

ORDINANCE 1215

CITY OF LACEY

AN ORDINANCE RELATING TO THE CITY'S WETLANDS PROTECTION AND HABITAT CONSERVATION AREAS PROTECTION REGULATIONS, AMENDING THE LACEY MUNICIPAL CODE BY REPEALING SECTIONS 14.28.470, 14.28.480 AND 14.33.030, ADDING NEW SECTIONS 14.28.445, 14.28.447, 14.28.455, 14.28.465, 14.33.030, 14.33.115, 14.33.116 and 14.33.117, AMENDING SECTIONS 14.28.030, 14.28.080, 14.28.090, 14.28.100, 14.28.120, 14.28.140, 14.28.280, 14.28.300, 14.28.350, 14.28.360, 14.28.370, 14.28.440, 14.28.450, 14.28.460, 14.28.490, 14.33.060, 14.33.070, 14.33.080, 14.33.100, 14.33.110 AND 14.33.160 ALL OF SAID CODE AND ADOPTING A SUMMARY FOR PUBLICATION.

WHEREAS, the City has previously amended it's Environmental Protection and Resource Conservation Plan required by the State Growth Management Act which Plan requires changes to the City's Wetlands Protection and Habitat Conservation Areas Protection Ordinances found in Chapters 14.28 and 14.33 of the Lacey Municipal Code and further changes are required to bring said regulations in conformance with state law and the City's Planning Commission has recommended the modifications set forth herein,

NOW, THEREFORE;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, AS FOLLOWS:

Section 1: Sections 14.28.470, 14.28.480 and 14.33.030 of the Lacey Municipal Code are hereby repealed.

Section 2: Section 14. 28.030 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.030 Definitions.** For the purposes of this chapter, the following definitions shall apply:

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

B1. "Best management practices" means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and

2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands.

3. Protect trees and vegetation designated to be retained during the following site construction; and

4. Provide standards for proper use of chemical herbicides within critical areas.

B2. "Best available science" means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined in WAC 365-195-900 through 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.

C. "Compensation project" means actions necessary to replace project-induced wetland and wetland buffer losses, including land acquisition, planning, construction plans, monitoring and contingency actions.

D. "Compensatory mitigation" means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:

1. "Restoration" - Actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities, or catastrophic events within an area which no longer meets the definition of a wetland.

2. "Creation" - Actions performed to intentionally establish a wetland at a site where it did not formerly exist.

3. "Enhancement" - Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

4. "Preservation" - actions taken to ensure the permanent protection of existing high quality wetlands.

E. "Department" means the Washington State Department of Ecology.

F. "Developable area" means an area of land outside of wetlands and wetland buffers.

G. "Emergent wetland" means a regulated wetland with at least thirty percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

H. "Essential habitat" means habitat necessary for the survival of federally listed threatened, endangered, and sensitive species and state listed priority species.

I. "Existing and ongoing agriculture" includes those activities conducted on lands defined in RCW 84.34.020 (2), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved

areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.

J. "Exotic" means any species of plants or animals that are foreign to the planning area.

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

L. "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.

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

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

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

P. "High quality wetlands" are those regulated wetlands which meet the following criteria:

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

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

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

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

T. "Isolated wetlands" means those regulated wetlands which:

1. Are outside of and not contiguous to any 100 year floodplain of a lake, river, or stream; and
2. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

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

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

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

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

X. "Native vegetation" means plant species which are indigenous to the area in question.

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

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

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

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

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

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

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

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

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

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
2. The dumping, discharging, or filling with any material;
3. The draining, flooding, or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition, or expansion of any structure;

7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland or any other activity taking place in a wetland or buffer involving the modification of vegetation falling under the jurisdiction of the city's Tree and Vegetation Protection and Preservation Ordinance;

8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.

HH. ~~“Regulated wetlands” means type 2 through 5 waters as defined by Washington Forest Practices Rules and Regulations WAC 222 and ponds twenty acres or less, including their submerged aquatic beds, and those lands defined as wetlands under the Federal Clean Water Act, 33 U.S.C. Sec. 1251 et seq., and rules promulgated pursuant thereto and shall be those areas and those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Regulated wetlands generally include streams falling under Forest Practice Regulations and swamps, marshes, bogs, and similar areas. Wetlands created as mitigation and wetlands modified for approved land use activities shall be considered as regulated wetlands. All Category I and V wetlands shall be considered regulated wetlands. Regulated wetlands do not include Category II and III wetlands less than two thousand five hundred square feet and Category IV wetlands less than ten thousand square feet. Regulated wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. The applicant shall bear the burden of proving that the site was not previously a wetland. For identifying and delineating a regulated wetland, local government shall consider the “Federal Manual for Identifying and Delineating Jurisdictional Wetlands.”~~ all wetlands as defined herein and wetlands which fall waterward of the ordinary high water mark of lakes. At the time of adoption of this provision the Department of Ecology, had not provided a threshold for small wetland exemptions. Previous recommendations prepared by the Department of Ecology, in the early 1990s, provided exemptions for some small wetlands; Category 2 and 3 wetlands under 2,500 square feet, and category IV wetlands under 10,000 square feet. The Department of Ecology no longer believes such exemptions are scientifically valid. Depending upon individual circumstances of a wetland site, these small wetlands may or may not have functions and values justifying regulation. Therefore, a preliminary site review and assessment should be preformed prior to the modification of any small wetland, under the thresholds described above, to consider the probable functions and values of the wetland. A wetland permit or other mitigation will be required unless the applicant adequately demonstrates that the wetland functions and values provided by the small wetland are sufficiently limited enough that consideration during development of the property is not warranted. If the preliminary review indicates the values and functions are sufficiently limited, considering other goals and policies of the Comprehensive Land Use Plan to develop an urban community, the small wetland may be exempted from full wetland permit review.

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

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

KK. "Serviceable" means presently usable.

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

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

NN. ~~"Wetlands" are for the purposes of inventory, incentives, and nonregulatory programs, means those lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this definition, wetlands must have one or more of the following attributes:~~

~~— 1. At least periodically, the land supports predominantly hydrophytes;~~

~~— 2. The substrate is predominantly undrained hydric soil; and~~

~~— 3. The substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year. those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. For identifying and delineating a regulated wetland, local government shall use the Washington State Wetland Identification and Delineation Manual.~~

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

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

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

RR. "Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in this chapter.

Section 3: Section 14. 28.080 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.080 Maps and inventory.** This chapter shall apply to all lots or parcels on which wetlands and/or wetland buffers are located within the jurisdiction of the city of Lacey. The approximate location and extent of wetlands in the city of Lacey is displayed on the city zoning map and wetland maps created by Regional Planning based upon National Wetland Inventory maps and local aerial photograph studies. ~~and Department of Natural Resources Stream Typing Maps.~~ The city zoning map and ~~Department of Natural Resources Stream Typing Maps~~ and inventory maps are to be used as a guide to the general location and extent of wetlands. Wetlands not shown on the zoning map, ~~Department of Natural Resources Stream Typing Maps~~ or National Wetlands Inventory are presumed to exist in the city of Lacey and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control.

Section 4: Section 14. 28.090 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.090 Determination of regulatory wetland boundary.**

A. The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation applying the wetland definition provided in Section 14.28.030 of this chapter. Qualified professional and technical scientists shall perform wetland delineations using the ~~"Federal Manual for Identifying and Delineating Jurisdictional Wetlands"~~ "Washington State Identification and Delineation Manual". The applicant is required under Section 14.28.190 of this chapter to show the location of the wetland boundary on a scaled drawing as a part of the permit application.

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

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

D. Where the applicant has provided a delineation of the wetland boundary, the city of Lacey shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the city of Lacey shall, at the applicant's expense, obtain expert services to render a final delineation.



Section 5: Section 14. 28.100 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.100 Wetlands rating system.** The following system shall be used to rate, establish and administer buffer widths, and replacement ratios for wetlands. For a detailed explanation of this system, refer to Washington State Wetland Rating System documents for Western Washington (1991) 1993, or as hereafter amended.

A. "Category I wetlands" can be described as the premium wetlands. Generally, these wetlands are not common and would make up a small percentage of the wetlands in the state. These are wetlands that: (1) are very valuable for a particular rare animal species; (2) represent a high quality example of a rare wetland type; (3) are rare habitat type within a given region; or, (4) provide irreplaceable functions and values which are impossible to replace within a human lifetime. ~~The criteria for Category I wetlands are as follows:~~

- ~~— 1. Documented habitat recognized by federal or state agencies for threatened or endangered plant (or potentially extirpated plant), animal, or fish species;~~
- ~~— 2. Documented Natural Heritage wetland sites or high quality native wetland communities which qualify as Natural Heritage wetland sites;~~
- ~~— 3. Documented habitat of regional (Pacific Coast) or national significance for migratory birds;~~
- ~~— 4. Regionally rare native wetland communities with irreplaceable ecological functions including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps (defined in the rating system documents); or~~
- ~~— 5. Wetlands with irreplaceable ecological functions;~~
- ~~or~~
- ~~— 6. Documented wetlands of local significance.~~

B. "Category II wetlands" occur more commonly than Category I wetlands. They can be described as those wetlands that: (1) provide habitat for very sensitive or important wildlife or plants; (2) are either difficult to replace; or, (3) provide very high functions and values, particularly for wildlife habitat.

~~The criteria for Category II wetlands satisfy no Category I criteria and are as follows:~~

- ~~— 1. Documented habitats for State listed recognized by federal or state agencies for sensitive plant, animal, or fish species;~~
- ~~— 2. Documented priority habitats and species recognized by state agencies;~~
- ~~— 3. Wetlands with significant functions which may not be adequately replicated through creation or restoration;~~
- ~~— 4. Wetlands with significant habitat value of twenty two or more points from the rating system; or~~
- ~~— 5. Documented wetlands of local significance.~~

C. "Category III wetlands" occur more frequently throughout the state than do Category I and Category II wetlands. Generally these wetlands will be smaller, less diverse and/or more isolated than Category II wetlands. These wetlands also provide important functions and values and are important for a variety of wildlife species. These wetlands would be difficult to replace.

~~The criteria for Category III wetlands do not contain features outlined in Category I, II, or IV and are as follows:~~

- ~~— 1. Wetlands with significant habitat value of twenty-one points or less from the rating system;~~
- ~~— 2. Estuarine wetlands which do not satisfy the Category I or II wetland criteria; or~~
- ~~— 3. Documented wetlands of local significance.~~

D. "Category IV wetlands" are smaller, more isolated and have less diverse vegetation than the other wetland categories. These wetlands do have important values and function, but could be replaced. In some cases it may be able to improve its value for habitat.

~~The criteria for Category IV wetlands satisfy no Category I, II, or III criteria and are as follows:~~

~~— 1. Wetlands less than one acre, and hydrologically isolated that are less than or equal to one acre in size, have only one wetland class, and are dominated by a single non-native plant species (monotypic vegetation); or and comprised of one vegetated class that is dominated (greater than eighty percent areal cover) by soft rush, hard hack or cattail; or~~

~~2. Wetlands less than two (2) acres in size, and hydrologically isolated, with one wetland class and greater than ninety percent (90) areal cover of non-native plant species, vegetated class, and greater than ninety percent of areal cover in any combination of invasive or exotic species from the rating system. E. "Category V Wetlands".~~

~~E. 1. All 2-5 waters as defined by the Washington Forest Practice Rules and Regulations that do not meet requirements of Categories I-IV.~~

~~— a. Type 1 waters as defined by WAC 222-16-020 are specifically excluded from Category V. Type 1 water means all waters, within their ordinary high water mark, as inventoried as "shorelines of the state" under Chapter 90.58 RCW.~~

~~— b. Type 2 through 5 waters are described by WAC 222-16-020 as follows:~~

~~— "Type 2 water" shall mean segments of natural waters which are not classified as Type 1 water and have a high use and are important from a water quality standpoint for:~~

- ~~— (1) Domestic water supplies;~~
- ~~— (2) Public recreation;~~
- ~~— (3) Fish spawning, rearing, or migration or wildlife uses, or~~
- ~~— (4) Are highly significant to protect water quality.~~

~~“Type 3 water” shall mean segments of natural waters which are not classified as Type 1 or 2 water and have a moderate to slight use and are moderately important from a water quality standpoint for:~~

- ~~———— (1) Domestic use,~~
- ~~———— (2) Public recreation,~~
- ~~———— (3) Fish spawning, rearing, or migration or wildlife uses, or~~
- ~~———— (4) Have moderate value to protect water quality.~~

~~“Type 4 water” shall mean segments of natural waters which are not classified as Type 1, 2, or 3. Their significance lies in their influence on water quality downstream in Type 1, 2, and 3 waters. These may be perennial or intermittent.~~

~~“Type 5 water” means all other waters, in natural water courses, including streams with or without a well defined channel, areas of perennial or intermittent seepage, ponds, and natural sinks. Drainage ways having short periods of spring runoff are considered to be Type 5 waters. A more thorough description of water typing criteria is specified in WAC 222-16-030 and is hereby incorporated by reference. Stream typing maps identifying water types within the city of Lacey are available from the State Department of Natural Resources and are on file at Lacey City Hall and are also hereby incorporated by reference.~~

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

F. Wetland rating categories shall be applied as the wetland exists on the date of adoption of the ordinance codified in this chapter; as the wetland may naturally change thereafter; or as the wetland may change in accordance with permitted activities. Wetland ratings shall not be altered to recognize illegal modifications.

Section 6: Section 14. 28.120 of the Lacey Municipal Code is hereby amended to read as follows:

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

A. Construction of a single family residence within the normal required wetland buffer on any legally established lot of record; provided it is not possible to locate said single family residence on said lot without reduction of the normally required buffer area and provided the site plan review committee shall require as large a buffer from the wetland as can reasonably

be accommodated on said lot. In no case shall a dwelling be permitted to be developed in the wetland area except through the provisions and procedures of Section 14.28.350 of this chapter;

B. Efforts of public and private organizations, clubs or memberships for the conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;

C. Outdoor recreational activities developed for the public or private organizations, clubs or memberships, including hunting, fishing, bird watching, hiking, boating, swimming, and canoeing, provided they do not adversely impact the wetland or wetland buffer;

D. The maintenance of drainage ditches. Maintenance shall not include construction of such drainage ditches except pursuant to subsections K and L of this section;

E. Development of nature trails;

F. Boat mooring buoys;

G. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road; and

H. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions;

I. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less when required by a local governmental agency;

J. Relocation of natural gas, cable communications, and telephone facilities, lines, pipes, mains, equipment or appurtenances when required by a local governmental agency.

K. Improvement of existing stormwater treatment facilities provided such activities are designed to improve or enhance wetlands by reduction of existing stormwater drainage impacts.

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

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

1. No other location is feasible, and

2. The location of such facilities will not degrade the functions or values of the wetland.

Section 7: Section 14. 28.140 of the Lacey Municipal Code is hereby amended to read as follows:

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

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

Section 8: Section 14. 28.280 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.280 Wetland buffers--Standard buffer zone widths.** Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All

buffers shall be measured from the wetland boundary as surveyed in the field pursuant to the requirements of Section 14.28.090. The width of the wetland buffer zone shall be determined according to wetland category and the proposed land use. Where an area may be classified under more than one category, the category having the greatest buffer area shall apply. These buffer widths presume that buffer area is comprised of relatively intact native vegetation community adequate to protect the wetland functions at values at the time of the proposed activity. If the vegetation is not adequate, then the buffer width may need to be increased or planted to maintain the standard width:

- A. Category I
  - High intensity 300 feet
  - Low intensity 200 feet
- B. Category II
  - High intensity 200 feet
  - Low intensity 100 feet
- C. Category III
  - High intensity 100 feet
  - Low intensity 50 feet
- D. Category IV
  - High intensity 50 feet
  - Low intensity 25 feet
- E. ~~Category V~~
  - ~~Type 2-3 waters 200 feet~~
  - ~~Type 4 waters 100 feet~~
  - ~~Type 5 waters 50 feet~~

Section 9: Section 14. 28.300 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.300 Reduction of standard wetland buffer zone width.**

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

1. Buffer Restoration. This means improving the quality of the buffer so that it provides for increased visual screening or increased vegetative diversity.
2. Shielding High Intensity Land Uses. This means providing berms and/or permanent solid fences at the edge of the buffer. It may also include orientation of the building so that the building itself acts as a shield to buffer the wetland.
3. Hydrologic Restoration. This means providing permanent improvements to the site hydrology, which may include removal of a ditch that is draining a wetland.

4. Habitat Restoration. This means substantial improvements to the fish and wildlife habitat of a wetland or its buffer such as importing snag or meandering a channelized stream.

5. Wetland Restoration. This means improving other functions and values of a wetland. Wetland enhancement is not allowed in a Class I wetland.

B. Whenever any of the activities listed in subsection 14.28.300(A) are used to reduce buffer widths, it shall be in accordance with a written plan provided by the qualified professional or technical wetlands consultant or scientist substantiating that the activity is necessary because of existing degraded conditions of the wetland or buffer and that it will result in improved protection of the wetland and wetland functions and values.

C. Any wetland created, restored, or enhanced as compensation for approved wetland alterations shall have the standard buffer required for the category of the created, restored, or enhanced wetland.

Section 10: Section 14. 28.350 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.350 Avoiding wetland impacts.**

A. Regulated activities and special uses shall not be authorized in a regulated wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied.

B. With respect to Category I ~~and V~~ wetlands, an applicant must demonstrate that denial would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.

C. With respect to Category II and III wetlands, the following provisions shall apply:

1. For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences.

2. Where nonwater-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:

a. The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and

b. A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and

c. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.

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

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

1. That the proposed project is water-dependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative pursuant to this section;

2. That no reasonable use with less impact on the wetland and its buffer is possible (e.g., agriculture, aquaculture, transfer or sale of development rights or credits, sale of open space easements, etc.);

3. That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to wetlands and wetland buffers;

4. That the proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;

5. That disturbance of wetlands has been minimized by locating any necessary alteration in wetland buffers to the extent possible;

6. That the proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, rare, sensitive, or as documented priority species or priority habitats;

7. That the proposed activities will not cause significant degradation of ground water or surface water quality;

8. That the proposed activities comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

9. That any and all alterations to wetlands and wetland buffers will be mitigated as provided in Section 14.28.510;

10. That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and



11. That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter.

If the city of Lacey determines that alteration of a wetland and/or wetland buffer is necessary and unavoidable, the city of Lacey shall set forth in writing in the file it maintains regarding a permit application its findings with respect to each of the items listed in this subsection.

Section 11: Section 14. 28.360 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.360 Minimizing wetlands impacts.**

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

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

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

Section 12: Section 14. 28.370 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.370 Limited density transfer and open space credit.**

A. For development proposals on lands containing wetland buffers, the city of Lacey shall determine allowable dwelling units for residential development proposals based on the formulas below.

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

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

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

the buffer density credit;

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

added to

the upland non-buffer area density;

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

The density credit figure is derived from the following table:

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

The density credit can only be transferred within the development proposal site. To the extent that application of the formula may result in lot sizes and other zoning standards less than the minimum allowed by the underlying district, they may be authorized up to a fifty percent reduction of said standards provided that the resultant lot is of sufficient size to reasonably accommodate the intended use with room for adequate setbacks, private yard areas and other provisions deemed important to neighborhood quality and that any reduced standards result in a more innovative and superior design and provided further that uses allowed within the zoning district shall not be varied from. Additionally, lots must be of sufficient size to meet applicable health requirements. In cases where reduced lot sizes or departure from other standards is requested, the minimum standards shall be up to the sole discretion of the site plan review committee according to the processes in Section 1C.040 of the City of Lacey Development Guidelines and Public Works Standards or city hearings examiner and city council through the review process of Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.

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

B. Up to fifty percent of a development's open space requirement may be satisfied by wetland and wetland area buffers in consideration of the significant passive recreation opportunities provided by said lands. The remaining fifty percent open space requirement must be set aside outside of the wetland and wetland buffer area to provide for and accommodate proposed or potential future active (high intensity) recreational use.

Section 12: Section 14. 28.440 of the Lacey Municipal Code is hereby amended to read as follows:

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

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

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

Section 13: There Is Hereby Added To The Lacey Municipal Code A New Section 14.28.445 To Read As Follows:

**14.28.445 Performance Standards - Mitigation requirments.**

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

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

1. The lost wetland area provides minimal functions and the mitigation action(s) results in net gain in wetland functions as determined by a site specific function assessment; or

2 The lost wetland area provides minimal functions as determined by a site-specific function assessment and other protected or enhanced habitats provide greater benefits to the functioning of the watershed, such as riparian habitat protection and enhancement.

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

1. The lost wetland provides minimal functions as determined by a site-specific function assessment and the proposed mitigation action(s) will provide equal or greater

functions or will provide function shown to be limiting within a watershed through a formal watershed assessment protocol; or

2. Out of kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types.

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

1. Restoring wetlands on upland sites that were formerly wetlands.

2. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.

3. Enhancing significantly degraded wetlands.

4. Preserving high-quality wetlands that are under imminent threat.

Section 14: There Is Hereby Added To The Lacey Municipal Code A New Section 14.28.447 To Read As Follows:

**14.28.447 Type and Location of Mitigation.**

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

1 There are no reasonable on-site opportunities or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;

2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

3. Off-site locations shall be in the same sub-drainage basin and the same Water Resource Inventory Area (WRIA) unless;

a) the impact is located near the boundary of a WRIA;

b) Established regional or watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation at another site; or

c) Credits from a City certified wetland mitigation bank are used as mitigation, and the use of credits is consistent with the terms of the banks certification.

Section 15: Section 14. 28.450 of the Lacey Municipal Code is hereby amended to read as follows:

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

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

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

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

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

Category I	6:1
Category II or III	
Forested	3:1
Category III Scrub-shrub	2:1
Emergent	1.5:1
Category IV	1.25:1
Category V	
<hr/>	Type 2 water 6:1
<hr/>	Type 3 water 3:1
<hr/>	Type 4 water 2:1
<hr/>	Type 5 water 1.25:1

1. Increased Replacement Ratio. The city of Lacey may increase the ratios under the following circumstances:

- a. Uncertainty as to the probable success of the proposed restoration or creation;
- b. Significant period of time between destruction and replication of wetland functions will elapse between impact and replication of wetland functions; or
- c. Projected losses in functional value. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
- d. The impact was an unauthorized impact.

2. Decreased Replacement Ratio. The city of Lacey may decrease these ratios under the following circumstance:

a. ~~Findings of special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value is attained under the decreased ratio. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;~~

b. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or

c. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

3. ~~In all cases,~~ A minimum acreage replacement ratio of 1:1 shall be required except as provided by section 14.28.445 (B).

Section 16: There Is Hereby Added To The Lacey Municipal Code A New Section 14.28.455 To Read As Follows:

**14.28.455 Wetland Mitigation Banks.**

A. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

1. The bank is approved by the City, the Department of Ecology, or the U.S. Army Corps of Engineers.

2. The City determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

3. The proposed use of credits is consistent with the terms and conditions of the banks certification.

B. Replacement ratios for projects using bank credits shall be consistent with the replacement ratios specified in the banks certification.

C. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the banks certification. In some cases, bank service areas may include portions of more than one Water Resource Inventory Area (WRIA) for specific wetland functions.

Section 17: Section 14. 28.460 of the Lacey Municipal Code is hereby amended to read as follows:

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

~~A. Any applicant proposing to alter wetlands may propose to enhance existing significantly degraded wetlands in order to compensate for wetland losses. Applicants proposing to enhance wetlands shall identify how enhancement conforms to the overall goals and requirements of the local wetlands protection program and established regional goals. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase~~

will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

~~B. A wetlands enhancement compensation project shall be determined pursuant to Sections 14.28.430 through 14.28.510, provided that enhancement for one function and value will not degrade another function or value and that acreage replacement ratios shall be doubled to recognize existing functional values and, provided further, that Category I wetlands shall not be enhanced. (Ord. 912 §1 Sec. 7.5(f)(3), 1991). At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under 14.28.450. The ratios shall be greater than double the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.~~

Section 18: There Is Hereby Added To The Lacey Municipal Code A New Section 14.28.465 To Read As Follows:

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

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

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

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

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

6. The preservation site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on or off-site activities. ("potential" includes permitted, or planned, or perceived actions); and

7. The area proposed for the preservation is of a high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of high quality areas;

- a) Category I or II wetland rating;
- b) Rare wetland type (for example, bogs, estuaries);
- c) Habitat for threatened or endangered species;
- e) Wetland type that is rare in the area;
- e) Provides biological and/or hydrological connectivity;
- f) High regional or watershed importance (for example, listed as a priority site in watershed plan); and
- g) Large size with species diversity (plants and/or animals) and/or high abundance.

C. Mitigation ratios for preservation as a sole means of mitigation. Mitigation ratios for preservation as the sole means of mitigation shall range from 10-to-1 to 20-to-1, as determined by the City, depending on the quality of wetlands being mitigated and the quality of the wetlands being preserved.

Section 19: Section 14. 28.490 of the Lacey Municipal Code is hereby amended to read as follows:

**14.28.490 Application approval-- Compensatory mitigation--Timing.** Where feasible, compensatory projects shall be completed prior to activities that will disturb wetlands ~~and immediately after activities that will temporarily disturb wetlands.~~ In all other cases, mitigation shall be completed immediately following disturbance and except for Category I wetlands, compensatory projects should be completed prior to use or occupancy of the activity or development. which was conditioned upon such compensation. Construction of ~~compensation~~ mitigation projects shall be timed to reduce impacts to existing wildlife and flora. The City may authorize a one time temporary delay, up to one-hundred-twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the City, and include a financial guarantee.

Section 20: There is hereby added to the Lacey Municipal Code a new Section 14.33.030 to read as follows:



**14.33.030 Definitions.** For the purposes of this chapter, the following definitions shall apply:

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

- H. "Exotic" means any species of plants or animals which are foreign to the planning area.
- I. "Fish and wildlife habitat conservation areas" also referred to as "Habitat Conservation Area" means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated sub-populations are not created as designated by WAC 365-190-080 (5). These areas include:
1. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
  2. Habitats and species of local importance, including but not limited to areas designated as priority habitats or priority species by the Dept. of Fish and Wildlife;
  3. Commercial and recreational shellfish areas;
  4. Kelp and eelgrass beds, herring and smelt spawning areas;
  5. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds;
  6. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington;
  7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
  8. State natural area preserves and natural resource conservation areas; and
  9. Land essential for preserving connections between habitat blocks and open spaces.
- J. "Extraordinary hardship" means strict application of this chapter and/or programs adopted to implement this chapter by the city of Lacey that would prevent all reasonable economic use of the parcel.
- K. "Financial security" means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or
- L. "Functions and values" – the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.
- M. "In-kind compensation" means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category".
- N. "Mitigation" means avoiding, minimizing or compensating for adverse critical areas impacts. Mitigation, in the following order of preference, is:
1. Avoiding the impact altogether by not taking a certain action or parts of an action;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
3. Rectifying the impact to habitat conservation areas by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
6. Compensating for the impact to habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
7. Monitoring the required mitigation and taking remedial action when necessary.

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

- O. "Native vegetation" means plant species that are indigenous to the area in question.
- P. "Ordinary high water mark (OHM)" means that mark which is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.
- Q. "Priority habitats" means a seasonal range or habitat element with which a given species has a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.
- R. "Priority species" means those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state listed endangered, threatened, and sensitive species, as well as other species of concern, and game species.
- S. "Qualified professional" means a person with experience and training in the applicable critical area. A qualified professional for habitats must have obtained a B.S. or B.A. or equivalent degree in biology, and at least two years of work experience related to the subject species or habitat.
- T. "Restoration" means measures taken to restore an altered or damaged natural feature including:
  1. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
  2. Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

- U. “Riparian habitat” means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife.
- V. “Species” means any group of animals classified as a species or subspecies as commonly accepted by the scientific community.
- W. “Species, endangered” means any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.
- X. “Species, threatened” means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.
- Y. “Water typing system” means waters classified according to WAC 222-16-031 as follows:
1. Type 1 water – all waters, within their ordinary high water mark, as inventoried as “shorelines of the state” under Chapter 90.58 RCW and the rule promulgated pursuant to Chapter 90.58 RCW, but not including waters’ associated wetlands as defined in Chapter 90.58 RCW.
  2. Type 2 water- segments of natural waters that are not classified as Type 1 water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:
    - a. Are used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish population:
      - (1) Stream segments having a defined channel 20 feet or greater in width between the ordinary high water mark and having a gradient of less than 4 percent.
      - (2) Lakes, ponds, or impoundments having a surface area of 1 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 5% gradient.
      - (3) Type 3 water – segments of natural waters that are not classified as Type 1 or 2 waters and have a moderate to slight fish, wildlife and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

a. Are used by significant numbers of anadromous fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have significant anadromous fish use:

(1) Streams segments having a defined channel of 5 feet or greater in width between the ordinary high water marks; and having a gradient of less than 12 percent and not upstream of a falls of more than 10 vertical feet.

(2) Ponds or impoundments having a surface area of less than 1 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 10 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 12 percent.

(2) Ponds or impoundments having a surface area greater than 0.5 acres a seasonal low water.

c. Are highly significant for the protection of down stream water quality. Tributaries which contribute greater than 20 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 50 percent of their drainage area at the point of confluence, whichever is less.

4. Type 4 water – this classification shall be applied to segments of natural waters which are not classified as Type 1, 2 or 3, and for the purpose of protecting water quality downstream are classified as Type 4 water upstream until the channel width becomes less than 2 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.

Section 21: Section 14. 33.060 of the Lacey Municipal Code is hereby amended to read as follows:

**14.33.060 Designation, maps and inventory.**

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

B. Fish and wildlife habitat conservation areas include:

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

a. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish

and Wildlife Service and the National Marine Fisheries Service should be consulted as necessary for current listing status.

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

2. State priority habitats and areas associated with state priority species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.

3. Habitat and species of local importance. Habitats and species of local importance are those identified by the City of Lacey, including those that possess unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators.

4. Kelp and eelgrass beds, and herring and smelt spawning areas.

5. Naturally occurring ponds under twenty (20) acres. Naturally occurring ponds are those ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.

6. Waters of the State. Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-030 or WAC 222-16-031 depending upon the classification used.

7. Type 1 through 5 waters as designated by the Department of Natural Resources. Type 1 through 5 waters are those water bodies designated by the Department of Natural Resources stream typing pursuant to WAC 222-13-031.

8. State natural area preserves and natural resource conservation areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the state Department of Natural Resources.

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

The approximate location and extent of habitat conservation areas in the city of Lacey is shown in maps provided in the city of Lacey Environmental Protection and Resource

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

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

Section 22: Section 14. 33.070 of the Lacey Municipal Code is hereby amended to read as follows:

**14.33.070 Determination of habitat conservation area.**

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

Section 23: Section 14. 33.080 of the Lacey Municipal Code is hereby amended to read as follows:

**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.

Section 24: Section 14. 33.100 of the Lacey Municipal Code is hereby amended to read as follows:

**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 Section 14.33.080 occurring in a fish and wildlife habitat conservation area or buffer.

Section 25: Section 14. 33.110 of the Lacey Municipal Code is hereby amended to read as follows:

**14.33.110 Application information requirements.**

A. An application for site plan review within a habitat conservation area or it's 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 ~~and~~

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 section 14.33.115 of this title.
- 8.9 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 Wildlife based on review of the project site.

Section 26: There is hereby added to the Lacey Municipal Code a new Section 14.33.115 to read as follows:

**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 section 14.33.040 of this title.
- 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 (200) feet of the project area; and
  3. All shoreline areas, flood plains, and other critical areas, and related buffers within two hundred (200) 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.

Section 27: There is hereby added to the Lacey Municipal Code a new Section 14.33.116 to read as follows:

**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 (50%) in any location; and
  - f. The buffer area width is not less than fifty (50) 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 (50) feet, whichever is less, and must be maintained by the property owner or homeowners association in perpetuity. The sign shall be worded as follows or with alternative wording approved by the City; "habitat conservation area - do not disturb - contact City of Lacey - regarding restrictions and uses."

3. Fencing.
  - a. The City may condition any permit or authorization to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.

b. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.

c. Fencing installed as part of a proposed activity or as required in this section shall be designed as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

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

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

Section 28: There is hereby added to the Lacey Municipal Code a new Section 14.33.117 to read as follows:

**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 (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 (800) feet, or within a quarter mile (2,640 feet) and in a shoreline foraging area. The City shall verify the location of eagle management areas for each proposed

activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the department of Fish and Wildlife.

B. Anadromous fish.

1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
  - a. Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
  - b. An alternative alignment or location for the activity is not feasible;
  - c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and
  - d. Any impacts to the functions and values of the habitat conservation area are mitigated in accordance with an approved critical area report.
2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
3. Fills may only intrude into water bodies used by anadromous fish when consistent with the Lacey shoreline management program and the applicant demonstrates that the fill is for a water-dependent use that is in the public interest.

C. Wetland habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall, at a minimum, conform to the wetland development performance standards set forth in title 14.28 (wetlands protection) of the Lacey Municipal Code.

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 subsection\_3, or a lesser width is allowed pursuant to subsection 4. Below. Widths shall be measured outward, on the horizontal plane, from the ordinary high water mark or from the top of the bank if the ordinary high water mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of in stream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

### **TABLE OF RIPARIAN HABITAT AREA WIDTHS**

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

3. Increased riparian habitat area widths. The recommended riparian habitat area widths shall be increased as follows:
  - a. When the Lacey Site Plan Review committee determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
  - b. When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
  - c. When the channel migration zone exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the channel migration zone;
  - d. When the habitat area is in an area of high blowdown potential, the riparian habitat area shall be expanded an additional fifty (50) feet on the windward side; and
  - e. When the habitat area is within an erosion or landslide hazard area, or buffer, the riparian habitat area shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.
4. Riparian habitat area width averaging. The City may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if: all of the following requirements are satisfied:
  - a. The width reduction will not reduce stream or habitat functions including those of non fish habitat;
  - b. The width reduction will not degrade the habitat, including habitat for anadromous fish;
  - c. The proposal will provide additional habitat protection;
  - d. The total area contained in the riparian habitat area of each stream on the development proposal site in not decreased;
  - e. The recommended riparian habitat area width is not reduced by more than fifty percent (50%) in any one location;
  - f. The recommended riparian habitat area width is not reduced to less than seventy-five (75) feet;

- g. The width reduction will not be located within another critical area or associated buffer;
  - h. The reduced riparian habitat area width is supported by best available science.
  - i. All undeveloped lands within total area will be left undeveloped in perpetuity by covenant, deed restriction, easement or other legally binding mechanism;
  - j. The buffer averaging plan shall be conducted in consultation with a qualified biologist and the plan shall be submitted to the Washington Department of Fish and Wildlife for comment; and
  - k. The Site Plan Review Committee shall use the recommendations of the qualified experts in making its decision on a plan that uses buffer width averaging.
5. Riparian habitat mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values, on a per function basis, and be located in the same sub drainage basin as the habitat impacted.
6. Alternative mitigation for riparian habitat areas. The requirements set forth in this section may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub - drainage basin as a result of alternative mitigation measures.
- E. Riparian habitat areas, ponds, lakes, waters of the state, and marine habitat. The following specific activities may be permitted within a riparian habitat area, pond, lake, water of the state, marine habitat or associated buffer when the activity complies with the provisions set forth in the Lacey shoreline management program and subject to the following standards:
- 1. Clearing and grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:
    - a. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year, provided the City may extend or shorten the dry season on a case by case basis, determined on actual weather conditions.
    - b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
    - c. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
    - d. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing 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 (1/4) 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 (1/4) 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 (3) and thirteen (13) 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 (30) feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:

- a. There is no other feasible alternative route with less impact on the environment;
  - b. The crossing minimizes interruption of downstream movement of wood and gravel;
  - c. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;
  - d. Road bridges are designed according to the Department of Fish and Wildlife Fish Passage Design at Road Culverts, March 1999, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000; and
  - e. Trails and associated viewing platforms shall not be made of continuous impervious materials.
7. Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report if they comply with the following standards:
- a. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
  - b. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;
  - c. The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
  - d. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
  - e. The utility route shall not parallel the stream, or locate in adjacent ravines; and
  - f. The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.
8. Public flood protection measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the City's review and approval of a critical area report, and the approval of a Federal Biological Assessment, by the Federal agency responsible for reviewing actions related to a federally listed species.
9. In-stream structures. In-stream structures, such as, but not limited to, high flow bypasses, sediment ponds, in-stream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the City and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.
10. Storm-water conveyance facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:
- a. No other feasible alternatives with less impact exist;
  - b. Mitigation for impacts is provided;

- c. Storm-water conveyance facilities shall incorporate fish habitat features; and
- d. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.

11. On-site sewage systems and wells.

- a. New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system.
- b. Repairs to failing on-site systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact;
  - (1) Connection to an available public sanitary sewer system;
  - (2) Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the Thurston County Health Department; or
  - (3) Repair to the existing on-site septic system.

Section 29: Section 14. 33.160 of the Lacey Municipal Code is hereby amended to read as follows:

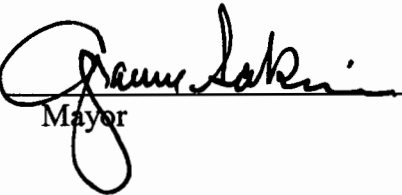
**14.33.160 Criteria for habitat conservation area approvals.**

- 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.

Section 30: The summary attached hereto is hereby approved for publication.

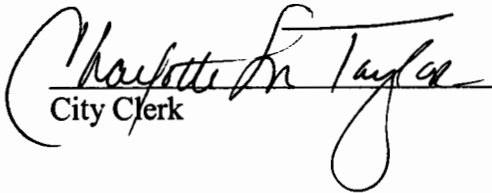
PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, this  
6th day of November, 2003.

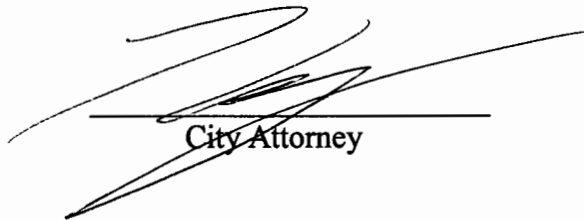
CITY COUNCIL

BY:   
Mayor

Attest:

Approved as to form:

  
City Clerk

  
City Attorney

Published: Monday, November 10, 2003

## SUMMARY FOR PUBLICATION

### ORDINANCE 1215

#### CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on November 6, 2003, Ordinance No. 1215, entitled "AN ORDINANCE RELATING TO THE CITY'S WETLANDS PROTECTION AND HABITAT CONSERVATION AREAS PROTECTION REGULATIONS, AMENDING THE LACEY MUNICIPAL CODE BY REPEALING SECTIONS 14.28.470, 14.28.480 AND 14.33.030, ADDING NEW SECTIONS 14.28.445, 14.28.447, 14.28.455, 14.28.465, 14.33.030, 14.33.115, 14.33.116 and 14.33.117, AMENDING SECTIONS 14.28.030, 14.28.080, 14.28.090, 14.28.100, 14.28.120, 14.28.140, 14.28.280, 14.28.300, 14.28.350, 14.28.360, 14.28.370, 14.28.440, 14.28.450, 14.28.460, 14.28.490, 14.33.060, 14.33.070, 14.33.080, 14.33.100, 14.33.110 AND 14.33.160 ALL OF SAID CODE AND ADOPTING A SUMMARY FOR PUBLICATION."

The main points of the Ordinance are as follows:

1. The Ordinance makes changes in the City's Wetlands Protection Ordinance found in LMC Chapter 14.28.
2. The Ordinance further makes changes in the City's Habitat Conservations Areas Protection Regulations found in LMC Chapter 14.33.
3. The changes to these two chapters of the Lacey Municipal Code are designed to bring the regulations in compliance with the City Environmental Protection and Resource Conservation Plan which was updated by action of the Council in 2002. The amendments include changes required by the State Growth Management Act and include provisions in the model regulations developed by the State Department of Community Trade and Economic Development.
4. One of the most significant changes in the regulations is to require that best available science be utilized in making environmental decisions.
5. The Ordinance approves this Summary for publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Charlotte M. Taylor  
City Clerk

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Published: November 10, 2003.