

ORDINANCE NO. 1505

CITY OF LACEY

AN ORDINANCE ADOPTING MODIFICATIONS TO VARIOUS PARTS OF THE CITY'S COMPREHENSIVE PLAN, UPDATING REGULATIONS TO CRITICAL AREAS, AMENDING SECTIONS 14.28.020, 14.28.030, 14.28.067, 14.28.080, 14.28.100, 14.28.120, 14.28.130, 14.28.190, 14.28.280, 14.28.290, 14.28.310, 14.28.370, 14.28.380, 14.28.445, 14.28.550, 14.33.020, 14.33.030, 14.33.060, 14.33.070, 14.33.110, 14.33.116, 14.33.117, 14.33.200, 14.33.310, 14.34.005, 14.34.010, 14.34.030, 14.34.040, 14.34.070, 14.34.082, 14.34.084, 14.34.086, 14.34.100, 14.34.110, 14.34.120, 14.34.130, 14.34.135, 14.34.145, 14.34.150, 14.37.020, 14.37.030, 14.37.050, 14.37.060, 14.37.080, 14.37.100, 14.37.110, 14.37.120, 14.37.150, 14.37.170, 14.37.180, 14.37.200, 14.37.250, AND 14.37.300 OF THE LACEY MUNICIPAL CODE, REPEALING SECTIONS 14.28.140, 14.28.300, 14.28.330, AND 16.14.100 OF THE LACEY MUNICIPAL CODE, REPEALING CHAPTER 14.36 OF THE LACEY MUNICIPAL CODE, ADOPTING A NEW CHAPTER 14.36 OF THE LACEY MUNICIPAL CODE, AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, the City of Lacey has developed a comprehensive plan in accordance with the Growth Management Act (GMA); and

WHEREAS, the GMA requires local governments to review and revise regulations on critical areas to incorporate the best available science; and

WHEREAS, several state agencies have published guidance materials to assist local governments in including science in policies and development regulations; and

WHEREAS, staff have reviewed relevant portions of the Lacey Municipal Code; and

WHEREAS, staff have identified opportunities to include the best available science in the City's regulations on critical areas; and

WHEREAS, the Planning Commission conducted a public hearing on January 3, 2017; and

WHEREAS, no public comments were received; and

WHEREAS, the Planning Commission voted unanimously to recommend the draft critical updates; and

WHEREAS, the City Council finds that the approval of the updates will be in the public interest,

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

Section 1. Section 14.28.020 of the Lacey Municipal Code is hereby amended as follows:

**14.28.020 Purpose.**

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

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

1. Impeding flood flows, reducing flood storage capacity, or impairing natural flood control functions, thereby resulting in increased flood heights, frequencies, or velocities on other lands;
2. Increasing water pollution through location of domestic waste disposal systems or stormwater systems in wetlands; unauthorized application of pesticides and herbicides; disposal of solid waste at inappropriate sites; creation of unstable fills; or the destruction of wetland soils and vegetation;
3. Increasing erosion;
4. Decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
5. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;

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

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

1. Preserving, protecting and restoring wetlands functions and values by regulating development within wetlands and wetland buffers;
2. Protecting the public against losses from:
  - a. Unnecessary maintenance and replacement of public facilities, including the dredging of ports and navigation channels;
  - b. Publicly funded mitigation of avoidable impacts;
  - c. Cost for public emergency rescue and relief operations; and
  - d. Potential litigation from improper construction practices authorized for wetland areas;
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of wetlands;
4. Providing city of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;

~~5. Adopting Governor Booth Gardner's interim goal to achieve no overall net loss in acreage and functions of Washington's remaining wetland base and the long-term goal to increase the quantity and quality of Washington's wetland resource base;~~

65. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter 43.21C RCW, Puget Sound Water Quality Management Plan, Washington State Executive Order 90-04, the City Land Use Element of the Comprehensive Land Use Plan, the City Comprehensive Plan for Outdoor Recreation, the City Zoning Code (LMC Title 16), the City Environmental Policy Ordinance (Chapter 14.24 LMC), Shoreline Master Program (Chapter 14.26 LMC), Tree Protection and Preservation Ordinance (Chapter 14.32 LMC), and all other present and future city of Lacey functional, environmental and community plans and programs.

Section 2. Section 14.28.030 of the Lacey Municipal Code is hereby amended as

follows:

**14.28.030 Definitions.**

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

A. "Alteration" means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.

AB. "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.

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

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and
2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands; and
3. Protect trees and vegetation designated to be retained during the following site construction; and
4. Provide standards for proper use of chemical herbicides within critical areas.

~~CD.~~ “Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined in WAC 365-195-900 through 365-195-925. ~~Sources of best available science are included in “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas” published by the State Office of Community Development.~~

~~DE.~~ “Compensation project” means actions necessary to replace project-induced wetland and wetland buffer losses, including land acquisition, planning, construction plans, monitoring and contingency actions.

~~EF.~~ “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.

~~G.~~ “Creation” means the manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

~~FH.~~ “Department” means the Washington State Department of Ecology.

~~GI.~~ “Developable area” means an area of land outside of wetlands and wetland buffers.

~~HJ.~~ “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.

~~K.~~ “Enhancement” means the manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife

habitat. Enhancement results in a change in wetland function(s) and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

IL. “Essential habitat” means habitat necessary for the survival of federally listed threatened, endangered, and sensitive species and state listed priority species.

JM. “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.

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

LO. “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.

MP. “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.

NQ. “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.

OR. “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.

PS. “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.

QT. “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.

RU. “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.”

SV. “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.”

FW. “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.”

X. “In-lieu-fee program” means an agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the mitigation sponsor collects funds from an individual or a number of individual who are required to conduct compensatory mitigation required under a wetland regulatory program. The sponsor may use the funds pooled from multiple permittees to create one or a number of sites under the authority of the agreement to satisfy the permittees’ required mitigation.

UY. “Isolated wetlands” means those regulated wetlands which: a wetland that is hydrologically isolated from other aquatic resources as determined by the United States Army Corps of Engineers (USACE). Isolated wetlands may perform important functions and are protected by state law (RCW 90.48) whether or not they are protected by federal law.

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

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

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

WAA. "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.

XBB. "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.

CC. "Monitoring" means evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features. Monitoring includes gathering baseline data.



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

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

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

B~~B~~GG. “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.”

C~~C~~HH. “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.

I~~I~~. “Preservation” means the removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or conservation easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland acres but may result in a gain in functions over the long term.

D~~D~~JJ. “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.

E~~E~~KK. “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.

F~~F~~LL. “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.

G~~G~~MM. “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 LMC 14.28.065 and 14.28.067.

~~HHNN~~. “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.

~~HOO~~. “Regulated wetlands” means all wetlands as defined herein and wetlands which fall waterward of the ordinary high water mark of lakes; except that the following wetlands may be filled if the impacts are fully mitigated based on the requirements of LMC 14.28.445. In order to verify the following conditions, a wetland report shall be submitted.~~all isolated Category III and IV wetlands less than one thousand square feet are exempt from the provisions of this chapter; provided, that:~~

1. ~~They are not associated with riparian areas or buffers.~~All isolated Category IV wetlands less than 4,000 square feet that:
  - a. Are not associated with riparian areas or their buffers;
  - b. Are not associated with shorelines of the state or their associated buffers;
  - c. Are not part of a wetland mosaic;

- d. Do not score 5 or more more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* or as revised and approved by Ecology; and
- e. Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter 14.33.

2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter~~They are not part of a wetland mosaic;~~

3.—~~They do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance.~~

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

HPP. “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.

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

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

~~KKRR~~. “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.

~~LLSS~~. “Serviceable” means presently usable.

~~MMTT~~. “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.

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

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

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

~~QQXX~~. “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.

~~RRYY~~. “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).

~~SSZZ~~. “Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in this chapter.

AAA. “Wetland mitigation bank” means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of unavoidable impacts to wetlands or other aquatic resources that typically are unknown at the time of certification to compensate for future, permitted impacts to similar resources.

BBB. "Wetland mosaic" means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50% of the total area of the entire mosaic, including uplands and open water.

Section 3. Section 14.28.067 of the Lacey Municipal Code is hereby amended as

follows:

**14.28.067 Contracting with qualified professional wetland consultants or scientists.**

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

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

Section 4. Section 14.28.080 of the Lacey Municipal Code is hereby amended 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. The city zoning map and inventory maps are to be used as a guide to the general location and extent of wetlands. Wetlands not shown on the zoning map, or National Wetlands Inventory are presumed to exist in the city of Lacey and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control.

Section 5. Section 14.28.100 of the Lacey Municipal Code is hereby amended 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 for Western Washington: 2014 Update (Revised, Publication No. 14-06-029, October 2014), or as hereafter amended.

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

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

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

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

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

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

Section 6. Section 14.28.120 of the Lacey Municipal Code is hereby amended as

follows:

**14.28.120 Allowed activities.**

The[RA1] activities listed below are allowed in wetlands and/or their buffers. These activities do not require submission of a wetland report, except where noted. These activities include: 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. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland. Construction of a single family residence within the normal required wetland buffer on any legally established lot of record; provided it is not possible to locate said single family residence on said lot without reduction of the normally required buffer area and provided the site plan review committee shall require as large a buffer from the wetland as can reasonably be accommodated on said lot. In no case shall a dwelling be permitted to be developed in the wetland area except through the provisions and procedures of LMC 14.28.350;

B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources. Efforts of public and private organizations, clubs or memberships for the conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;

C. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed. 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. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately

disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species. 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. Educational and scientific research activities. Development of nature trails;

F. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable. Boat mooring buoys;

G. Site investigation related to development of a wetland report. 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. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions;

I. Stormwater management facilities. [RA2]A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment or Flow Control BMP if ALL of the following criteria are met: 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;

1. The wetland is classified as a category IV or a Category III wetland with a habitat score of 3-4 points; and
2. There will be no net loss of functions and values of the wetland; and
3. The wetland does not contain a breeding population of any native amphibian species; and
4. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the "Guide for Selecting Mitigation Sites Using a Watershed Approach," (available here: <http://www.ecy.wa.gov/biblio/0906032.html>); or the wetland is part of a priority



restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan; and

5. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and
6. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits.

Stormwater LID BMPs required as part of new and redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site.

~~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 14.28.130 of the Lacey Municipal Code is hereby amended as

follows:

**14.28.130 Special uses.**

Any activity other than those specified in LMC 14.28.120 and ~~14.28.140~~ may not be conducted in wetlands or wetland buffers except upon wetland development approval from

the city of Lacey pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.

Section 8. Section 14.28.140 is hereby repealed.

Section 9. Section 14.28.190 of the Lacey Municipal Code is hereby amended as

follows:

**14.28.190 Application information requirements.**

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

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

B. The city of Lacey may require additional information, including, but not limited to, a wetland report that contains an assessment of wetland functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic, or other values of a wetland; a study of flood, erosion, or other hazards at the site and the effect

of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter. The city of Lacey shall maintain and make available to the public, all information applicable to any wetland and its buffer.

Section 10. Section 14.28.280 of the Lacey Municipal Code is hereby amended 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 LMC 14.28.090. The width of the wetland buffer zone shall be determined according to wetland category, the proposed land use and the wetland’s identified functions and values.

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

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

Points for Habitat from Wetland Rating Form	3	4	5	6	7	8	9
Alternative 3A High Intensity	80	100	140	180	220	260	300

Points for Habitat from Wetland Rating Form	3	4	5	6	7	8	9
Alternative 3A Low Intensity	<u>4060</u>	<u>5575</u>	<u>75105</u>	<u>95135</u>	<u>115165</u>	<u>135195</u>	<u>150225</u>

Section 11. Section 14.28.290 of the Lacey Municipal Code is hereby amended as follows:

**14.28.290 Increased wetland buffer zone width.**

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

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

Section 12. Section 14.28.300 of the Lacey Municipal Code is hereby repealed.

Section 13. Section 14.28.310 of the Lacey Municipal Code is hereby amended as follows:

**14.28.310 Standard wetland buffer width averaging.**

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

- A. That averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property and there are no feasible alternatives to the site design that could be accomplished without buffer averaging;

~~B. That the wetland contains variations in sensitivity due to existing physical characteristics;~~

~~C. That low intensity land uses would be located adjacent to areas where buffer width is reduced, and that such low intensity land uses are guaranteed in perpetuity by covenant, deed restriction, easement, or other legally binding mechanism;~~

DB. That width averaging will not adversely impact the wetland ~~functional~~ functions and values as demonstrated by a wetland report; and

EC. That the total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging. In no instance shall the buffer width be reduced by more than ~~fifty~~ twenty-five percent of the standard buffer ~~or be less than twenty-five feet~~

Section 14. Section 14.28.330 of the Lacey Municipal Code is hereby repealed.

Section 15. Section 14.28.370 of the Lacey Municipal Code is hereby amended as

follows:

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

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

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

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

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

the buffer density credit;

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

added to

the upland non-buffer area density;

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

The density credit figure is derived from the following table:

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

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

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

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

Section 16. Section 14.28.380 of the Lacey Municipal Code is hereby amended as follows:

**14.28.380 Acting on the application-- Special conditions.**

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

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

a. The applicant shall convey an irrevocable offer to dedicate to the city of Lacey or other public or non-profit entity specified by the city of Lacey the wetland and buffer area for the protection of the wetland and its buffer to ensure management of the wetland resource in the best interest of the public; or

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

2. Specific Language for Deed Restrictions. Deed restrictions required in subsection (A)(1)(b) of this section shall be set forth in substantially the following form:

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

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

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

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

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

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

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

- ~~a. Temporary markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the city of Lacey prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs are in place.~~
- ~~b. Permanent signs. As a condition of any permit or authorization issued pursuant to this Chapter, the City shall require the applicant to install permanent signs along the boundary of a wetland or buffer.~~
- ~~c. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) every fifty (50) feet, or one (1) per lot if the lot is less than fifty (50) feet wide, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the City:~~

**Protected Wetland Area Do Not Disturb Contact City of Lacey Regarding Uses, Restrictions, and Opportunities for Stewardship**

4. Fencing.

- ~~a. The applicant shall be required to install a permanent split-rail fence constructed of non-treated wood (RA3) around the wetland or buffer when domestic animals are present or may be introduced on site.~~



- b. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

B. Additional Conditions.

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

Section 17. Section 14.28.445 of the Lacey Municipal Code is hereby amended as follows.

**14.28.445 Performance Standards--Mitigation requirements.**

A. Mitigation shall achieve equivalent or greater biological functions. Mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions and shall be consistent with the Department of Ecology's Wetland Mitigation in Washington State – Part 2, Developing Mitigation Plans – Volume I, and Selecting Wetland Mitigation Sites Using a Watershed Approach ~~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.~~ Avoid the impact altogether by not taking a certain action or parts of an action.
2. ~~Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.~~ Minimize impacts by limiting the degree or magnitude of the action and its implementation, but using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. ~~Enhancing significantly degraded wetlands.~~ Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
4. ~~Preserving high quality wetlands that are under imminent threat.~~ Reduce or eliminate the impact over time by preservation and maintenance operations.
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
6. Monitor the required compensation and take remedial or corrective measures when necessary.

Section 18. Section 14.28.550 of the Lacey Municipal Code is hereby amended as follows:

**14.28.550 Temporary emergency approval.**

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

1. The city of Lacey determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and

2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.

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

1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days; and

2. Require, within this ninety-day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the ninety days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

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

D. The emergency permit may be terminated at any time without process upon a determination by the city of Lacey that the action was not or is no longer necessary to protect human health or the environment.

Section 19. Section 14.33.020 of the Lacey Municipal Code is hereby amended as

follows:

**14.33.020 Purpose/ and intent**

A. It is the policy of the city of Lacey to require site planning and habitat management planning to ~~avoid or minimize damage to~~ designate and protect the functions and values of habitat conservation areas based on best available scientific information wherever possible;

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

1. Decreasing breeding, nesting, and feeding areas for many species of birds, including those rare and endangered;

2. Decreasing habitat for fish and other forms of wildlife, including those rare and endangered;

3. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;

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

1. Preserving, protecting and restoring habitat conservation areas by regulating development within habitat conservation areas;
2. Protecting the public against losses from publicly funded mitigation of avoidable impacts;
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of habitat conservation areas;
4. Providing city of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;

5. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter 43.21C RCW, ~~the city Environmental Protection and Resource Conservation Plan, the city Comprehensive Land Use Plan~~ City of Lacey & Lacey Urban Growth Area Comprehensive Plan, the city Zoning Code (LMC Title 16), the city Environmental Policy Ordinance (Chapter 14.24 LMC), the city Tree and Vegetation Protection and Preservation Ordinance (Chapter 14.32 LMC), and all related environmental and community plans and programs.

Section 20. Section 14.33.030 of the Lacey Municipal Code is hereby amended 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. “Bankfull width” means:

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

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

~~CD.~~ “Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. ~~Sources of best available science are included in “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas” published by the state Office of Community Development.~~

~~DE.~~ “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.

~~EF.~~ “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.

~~FG.~~ “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.

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

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

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

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

1. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
2. Habitats and species of local importance, including but not limited to areas designated as priority habits or priority species by the Department of Fish and Wildlife;
3. Commercial and recreational shellfish areas;
5. 4.—Kelp and eelgrass beds, herring and smelt, and other forage fish spawning areas;
5. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds, if permitted by a regulatory authority;
6. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington;

7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
8. State natural area preserves and natural resource conservation areas; ~~and~~
9. Land essential for preserving connections between habitat blocks and open spaces; and
10. Riparian ecosystems including salmonid habitat, which also includes marine nearshore areas.

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

~~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.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.

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

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

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

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

P. "Monitoring" means evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features. Monitoring includes gathering baseline data.

QQ. "Native vegetation" means plant species that are indigenous to the area in question.

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

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

QS. "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.

RT. "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.

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

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

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

UW. “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.

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

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

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

AAX. “Water typing system” means waters classified according to WAC 222-16-031 as follows:

1. Type S+ water - all waters, within their bankfull width~~ordinary high water mark~~, as inventoried as “shorelines of the state” under Chapter 90.58 RCW and the rule promulgated pursuant to Chapter 90.58 RCW, ~~but not including periodically inundated areas of their associated wetlands.~~ waters’ associated wetlands as defined in Chapter 90.58 RCW.

2. Type F2 water - segments of natural waters other than Type S Water 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 are or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:

a. 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: Waters which are diverted for domestic use by more than ten (10) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(1) Stream segments having a defined channel twenty feet or greater in width between the ordinary high water mark and having a gradient of less than four percent.

(2) Lakes, ponds, or impoundments having a surface area of one acre or greater at seasonal low water.

b. Are used by salmonids for off channel habitat. These areas are critical to the maintenance of optimum survival of juvenile salmonids. This habitat shall be identified based on the following criteria: Waters which are diverted for use by federal, state, tribal, or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The Department of Natural Resources may allow additional harvest beyond the requirements of Type F Water designation provided the Department of Natural Resources determines after a landowner-requested on-site assessment by the Department of Fish and Wildlife, Department of Ecology, the affected tribes, and interested parties that:

(1) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and The site must be connected to a stream bearing salmonid and accessible during some period of the year; and

(2) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery; The off-channel water must be accessible to juvenile salmonids through a drainage channel with less than a five percent gradient.

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

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

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

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

3. Type Np3 water — segments of natural waters within the bankfull width of the defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry at any time of the year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow, that are not classified as Type 1 or 2 waters and have a moderate to slight fish, wildlife and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

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

(1)— Stream segments having a defined channel of five feet or greater in width between the ordinary high water marks; and having a gradient of less than twelve percent and not upstream of a falls of more than ten vertical feet.

(2)— Ponds or impoundments having a surface area of less than one acre at seasonal low water and having an outlet to an anadromous fish stream.

b.— Are used by significant numbers of resident game fish. Waters with the following characteristics are presumed to have significant resident game fish use:

~~(1) Stream segments having a defined channel of ten feet or greater in width between the ordinary high water marks; and a summer low flow greater than 0.3 cubic feet per second; and a gradient of less than twelve percent.~~

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

~~e. Are highly significant for the protection of down stream water quality. Tributaries which contribute greater than twenty percent of the flow to a Type 1 or 2 water are presumed to be significant for 1,500 feet from their confluence with the Type 1 or 2 water or until their drainage area is less than fifty percent of their drainage area at the point of confluence, whichever is less.~~

~~4. Type Ns means all segments of natural waters within the bankful width of the defined channels that are not Type S, F, or NP Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters. 4 water —this classification shall be applied to segments of natural waters which are not classified as Type 1, 2, or 3, and for the purpose of protecting water quality downstream are classified as Type 4 water upstream until the channel width becomes less than two feet in width between the ordinary high water marks. Their significance lies in the influence on water quality downstream in Type 1, 2, and 3 waters. These may be perennial or intermittent.~~

~~5. Type 5 water —this classification shall be applied to all natural waters not classified as Type 1, 2, 3, or 4; including streams with or without well defined channels, areas of perennial or intermittent seepage, ponds, natural sinks and drainage ways having short periods of spring or storm runoff.~~

Section 21. Section 14.33.060 of the Lacey Municipal Code is hereby amended 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 areas or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.

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

4. Kelp and eelgrass beds, and herring ~~and~~ smelt, and other forage fish spawning areas.

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

6. Waters of the state. Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and

watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-030 or 222-16-031 depending upon the classification used.

7. ~~Type 1 through 5~~ S, F, Np, and Ns waters as designated by the state Department of Natural Resources. Type S, F, Np, and Ns ~~1 through 5~~ waters are those water bodies designated by the Department of Natural Resources stream typing pursuant to WAC 222-13-034030.

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

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

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

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

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

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

1. Department of Fish and Wildlife Priority Habitat and Species Maps;
2. Department of Natural Resources Official Water Type Reference Maps, as amended;
3. Department of Natural Resources Puget Sound Intertidal Habitat Inventory Maps;
4. Department of Natural Resources Shorezone Inventory;
5. Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors;

6. Reports published by the Washington Conservation Commission; and
7. Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area Maps.

Habitat conservation areas not shown on the maps are presumed to exist in the city of Lacey and are protected under all the provisions of this chapter. In the event that any of the habitat conservation area designations shown on the maps conflict with the criteria set forth in this chapter, the criteria shall control.

Section 22. Section 14.33.070 of the Lacey Municipal Code is hereby amended 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 Fish and Wildlife. Provided that if no methodology is available the consultant shall use best available science to delineate the site for the Department of Fish and Wildlife's review. The applicant is required under LMC 14.33.120 to show the location of the habitat conservation area on a scaled drawing as a part of the approval application.
- B. The city of Lacey shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the city of Lacey shall, at the applicant's expense, obtain expert services to render a final delineation.

Section 23. Section 14.33.110 of the Lacey Municipal Code is hereby amended as follows:

**14.33.110 Application information requirements.**

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

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

Section 24. Section 14.33.116 of the Lacey Municipal Code is hereby amended 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 in any location; and
- f. The buffer area width is not less than fifty feet.

H. Signs and fencing of habitat conservation areas.

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

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

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

3. Fencing.

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

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

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

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

1. Land that is located wholly within a habitat conservation area and/or its buffer may not be subdivided.

2. Land that is located partially within a habitat conservation area and/or its buffer may be divided, provided an accessible and contiguous portion of each new lot is located outside of the habitat conservation area or its buffer, and meets other requirements of the city zoning code. Provided further, that clustering, smaller lots, and other techniques can be used to protect the conservation area while providing reasonable density opportunities for the land owner.

3. Access roads and utilities serving the proposed may be permitted within the habitat conservation area and associated buffers only if the city determines that no other feasible alternative exists and when consistent with this title.

Section 25. Section 14.33.117 of the Lacey Municipal Code is hereby amended 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.

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

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

~~3. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Rules in WAC 2322-12-292. Whenever activities are proposed adjacent to a verified nest territory or communal roost, a qualified professional shall develop a habitat management plan. Activities are adjacent to bald eagle sites when they are within eight hundred feet, or within a quarter mile (2,640 feet) and in a shoreline foraging area. The city shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Department of Fish and Wildlife.~~

B. Anadromous fish.

1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special

consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

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

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

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

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

Table of Riparian Habitat Area Widths

Type <del>1 and 2</del> <u>S</u> streams	250 feet
Type <del>3</del> <u>F</u> streams <del>5 to 20</del> feet wide	200 feet
<del>Other</del> Type <del>3</del> <u>Np</u> streams	150 feet
Type <del>4 and 5</del> <u>Ns</u> streams	150 feet

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

~~34.~~ Increased riparian habitat area widths. The recommended riparian habitat area widths shall be increased as follows:

- a. When the Lacey Site Plan Review Committee determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
- b. When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
- c. When the channel migration zone exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the channel migration zone;
- d. When the habitat area is in an area of high blowdown potential, the riparian habitat area shall be expanded an additional fifty feet on the windward side; and
- e. When the habitat area is within an erosion or landslide hazard area, or buffer, the riparian habitat area shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.

~~45.~~ Riparian habitat area width averaging. The city may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if all of the following requirements are satisfied:

- a. The width reduction will not reduce stream or habitat functions including those of non fish habitat;

- b. The width reduction will not degrade the habitat, including habitat for anadromous fish;
- c. The proposal will provide additional habitat protection;
- d. The total area contained in the riparian habitat area of each stream on the development proposal site in not decreased;
- e. The recommended riparian habitat area width is not reduced by more than fifty percent in any one location;
- f. The recommended riparian habitat area width is not reduced to less than seventy-five feet;
- g. The width reduction will not be located within another critical area or associated buffer;
- h. The reduced riparian habitat area width is supported by best available science;
- i. All undeveloped lands within total area will be left undeveloped in perpetuity by covenant, deed restriction, easement or other legally binding mechanism;
- j. The buffer averaging plan shall be conducted in consultation with a qualified biologist and the plan shall be submitted to the Washington Department of Fish and Wildlife for comment; and
- k. The Site Plan Review Committee shall use the recommendations of the qualified experts in making its decision on a plan that uses buffer width averaging.

56. 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.

67. Alternative mitigation for riparian habitat areas. The requirements set forth in this section may be modified at the city's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub - drainage basin as a result of alternative mitigation measures.

E. Riparian habitat areas, ponds, lakes, waters of the state, and marine habitat. The following specific activities may be permitted within a riparian habitat area, pond, lake, water

of the state, marine habitat or associated buffer when the activity complies with the provisions set forth in the Lacey shoreline management program and subject to the following standards:

1. Clearing and grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:
  - a. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year, provided the city may extend or shorten the dry season on a case by case basis, determined on actual weather conditions.
  - b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
  - c. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
  - d. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or re-establishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
  - e. Erosion and sediment control that meets or exceeds the standards set forth in the Lacey Development Guidelines and Public Works Standards shall be provided.
2. Shoreline erosion control measures. New replacement, or substantially improved, shoreline erosion control measures may be permitted in accordance with an approved area report that demonstrates the following:
  - a. Natural shoreline processes will be maintained. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the project area.
  - b. The shoreline erosion control measures will not degrade fish or wildlife habitat conservation areas or associated wetlands.
  - c. Adequate mitigation measures ensure that there is no net loss of the functions or values of intertidal habitat or riparian habitat as a result of the proposed shoreline erosion control measures.
  - d. The proposed shoreline erosion control measures do not result in alteration of intertidal migration corridors.



3. Stream-bank stabilization to protect new structures from future stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.
4. Launching ramps - public or private. Launching ramps may be permitted in accordance with an approved critical area report that has demonstrated the following:
  - a. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the site;
  - b. The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands;
  - c. Adequate mitigation measures ensure that there is no net loss of the functions or values of intertidal habitat or riparian habitat as a result of the ramp; and
  - d. No alteration of intertidal migration will occur as a result of the ramp.
5. Docks. Repair and maintenance of an existing dock or pier may be permitted in accordance with an approved critical area report subject to the following:
  - a. There is no increase in the use of materials creating shade for predator species or eelgrass;
  - b. There is no expansion in over-water coverage;
  - c. There is no new spanning of waters between three and thirteen feet deep;
  - d. There is no increase in the size and number of pilings; and
  - e. There is no use of toxic materials, such as creosote, that come in contact with the water.
6. Roads, trails, bridges, and rights-of-way. Construction of trails, roadways, and minor road bridging, less than or equal to thirty feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:
  - a. There is no other feasible alternative route with less impact on the environment;
  - b. The crossing minimizes interruption of downstream movement of wood and gravel;

- c. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;
- d. Road bridges are designed according to the Department of Fish and Wildlife Fish Passage Design at Road Culverts, ~~March 1999~~ 2003, as amended, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, ~~2000~~ 2010 as amended; and
- e. Trails and associated viewing platforms shall not be made of continuous impervious materials.

7. Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report if they comply with the following standards:

- a. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
- b. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;
- c. The utilities shall cross at an angle greater than sixty degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
- d. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
- e. The utility route shall not parallel the stream, or locate in adjacent ravines; and
- f. The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.

8. Public flood protection measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the city's review and approval of a critical area report, and the approval of a Federal Biological Assessment, by the federal agency responsible for reviewing actions related to a federally listed species.

9. In-stream structures. In-stream structures, such as, but not limited to, high flow bypasses, sediment ponds, in-stream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the city and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.

10. Storm-water conveyance facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:

- a. No other feasible alternatives with less impact exist;
- b. Mitigation for impacts is provided;
- c. Storm-water conveyance facilities shall incorporate fish habitat features; and
- d. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.

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 26. Section 14.33.200 of the Lacey Municipal Code is hereby amended as follows:

**14.33.200 Special conditions.**

A. Sensitive Area Tracts. As a condition of any approval issued pursuant to this chapter, the applicant shall be required to create a separate sensitive area tract or tracts containing the areas determined to be habitat conservation areas for priority habitats or priority species in

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

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

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

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

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

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

D. **Signing and Fencing.** The common boundary between a separate sensitive area tract and the adjacent land must be permanently identified. This identification shall include permanent ~~wood or metal signs on treated or metal posts.~~ Signs made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) every fifty (50) feet or one (1) per lot if the lot is less than fifty (50) feet wide, and must be maintained by the property owner in perpetuity Signs shall be worded as follows:

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

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

E. **Additional Conditions.**

1. The location of the outer extent of the priority habitat area or priority species site pursuant to an approval shall be marked in the field by a qualified habitat biologist, and such field marking shall be approved by the city of Lacey prior to the commencement of approved activities. Such field markings shall be maintained throughout the duration of the approval.
2. The city of Lacey may attach such additional conditions to the granting of approvals as deemed necessary to assure the preservation and protection of affected priority habitat or species and to assure compliance with the purposes and requirements of this chapter.

Section 27. Section 14.33.310 of the Lacey Municipal Code is hereby amended as

follows:

**14.33.310 Assessment relief.**

~~The assessors of the city of Lacey~~ Thurston County Assessor's Office shall consider priority habitats or priority species regulations in determining the fair market value of land. Any owner of an undeveloped area designated as habitat conservation area who has dedicated an easement or entered into a perpetual conservation restriction with the city of Lacey or a nonprofit organization to permanently control some or all regulated activities in said area shall have that portion of land assessed consistent with those restrictions. Such landowner shall also

be exempted from special assessments on the controlled area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains.

Section 28. Section 14.34.005 of the Lacey Municipal Code is hereby amended as follows:

**14.34.005 Purpose and Intent.**

It is the intent of this ordinance to:

- A. Adopt policy and regulation restricting development and recurring flood damages within designated flood hazard areas where such development would put life and property at risk because of flood hazard;
- B. Identify those areas at risk for flood hazard by reference to appropriate maps and studies that represent the best scientific information available to the city of Lacey;
- C. Adopt policy and regulation for Lacey's flood hazard areas that is coordinated and consistent with Lacey's sensitive area ordinances. These ordinances protect designated environmentally sensitive area resources that generally overlap with flood hazard areas.
- D. Adopt policy and regulation restricting development within designated flood hazard areas that would adversely impact the function and value of critical/sensitive area resources by reducing flood water retention capacity of wetlands or impacting critical habitat, including anadromous fish.
- E. Coordinate designation and use of land under requirements of the state Growth Management Act (GMA), recognizing adequate developable land resources have been identified and zoned to accommodate forecasted growth outside of designated flood hazard areas.
- F. Coordinate regulation and management of flood hazard areas and other sensitive/critical areas according to the concepts under GMA, and the City-Comprehensive Land-Use-Plan, and the National Flood Insurance Program;
- G. Promote the natural function and values of flood hazard areas and other critical area resources that are not compatible with urbanization and need special consideration and protection.
- H. Recognize there is no compelling public need to justify the adverse impacts to the public's interest that would result from development within flood hazard areas.

Section 29. Section 14.34.010 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.010 Definitions.**

Unless specifically defined below or in Chapter 16.06 LMC, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application:

- A. "Appeal" means a request for a review of the building official's interpretation of any provisions of this chapter or a request for a variance.
- B. "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A and V.
- C. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "one-hundred-year flood." Designated on flood insurance rate maps by the letters A or V.
- D. "Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.
- E. "Best available information" means in absence of official flood insurance rate map data, communities can use data from federal, state, or other sources provided this data has either been generated using technically defensible methods or is based on reasonable historical analysis and experience.
- EF. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard or removal of substantial amounts of vegetation, or alteration of the natural site characteristics.
- FG. "Elevation certificate" means the official form (FEMA Form ~~81-31~~ 086-0-33) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by community officials.
- GH. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
1. The overflow of inland or tidal waters; and/or
  2. The unusual and rapid accumulation of runoff of surface waters from any source.

I. “Flood damages” includes harmful inundation, water erosion of soil, stream banks and beds., stream channel shifting and changes, harmful deposition by water of eroded and shifting soils and debris upon property or in the beds of streams or other bodies of water, damages by high water to public roads, highways, bridges, utilities and to works built for protection against floods or inundation, the interruption by floods of travel, communication and commerce, and all other high water influences and results which injuriously affect the public health and the safety of property.

HJ. Flood Hazard Area. See “Area of special flood hazard.”

IK. “Flood insurance rate map (FIRM)” means the official map on which the Federal Insurance & Mitigation Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

JL. “Flood insurance study” means the official report provided by the Federal Insurance & Mitigation Administration that includes flood profiles and the water surface elevation of the base flood.

KM. “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

LN. “Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements.

MO. “New construction” means structures for which the “start of construction” commenced on or after the effective date of this chapter.

NP. “Protected area” means the lands that lie within the boundaries of the floodway, and the riparian habitat zone, and the channel migration area. Because of the impact that development can have on flood heights and velocities and habitat, special rules apply in the protected area.

Q. “Replacement residential structure” means a residential structure built as a substitute for a previously existing residential structure of equivalent use and size.

OR. “Start of construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site beyond the state of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or



walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

PS. "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground. Manufactured homes are considered structures.

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

RU. "Substantial improvement" means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

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

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration will not preclude the structure's continued designation as a historic structure.

SV. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

Section 30. Section 14.34.030 of the Lacey Municipal Code is hereby amended as follows:

**14.34.030 Basis for establishing the areas of special flood hazard.**

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

Section 31. Section 14.34.040 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.040 Compliance required and penalties for non-compliance.**

A. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations.

B. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than ninety days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case.

C. Additionally, violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a civil violation. Any person who violates this chapter or fails to comply with any of its requirements shall be subject to a civil penalty in accordance with Chapter 14.40 LMC.

D. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 32. Section 14.34.070 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.070 Warning and disclaimer of liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This

chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of Lacey, any officer or employee thereof, or the Federal Insurance & Mitigation Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Section 33. Section 14.34.082 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.082 Prohibition on development within areas of special flood hazard.**

Because of the potential hazard to life and property and the restrictions already in place related to sensitive areas on those lands designated as flood hazard within the city of Lacey, development as defined in LMC 14.34.010 shall be prohibited on lands designated as flood hazard areas with only a few exemptions. Exemptions are listed below and must meet requirements of LMC 14.34.084:

- A. Trails and recreational improvements for public access to water bodies consistent with the City Comprehensive Plan for Outdoor Recreation and the City Shoreline Master Program, if applicable.
- B. Public works projects involving the provision or transmission of a utility where no alternative routing options are reasonable.
- C. Public works projects consistent with the City Transportation Plan where no alternative routing options are reasonable.
- D. Maintenance activities and improvements to pre-existing structures that do not increase the footprint of the structure and comply with the requirements contained in 14.34.010(U).
- E. Public activities and improvements approved by the city of Lacey determined to be in the public's best interest.

Section 34. Section 14.34.084 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.084 General requirements applicable to exemptions permitted in LMC 14.34.082.**

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

- A. All applicable requirements of this chapter are satisfied.

- B. It does not increase the risk of flood hazard or displace flood waters to adjacent sites.
- C. The improvement has no impact to critical habitat or any impacts are fully mitigated as determined by the Washington State Department of Fish and Wildlife.
- D. Any impact to the riparian habitat zone (RHZ) ~~is~~ areas are fully mitigated and all critical area buffers and standards of Chapters 14.28 (Wetlands Protection), 14.32 (Tree and Vegetation Protection and Preservation) and 14.33 LMC (Habitat Conservation Areas Protection) are satisfied. This includes a two-hundred-foot buffer along Woodland Creek which exceeds the distance of Woodland Creek's channel migration zone (CMZ), ~~by a distance greater than fifty feet.~~
- E. Stormwater and drainage features shall incorporate LID techniques in accordance with the current City of Lacey Stormwater Design Manual.
- F. Creation of new impervious surfaces shall not exceed ten (10) percent of the surface area of the portion of the lot in the floodplain unless mitigation is provided.
- G. Any loss of floodplain storage shall be avoided, rectified or compensated for. Any compensation off site must be in a priority floodplain restoration area identified in the associated ESU Recovery Plan for listed species.
- H. Uses that are not permitted in the protected area because they can adversely affect water quality, habitat and other natural values and functions include:
1. Septic tanks and drainfields;
  2. Dumping of any materials;
  3. Hazardous or sanitary waste landfills;
  4. Receiving areas for toxic or hazardous waste;
  5. Other contaminants.
- I. Uses shall comply with the city's tree and vegetation protection and preservation ordinance (Chapter 14.32 LMC) which prohibits the removal of vegetation within critical areas or associated buffers. Minimal unavoidable disturbances may be permitted if fully mitigated.
- J. Development may not adversely impact water quality, water quantity, flood volume, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids. Any project with impacts to these elements of the environment that are not fully mitigated will be prohibited.

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

L. New road crossing over streams in the floodplain or buffers associated with wetlands within designated flood hazard areas is prohibited.

Section 35. Section 14.34.086 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.086 Administrative requirements.**

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

A. The application for a permit to develop in the affected area must include the elevations of the ten (10)-, fifty (50)- and one-hundred (100)-year floods, where such data is available.

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

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

Section 36. Section 14.34.100 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.100 Duties and responsibilities of the building official.**

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

A. Permit Review.

1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;

2. Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;

3. Review all development permits to determine if the proposed development is located in the area of special flood hazard or floodway. If located in the area of special flood hazard or floodway, assure that permits are denied or meet exemption requirements according to the provisions of this chapter. If located in a floodway, assure that the encroachment provisions of LMC 14.34.140 are met.

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

C. Information to Be Obtained and Maintained.

1. Where base flood elevation data is provided through the flood insurance study, FIRM or is required under subsection B of this section, obtain and record the actual (as-built) elevation in relation to mean sea level of the lowest floor (including basement) of all new and substantially improved structures and whether or not the structure has a basement. The information shall be recorded on a current elevation certificate with Section B completed by the local official.

2. For all new or substantially improved floodproofed nonresidential structures where base flood elevation data is provided through the FIRM, Flood Insurance Study, or as required in subsection B of this section:

a. Verify and record the actual elevation (in relation to mean sea level) to which the structure was floodproofed.

b. Maintain the floodproofing certification required in LMC 14.34.130(B).

3. Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Alteration of Watercourses.

1. Except in cases where the city, ~~or state,~~ or federal government undertakes public works projects for the benefit of the general public, alteration or relocation of any watercourses is prohibited;

2. In cases where a city, state, or federal government entity undertakes such a project all appropriate city, state, and federal permits and approvals shall be required. All identified impacts shall be fully mitigated;

3. In cases of city, state, or federal government projects the building official shall notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance & Mitigation Administration;

4. In the case of a city, state, or federal government project the building official shall require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished and all habitat functions maintained.

E. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards.

Section 37. Section 14.34.110 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.110 Variance procedures.**

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

A. Generally, the only condition under which a variance from the elevation standard may be issued is for substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.

B. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

D. Variances shall only be issued upon:

1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

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

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

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

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

H. The provisions of this chapter which are for the protection of the safety, health and welfare of the general public are demonstrated to not be applicable to the subject property and therefore should not be applied.

Section 38. Section 14.34.120 of the Lacey Municipal Code is hereby amended as

follows:

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

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

**A. Anchoring.**

1. All new construction permitted under LMC 14.34.082 and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

**B. Construction Materials and Methods.**



1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
3. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
2. Water wells shall be located on high ground that is not in the floodway;
3. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
4. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals.

1. Subdivision of areas of special flood hazard for the purpose of developing residential structures is prohibited. Where special flood hazard areas are part of an ownership with an area outside of the special flood hazard area that can be subdivided, flood hazard areas shall be designated and deeded as open space. Open space areas within a flood hazard area shall be deeded to either the subdivision lot owners association, the city of Lacey, or other public entity for protection and preservation, at the sole discretion and determination of the city of Lacey.
2. All subdivision proposals shall be consistent with the need to minimize flood damage.
3. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed outside of the area of special flood hazard.
4. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

5. Where base flood elevation data has not been provided or is not available from another authorized source, it shall be generated for subdivision proposals and other proposed developments which contain at least fifty (50) lots or five (5) acres (whichever is less).

Section 39. Section 14.34.130 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.130 Specific standards for pre-existing use exemptions.**

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

**A. Residential Construction.**

1. Substantial improvement of any pre-existing residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation (BFE) and shall not be permitted in the floodway (see LMC 14.34.140(B)).

a. The substantial improvement will not increase the footprint of the structure.

2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one (1) foot above grade.

c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

3. Substantial improvements are only allowed as permitted by listed exemptions in LMC 14.34.082. Where a pre-existing structure is involved, maintenance or improvements shall not increase the footprint of the structure (LMC 14.34.082).

**B. Nonresidential Construction.**

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

a. Be floodproofed so that below one (1) foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans;

d. Nonresidential structures that are elevated but not floodproofed must meet the same standards for space below the lowest floor as described in subsection (A)(2) of this section;

e. The footprint of a pre-existing structure shall not be increased (LMC 14.34.082);

f. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level (e.g., a building floodproofed to one foot above the base flood level will be rated at the base flood level).

2. Substantial improvements are only allowed as permitted by listed exemptions in LMC 14.34.082. Where a pre-existing structure is involved, maintenance or improvements shall not increase the footprint of the structure (LMC 14.34.082).

C. Manufactured Homes.

1. All manufactured homes are prohibited in the area of special flood hazard.

D. Recreational Vehicles.

1. Recreational vehicles placed on sites in areas of special flood hazard shall be fully licensed and ready for highway use, on wheels or jacking systems, attached to the site by only quick disconnect type utilities and security devices and have no permanently attached additions.

Section 40. Section 14.34.135 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.135 AE zones with base flood elevations but no floodways.**

In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within zone AE on the community's FIRM, except as permitted by LMC 14.34.082 (exemptions). Prior to issuing a permit, it must be demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

Section 41. Section 14.34.145 of the Lacey Municipal Code is hereby amended as

follows:

**14.34.145 Coastal high hazard--Zone VE.**

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

1. All new construction and substantial improvements shall be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated one (1) foot or more above the base flood level.
2. The pile or column foundation and structure attached thereto are anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred (100)-year mean recurrence interval).
3. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections (A)(1) and (2) of this section.
4. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and

substantially improved structures and whether or not such structures contain a basement. The building official shall maintain a record of all such information.

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

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

1. Breakaway wall collapse shall result from water load less than that which would occur during the base flood.

2. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred (100)-year mean recurrence interval).

3. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

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

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

F. Manufactured homes are prohibited.

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

Section 42. Section 14.34.150 of the Lacey Municipal Code is hereby amended as follows:

**14.34.150 Wetlands management.**

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

- A. Review proposals for development within base floodplains for their possible impacts on wetlands located within the floodplain;
- B. Ensure that development activities in or around wetlands do not negatively affect public safety, health, and welfare by disrupting the wetlands' ability to reduce flood and storm drainage;
- C. Require compliance with the city wetland protection ordinance (Chapter 14.28 LMC), habitat conservation protection ordinance (Chapter 14.33 LMC), tree and vegetation protection ordinance (Chapter 13.32 LMC) and applicable environmental plans and regulations.

Section 43. Chapter 14.36 of the Lacey Municipal Code is hereby repealed.

Section 44. There is hereby added to the Lacey Municipal Code a new Chapter 14.36, to read as follows:

**14.36.020 Purpose and intent.**

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

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

E. To provide legislation regulating land uses within critical aquifer recharge areas generally and more precise standards and regulations for designated wellhead protection areas.

**14.36.030 Wellhead protection and critical aquifer recharge areas--Definitions.**

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

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

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

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

F. "Category I critical aquifer recharge areas" means those areas with extreme aquifer sensitivity due to the presence of soils that provide very rapid recharge with little natural water quality treatment. Category I areas contain coarse soil textures and soil materials, and are derived from glacial outwash materials. The predominant soil series in Category I CARAs are listed in LMC 14.36.070B.G. "Category II critical aquifer recharge areas" are those areas with high aquifer sensitivity due to soils which provide slightly lower recharge than Category I, but provide little protection and natural water quality treatment. Category II soils are derived from materials of glacial deposit. The predominant soil series in Category II CARAs are listed in LMC 14.36.070B.

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

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

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

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

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

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

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

O. "MPCs" means reasonable methods of prevention and control. Examples of MPCs include, but are not limited to pollution prevention plan development and implementation, routine maintenance, secondary containment, and measures to eliminate contaminant pathways to the source water.

P. "Pollution prevention plan" means a site-specific plan that addresses the avoidance of unplanned chemical release in the air, water, or land. It is based upon deliberate waste management planning, site design, and operational practices.

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

R. "Wellhead protection area (WHPA)" means the surface and subsurface area surrounding a well or well field, through which contaminants are reasonably likely to move toward and reach such water well or well field within one (1), five (5), and ten (10) years. WHPAs for



Lacey's water supply wells are adopted in Lacey's Water System Comprehensive Plan which is approved by the Washington State Department of Health.

**14.36.040 Applicability.**

A. The provisions of this chapter apply to non-exempt proposals for development of new uses, and the alteration or expansion of existing uses located in wellhead protection areas or critical aquifer recharge areas within the city of Lacey as defined by this chapter.

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

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

D. The city of Lacey shall not grant any approval or permission to conduct a nonexempt activity in an area classified as a wellhead protection area or Category I or II critical aquifer recharge area until the requirements of this chapter have been fulfilled including but not limited to action on the following: limited administrative review, full administrative review, quasi-judicial review, legislative review pursuant to Chapter 1.010C of the City of Lacey Development Guidelines and Public Works Standards, or any subsequently adopted permit or required approval not expressly exempted by this chapter.

**14.36.050 Exempt activities.**

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

A. Building projects for individual single family residence or duplex;

B. Boundary line adjustments;

C. Franchise right-of-way construction permit;

D. Grading permit for less than five hundred cubic yards of material, provided the permit is not part of a project that exceeds a threshold triggering stormwater requirements as defined under the *City of Lacey Stormwater Design Manual*;

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

F. Noncommercial outdoor recreation activities that have no impact on aquifer recharge, such as bird watching or hiking, but shall not include such things as golf courses that may impact aquifer recharge;

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

H. Location of boundary markers;

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

J. Nondevelopment educational activities and scientific research;

K. Normal and routine maintenance or repair of existing utility structures or right-of-way, except situations involving the application of chemical substances;

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

M. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way, except situations involving the application of chemical substances

#### **14.36.060 Maps and inventory.**

Maps of soils in the Lacey area are located on the *Web Soil Survey*, (Natural Resource Conservation District) The soil survey maps, as amended, are the basis for the CARA categories referenced in this chapter. The standards of this chapter shall apply to all lots or parcels which include Category I or II critical aquifer recharge areas, within the jurisdiction of the city of Lacey. Maps relating to city of Lacey wellhead protection areas are in the City of Lacey Water System Comprehensive Plan, as amended. In the event that any of the critical aquifer recharge areas or wellhead protection areas shown on the maps conflict with the criteria set forth in this chapter, the criteria in this chapter shall control.

**14.36.070 Determination of wellhead protection areas and critical aquifer recharge areas**

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

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

**Critical Aquifer Recharge Area Soil Series**

<b><u>CATEGORY I SOIL SERIES</u></b>	
<b><u>Series Name</u></b>	<b><u>SCS Map Symbol #</u></b>
<u>Baldhill</u>	<u>5, 6, 7, 8</u>
<u>Cagey</u>	<u>20</u>
<u>Everett</u>	<u>32, 33, 34, 35</u>
<u>Grove</u>	<u>42</u>
<u>Indianola</u>	<u>46, 47, 48</u>
<u>Newberg</u>	<u>71, 72</u>
<u>Nisqually</u>	<u>73, 74</u>
<u>Pilchuck</u>	<u>84</u>
<u>Pits, gravel</u>	<u>85</u>
<u>Puyallup</u>	<u>89</u>
<u>Spanaway</u>	<u>110, 111, 112, 113, 114</u>
<u>Sultan</u>	<u>115</u>
<u>Tenino</u>	<u>117, 118, 119</u>
-	-
<b><u>CATEGORY II SOIL SERIES</u></b>	
<b><u>Series Name</u></b>	<b><u>SCS Map Symbol #</u></b>
<u>Alderwood</u>	<u>1, 2, 3, 4</u>
<u>Chehalis</u>	<u>26</u>
<u>Delphi</u>	<u>27, 28</u>
<u>Eld</u>	<u>31</u>
<u>Giles</u>	<u>38, 39, 40</u>
<u>Maytown</u>	<u>64</u>
<u>Spana</u>	<u>109</u>
<u>Yelm</u>	<u>126, 127, 128</u>
-	-
<b><u>CATEGORY II SOIL SERIES</u></b>	
<b><u>Series Name</u></b>	<b><u>SCS Map Symbol #</u></b>

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

C. The exact presence and location of soils constituting a critical aquifer recharge area shall be determined by a field investigation applying specific criteria described by the health officer or health expert. A professional soil scientist or licensed hydrogeologist expert shall perform soils analysis necessary to make determinations. Hiring the services of a soil scientist or licensed hydrogeologist expert shall be the responsibility of the applicant. The applicant is required under LMC 14.36.115 to show the location of the aquifer sensitive area on a scaled drawing as a part of the application.

D. Disputed areas

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

2. In the event the changes are contested by the applicant, the city of Lacey shall, at the applicant's expense, obtain its own expert services to render a final determination

3. In areas that have been disturbed or the surface soil removed as in gravel pits, the city of Lacey in consultation with the health officer and the Natural Resources Conservation Service shall determine the most appropriate category with geological and hydrological information.

**14.36.080 Review standards--General review requirements.**

A. No nonexempt action shall be undertaken by any person which results in any alteration of a critical aquifer recharge area or wellhead protection area except in compliance with the requirements, goals, purposes and objectives of this chapter.

B. In association with normal permit requirements every nonexempt activity will require a written authorization or notation on the application of compliance with this chapter prior to undertaking the activity.

C. The city may approve, approve with conditions or deny any development proposal in order to comply with the requirements and carry out the goals, purposes and objectives of this chapter.

**14.36.090 Consolidated application process.**

When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time in conformance with Section 1B.030 of the City of Lacey Development Guidelines and Public Works Standards.

**14.36.100 Information requirements.**

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

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

1. The exact boundary and description of wellhead protection areas, including the source well and sanitary control area, if applicable;
2. Locations of Category I and II soils on the site;
3. Groundwater contours indicating the direction of shallow groundwater flow, shown in relation to the wellhead and its wellhead protection area if applicable, and existing and proposed stormwater facilities;
4. Any existing well(s) on site, whether in use or abandoned;
5. All potential sources of soil or groundwater contamination on the site; and
6. Locations of proposed temporary construction dewatering wells or other resource protection wells anticipated for gathering project data.

B. A description of the proposed use of the site, and descriptions of the types and quantities of hazardous materials that would be used or stored on the site including fuels and fuels associated with mechanical equipment and retail products;

C. A description of the engineering design and planned operation and maintenance of the projects that will mitigate impacts to groundwater quality and quantity at the development site. The description shall also identify specific limitations of the site, such as soils and geology, for mitigating impacts to site development. See requirements in special reports,

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

*subject to limitations*

A. To protect the public health and safety, prevent aquifer contamination, and preserve the ground water resource for continual beneficial use, uses shall be most limited in those areas which have the highest degree of risk.

B. Stormwater runoff. Stormwater impacts shall be mitigated through the application of the most current version of the *City of Lacey Stormwater Design Manual*. To minimize the potential for groundwater contamination, stormwater runoff may require maximum treatment of metals and Phosphorous prior to infiltration or discharge. Determinations will be made on a case by case basis, in accordance with the *City of Lacey Stormwater Design Manual*.

C. Agricultural activities. Agricultural activities within the city are primarily associated with urban agriculture, as allowed under Chapter 16.21 LMC, which includes limits and requirements for small farm animals. Agricultural impacts shall be mitigated through implementation of the Northern Thurston County Ground Water Management Plan (1991) as revised and updated, where applicable. In designated critical areas, the city of Lacey in consultation with the health officer or other qualified health expert shall require an applicant to employ methods that result in protection from aquifer contamination.

D. Solid Waste. Solid waste disposal facilities shall comply with Chapters 173-304 and 173-200 WAC. Solid waste landfills, and other solid waste disposal facilities likely to produce leachate shall be prohibited in Critical Aquifer Recharge Area Categories I and II. Handling and transfer facilities within these two categories may be placed with source control measures appropriate to the facility. Special care shall be employed to avoid the impacts of spills and leachate.

E. Hazardous materials.

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

F. Fertilizer and pesticides. Reserved.

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

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

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

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

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

A. The city of Lacey may coordinate with the health officer in the enforcement of these regulations.

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

**14.36.130 Critical aquifer recharge areas--Special reports.**

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

1. There is insufficient hydrogeological information to perform an adequate review to assure aquifer protection; or

2. The project is likely to possess, store, use, transport, or dispose of hazardous materials.

B. The city of Lacey may waive the hydrogeological report requirements if the nature of the project and its impacts are generally known, or the impacts of the project have been mitigated by source control strategies.

**14.36.140 Hydrogeological reports.**

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

1. There is insufficient ground water information to perform an adequate review to assure aquifer protection: or

2. The project is likely to possess, store, use, transport, or dispose of hazardous materials.

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

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

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

E. The hydrogeological report shall contain the information required under LMC 14.36.100, and the following:

1. Information sources;

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

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

4. Location and depth of perched water tables;

5. Groundwater elevations, flow direction, and gradient;

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

7. Background water quality;

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

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



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

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

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

15. Any other information as required by the city.

F. The city of Lacey may retain health experts and other consultants with applicable expertise at the applicant's expense to assist in the review of special studies outside the range of staff expertise.

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

H. The city of Lacey may waive the hydrogeological report requirements if the nature of the project and its impacts are generally known, or the impacts of the project have been mitigated by source control strategies.

#### **14.36.150 Hydrogeological reports-- Reimbursement for costs.**

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

#### **14.36.160 Hazardous materials spill plans**

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

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

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

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

D. Any existing use which uses, stores, handles or disposes of hazardous materials above these minimum cumulative quantities will meet requirements described in LMC 14.36.160(A):

1. Chemical substances that are ignitable, corrosive, reactive or toxic, consistent with WAC 173-303-090, as amended, except as provided for below. Minimum cumulative quantity: one hundred sixty (160) pounds or the equivalent of twenty (20) gallons.

2. Cleaning substances for janitorial use or retail sale in the same size, packaging and concentrations as a product packaged for use by the general public. Chlorinated solvents and nonchlorinated solvents which are derived from petroleum or coal tar will not be considered a cleaning substance under this subsection, but rather a chemical substance identified in LMC 14.36.160(B). Minimum cumulative quantity: eight hundred (800) pounds [for the equivalent one hundred (100) gallons], not to exceed fifty-five (55) gallons for any single package.

3. Businesses which use, store, handle or dispose of chemicals listed in WAC as "P" chemicals. Minimum cumulative quantity: two and two tenths (2.2) pounds.

#### **14.36.170 Wellhead protection area standards of mitigation**

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

1. If the proposal indicates the use, storage, handling or disposal of hazardous materials above the minimum quantity thresholds listed in LMC 14.36.160, the applicant shall submit a hazardous materials management (spill) plan as outlined in LMC 14.36.160.

2. Any existing wells on the site that are not actively used for domestic water use, irrigation or monitoring, or are not maintained and in such disrepair as to be unusable, will be decommissioned by the applicant following the procedures in WAC 173-160-381.

3. The city may require dedicated groundwater monitoring wells to be installed for the project in situations where groundwater contamination risks or monitoring needs are identified. The wells will be installed and equipped by the applicant to city standards.

4. The proposal must ensure compliance with the City of Lacey stormwater maintenance requirements, as described in section 5B of the *City of Lacey Development Guidelines and Public Works Standards*.

5. The city may allow alternatives to the minimum mitigation standards described in this section in unique conditions and on a case-by-case basis when the applicant demonstrates that:

a. The project has been evaluated by a Hydrogeological Report as described in 14.36.140; and

b. Based upon the Hydrogeological Report and the best available science the proposed alternative mitigation measures will be adequate to protect the drinking water source

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

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

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

1. Land spreading disposal facilities (as defined by Chapters 13-304 and 173-308 WAC - disposed above agronomic rates);
2. Direct groundwater recharge or surface percolation using reclaimed water (as defined under Chapter 90.46 RCW).
3. Animal operations with over 200 animal units. For purposes of this section, one animal unit is the equivalent number of livestock and/or poultry as defined by the U.S. Department of Agriculture Natural Resource Conservation Service Animal Waste Field Handbook;
4. Gas stations, petroleum products refinement, reprocessing, and storage (except underground storage of heating oil or agricultural fueling in quantities less than 1,100 gallons for consumptive use on the parcel where stored), and liquid petroleum products pipelines;
5. Automobile wrecking and salvage yards;
6. Dry cleaners, excluding drop-off only facilities;
7. Asphalt plants/cement concrete plants; and
8. Machine shops, metal finishing/fabricating, metal plating and electroplating.

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

1. Landfills (municipal sanitary solid waste and hazardous waste), demolition (inert), and wood waste;
2. Chemical/hazardous waste manufacturing, reprocessing, transfer, storage and disposal facilities;

3. Wood and wood products preserving; and
4. Gas stations without attendant (i.e., operated with no attendant on site to respond to fuel spills related to the dispensing of gasoline or equipment failure.

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

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

A. Expansion of all uses prohibited in LMC 14.36.180 shall be prohibited within the designated one-year time of travel zone:

B. Expansion of all uses prohibited in LMC 14.36.180 shall be prohibited within the designated one (1), five (5) and ten (10)-year time of travel zones:

C. For any expansion of an existing use proposed within the designated one (1), five (5) and ten (10)-year time of travel zones, the applicant shall meet the minimum standards of mitigation described in LMC 14.36.170. D. The health officer at the health officer's discretion and with reasonable expectation of risk to ground water, may require pollution prevention plan development and implementation of MPCs on any use located within the one (1), five (5) or ten (10)-year time of travel zones. The health officer will review the documentation to determine whether the expansion shall be approved, denied or approved with conditions to ensure adequate protection of the source water supply.

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

The following shall apply to existing uses located within the designated wellhead protection areas defined in LMC 14.36.030.

A. For any existing use identified by the pollution source inventory in approved wellhead protection plans, within the one (1), five (5) and ten (10) year time of travel zones which produces, uses, stores, handles or disposes of hazardous materials, the owner, upon request of the health officer shall submit a hazardous materials management (spill) plan as described under LMC 14.36.160 that will ensure adequate protection of the source water supply. The health officer, in consultation with the water purveyor in which the use is located, shall review this plan to determine whether the plan shall be approved, or approved with conditions to ensure adequate protection of the source water supply.

B. The health officer at the health officer's discretion, for good cause and with reasonable expectation of risk to ground water, may require pollution prevention plans and MPCs on any use proposed within the one (1), five (5), and ten (10)-year time of travel zones.

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

**14.36.210 Other laws and regulations.**

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

**14.36.220 Suspension, revocation.**

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

**14.36.230 Appeals.**

Any decision of the city of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards.

**14.36.240 Enforcement.**

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

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

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

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

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

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

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

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

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

3. Any person who undertakes nonexempt activity within a critical aquifer recharge area or wellhead protection area without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection B of this section shall incur a penalty allowed per violation. In the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the Hearings Examiner in conformance with Section 1D.030 of the *City of Lacey Development Guidelines and Public Works Standards*..

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

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

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

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in ID.030 of the *City of Lacey Development Guidelines and Public Works Standards*.

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

#### **14.36.250 Non-conforming activities.**

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

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

C. When in conflict, provisions of this section shall supersede the normal nonconforming use provisions of Chapter 16.93 LMC. Activities or adjuncts thereof that are nuisances shall not be entitled to continue.

#### **14.36.270 Amendments.**

These regulations and wellhead protection maps referenced in LMC 14.36.060 may from time to time be amended in accordance with the procedures and requirements in the general



statutes, the City of Lacey Comprehensive Plan, adopted development regulations, and as new information concerning becomes available.

**14.36.280 Severability.**

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

Section 45. Section 14.37.020 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.020 Purpose/intent.**

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

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

Section 46. Section 14.37.030 of the Lacey Municipal Code is hereby amended as

follows:

#### **14.37.030 Definitions.**

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

- A. "Applicant" means a person who files an application for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- B. "Artificially created hazard area" means artificially created areas of potential hazard such as fills and steep cuts. Such areas are reviewed during application for building permits or excavation and grading permits through a process provided in the Grading Chapter of the city's adopted Building Code, which allows application of specific conditions to insure the public health, safety and welfare. Such areas are not subject to review under this chapter.
- C. "Bluff" means a steeply rising, near vertical slope which abuts and rises from Puget Sound. Bluffs occur in the area at the extreme north end of Lacey's long term growth area north of the Beachcrest area. The toe of a bluff is the beach of Puget Sound. The top of a bluff is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is either the line of vegetation separating the unvegetated steep slope from the vegetated uplands plateau or, when the bluff is vegetated, the point where the bluff slope diminishes to less than fifteen percent.
- D. "Buffer" means an area adjacent to hillsides which provides the margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic, and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being or property damage resulting from natural disasters.
- E. "Clearing" means the destruction and removal of vegetation by burning, mechanical, or chemical methods.
- F. "Director" means the director of community & economic development or his/her designee.
- G. "Erosion hazard area" means an area designated by the city of Lacey Environmental Protection and Resources Conservation Plan which, according to the United States Department of Agriculture Soil Conservation Service Soil Survey of Thurston County, Washington, have severe erosion hazard potential. These soil map units are described in Table 11 of the Environmental Protection and Resource Conservation Plan.
- H. "Financial security" means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or other financial guarantee approved by the city attorney.
- I. "Geologically sensitive area" means an area that because of its susceptibility to erosion, sliding, earthquake or other geological events, are not suited to the siting of commercial,

residential, or industrial development consistent with public health or safety concerns. Geologically sensitive areas do not include artificially created hazard areas.

J. "Hillsides" means geological features of the landscape having slopes of fifteen percent and greater. To differentiate between levels of hillside protection and the application of development standards, the city of Lacey categorizes hillsides into four groups: hillsides of at least fifteen percent but less than twenty-five percent slope; hillsides of twenty-five percent but less than forty percent slope; hillsides of forty percent slope and greater; and hillsides which are defined as ravine sidewalls or bluffs.

K. "Landslide" means an episodic downslope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, and earthflows.

L. "Landslide hazard area" means an area potentially subject to landslides because of the combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors, including bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors. The following areas are considered to be subject to landslide hazard:

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

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

N. "Ravine sidewall" means a steep slope which abuts and rises from the valley floor of a stream and which was created by the wearing action of the stream. Ravine sidewalls contain slopes predominantly in excess of forty percent, although portions may be less than forty

percent. The toe of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is where the slope diminishes to less than fifteen percent. Minor natural or manmade breaks in the slope of ravine sidewalls shall not be considered as the top. Benches with slopes less than fifteen percent and containing developed or developable areas shall be considered as the top.

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

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

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

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

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

Q. "Soil Survey of Thurston County Washington" is a soil survey published by the U.S. Department of Agriculture Natural Resource Soil Conservation Service. The survey contains information that can be applied in land use management. All the soils of the Thurston County Area are shown on detailed maps and described in text.

Section 47. Section 14.37.050 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.050 Applicability.**

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

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

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

Section 48. Section 14.37.060 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.060 Maps and inventory.**

This chapter shall apply to all lots or parcels on which geologically sensitive areas are located within the jurisdiction of the city of Lacey. The approximate location and extent of geologically sensitive areas in the city of Lacey is shown on ~~map 6 as shown in the city of Lacey Environmental Protection and Resource Conservation Plan~~ the city's Arc Geographic Information System (GIS) maps. The city zoning map also shows such areas as environmentally sensitive pursuant to Chapter 16.54 LMC. The city ~~Environmental Protection and Resource Conservation Plan map~~ Arc GIS maps and zoning map are to be used as a guide to the general location and extent of geologically sensitive areas. Geologically sensitive areas not shown on the maps are presumed to exist in the city of Lacey and are protected under all the provisions of this chapter. In the event that any of the geologically sensitive area designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control.

Section 49. Section 14.37.080 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.080 Exempt activities.**

The following activities shall be exempt from the review requirements of this chapter and Chapter 1C of the City of Lacey Development Guidelines and Public Works Standards

provided such activities are undertaken using best management practices in a manner that does not adversely impact the geologically sensitive area:

- A. Nonpublic outdoor recreation activities such as bird watching or hiking, when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;
- B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the geologically sensitive area by changing existing topography, water conditions or other natural parameters important to the geological sensitivity;
- C. Boundary markers;
- D. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be restored immediately after investigative work has been completed;
- E. Educational activities and scientific research; ~~and~~
- F. Normal and routine maintenance or repair of existing utility structures or right-of-way;
- G. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way; and
- H. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way.

Section 50. Section 14.37.100 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.100 Geologically sensitive area applications.**

No ~~nonexempted~~ ~~nonexempt~~ use shall occur or be permitted to occur within a geologically sensitive area without full administrative review or quasi-judicial review of the application pursuant to Chapter 1C of the City of Lacey Development Guidelines and Public Works Standards, whichever is applicable.

Section 51. Section 14.37.110 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.110 Geologically sensitive areas --Information requirements.**

A. Application to conduct any activity not specifically exempted by LMC 14.37.080 within a geologically sensitive area shall be made to the department of community & economic development on forms furnished by that office.

B. Unless the city of Lacey waives one or more of the following information requirements, applications for activities undertaken in a geologically sensitive area must provide the following information:

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the entire parcel of land owned by the applicant and the exact boundary and description of the geologically sensitive features of the site;
2. A description of the vegetative cover of the site and adjacent area including dominant species;
3. A site development plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations at the site;
4. The exact sites and specifications for all proposed activities including the amounts and methods;
5. Elevations of the site and adjacent lands within the geologically sensitive area at contour intervals of no greater than five feet;
6. Top view and typical cross section views of the geologically sensitive features at the site to scale, and specific means to mitigate any potential adverse environmental impacts of the applicant's proposal relative to the geologically sensitive features of the site;
7. A soils engineering report including data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading, including the stability of slopes. Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.
8. An engineering geology report including an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to

be developed by the proposed grading. Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.

9. A full drainage study identifying special precautions necessary to avoid erosion hazard at the site.

Section 52. Section 14.37.120 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.120 Geologically sensitive areas-- Approval and extensions.**

A. Approvals shall normally be valid for a period of eighteen (18) months from the date of issue and shall expire at the end of that time pursuant to requirements of Chapter 16.84 LMC unless an underlying action has a longer approval period, in which case the longer approval period shall apply.

B. ~~One~~ (1) extension of an original approval may be granted upon written request to the city of Lacey by the original approval holder or the successor in title at least thirty days prior to the expiration for a six (6)-month time period. Prior to the granting of an extension, the city of Lacey shall require updated studies if, in its judgment, the original intent of the approval is altered or enlarged by the renewal, or if the circumstances relevant to the review and issuance of the original approval have changed substantially.

Section 53. Section 14.37.150 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.150 Interagency coordination for geologically sensitive area applications.**

Upon receipt of a complete application for approval authorizing activities within a geologically sensitive area, the city of Lacey shall submit the application to the U.S. Department of Agriculture ~~Soil~~-Natural Resource Conservation Service and other state and local agencies having jurisdiction over or an interest in such applications for review and comment. When such applications are submitted, said agencies should submit comments or should request an extension of the review period within fourteen (14) days. Extensions may be granted by the city of Lacey where complex issues necessitate a longer review period. When submitted, no approval shall be issued under this subsection prior to receipt of such comments or the expiration of the time period for any extension.

Section 54. Section 14.37.170 of the Lacey Municipal Code is hereby amended as

follows:



**14.37.170 Geologically sensitive areas-- Uses allowed in a designated buffer zone.**

Nonexempt activities shall not be allowed in a buffer zone recommended in a geologically sensitive area development plan except for activities having minimal adverse impacts on the geological sensitivity as determined in the development plan. These may include low intensity, passive recreational activities such as ~~previous~~ pervious trails.

Section 55. Section 14.37.180 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.180 Standards for geologically sensitive areas--Specific.Share.**

A. Undevelopable Geologically Sensitive Areas. Ravine sidewalls, bluffs and their buffers and hillsides with a slope greater than forty percent shall remain undeveloped except as otherwise provided in this chapter. The top, toe, and edges of ravine sidewalls, bluffs and the outside edge of their buffers and hillsides with forty percent slope or greater shall be determined and field marked by a qualified geotechnical engineer.

B. Landslide Hazard Areas. Hillsides containing or adjacent to landslide hazard areas shall be altered only when the site plan review committee concludes, based on required reports, the following:

1. There will be no increase in surface water discharge or sedimentation to adjacent properties; and
2. There will be no decrease in slope stability on adjacent properties; and
3. The alteration conforms to all other requirements of subsection E of this section; and
4. Either:
  - a. There is no hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a quantitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or
  - b. The landslide hazard area can be modified or the development proposal can be designed so that the landslide hazard is eliminated or mitigated so that the site is as safe as a site without a landslide hazard; or
  - c. The alteration is so minor as not to pose a threat.

C. Ravine Sidewalls and Bluffs.

1. **Buffers.** A fifty-foot undisturbed buffer of native vegetation shall be established from the top, toe, and sides of all ravine sidewalls and bluffs.

2. **Buffer Reduction.** The buffer may be reduced when expert verification and environmental information demonstrate to the satisfaction of the site plan review committee or hearings examiner, whichever is applicable, that the proposed construction method will:

- a. Not adversely impact the stability of ravine sidewalls and bluffs; and
- b. Not increase erosion and mass movement potential of ravine sidewalls and bluffs; and
- c. Use construction techniques which minimize disruption of the existing topography and vegetation; and
- d. Include measures to overcome any geological, soils, and hydrological constraints of the site. The buffer may be reduced by no more than fifty percent.

3. **Additional Buffers.** The site plan review committee may require increased buffers if environmental studies indicate such increases are necessary to mitigate landslide, seismic and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare.

4. **Building Setback Lines.** A building setback line of ten feet is required from the edge of any buffer of a ravine sidewall or bluff. Minor structural intrusions into the area of the building setback line may be allowed if it is determined that such intrusions will not negatively impact the geologically sensitive area.

5. All buffers shall be measured from the top, toe, and sides of all ravine sidewalls or bluffs.

D. **Developable Geologically Sensitive Areas.** Hillside other than ravine sidewalls and bluffs and their buffers and hillsides ~~greater~~less than forty percent slope are developable pursuant to the provisions of this chapter. The applicant shall clearly and convincingly demonstrate to the satisfaction of the site plan review committee or hearings examiner, whichever is applicable, that the proposal incorporates measures protecting the public health, safety, and welfare.

E. **Hillsides of Fifteen Percent Slope and Greater--Disturbance Limitations.** Development on hillsides shall comply with the following requirements regarding disturbance limitations, development location, development design, construction techniques and landscaping.

1. Amount of Disturbance Allowed. The following chart sets forth the maximum slope disturbance allowed on a development site:

Slope	Amount of Slope Which Can be Disturbed	Factor
0-15%	100%	1.00
15-25%	60%	.60
25-40%	45%	.45
40%+	0%	.00

The overall amount of disturbance allowed on development sites which have any combination of the above slope categories shall be determined by the following formula:

$(\text{Square footage of site having 0-15\% slopes}) \times 1.00 + (\text{Square footage of site having 15-25\% slopes}) \times .60 + (\text{Square footage of site having 25-40\% slopes}) \times .45 = \text{Total Amount of Allowable Site Disturbance.}$

The intent of this section shall be to provide reasonable flexibility in site development while promoting the intent of working with existing topography as opposed to against it.

2. Development Location.

- a. Structures and improvements shall be clustered to retain as much open space as possible and the natural topographic character of the slope; and
- b. Structures and improvements shall conform to the natural contour of the slope, foundations must be tiered to generally conform to the existing topography of the site; and
- c. Structures and improvements shall be located to preserve the most sensitive portion of the site and its natural land forms and vegetation.

3. Development Design.

- a. The footprint of buildings and other disturbed areas shall be minimized. The least number of buildings is desirable in order to consolidate the development; and
- b. Use of common access drives and utility corridors is required where feasible; and

c. Impervious lot coverage shall be minimized. With the exception of detached single family structures, under-structure parking and multi-level structures shall be incorporated where feasible; and

d. Roads, walkways and parking areas shall be designed to parallel the natural contours of the hillsides while maintaining consolidated areas of natural topography and vegetation. Access shall be located in the least sensitive area feasible; and

e. Use of retaining walls which allow the maintenance of existing natural slope areas is preferred over graded artificial slopes.

4. Construction Techniques.

a. Use of foundation walls as retaining walls is preferable to rock or concrete walls built separately and away from the building. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation; and

b. Structures shall be tiered to conform to existing topography and to minimize topographic modification.

5. Excavation and Grading.

a. All requirements of the grading chapter of the city's adopted Building Code shall be satisfied. Requirements under this chapter shall be consolidated with review requirements of the grading chapter of the Building Code to provide a coordinated review process.

6. Landscaping. The disturbed area of a development site not used for buildings and other improvements shall be landscaped according to a landscape design which will achieve a minimum forty percent coverage by the canopy of trees and shrubs within ten years to provide habitat desirable to native western Washington birds. The trees and shrubs shall be a mix of shade, flowering, and coniferous and broad-leaf evergreens that are either native to the Puget Sound region or are valuable to western Washington birds. The Department of Wildlife "Plants for Wildlife in Western Washington" shall be used as a general guide.

a. Trees shall be the following size at time of planting and shall conform to the "American Standard for Nursery Stock":

(1) Single-stem shade and flowering trees shall be a minimum one-and-one-half-inch to two-inch caliper trunk as measured six inches above the ground.

(2) Multi-stem shade and flowering trees shall be a minimum height of eight feet as measured from the ground level to the average uppermost point of growth of the plant.

(3) Coniferous evergreen trees shall be a minimum height of six feet as measured from the ground to the midpoint between the uppermost whorl and the tip of the leader. For species of trees without whorls, minimum height shall be measured to the uppermost side growth. The ratio of height to spread shall not be less than five to three.

(4) Broad-leaf evergreen trees shall be a minimum height of four feet as measured from the ground level to where the main part of the plant ends, not to the tip of a thin shoot.

b. Shrubs shall be the following size at time of planting and shall conform to the "American Standard for Nursery Stock":

(1) Dwarf and semi-dwarf deciduous shrubs shall be a minimum height of two to two and one-half feet above grade, and either a number three container size for container grown plants, ten-inch diameter root ball for balled and burlapped plants, or eleven-inch root spread for bare root plants.

(2) Strong-growing deciduous shrubs shall be a minimum height of two to three feet above grade, and either a number three container size for container grown plants, ten-inch diameter root ball for balled and burlapped plants, or eleven-inch root spread for bare root plants.

(3) Coniferous and broad-leaf evergreen shrubs (Types 1, 2, and 3) shall be a minimum height of two to two and one-half feet spread or height, and either a minimum number three container size for container grown plants or twelve-inch diameter root ball for balled and burlapped plants.

7. Erosion Control. A special drainage and erosion control plan shall be prepared outlining measures being taken to effectively control drainage and erosion. Landscaping activities and grading and excavation activities may be limited to specific times of the year based upon an analysis of soil types, proximity of wetlands, or other factors that may indicate an unacceptable risk of erosion hazards and related impacts (refer to the current City of Lacey Stormwater Design Manual).

F. Seismic Hazard Areas. The city of Lacey acknowledges it is in a seismic hazard zone and shall pursue more specific identification of those areas in the city at the greatest risk. Once said areas are identified, specific criteria designed to protect the public safety shall be developed.

Section 56. Section 14.37.200 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.200 Financial security.**

A. The city of Lacey shall require the applicant of a development proposal to provide financial security acceptable to the city of Lacey in an amount of one hundred fifty (150) percent of the estimated cost of improvements sufficient to fulfill the requirements of this chapter and to secure compliance with conditions and limitations set forth in the approval. The amount and the conditions of the financial security shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such financial security, the city of Lacey may utilize the financial security to fulfill obligations of the approval and take any other steps necessary to gain compliance with approval conditions including instituting an appropriate action in a court of competent jurisdiction. The city of Lacey shall release the financial security upon determining that:

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

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

B. The city of Lacey shall require the holder of an approval issued pursuant to this chapter to post financial security acceptable to the city of Lacey in an amount of twenty (20) percent of the cost of improvements sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two (2) years after they have been approved or accepted. The city of Lacey shall release the financial security upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or mitigation have been satisfactorily met for the required period.

Section 57. Section 14.37.250 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.250 Enforcement.**

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

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

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

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

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

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

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

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

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

3. Any person who undertakes any activity within a geologically sensitive area without first obtaining an approval required by this chapter, or any person who

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

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

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

6. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within thirty (30) days of receipt of the penalty to the city of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the city of Lacey by action of the city hearings examiner under the provision of Chapter 2.30 LMC may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

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

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

Section 58. Section 14.37.300 of the Lacey Municipal Code is hereby amended as

follows:

**14.37.300 Assessment relief.**

~~The assessors of Thurston County~~ Thurston County Assessor's Office shall consider geologically sensitive area regulations in determining the fair market value of land. Any owner of an undeveloped area designated as geologically sensitive shall have that portion of



land assessed consistent with applicable restrictions. Such landowner shall also be exempted from special assessments on the controlled area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains

Section 59. Section 16.14.100 of the Lacey Municipal Code is hereby repealed.

Section 60. 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 61. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 62. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,  
WASHINGTON, at a regularly-called meeting thereof, held this 9<sup>th</sup> day of  
March, 2017.

CITY COUNCIL

By:   
Mayor

Approved as to form:

  
City Attorney

Attest:

  
City Clerk

SUMMARY FOR PUBLICATION  
ORDINANCE NO 1505  
CITY OF LACEY

The Lacey City Council of the City of Lacey, Washington, passed on March 8, 2017, Ordinance No. 1505, entitled "AN ORDINANCE ADOPTING MODIFICATIONS TO VARIOUS PARTS OF THE CITY'S COMPREHENSIVE PLAN, UPDATING REGULATIONS TO CRITICAL AREAS, AMENDING SECTIONS 14.28.020, 14.28.030, 14.28.067, 14.28.080, 14.28.100, 14.28.120, 14.28.130, 14.28.190, 14.28.280, 14.28.290, 14.28.310, 14.28.370, 14.28.380, 14.28.445, 14.28.550, 14.33.020, 14.33.030, 14.33.060, 14.33.070, 14.33.110, 14.33.116, 14.33.117, 14.33.200, 14.33.310, 14.34.005, 14.34.010, 14.34.030, 14.34.040, 14.34.070, 14.34.082, 14.34.084, 14.34.086, 14.34.100, 14.34.110, 14.34.120, 14.34.130, 14.34.135, 14.34.145, 14.34.150, 14.37.020, 14.37.030, 14.37.050, 14.37.060, 14.37.080, 14.37.100, 14.37.110, 14.37.120, 14.37.150, 14.37.170, 14.37.180, 14.37.200, 14.37.250, AND 14.37.300 OF THE LACEY MUNICIPAL CODE, REPEALING SECTIONS 14.28.140, 14.28.300, 14.28.330, AND 16.14.100 OF THE LACEY MUNICIPAL CODE, REPEALING CHAPTER 14.36 OF THE LACEY MUNICIPAL CODE, ADOPTING A NEW CHAPTER 14.36 OF THE LACEY MUNICIPAL CODE, AND APPROVING A SUMMARY FOR PUBLICATION."

The main points of the Ordinance are described as follows:

1. The Ordinance amends the Lacey Municipal Code's critical area regulations as required under the Growth Management Act.
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: March 13, 2017.

Staff recommended change to title of LMC 14.36.110:

**14.36.110 Critical aquifer recharge areas--Uses and activities in critical aquifer recharge areas that are ~~not allowed~~ subject to limitations in wellhead protection zones.**

THIS ACTION WAS APPROVED  
BY COUNCIL MARCH 9, 2017.

PLEASE INCLUDE WHEN CODIFYING  
ORDINANCE NO. 1505.

THANK YOU

Caulfield

3.10.17