the Washington Department of Ecology, statutory law requirements, and collaborated with staff in Lacey's water resources department. The last update to this chapter was completed in 2002. Changes to this chapter included the reformatting sections for improved organization and coordination with existing standards.

The highlights of the changes to LMC 14.36 include:

1. Inclusion of wellhead protection in conjunction with CARA protection.
2. Inclusion of references to the adopted stormwater manual and stormwater management provisions.
3. Deleting outdated references and adding updated ones.
4. Making the document more readable by moving all definitions into the definition section, and consolidating sections where feasible.

**RECOMMENDATION:**

The Planning Commission will conduct a work session on LMC 14.33-Habitat Conservation Areas and LMC 14.36-Wellhead Protection and Critical Aquifer Recharge Areas for the state-mandated update to the Critical Areas Ordinance.

## CHAPTER 14.33

### HABITAT CONSERVATION AREAS PROTECTION

Sections:

- 14.33.020 Purpose ~~and~~ intent
- 14.33.030 Definitions
- 14.33.040 Qualified professional habitat biologist
- 14.33.050 Applicability
- 14.33.060 Designation, maps and inventory
- 14.33.070 Determination of habitat conservation area
- 14.33.080 Exempt activities
- 14.33.090 Repealed
- 14.33.100 Site plan review
- 14.33.110 Application information requirements
- 14.33.115 Critical area report requirements
- 14.33.116 Performance standards
- 14.33.117 Performance standards for specific habitats.
- 14.33.120 Site plan review approval and extensions
- 14.33.130 Repealed
- 14.33.140 Repealed
- 14.33.150 Interagency coordination for habitat conservation area applications
- 14.33.160 Criteria for habitat conservation area approvals
- 14.33.170 Uses allowed in a designated buffer zone
- 14.33.190 Permit processing--Building setback lines
- 14.33.200 Special conditions.
- 14.33.210 Financial security
- 14.33.220 Other laws and regulations
- 14.33.230 Suspension, revocation
- 14.33.240 Notice of final decision
- 14.33.250 Appeals
- 14.33.260 Enforcement
- 14.33.270 Non-conforming activities
- 14.33.280 Repealed
- 14.33.290 Amendments
- 14.33.300 Severability
- 14.33.310 Assessment relief

**14.33.020 Purpose ~~and~~ intent.**

A. It is the policy of the city of Lacey to require site planning and habitat management planning to designate and protect the functions and values of ~~avoid or minimize damage to~~ habitat conservation areas based on best available scientific information 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~~[City of Lacey & Lacey Urban Growth Area Comprehensive Plan](#), the city Zoning Code (LMC Title 16), the city Environmental Policy Ordinance (Chapter 14.24 LMC), the city [Tree and Vegetation 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. “Bankfull width” means:

1. For streams – the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross section.

2. For lakes, ponds, and impoundments – line of mean high water.

3. For tidal water-line of mean high tide.

4. For periodically inundated areas of associated wetlands – line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

~~DC.~~ “Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that are 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.~~

~~ED.~~ “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;

**Comment [CO1]:** Change in reference per state guidance.

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.

**FE.** “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.

**GF.** “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.

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

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

**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.

**Comment [C02]:** Moved in alphabetical order.

**KI.** “Fish and wildlife habitat conservation areas” also referred to as “Habitat Conservation Area” means areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas shall be managed necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated sub-populations are not created, and not degrading or reducing populations or habitats so they are no longer viable over the long term, as designated by WAC 365-190-080(5). These areas include:

**Comment [C03]:** Changes in definition from WAC’s

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, and other forage fish 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, if permitted by a regulatory authority;
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; and

10. Riparian ecosystems including salmonid habitat, which also includes marine nearshore areas.

~~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.~~

~~Fish and wildlife habitat conservation areas do not include artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.~~

**Comment [C04]:** Amendment made by the 2012 Legislature.

~~LK. “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.~~

~~ML. “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~~

~~NM. “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”.~~

~~ON. “Mitigation” or “mitigation sequencing” 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;~~

**Comment [C05]:** Redundant, see #5

~~56. Compensating for the impact to habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and~~

~~67. Monitoring the required mitigation and taking remedial action when necessary.~~

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

~~P. “Monitoring” means 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.~~

~~QQ. “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.~~

R. “Primary association” means a primary habitat area used by federally or state listed endangered, threatened, candidate, sensitive, and priority wildlife or plant species which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

SQ. “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.

TR. “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.

US. “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.

VT. “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.

WU. “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.

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

YW. “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.

ZX. “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.

AAV.- “Water typing system” means waters classified according to WAC 222-16-0304 as follows:

1. Type ~~S1~~ Water - all waters, within their ~~bankfull width~~~~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 periodically inundated areas of their associated wetlands.~~~~waters’ associated wetlands as defined in Chapter 90.58 RCW.~~

2. Type ~~F2~~ Water - segments of natural waters ~~other than Type S Waters~~~~that are not classified as Type 1 water, which are within the bankfull widths of defined channels and have a high fish, wildlife, or human use.~~~~These are segments of natural waters~~ and periodically inundated areas of their associated wetlands, ~~which or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:~~

a. Waters, which are diverted for domestic use by more than ten (10) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such

**Comment [C06]:** Reflect changes to designations in the DNR water typing system

users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

b. Waters, which are diverted for use by federal, state, tribal, or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including, including tributaries if highly significant for protection of downstream water quality. The Department of Natural Resources may allow additional harvest beyond the requirements of Type F Water designation provided the Department of Natural Resources determines after a landowner-requested on-site assessment by the Department of Fish and Wildlife, Department of Ecology, the affected tribes, and interested parties that:

(1) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(2) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

c. Waters, which are within a federal, state, local, or private campground having more than ten (10) camping units: Provided, that the water shall not be considered to enter a campground unit it reaches the boundary of the park lands available for public use and comes within one hundred (100) feet of a camping unit, trail or other park improvement;

d. Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

(1) The site must be connected to fish habitat stream and accessible during some period of the year; and

(2) The off-channel water must be accessible to fish.

~~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 ~~Np~~<sup>3</sup> Water - segments of natural waters within the bankfull width of the defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of the year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow, 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.~~
- ~~e. 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 Ns4 means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters. 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:

**Comment [C07]:** Changes in definitions from WAC's

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, and other forage fish 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, if permitted by a regulatory agency. 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 S, F, Np, and Ns+ through 5 waters as designated by the state Department of Natural Resources. Type S, F, Np and NS + through 5 waters are those water bodies designated by the Department of Natural Resources stream typing pursuant to WAC 222-13-0304.

**Comment [C08]:** Suggested changes in designation areas by the Department of Fish and Wildlife.

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.

9. Land essential for preserving connections between habitat blocks and open spaces; and

10. Riparian ecosystems including salmonid habitat, which includes marine nearshore areas.

Fish and wildlife habitat conservation areas do not include artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

**Comment [CO9]:** Amendment made by the 2012 Legislature.

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 identified below~~ 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 Fish and 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 [#-sits](#) 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 and/or its buffer may not be subdivided.
2. Land that is located partially within a habitat conservation area and/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.~~

a. Development activities near bald eagle habitat shall be carried out consistent with the *National Bald Eagle Management Guidelines*.

b. Activities that may potentially impact bald eagle habitat shall complete the USFWS's self-certification process to determine if a permit from USFWS is required. If the self-certification process determines that a permit is needed, then a permit will be required. Mitigating actions identified in the self-certification process will also be required to be completed to protect bald eagles and their habitat. The applicant will be required to demonstrate that either they don't need a USFWS permit via self-certification or if a USFWS permit is required, that the permit has been obtained.

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

**Comment [CO10]:** Eagles have been delisted from the Endangered Species Act, WDFW no longer participates in developing or reviewing Bald Eagle Management Plans.

- 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 ~~master management~~ program and the applicant demonstrates that the fill is for a water-dependent use that is in the public interest.

**Comment [CO11]:** Referenced document name change.

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 <del>S1 and 2</del> streams	250 feet
Type <del>F3</del> streams <del>5 to 20 feet wide</del>	200 feet
<del>Other</del> Type <del>Np3</del> streams	150 feet
Type <del>4 and 5Ns</del> streams	150 feet

**Comment [CO12]:** Reflects changes to the stream typing system.

3. All developments and uses proposed for lands bordering Woodland Creek shall be required to maintain a minimum two hundred foot in depth natural buffer from the ordinary high water mark on both sides of the creek. Within the buffer area, no development or use shall be permitted except for natural open spaces, trails, passive recreational activities, streets and utility services. Stormwater runoff directed to Woodland Creek shall be pretreated to mitigate water quality impacts as approved by the city.

**Comment [CO13]:** Identified as an implementation measure in the Comprehensive Plan update.

4.3. 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.

54. 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.

65. 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.

76. 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 [mastermanagement](#) 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, [2003, as amended March 1999](#), and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2001 [10, as amended](#), 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.

**Comment [CO14]:** Documents updated

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 least 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 signs 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, wood or metal signs on treated or metal posts. Signs shall be worded as follows:

**Comment [CO15]:** Consistent with wetland chapter.

“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<sup>s</sup> 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 14.36**

**WELLHEAD PROTECTION AND CRITICAL AQUIFER RECHARGE AREAS ~~PROTECTION~~**

Sections:

- 14.36.020 Purpose ~~and~~ intent
- 14.36.030 Wellhead Protection and ~~C~~critical aquifer recharge areas--Definitions
- ~~14.36.040 Critical aquifer recharge areas--Rating system~~
- 14.36.0450 Applicability
- 14.36.050 Exempt activities
- 14.36.060 Maps and inventory
- 14.36.070 Determination of wellhead protection areas and critical aquifer ~~recharge~~sensitive areas ~~and wellheads~~
- ~~14.36.080 Exempt activities~~
- 14.36.0890 Review standards--General review requirements
- 14.36.4090 Consolidated application process
- ~~14.36.110 Interagency coordination for aquifer sensitive and wellhead area applications~~
- 14.36.10045 Information requirements
- 14.36.1120 Critical aquifer recharge areas-- Uses and activities in critical aquifer recharge areas that are not allowed in wellhead protection zones
- ~~14.36.130 Critical aquifer recharge areas--Residential density~~
- ~~14.36.140 Critical aquifer recharge areas--Wellhead protection areas--Designation~~
- 14.36.1250 Critical aquifer recharge areas and wellhead protection areas-- Departmental cooperation
- 14.36.1360 Critical aquifer recharge areas-- Special reports
- 14.36.1470 ~~Geoh~~Hydrogeological reports--~~General comments~~
- 14.36.1580 ~~Geoh~~Hydrogeological reports-- Reimbursement for costs
- 14.36.160 Hazardous materials management plans
- 14.36.170 Wellhead protection area standards of mitigation
- ~~14.36.210 Criteria for aquifer protection categories~~
- 14.36.180245 Wellhead protection area standards for new uses
- 14.36.190247 Special management areas - Wellhead protection area standards for expansion of existing uses
- 14.36.20049 Special Management Areas - Wellhead protection area standards for existing uses
- 14.36.2120 Other laws and regulations
- 14.36.2230 Suspension, revocation
- 14.36.2340 Appeals
- 14.36.2450 Enforcement
- 14.36.2560 Non-conforming activities
- 14.36.2670 Repealed
- 14.36.2780 Amendments
- 14.36.2890 Severability

**14.36.020 Purpose ~~and~~ intent.**

The purpose of this chapter is to protect the public health, safety, and welfare by protecting critical aquifer recharge areas and the city's water resources that serve as the city's potable water source. 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.

**Comment [CO1]:** This plan has been replaced by other documents.

**Comment [CO2]:** Contingency planning is not addressed in this chapter.

CHAPTER 14.36 WELLHEAD PROTECTION AND CRITICAL AQUIFER RECHARGE AREAS PROTECTION

Draft Update-PC Review

E. To provide legislation regulating land uses within critical aquifer recharge~~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 Wellhead protection and ~~C~~critical aquifer recharge areas--Definitions.**

A. “AKART” means all known, available, and reasonable methods of treatment, prevention, and control, and is one component of pollution prevention plan development and implementation. AKART refers to technology-based treatments of pollutant sources that are implemented along with BMP’s to treat, prevent and control the release of contaminants to surface water and groundwater. See WAC 173-201A-020.

BA. “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.

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

D. “Aquifer” means a geologic stratum containing groundwater that can be withdrawn and used for human purposes.

E. “BMPs” means best management practices for physical, structural, and/or managerial practices that, when used singularly or in combination, prevent or reduce pollutant discharges to waters of Washington State. These may include, but are not limited to, the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices.

FC. “~~Category I c~~ritical aquifer recharge areas” means those areas with extreme aquifer sensitivity due to the presence of soils that provide very rapid recharge with little natural water quality treatment. Category I areas contain coarse soil textures and soil materials, and are derived from glacial outwash materials. The predominate soil series in Category I CARAs are listed in LMC 14.36.070B, 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.

G. “Category II critical aquifer recharge areas” are those with high aquifer sensitivity due to soils which provide slightly lower recharge, but provide little protection and natural water quality treatment. Category II soils are derived from materials of glacial deposit. The predominant soil series in Category II CARAs are listed in LMC 14.36.070B.

H. “Category III critical aquifer recharge areas” are those areas with aquifers present but have moderate aquifer sensitivity due to surface soil material that encourages run-off and slows water entry into the ground. The predominate soil series in Category III CARAs are listed in LMC 14.36.070B.

I. “Category IV low aquifer sensitivity areas” are those areas of low ground water availability and whose soils series are derived from Basalic 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.

J. “Critical aquifer recharge areas (CARA)” means those areas that overlay aquifers that are used for potable water supply, and have soils and geologic characteristics that allow precipitation and runoff to infiltrate and replenish natural groundwater systems and aquifers. CARAs are further designated into Categories I, II, III, or IV based on soil type, texture, and origin as listed in 14.36.070B, with these categories determining the stringency of land use management controls needed to be protective of underlying 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.

**Comment [C03]:** Definitions for Critical Aquifer Recharge Area categories were moved from Section 14.36.040.

K. “Hazardous materials” means those substances, debris, and waste which are a physical or health hazard, chemical substances that are ignitable, corrosive, reactive or toxic, consistent with Chapter 173-303 WAC and the International Fire Code, as amended.

LE. “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.

MF. “Health officer” means the Thurston County health officer as defined in Chapter 70.05 RCW or his or her authorized representative.

N. “Hydrogeology” means the study of the interrelationships of geologic materials and processes with water, especially groundwater. Hydrogeology is a science that involves the study of the waters of the Earth, and the collection of data concerning waters and their interaction with other materials in the atmosphere, on the Earth’s surface, or in the interior of the Earth.

O. “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.

P. “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.

Q. “Sanitary control plan” means the one hundred (100) foot radius around any potable water supply well that shall be established and protected from all potential sources of contamination as required under WAC 246-290-135.

RG. “Wellhead protection areas (WHPA) 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 within six (6) months, and one (1), five (5), and ten (10) years. WHPAs for Lacey’s water supply wells are adopted in Lacey’s Water System Comprehensive Plan which is. 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”.~~

**Comment [C04]:** This section was moved to the definition section.

**Comment [C05]:** Disputed areas moved to 14.36.070.

~~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).~~

**14.36.0450 Applicability.**

A. The provisions of this chapter apply to non-exempt proposals for development of new uses, and the alteration or expansion of existing uses located in Wellhead Protection Areas or Critical Aquifer Recharge Areas within the city of Lacey as defined by this chapter.

BA. When any provision of any other chapter of the city of Lacey conflicts with this chapter, the most restrictive will prevail. These provisions shall apply to any project or portion of a project which is partially or wholly located within a wellhead protection area.

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

DC. 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 critical aquifer recharge 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 1.010C 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).

**14.36.050 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, provided the permit is not part of a project that exceeds a threshold triggering stormwater requirements as defined under the *City of Lacey Stormwater Design Manual*;

E. Conservation or preservation of soil, water, vegetation and wildlife in consultation with the Natural Resources Conservation Service, State Department of Wildlife, or other appropriate federal or state agency;

**Comment [C06]:** These definitions moved to the definition section.

**Comment [C07]:** Inclusion of wellhead protection provisions.

**Comment [C08]:** This section was moved from previous 14.36.080 for location next to applicability section.

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;

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; and

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).

**14.36.060 Maps and inventory.**

~~Maps have been developed classifying~~ Maps of soils in the Lacey area are located in the *Soil Survey of Thurston County, Washington* (Soil Conservation Service, 1990). This soil survey, as amended, is the basis for the CARA categories referenced in this chapter. ~~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 ~~include aquifer sensitive areas classified as~~ Category I or II ~~critical aquifer recharge or wellhead areas, are located~~ within the jurisdiction of the city of Lacey. ~~Maps relating to city of Lacey wellhead protection areas are in the City of Lacey Water System Comprehensive Plan, as amended. In the event that any of the critical aquifer recharge sensitive areas designations or wellhead protection 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).~~

**Comment [C09]:** Removed out of date references and replaced with current reference materials.

**14.36.070 Determination of wellhead protection areas and critical aquifer recharge sensitive areas and wellheads.**

A. Wellhead protection areas (WHPAs) for water supply wells are delineated by the city using a numerical computer groundwater model that is calibrated with current information on local hydrogeological properties and pumping characteristics at each city well. The WHPAs consist of time-based capture zones for one (1) year, five (5) year, and ten (10) year times of travel and may include additional management areas to account for uncertainty in the modeling or for areas wher WHPAs for two or more sources overlap.

**Comment [C010]:** Updated to reference current process.

B. Critical aquifer recharge areas are determined by the soil series and types present, as listed below.

Critical Aquifer Recharge Area Soil Series

**Comment [C011]:** Moved from section 14.36.210 and put into a table.

<u>CATEGORY I SOIL SERIES</u>	
<u>Series Name</u>	<u>SCS Map Symbol #</u>
<u>Baldhill</u>	<u>5, 6, 7, 8</u>

<a href="#">Cagey</a>	<a href="#">20</a>
<a href="#">Everett</a>	<a href="#">32, 33, 34, 35</a>
<a href="#">Grove</a>	<a href="#">42</a>
<a href="#">Indianola</a>	<a href="#">46, 47, 48</a>
<a href="#">Newberg</a>	<a href="#">71, 72</a>
<a href="#">Nisqually</a>	<a href="#">73, 74</a>
<a href="#">Pilchuck</a>	<a href="#">84</a>
<a href="#">Pits, gravel</a>	<a href="#">85</a>
<a href="#">Puyallup</a>	<a href="#">89</a>
<a href="#">Spanaway</a>	<a href="#">110, 111, 112, 113, 114</a>
<a href="#">Sultan</a>	<a href="#">115</a>
<a href="#">Tenino</a>	<a href="#">117, 118, 119</a>
-	-
<b><a href="#">CATEGORY II SOIL SERIES</a></b>	-
<b><a href="#">Series Name</a></b>	<b><a href="#">SCS Map Symbol #</a></b>
<a href="#">Alderwood</a>	<a href="#">1, 2, 3, 4</a>
<a href="#">Chehalis</a>	<a href="#">26</a>
<a href="#">Delphi</a>	<a href="#">27, 28</a>
<a href="#">Eld</a>	<a href="#">31</a>
<a href="#">Giles</a>	<a href="#">38, 39, 40</a>
<a href="#">Maytown</a>	<a href="#">64</a>
<a href="#">Spana</a>	<a href="#">109</a>
<a href="#">Yelm</a>	<a href="#">126, 127, 128</a>
-	-
<b><a href="#">CATEGORY II SOIL SERIES</a></b>	-
<b><a href="#">Series Name</a></b>	<b><a href="#">SCS Map Symbol #</a></b>
<a href="#">Bellingham</a>	<a href="#">14</a>
<a href="#">Dupont</a>	<a href="#">29</a>
<a href="#">Everson</a>	<a href="#">36</a>
<a href="#">Galvin</a>	<a href="#">37</a>
<a href="#">Godfrey</a>	<a href="#">41</a>
<a href="#">Hoogdal</a>	<a href="#">43, 44</a>
<a href="#">Kapowsin</a>	<a href="#">50, 51, 52, 53, 54, 55</a>
<a href="#">Mashel</a>	<a href="#">62, 63</a>
<a href="#">McKenna</a>	<a href="#">65</a>
<a href="#">Mukilteo</a>	<a href="#">69, 70</a>
<a href="#">Norma</a>	<a href="#">75, 76</a>
<a href="#">Puget</a>	<a href="#">88</a>
<a href="#">Scammen</a>	<a href="#">100, 101</a>
<a href="#">Semiamoo</a>	<a href="#">104</a>
<a href="#">Shalkar</a>	<a href="#">105</a>
<a href="#">Shalkar Variant</a>	<a href="#">106</a>
<a href="#">Skopopa</a>	<a href="#">107, 108</a>

<u>Tacoma</u>	<u>116</u>
<u>Tisch</u>	<u>120</u>

(Ord. 935 §10 (part), 1992).

~~C.A.~~ The exact presence and location of ~~soils constituting a critical~~ the aquifer ~~rechargesensitive~~ 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 ~~geo~~hydro~~geo~~logical expert shall perform soils analysis necessary to make determinations. Hiring the services of a soil scientist or ~~geo~~hydro~~geo~~logical 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).~~

D. 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 Natural Resources Conservation Service, shall determine the category.

2. 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

3. 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 Natural Resources Conservation Service shall determine the most appropriate category with geological and hydrological information.

~~**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;~~

**Comment [CO12]:** Disputed areas moved from subsection 14.36.040 with added provisions.

~~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).~~

**14.36.0890 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).

**14.36.1090 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).~~

**14.36.10015 Information requirements.**

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

A. A site development plan that shows the entire parcel of land owned by the applicant and features that are relevant to groundwater source protection, including but not limited to:

1. The exact boundary and description of wellhead protection areas, including the source well and sanitary setback, if applicable;
2. Locations of Category I and II soils on the site;
3. Groundwater contours indicating the direction of shallow groundwater flow, shown in relation to the wellhead and its wellhead protection area if applicable, and existing and proposed stormwater facilities;

**Comment [C013]:** Coordination with health officer has been placed in specific sections where applicable.

4. Any existing well(s) on site, whether in use or abandoned;
5. All potential sources of soil or groundwater contamination on the site; and
6. Locations of proposed temporary construction dewatering wells or other resource protection wells anticipated for gathering project data.

~~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 proposed use of the site, and descriptions of the types and quantities of hazardous materials that would be used and stored on the site including fuels and fuels associated with mechanical equipment and retail products; ~~vegetative cover of the site and adjacent area including dominant species;~~~~

~~C. A description of the engineering design and planned operation and maintenance of the projects that will mitigate impacts to groundwater quality and quantity at the development site. The description shall also identify specific limitations of the site, such as soils and geology, for mitigating impacts to site development. See requirements in special reports, LMC 14.36.130. 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 allowed 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 ~~r~~Runoff. Stormwater impacts shall be mitigated through the application of the most current version of the City of Lacey Stormwater Design Manual, the Drainage Design and Erosion Control Manual for the Thurston region. To minimize the potential for groundwater contamination, stormwater runoff may require maximum treatment of metals and nutrients prior to infiltration or discharge. Determinations will be made on a case by case basis, in accordance with the Stormwater Design Manual. In addition to this manual, spill prevention and contamination shall be considered during project review to avoid accidental release of pollutants.

C. Agricultural ~~a~~Activities. Agricultural activities within the city are primarily associated with urban agriculture, as allowed under Chapter 16.21 LMC, which includes limits and requirements for small farm animals. Agricultural impacts shall be mitigated through implementation of the Northern Thurston County Ground Water Management Plan (1991), where applicable. In critical 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 ~~m~~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.~~

~~14. 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. Projects within sites that utilize, store, or dispose of hazardous substances may be required to prepare and implement a source control and spill prevention plan that is specific to the hazardous substances on the site, or hazardous materials management plan as described in section 14.36.160.~~

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

G. Onsite septic systems. Onsite septic systems for new or expanding uses with the city are addressed in service policies in the *City of Lacey Wastewater Comprehensive Plan*. The following provisions do not apply to septic tank effluent pumping (STEP) systems that are part of the city sewer system.

1. New individual or community onsite septic systems are not allowed within the city.

2. Individual onsite septic systems for expanding uses are discouraged and will only be considered on a case by case basis, generally as exceptional cases when connection to city sewer is not feasible.

H. Abandoned wells. Wells that cease to be used as a water source or as a resource protection well, are unmaintained, or are in such disrepair as to be unusable, shall be decommissioned consistent with WAC 173-160 to prevent ground water contamination and remove any public safety hazards.

~~14.36.130 Critical aquifer recharge areas Residential density.~~

~~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~~

**Comment [CO14]:** This process is no longer utilized.

~~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).~~

~~**14.36.1250 Critical aquifer recharge areas and wellhead protection areas--Departmental cooperation.**~~

~~A. 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).~~

~~B. Where designated critical aquifer recharge areas and wellhead protection areas encroach into the city of Lacey from neighboring jurisdictions, the provisions of this chapter shall apply.~~

~~**14.36.1360 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 geohydrogeological 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).~~

~~**14.36.1470 Geohydrogeological reports--General comments.**~~

~~A. The city shall require a hydrogeological report for a project located in a wellhead protection are or Category I or II critical aquifer recharge are 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.~~

~~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. This report shall be prepared, signed, and dated by a professional who is licensed in the state of Washington in hydrogeology or geology.~~

**Comment [CO15]:** Moved and modified from the section below.

CB. ~~The special report s~~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.

DC. ~~The special report s~~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 hydrogeological report shall contain the information required under LMC 14.36.100, and the following:

1. Information sources;

2. Site geology and hydrostratigraphy, supported by well logs or borings;

3. Available data on wells and springs located within ¼ mile of the site;

4. Location and depth of perched water tables;

5. Groundwater elevations, flow direction, and gradient;

6. Recharge potential of facility site, including permeability and transmissivity;

7. Background water quality;

8. Identification of all hazardous materials to be used or stored on the site;

9. Analysis of the increase or change in nitrate concentrations predicted to occur in groundwater beneath the site as a result of the project;

10. A description of site conditions prior to project development, including vegetation and other conditions relating to existing and historic groundwater recharge at the site;

11. An analysis of site conditions as they are likely to exist during and after construction of the proposed project, and their cumulative impacts on ground water quantity and quality;

12. Discussion of proposed mitigation measures to minimize impacts to groundwater quality and quantity, including training, maintenance and monitoring plans, and proposed mechanisms and financial measures that will ensure long-term implementation of mitigation measures; and

15. Any other information as required by the city.

FE. 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).

G. Review and evaluation of the report may be delegated to other city departments and to qualified private consultants at the applicant's expense.

H. The city of Lacey may waive the hydrogeological 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.

**14.36.1580 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).~~

**14.36.160 Hazardous materials spill plans**

A. Any new project located within a wellhead protection area that uses, stores, handles or disposes of hazardous materials above the minimum cumulative quantities listed in this section shall submit a hazardous materials management (spill) plan that will ensure adequate protection of the aquifer and any domestic water supply. This plan shall be reviewed and updated as needed, and conditions under this plan shall be met on an ongoing basis.

B. The City in consultation with the Thurston County Health Officer may request that an owner of any existing use located within wellhead protection area which uses, stores, handles or disposes of hazardous materials above the minimum cumulative quantities listed within this section to submit a hazardous materials management (spill) plan. This plan shall be reviewed and updated as needed, and conditions under this plan shall be met on an ongoing basis.

C. Hazardous materials management (spill) plans shall include, at a minimum, the following:

1. A brief description of business activities and a list and map of the locations, amounts, and types of hazardous materials, hazardous waste and petroleum products, stored on site;

**Comment [C016]:** Added wellhead protection requirements to the chapter.

2. A pollution prevention evaluation that reviews whether the risk from hazardous substances could be reduced through modifying production processes, utilizing nontoxic or less toxic substances, implementing conservation techniques, or reusing materials rather than putting them in the waste stream;
3. A description of inspection procedures for hazardous material storage areas and containers and the minimum inspection intervals. An inspection logbook shall be maintained for periodic review by the city or county;
4. Provision of an appropriate spill kit with adequate spill supplies and protective clothing;
5. Detailed spill cleanup and emergency response procedures identifying how the applicant will satisfy the requirements of the Dangerous Waste Regulations, Chapter 173-303 WAC, in the event that hazardous material is released into the ground, ground water, or surface water;
6. Procedures to report spills immediately to the Department of Ecology and the Environmental Health Division of the Thurston County Public Health and Social Services Department, in that order;
7. A list of emergency phone numbers (e.g., the local fire district and ambulance);
8. Procedures to ensure that all employees with access to locations where hazardous materials are used or stored receive adequate spill training. A training logbook shall be maintained for periodic review by the county;
9. A map showing the location of all floor drains and any hazardous material and petroleum product transfer areas; and
10. Additional information determined by the approval authority to be necessary to demonstrate that the use or activity will not have an adverse impact on ground water quality.

D. Any existing use which uses, stores, handles or disposes of hazardous materials above these minimum cumulative quantities will meet requirements described in subsection A above;

1. Chemical substances that are ignitable, corrosive, reactive or toxic, consistent with WAC 173-303-090, as amended, except as provided for below. Minimum cumulative quantity: one hundred sixty (160) pounds or the equivalent of twenty (20) gallons.
2. Cleaning substances for janitorial use or retail sale in the same size, packaging and concentrations as a product packaged for use by the general public. Chlorinated solvents and nonchlorinated 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 (B)(1) of this section. Minimum cumulative quantity: eight hundred (800) pounds [or the equivalent one hundred (100) gallons], not to exceed fifty-five (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: two and two tenths (2.2) pounds.

**Field Code Changed**

**Comment [CO17]:** Field code changed

**14.36.170 Wellhead protection area standards of mitigation**

A. Every application for a non-exempt development permit for a new use or expansion of existing uses within a wellhead protection area shall meet these minimum standards for mitigation:

1. If the proposal indicates the use, storage, handling or disposal of hazardous materials above the minimum quantity thresholds listed in LMC 14.36.190, the applicant shall submit a hazardous materials management (spill) plan as outlined in LMC 14.36.190.
2. Any existing wells on the site that are not actively used for domestic water use, irrigation or monitoring, or are not maintained and in such disrepair as to be unusable, will be decommissioned by the applicant following the procedures in WAC 173-160-381.
3. The city may require dedicated groundwater monitoring wells to be installed for the project in situations where groundwater contamination risks or monitoring needs are identified. The wells will be installed and equipped by the applicant to city standards.
4. The proposal must ensure compliance with the City of Lacey stormwater maintenance requirements, as described in section 5B of the *City of Lacey Development Guidelines and Public Works Standards*.
5. The city may allow alternatives to the minimum mitigation standards described in this section in unique conditions and on a case-by-case basis when the applicant demonstrates that:
  - a. The project has been evaluated by a Hydrogeological Report as described in 14.36.140; and
  - b. Based upon the Hydrogeological Report and the best available science the proposed alternative mitigation measures will be adequate to protect the drinking water source

**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.

**Comment [CO18]:** This is simplified in the table in section 14.36.070 and in the definition section.

**Category I Soil Series**

<b>Series Name</b>	<b>SCS Map Symbol #</b>
Baldhill	5, 6, 7, 8
Cagey	20
Everett	32, 33, 34, 35
Grove	42
Indianola	46, 47, 48

Series Name	SCS Map Symbol #
Newberg	71, 72
Nisqually	73, 74
Pilehuk	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	34
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	44

Series Name	SCS Map Symbol #
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
Catheart	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

Series Name	SCS Map Symbol #
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
Dupont Muek	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

Lacey Municipal Code  
 CHAPTER 14.36 WELLHEAD PROTECTION AND  
 CRITICAL AQUIFER RECHARGE AREAS  
 PROTECTION

Series-Name	Map-Symbol #	Category
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
Pilehuk	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
Rock-outerop	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

<u>Series-Name</u>	<u>Map-Symbol#</u>	<u>Category</u>
<u>Tisch</u>	<u>120</u>	<u>III</u>
<u>Vailton</u>	<u>121, 122</u>	<u>IV</u>
<u>Wilkeson</u>	<u>123, 124</u>	<u>IV</u>
<u>Xerorhents</u>	<u>125</u>	<u>H</u>
<u>Yelm</u>	<u>126, 127, 128</u>	<u>H</u>

~~(Ord. 935 §10 (part), 1992).~~

**14.36.180215 Wellhead protection area standards for new uses.**

The following standards for new uses within designated wellhead protection areas are established to minimize risk to potable water supplies.

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. Direct groundwater recharge or surface percolation using reclaimed water (as defined under Chapter 90.46 RCW.

3. 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;

4. 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;

5. Automobile wrecking and salvage yards;

~~5. Wood waste landfills; and~~

~~6. Dry cleaners, excluding drop-off only facilities;~~

7. Asphalt plants/cement concrete plants; and

8. Machine shops, metal finishing/fabricating, metal plating and electroplating.

B. The following uses shall be prohibited within the designated one (1), five (5) and ten (10)-year time of travel zones:

1. Landfills (municipal sanitary solid waste and hazardous waste), demolition (inert), and wood waste;

2. Chemical/hazardous waste manufacturing, reprocessing, transfer, storage and disposal facilities;

3. Wood and wood products preserving; and

4. ~~Chemical manufacturing~~Gas stations without attendant (i.e., operated with no attendant on site to respond to fuel spills related to the dispensing of gasoline or equipment failure.

~~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 non-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).~~

**14.36.190217 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 all~~ uses prohibited in LMC 14.36.180 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 all~~ uses prohibited in LMC 14.36.180 shall be prohibited within the designated one, ~~(1),~~ five ~~(5)~~ and ten ~~(10)~~-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.~~

CHAPTER 14.36 WELLHEAD PROTECTION AND  
 CRITICAL AQUIFER RECHARGE AREAS  
 PROTECTION

Draft Update-PC Review

C. For any expansion of an existing use proposed within the designated one (1), five (5) and ten (10)-year time of travel zones ~~which uses, stores, handles or disposes of hazardous materials above the minimum quantities listed below~~, the applicant shall meet the minimum standards of mitigation described in LMC 14.36.170, ~~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.~~

~~D. 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 (1), five (5) and ten (10)-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).~~

**14.36.2019 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 (1), five (5) and ten (10)-year time of travel zones which produces, 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 hazardous materials management (spill) pollution prevention plan as described under LMC 14.36.160 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.

~~B. 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 (1), five (5), and ten (10)-year time of travel zones.

~~CB.~~ 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).

**14.36.2120 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).

**14.36.2230 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).

**14.36.2340 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).

**14.36.2450 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 critical~~ aquifer ~~recharge sensitive~~ area ~~or wellhead protection 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; ~~and~~

(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 ~~a critical~~ aquifer ~~recharge sensitive~~ area ~~or wellhead protection 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 Hearings Examiner in conformance with Section 1D.030 of the City of Lacey Development Guidelines and Public Works Standards. ~~Superior Court within the subject jurisdiction.~~

CHAPTER 14.36 WELLHEAD PROTECTION AND CRITICAL AQUIFER RECHARGE AREAS PROTECTION

[Draft Update-PC Review](#)

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 [1D.030 of the City of Lacey Development Guidelines and Public Works Standards](#). ~~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).

**14.36.2560 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).

**14.36.2670 Repealed.**

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

**14.36.2780 Amendments.**

These regulations and ~~the city of Lacey Environmental Protection and Resource Conservation Plan~~[wellhead protection maps referenced in LMC 14.36.060](#) may from time to time be amended in accordance with the procedures and requirements in the general statutes, [the City of Lacey Comprehensive Plan, adopted development regulations](#), and as new information concerning becomes available. (Ord. 935 §10 (part), 1992).

**14.36.2890 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).

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



## PLANNING COMMISSION STAFF REPORT

December 6, 2016

**SUBJECT:** Work session on proposed addition of an Impact Fee Chapter to the LMC related to the collection of impact fees.

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

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**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

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

There was a previous worksession on the draft impact fee chapter held on October 18, 2016. The Planning Commission also 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.

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**BACKGROUND:**

Proposed changes to the city's environmental regulations for increasing exemption levels to reduce redundancy in the environmental review process will necessitate procedural revisions to collect school impact fees. The amendments to our environmental regulations were recommended in part to address the stated need in the Comprehensive Plan of encouraging multi-family and infill development in the limited available land remaining in the city's urban growth area and provide for diverse housing types for affordability and more choices. Recommended changes to the Environmental Policy chapter and accompanying Historic Preservation & Cultural Resources chapter were not forwarded to the council due to an oversight by staff with respect to the current process of collecting school impact fees through the SEPA process.

**PROPOSED IMPACT FEE PROVISIONS**

Impact fees are charges paid by new development to reimburse local governments for the capital cost of public facilities that are needed to serve new development. 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 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.

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 under LMC 14.21 and school facilities under SEPA. The proposed addition of an impact fee chapter would change the procedure for collecting school impact fees as well as 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 has updated their capital facilities plan and impact fee rates. Fees for transportation impacts are collected through a separate state law and are not proposed to be changed at this time.

The proposed impact fee chapter has been revised based on comments received by the Planning Commission, the city attorney, and an internal city review. Changes to the draft chapter are noted in track changes and include comment notations of where a policy decision needs to be recommended by the commission. The policy decisions noted are:

1. The percentage of school impact fees that will be exempted for designated low-income housing.
2. The number of single family detached and attached units that will be allowed to defer the payment of impact fees. State law requires a minimum of up to twenty units per contractor.

Planning staff will meet with Fire District 3 commissioners regarding the draft provisions as well as the North Thurston School District for comments. External review of the draft will be completed prior to the adoption of the chapter. Expedited review and approval has been completed by the Washington State Department of Commerce.

**RECOMMENDATION:**

The Planning Commission is requested to review revisions to the draft impact fee chapter to Title 14 of the Lacey Municipal Code. This chapter would be adopted in conjunction with proposed changes to Environmental Protection and Historic Preservation Chapters, and 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 [and are not subject to this chapter](#).

**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 a capital facilities plan 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. "Single family attached or detached dwelling unit" means a dwelling designated and intended for use by one family that may be site built or manufactured, or a townhouse defined as an attached single family dwelling unit that is contained on a separate legal lot of record for the purposes of section 14.\*\*.160, deferral of impact fees.

EE.DD. "Square footage" means the square footage of the gross floor area of the development.

FF.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.

GG.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 [Capital Facilities Plan](#) and Lacey Fire District 3 [Capital Facilities Plan](#), 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 and the applicable interlocal agreement pursuant to Section 14.\*\*.130 and 14.\*\*.140, 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 ~~prior to~~ 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 ~~fees 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 ~~the 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 be 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 and 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 feepayer.

**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 residential structure ~~that does not increase the number of residential units, 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:** The city may exempt from 0% to 80% of school impact fees to support the construction of affordable housing. If the city exempts 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 Director 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 [exhaustion of 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's written decision.~~

**Comment [C03]:** Stated in subsection A.

**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 city and 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 city and 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) units/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 shall/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;

**Comment [CO4]: POLICY DECISION** The city may elect to defer more than 20 permits per applicant per year but is required to provide for a minimum of 20 units per year.

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 [or fire](#) district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid school [or fire](#) 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.