

ORDINANCE NO. 1466

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY RELATING TO WETLANDS PROTECTION, AMENDING THE SHORELINE MASTER PROGRAM AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, The Washington State Department of Ecology has updated the Washington State wetland rating systems for eastern and western Washington to incorporate the most current and best available scientific information; and

WHEREAS, the updates to the rating system required the City to update the Wetlands Protection Chapter of the Lacey Municipal Code (LMC); and

WHEREAS, due to the changes required in the wetland chapter of the LMC, a limited amendment to the Shoreline Master Program will be necessary; and

WHEREAS, on November 18, 2014, the Planning Commission reviewed the proposed amendments to the Shoreline Master Program and recommended no changes; and

WHEREAS, on December 2, 2014, the Planning Commission held a public hearing on the proposed amendments. At the conclusion of the public hearing the Planning Commission voted unanimously to recommend the proposed amendments to the City Council for adoption; and

WHEREAS, on December 18, 2014, the City Council approved the amendments and directed that said amendments be submitted to the Washington State Department of Ecology for approval prior to formal adoption by the City Council; and

WHEREAS, on March 10, 2015, the Washington State Department of Ecology, in its letter to the Mayor, announced its final approval of said amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:


Section 1. The City of Lacey Shoreline Master Program is hereby amended as set forth in the attachment hereto.

Section 2. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

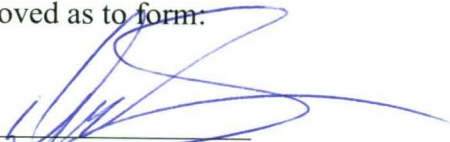
Section 3. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make corrections to this ordinance including, but not limited to, the corrections of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, at a regularly-called meeting thereof, held this 9th day of April, 2015.


CITY COUNCIL

By: 
Mayor

Approved as to form:


City Attorney

Attest:


City Clerk

SUMMARY FOR PUBLICATION
ORDINANCE NO 1466
CITY OF LACEY

The City Council of Lacey, Washington passed on April 9, 2015, Ordinance No. 1466, entitled "AN ORDINANCE OF THE CITY OF LACEY RELATING TO WETLANDS PROTECTION, AMENDING THE SHORELINE MASTER PROGRAM AND APPROVING A SUMMARY FOR PUBLICATION."

The main points of the Ordinance are described as follows:

1. The Ordinance provides for a limited amendment to the City of Lacey Shoreline Master Program.
2. 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.

Published: April 13, 2015.

17.10.020 References to Plans, Regulations or Information Sources

1. Where this Program makes reference to any RCW, or WAC, as amended and the current edition of other state, or federal regulations, shall apply.
2. Local Lacey plans and codes being referenced in this Shoreline Master Program include the following:
 - A. Title 14 of the Lacey Municipal Code (LMC): The Lacey Title on Buildings and Construction that includes Lacey's critical area ordinances and design review chapters, specific sections referenced include:
 - LMC Chapter 14.04, International Building and International Residential Code;
 - LMC Chapter 14.23, Design Review;
 - LMC Chapter 14.24, Environmental Policy;
 - LMC Chapter 14.28, Wetlands Protection* (Ordinance # ~~_____~~, ~~1295~~, ~~10/25/07~~ 12/18/2014);
 - LMC Chapter 14.31, Zero Effect Drainage Discharge;
 - LMC Chapter 14.32, Tree and Vegetation Protection and Preservation* (Ordinance 1269, 07/27/06);
 - LMC Chapter 14.33, Habitat Protection* (Ordinance 1215, 11/06/03);
 - LMC Chapter 14.34, Flood Hazard* (Ordinance 1265, 06/08/06);
 - LMC Chapter 14.37, Geologically Sensitive Areas* (Ordinance 1208, 08/18/03);
 - B. Title 15 of the LMC: The Lacey Land Division Ordinance;
 - C. Title 16 of the LMC: The Lacey Zoning Code;
 - D. Development Guidelines and Public Works Standards (DGPWS)*;
 - E. The Lacey Comprehensive Land Use Plan developed under the State Growth Management Act (GMA) and all of its elements. Elements specifically referenced include:
 - City of Lacey and Thurston County Land Use Plan for the Urban Growth Area;
 - City of Lacey Housing Element
 - Environmental Protection and Resource Conservation Plan and its Urban Forest Management Plan;
 - Lacey Comprehensive Plan for Outdoor Recreation;
 - City of Lacey 2030 Transportation Plan;
 - Appendix 1 City of Lacey Public Access Plan
 - Appendix 2 Vegetation/Landscaping Examples and Guidelines
 - Appendix 3 Shoreline Environmental Designations
 - Appendix 4 Portions of the original Inventory and Characterization Report and Environmental Designations that apply to Lacey. For informational purposes the full report is provided in CD format in the slipcover of this appendix.
 - Appendix 5 Cumulative Impacts Report
 - Appendix 6 Shoreline Environmental Designations
 - Appendix 7 Referenced City of Lacey Ordinances Used in this Document (Include ordinance adopting revisions to CAO)

Shoreline Master Program Amendment - 2015

NOTES REGARDING REFERENCED DOCUMENTS:

* denotes a reference considered by the Department of Ecology to be mandatory fulfilling an identified requirement of local SMPs and required to be identified by date of adoption and adopted version and attached as an appendix to the SMP.

References not identified by an * are considered “loose” reference by the Department of Ecology and are not required to be adopted in an appendix.

Portions of the LMC referenced as a requirement of providing compliance with RCW 90.58.090(4) and the SMP Guidelines (WAC 173-26, Part III) of the SMP and designated with an * will be the version in effect at the time of adoption of the Shoreline Master Program and will not include amendments made to those Plans or sections of the LMC after the date of adoption. Pursuant to WAC 173-26-191(2)(b), amending the referenced regulations in the SMP for those areas under shoreline jurisdiction will require an amendment to the master program and approval by the Department of Ecology.

~~Pursuant to a determination made by the Department of Ecology, later amendment to ordinances designated with an * will not be considered applicable to and will not change content of the Shoreline Master Program and therefore will not require amendment of the Shoreline Master Program. If the City wants to update the Shoreline Master Program to include such amendments in those areas under Shoreline Jurisdiction, Lacey may file for amendment of the Shoreline Master Program to include the amendments. Otherwise, the Shoreline Master Program will continue to use the version of the * referenced document in effect at the time the Shoreline Master Program was adopted, as shown in the applicable appendix.~~

Pursuant to a determination made by the Department of Ecology those ordinances “loosely” referenced will apply to shoreline areas when updated, but will not require amendment of the SMP.

Changes will also include the addition of the ordinance amendments to Chapter 14.28, Wetland Protections in Appendix 7.

RESOLUTION NO. 1020

CITY OF LACEY

A RESOLUTION APPROVING THE CITY'S PROPOSED AMENDMENTS TO THE SHORELINE MASTER PROGRAM FOR SUBMITTAL TO THE DEPARTMENT OF ECOLOGY.

WHEREAS, The Washington State Department of Ecology has updated the Washington State wetland rating systems for eastern and western Washington to incorporate the most current and best available scientific information; and

WHEREAS, the updates to the rating system require the City to update the Wetlands Protection chapter of the Lacey Municipal Code (LMC); and

WHEREAS, due to the changes required in the wetland chapter of the LMC, a limited amendment to the Shoreline Master Program will be necessary; and

WHEREAS, on November 18, 2014, the Planning Commission reviewed the proposed amendments to the Shoreline Master Program and recommended no changes; and

WHEREAS, on December 2, 2014 the Planning Commission held a public hearing on the proposed amendments. At the conclusion of the public hearing the Planning Commission voted unanimously to recommend the proposed amendments to the City Council for adoption; and

WHEREAS, pursuant to state law, the Shoreline Master Program cannot be formally adopted by the City until it is approved by the State Department of Ecology,

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, that the Council hereby approves those certain amendments to the Shoreline Master Program as attached hereto, and directs that said amendments be submitted to the Washington State Department of Ecology for approval prior to formal adoption by the City Council.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, this 18th day of December, 2014.

CITY COUNCIL

By 
Mayor

Attest:


City Clerk

Approved as to form:


City Attorney



RECEIVED MAR 12 2015

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

March 10, 2015

The Honorable Andy Ryder
City of Lacey
420 College Street SE
Lacey, WA 98503

Re: Final Ecology Approval of the City of Lacey 2015 Limited Shoreline Master Program Amendment

Dear Mayor Ryder:

The Department of Ecology (Ecology) is pleased to announce final approval of the City of Lacey (City) Shoreline Master Program (SMP) limited amendment. Congratulations to you, your staff, and the community for completing this limited amendment.

Ecology finds the City's amendment is consistent with the policy and procedural requirements of the Shoreline Management Act (RCW 90.58) and its implementing rules. Therefore, Ecology approves the City's limited SMP amendment as submitted. The Findings and Conclusions document, enclosed as Attachment A, provides more information in support of our decision. This is Ecology's final action and there will be no further modifications to the proposal.

The SMP as amended is effective 14 days from the date of this letter. This 14-day period was established by the state legislature in 2011, and is intended to provide lead time for the City to prepare to implement the amended SMP.

Ecology is required to publish a newspaper notice that the City's SMP amendment has received final approval. The publication of this notice, in the form of a legal ad, will begin a 60-day appeal period. We will provide a copy of the legal ad to the City for its records.

Finally, please integrate the changes referenced in this correspondence into the City's SMP. When this is complete, please forward one clean hard copy and one digital copy of the complete amended SMP to Ecology.



The Honorable Andy Ryder
March 10, 2015
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If you have any questions, please contact our regional planner, Chrissy Bailey, at Chrissy.Bailey@ecy.wa.gov (360) 407-0290.

Sincerely,



Maia D. Bellon
Director

Enclosure

By Certified Mail [7012 1010 0003 3028 3836]

cc: Christy Osborn, City of Lacey
Chrissy Bailey, Ecology
Paula Ehlers, Ecology

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED LIMITED AMENDMENT TO THE CITY OF LACEY
SHORELINE MASTER PROGRAM**

SMP Submittal accepted January 16, 2015, Resolution No. 1020

Prepared by Chrissy Bailey on February 26, 2015

Brief Description of Proposed Amendment: The City of Lacey has submitted a limited amendment of its Shoreline Master Program (SMP) to the Department of Ecology (Ecology) for approval, to:

- Incorporate the City's recently revised wetland ordinance into the SMP, which revisions address Ecology's 2014 changes to the Washington State Wetland Rating Systems, and
- Clarify language pertaining to when an SMP amendment is necessary as a result of modifications to an ordinance adopted into the SMP by reference.

FINDINGS OF FACT

Need for amendment. The proposed amendment is needed to incorporate the City's recently revised wetland ordinance into the SMP. The City revised the Wetland Protection chapter of the Lacey Municipal Code (LMC 14.28) to be consistent with updates made by Ecology to the Washington State Wetland Rating Systems (rating system) in 2014. The most substantive difference between the 2004 version of the rating system and the 2014 updates involved changing the scale of scores from 1-100 to 9-27 to better reflect the scientific accuracy of the tools.

Additionally, the City is proposing to clarify language in the SMP pertaining to incorporation by reference. The SMP Guidelines allow local jurisdictions to include other locally adopted policies or regulations in an SMP by reference. The City included a list of such incorporated regulations in its SMP. The list was followed by a paragraph intended to differentiate between chapters of the LMC incorporated by reference to comply with requirements in the Shoreline Management Act and the SMP Guidelines (WAC 173-26, Part III), and those being "loosely referenced." The City is proposing to clarify the language in this paragraph, which was complicated and somewhat unclear.

SMP provisions to be changed by the amendment as proposed: The following sections of the existing City of Lacey SMP are proposed for change (~~strike through~~/underline format):

17.10.020 References to Plans, Regulations or Information Sources

2. Local Lacey plans and codes being referenced in this Shoreline Master Program include the following:

A. Title 14 of the Lacey Municipal Code (LMC): The Lacey Title on Buildings and Construction that includes Lacey's critical area ordinances and design review chapters, specific sections referenced include:

- LMC Chapter 14.28, Wetlands Protection* (Ordinance # ~~1295, 10/25/07~~ 1449, 12/18/2014);

E. The Lacey Comprehensive Land Use Plan developed under the State Growth Management Act (GMA) and all of its elements. Elements specifically referenced include:

- Appendix 7 Referenced City of Lacey Ordinances Used in this Document (Include ordinance adopting revisions to CAO)

NOTES REGARDING REFERENCED DOCUMENTS:

Portions of the LMC referenced as a requirement of providing compliance with RCW 90.58.090(4) and the SMP Guidelines (WAC 173-26, Part III) of the SMP and designated with an * will be the version in effect at the time of adoption of the Shoreline Master Program and will not include amendments made to those Plans or sections of the LMC after the date of adoption. Pursuant to WAC 173-26-191(2)(b), amending the referenced regulations in the SMP for those areas under shoreline jurisdiction will require an amendment to the master program and approval by the Department of Ecology.

~~Pursuant to a determination made by the Department of Ecology, later amendment to ordinances designated with an * will not be considered applicable to and will not change content of the Shoreline Master Program and therefore will not require amendment of the Shoreline Master Program. If the City wants to update the Shoreline Master Program to include such amendments in those areas under Shoreline Jurisdiction, Lacey may file for amendment of the Shoreline Master Program to include the amendments. Otherwise, the Shoreline Master Program will continue to use the version of the * referenced document in effect at the time the Shoreline Master Program was adopted, as shown in the applicable appendix.~~

Amendment History and Review Process: The City's submittal indicates the proposed SMP amendment originated from a local planning process that began in November 2014. The record shows that a public hearing on the Wetland Protection and Shoreline Master Program revisions before the Planning Commission was held on December 2, 2014. The record provided by the City indicates notice of the hearing was published in The Olympian on November 22, 2014. At the close of the public hearing, the Planning Commission moved to recommend the amendments to the City Council for adoption.

The City Council considered the Planning Commission's motion at its December 18, 2014 meeting. With the passage of Ordinance No. 1449, Council adopted amendments to the Wetland Protection provisions in LMC 14.28. With the passage of Resolution No. 1020 on December 18, 2014, the City Council directed staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review on December 29, 2014, with additional materials submitted on January 15, 2015. The submittal was verified as complete on January 16, 2015. Notice of the state comment period was distributed to state and local interested parties identified by the City on January 30, 2015 by US mail and by email, in compliance with the requirements of WAC 173-26-120 (2). The state comment period began on February 6, 2015 and continued through February 23, 2015 for a total of 15 days.¹ Ecology staff determined the proposed amendment is relatively straightforward and non-controversial and a shorter comment period is justified.

Notice of the comment period was provided on Ecology's website:

<http://www.ecy.wa.gov/programs/sca/shorelines/smp/mycomments/LaceyLimitedAmendment.html>.

The notice included a description of the proposed amendment, the authority under which the action was proposed, and the manner in which interested persons could obtain copies and present their views.

¹ Per RCW 90.58.090 (2)(a), the comment period shall be at least 30 days unless the department determines the level of complexity or controversy involved supports a shorter period.

This information was also included in the written and email notices, which were sent to 37 interested parties. Ecology received no comments during the 15-day comment period.

Ecology finds that the City engaged the public and interested parties in the limited SMP amendment process in accordance with the participation requirements in WAC 173-26-100 and 110. Ecology complied with the public notification provisions related to the state process for approving/amending shoreline master programs outlined in WAC 173-26-120.

Summary of Issues Raised During the Public Review Process: None.

Summary of Issues Identified by Ecology as Relevant To Its Decision: None

Consistency with Chapter 90.58 RCW: The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3) and (4). The amendment was also reviewed for consistency with RCW 36.70A.480 as required by RCW 90.58.610. The record contains evidence of compliance with SMA procedural requirements for amending SMPs contained in RCW 90.58.090(1) and (2).

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251) as well as the definitions in 173-26-020. This included review of an SMP Submittal Checklist, which was completed by the City and submitted to Ecology for review along with other amendment materials.

Consistency with Limited Amendment Criteria: The proposed amendment has also been reviewed for compliance with the limited amendment approval criteria in WAC 173-26-201(1)(c). The amendment is necessary to comply with state implementing rules applicable to shorelines of the state within the local government jurisdiction (WAC 173-26-201(1)(c)(i)(A)) and to improve consistency with the Act's goals and policies and its implementing rules (WAC 173-26-201(1)(c)(i)(D)). The City of Lacey is not currently conducting a comprehensive shoreline master program (WAC 173-26-201(1)(c)(ii)). The proposed amendments will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(iii)), and are consistent with all applicable policies and standards of the Act (WAC 173-26-201(1)(c)(iv)). All procedural rule requirements for public notice and consultation have been satisfied (WAC 173-26-201(1)(c)(v)). The master program guidelines analytical requirements and substantive standards have been satisfied, as applicable to the amendments. The amendments will not result in a net loss of shoreline ecological functions (WAC 173-26-201(1)(c)(vi)).

Ecology finds that the proposed limited SMP amendment as approved by the City under Resolution No. 1020 is consistent with provisions in the Act and with applicable SMP Guideline requirements.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of documentation that the amendments are categorically exempt from SEPA review because they represent nonproject actions that were subject to a previous environmental review (RCW 43.21C.450 (1) and (2)).

Other Studies or Analyses supporting the limited amendment: Ecology also reviewed the following additional documents prepared or provided by the City in support of the limited SMP amendment:

- *City of Lacey Planning Commission minutes, December 2, 2014*
- *Staff Report with Planning Commission Recommendation to the Lacey City Council, December 18, 2014*
- *City of Lacey Ordinance No. 1449, December 18, 2014*

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and considering that no comments were received, Ecology concludes that the City's proposed limited SMP amendment is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251) as well as the definitions in WAC 173-26-020.

Ecology concludes that the proposed limited amendment is consistent with the criteria for approving limited amendments in WAC 173-26-201(1)(c).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting public hearings, providing public notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's limited amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring an SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed limited amendment is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed limited amendment will be effective 14 days from the date of this approval.