

ORDINANCE 912
CITY OF LACEY

AN ORDINANCE ADOPTING THE CITY'S "WETLANDS PROTECTION ORDINANCE" PROVIDING FOR THE COORDINATION OF THE PROVISIONS OF SAID ORDINANCE WITH OTHER PROVISIONS OF THE CODE, ADDING A NEW CHAPTER 14.28, A NEW SECTION 15.10.080 AND AMENDING SECTIONS 14.24.160, 15.10.060, 15.12.060, 15.16.020, 15.18.010, 15.32.060, 15.32.080, 15.32.090, 15.36.010, 16.54.050, 16.54.060, 16.84.010, 16.84.030 AND 16.84.060 ALL OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION.

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

SECTION ONE: The following Wetlands Protection Ordinance is hereby adopted as a new chapter, 14.28, of the Lacey Municipal Code with each section of said ordinance set forth herein to be properly numbered upon codification in accordance with numbering system set forth in said code:

1.1 Findings of Fact

The City Council of the City of Lacey hereby finds that:

- a. Wetlands and their buffer areas are valuable and fragile natural resources with significant development constraints due to flooding, erosion, soil liquefaction potential, and septic disposal limitations.
- b. In their natural state, wetlands provide many valuable social and ecological services, including:
 - 1) controlling flooding and stormwater runoff by storing or regulating natural flows;
 - 2) protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation;
 - 3) providing areas for groundwater recharge;
 - 4) preventing shoreline erosion by stabilizing the substrate;
 - 5) providing habitat areas for many species of fish, wildlife, and vegetation, many of which are dependent on wetlands for their survival, and many of which are on Washington State and Federal Endangered Species lists;
 - 6) providing open space and visual relief from intense development in urbanized area;
 - 7) providing recreation opportunities; and

- 8) serving as areas for scientific study and natural resource education.

c. Development in wetlands results in:

- 1) increased soil erosion and sedimentation of downstream water bodies, including navigable channels;
- 2) increased shoreline erosion;
- 3) degraded water quality due to increased turbidity and loss of pollutant removal processes;
- 4) elimination or degradation of wildlife and fisheries habitat;
- 5) loss of fishery resources from water quality degradation, increased peak flow rates, decreased summer low flows, and changes in the streamflow regimen.
- 6) loss of stormwater retention capacity and slow-release detention resulting in flooding, degraded water quality, and changes in the streamflow regimen of watersheds;
- 7) loss of groundwater recharge areas;
- 8) loss or degradation of open space and natural aesthetics of wetland areas.
- 9) loss or degradation of natural recreation opportunities provided by wetland areas.
- 10) loss of opportunities for scientific study of wetland areas.

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

- 1) stabilizing soil and preventing erosion;
- 2) filtering suspended solids, nutrients and harmful or toxic substances;
- 3) moderating impacts of stormwater runoff;
- 4) moderating system microclimate;
- 5) protecting wetland wildlife habitat from adverse impacts;
- 6) maintaining and enhancing habitat diversity and/or integrity;
- 7) supporting and protecting wetlands plant and animal species and biotic communities; and

- 8) reducing disturbances to wetland resources caused by intrusion of humans and domestic animals.
- e. The loss of the social and ecological services provided by wetlands results in a detriment to public safety and welfare; replacement of such services, if possible at all, can require considerable public expenditure.
- f. A considerable acreage of these important natural resources has been lost or degraded by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Remaining wetlands are in jeopardy of being lost, despoiled, or impaired by such acts.

It is therefore necessary for the City of Lacey to ensure maximum protection for wetland areas by discouraging development activities in wetlands and those activities at adjacent sites that may adversely affect wetland functions and values, to encourage restoration and enhancement of already degraded wetland systems, and to encourage creation of new wetland areas.

1.2 Purpose

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.

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:

- a. 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;
- b. increasing water pollution through location of domestic waste disposal systems or storm water 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;
- c. increasing erosion;
- d. decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
- e. interfering with the exchange of nutrients needed by fish and other forms of wildlife;
- f. decreasing habitat for fish and other forms of wildlife;

- g. adversely altering the recharge or discharge functions of wetlands, thereby impacting groundwater or surface water supplies;
- h. significantly altering wetland hydrology and thereby causing either short-or long-term changes in vegetational composition, soils characteristics, nutrient cycling, or water chemistry;
- i. destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
- j. 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
- k. destroying or damaging aesthetic and property values, including significant public viewsheds.

The purposes of this chapter are to protect the public health, safety and welfare by preventing the adverse environmental impacts of development enumerated in Section 1 of this chapter, and by:

- a. Preserving, protecting and restoring wetlands by regulating development within wetlands and wetland buffers;
- b. Protecting the public against losses from:
 - 1. unnecessary maintenance and replacement of public facilities, including the dredging of ports and navigation channels;
 - 2. publicly funded mitigation of avoidable impacts;
 - 3. cost for public emergency rescue and relief operations; and
 - 4. potential litigation from improper construction practices authorized for wetland areas;
- c. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of wetlands;
- d. Providing City of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;
- e. 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;
- f. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter 43.21C RWC, Puget Sound Water Quality Management Plan, Washington State Executive Order 90-04, the City Comprehensive Landuse Plan, the City Comprehensive Plan for outdoor recreation, the City Zoning Code Chapter 16LMC, the

City Environmental Policy Ordinance Chapter 14.24LMC, Shoreline Master Program Chapter 14.26LMC, Tree Protection and Preservation Ordinance Chapter 14.32LMC, and all other present and future City of Lacey functional, environmental and community plans and programs.

Section 2: Definitions

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

- a. "Applicant" means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- b. "Best management practices" means conservation practices or systems of practices and management measures that:
 - 1) Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and
 - 2) Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands.
- c. "Compensation project" means actions necessary to replace project-induced wetland and wetland buffer losses, including land acquisition, planning, construction plans, monitoring and contingency actions.
- d. "Compensatory mitigation" means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:
 - 1) "Restoration" - Actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities, or catastrophic events within an area which no longer meets the definition of a wetland.
 - 2) "Creation" - Actions performed to intentionally establish a wetland at a site where it did not formerly exist.
 - 3) "Enhancement" - Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.
- e. "Department" means the Washington state department of ecology.
- f. "Developable Area" means an area of land outside of wetlands and wetland buffers.

- g. "Emergent wetland" means a regulated wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.
- h. "Essential habitat" means habitat necessary for the survival of Federally listed threatened, endangered, and sensitive species and state listed priority species.
- i. "Existing and ongoing agriculture" includes those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.
- j. "Exotic" means any species of plants or animals that are foreign to the planning area.
- k. "Extraordinary hardship" means strict application of this chapter and/or programs adopted to implement this chapter by the City of Lacey would prevent all reasonable economic use of the parcel.
- l. "Financial Security" means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or other financial guarantee approved by the City attorney.
- m. "Forested wetland" means a regulated wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.
- n. "Functions", "beneficial functions", or "functions and values" means the beneficial roles served by wetlands including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.
- o. "High intensity land use" includes land uses which are associated with moderate or high levels of human disturbance or substantial wetland habitat impacts including, but not limited to, urban

residential densities, active recreation uses, and commercial and industrial land uses.

- p. "High quality wetlands" are those regulated wetlands which meet the following criteria:
- 1) No, or isolated, human alteration of the wetland topography;
 - 2) No human-caused alteration of the hydrology or else the wetland appears to have recovered from the alteration;
 - 3) Low cover and frequency of exotic plant species;
 - 4) Relatively little human-related disturbance of the native vegetation, or recovery from past disturbance;
 - 5) If the wetland system is degraded, it still contains a viable and high quality example of a native wetland community; and
 6. No known major quality problems.
- q. "Hydric Soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands".
- r. "Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands".
- s. "In-kind compensation" means to replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."
- t. "Isolated wetlands" means those regulated wetlands which:
- 1) are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and
 - 2) have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.
- u. "Lot of Record" means a lot legally established by survey or legal description and recorded at the County Auditor's Office prior to adoption of the City of Lacey subdivision ordinance or a lot legally established after adoption of the City of Lacey subdivision regulations by recording of a building site plan, subdivision or short subdivision at the County Auditor's office.

The definition of Lot shall be that definition used in the Lacey subdivision ordinance LMC Chapter 15.08.020E.

- v. "Low intensity land use" includes land uses which are associated with low levels of human disturbance or low wetland habitat impacts, including, but not limited to, passive recreation, open space, agricultural, or forest management land uses.
- w. "Mitigation" includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation, in the following order of preference is:
 - 1) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - 2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
 - 3) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
 - 4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
 - 5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
 - 6) Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures.
- x. "Native Vegetation" means plant species which are indigenous to the area in question.
- y. "Offsite compensation" means to replace wetlands away from the site on which a wetland has been impacted by a regulated activity.
- z. "Onsite compensation" means to replace wetlands at or adjacent to the site on which a wetland has been impacted by a regulated activity.
- aa. "Out-of-kind compensation" means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity. It does not refer to replacement "out-of-category."
- bb. "Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to regulated wetlands. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or

managed in order to fulfill the basic purpose of the proposed activity.

- cc. "Priority habitats" are a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.
- dd. "Priority species" are those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened, and sensitive species as well as other species of concern and game species.
- ee. "Puget Sound" means all salt waters of the state of Washington inside the international boundary line between the State of Washington and the province of British Columbia, lying east of one hundred twenty-three degrees, twenty-four minutes west longitude.
- ff. "Qualified professional or technical wetlands consultant or scientist" means an individual or team that has both the academic qualifications and field experience to provide the technical expertise for making competent wetland delineations and recommendations necessary to implement the goals and requirements of this chapter. Said persons must have previously demonstrated competence in wetland work by having successfully prepared complex wetland studies that have been approved and accepted by the State Department of Ecology.
- gg. "Regulated Activities" means any of the following activities which are directly undertaken or originate in a regulated wetland or its buffer:
 - 1) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
 - 2) The dumping, discharging, or filling with any material;
 - 3) The draining, flooding, or disturbing of the water level or water table;
 - 4) The driving of pilings;
 - 5) The placing of obstructions;
 - 6) The construction, reconstruction, demolition, or expansion of any structure;
 - 7) The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or

planting of vegetation that would alter the character of a regulated wetland or any other activity taking place in a wetland or buffer involving the modification of vegetation falling under the jurisdiction of the City's Tree and Vegetation Protection and Preservation Ordinance.

- 8) Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.
- hh. "Regulated wetlands" means type 2-5 waters as defined by Washington Forest Practices Rules and Regulations WAC222 and ponds twenty acres or less, including their submerged aquatic beds, and those lands defined as wetlands under the federal clean water act, 33 u.s.c. Sec. 1251 et seq., and rules promulgated pursuant thereto and shall be those areas and those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Regulated wetlands generally include streams falling under Forest Practice Regulations and swamps, marshes, bogs, and similar areas. Wetlands created as mitigation and wetlands modified for approved land use activities shall be considered as regulated wetlands. All category I and V wetlands shall be considered regulated wetlands. Regulated wetlands do not include category II and III wetlands less than 2,500 square feet and category IV wetlands less than 10,000 square feet. Regulated wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. The applicant shall bear the burden of proving that the site was not previously a wetland. For identifying and delineating a regulated wetland, local government shall consider the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands".
- ii. "Repair or maintenance" means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter additional regulated wetlands are not included in this definition.
- jj. "Scrub-shrub wetland" means a regulated wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.
- kk. "Serviceable" means presently useable.
- ll. "Unavoidable and necessary impacts" are impacts to regulated wetlands that remain after a person proposing to alter regulated

wetlands has demonstrated that no practicable alternative exists for the proposed project.

- mm. "Water-dependent" means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.
- nn. "Wetlands," for the purposes of inventory, incentives, and nonregulatory programs, means those lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this definition, wetlands must have one or more of the following attributes:
 - 1) At least periodically, the land supports predominantly hydrophytes;
 - 2) The substrate is predominantly undrained hydric soil; and
 - 3) The substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.
- oo. "Wetlands site plan review approval" means any approval issued, conditioned or denied to implement the standards of this chapter.
- pp. "Wetland buffers: or "wetland buffer zones: is an area that surrounds and protects a wetland from adverse impacts to the functions and values of a regulated wetland.
- qq. "Wetland classes," "classes of wetlands" or "wetland types" means descriptive classes of the wetlands taxonomic classification system of the United States fish and wildlife service (Cowardin, et al 1978).
- rr. "Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in this chapter.

Section 3: General Provisions

3.1 Abrogation and Greater Restrictions

It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

3.2 Interpretation

The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

3.3 Qualified Professional or Technical Wetland Consultant or Scientist

It is expected that most applications for wetland approval will require a qualified professional or technical wetland consultant or scientist to provide the information necessary to fulfil the requirements of this chapter. It shall be the responsibility of the applicant to purchase the services of a qualified consultant or scientist.

Section 4: Lands to Which this Chapter Applies

4.1. Applicability

- a. When any provision of any other chapter of the City of Lacey conflicts with this chapter, that which provides more protection to wetlands and wetland buffers shall apply unless specifically provided otherwise in this chapter.
- b. The City of Lacey is authorized to adopt written administrative procedures for the purpose of carrying out the provisions of this chapter.
- c. The City of Lacey shall not grant any approval or permission to conduct a regulated activity in a wetland or wetland buffer until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

Section 4.2. 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 Department of Natural Resources Stream Typing Maps. The City Zoning Map and Department of Natural Resources Stream Typing Maps are to be used as a guide to the general location and extent of wetlands. Wetlands not shown on the Zoning Map, Department of Natural Resources Stream Typing Maps or National Wetlands Inventory are presumed to exist in the City of Lacey and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control.

Section 4.3 Determination of Regulatory Wetland Boundary

The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation applying the wetland definition provided in Section 2 of this chapter. Qualified professional and technical scientists shall perform wetland delineations using the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands". The applicant is required under Section 6.3.c of this chapter to show the location of the wetland boundary on a scaled drawing as a part of the permit application.

The City of Lacey, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The City of Lacey shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant may be charged for the costs incurred in accordance with the provisions of Section 6.3.d of this chapter.

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

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

4.4 Wetlands Rating System

The following rating system is hereby adopted as the rating system for the City of Lacey. Wetlands buffer widths, replacement ratios and avoidance criteria shall be based on these rating systems.

a) Puget Sound Region Wetlands Rating System

1) Category I Criteria

- A. Documented habitat for endangered or threatened plant, fish, or animal species or for potentially extirpated plant species recognized by state or federal agencies; or
- B. High quality native wetland communities, including documented Natural Heritage wetland sites and sites which qualify as a quality Natural Heritage wetland; or
- C. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine, wetlands, or mature forested swamps; or

- D. Wetlands of exceptional local significance as determined by the Site Plan Review Committee. The criteria may include, but not be limited to, rarity, groundwater recharge areas, significant habitats, unique educational sites or other specific functional values identified and deemed of specific local significance.

2) Category II Criteria

- A. Regulated wetlands that do not contain features outlined in category I; and
- B. Documented habitats for sensitive plants, or fish or animal species recognized by federal or state agencies; or
- C. Rare wetland communities listed in subsection 1)C which are not high quality; or
- D. Documented priority habitats and species recognized by state agencies; or
- E. Wetland types with significant functions which may not be adequately replicated through creation or restoration. In the Puget Sound planning area, these wetlands may be demonstrated by the following characteristics:
 - i. significant peat systems; or
 - ii. forested swamps that have three canopy layers, excluding monotypic stands of red alder averaging 8 inches diameter at breast height or less; or
 - iii. significant spring fed systems;
- F. Wetlands with significant habitat value based on diversity and size.
 - i. 10 acres or greater in size; and 2 or more wetland classes together with open water at any time during a normal year; or
 - ii. 10 acres or greater in size; and 3 or more wetland classes; and 5 or more subclasses of vegetation in a dispersed pattern; or
 - iii. 5 acres or greater in size; and 40 percent to 60 percent open water at any time during a normal year; and 2 or more subclasses of vegetation in a dispersed pattern;
- G. Regulated wetlands contiguous with salmonid fish-bearing waters, including streams where flow is intermittent; or

H. Wetlands with significant use by fish and wildlife.

3) Category III Criteria

A. Regulated wetlands that do not contain features outlined in category I, II or IV.

4) Category IV Criteria

- A. Regulated wetlands which do not meet the criteria of a category I or II wetland; and
- B. Isolated wetlands that are less than or equal to one acre in size; and have only one wetland class; and have only one dominant plant species (monotypic vegetation); or
- C. Isolated wetlands that are less than or equal to two acres in size, and have only one wetland class and a predominance of exotic species.

5) Category V Criteria

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

i. Type 1 waters as defined by WAC 222-16-020 are specifically excluded from category V. Type 1 water means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under chapter 90-58RCW.

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

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

- a) Domestic water supplies,
- b) Public recreation,
- c) Fish spawning, rearing, or migration or wildlife uses; or
- d) Are highly significant to protect water quality.

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

- a) Domestic use,
- b) Public recreation,
- c) Fish spawning, rearing, or migration or wildlife uses; or
- d) Have moderate value to protect water quality.

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

"Type 5 Water" means all other waters, in natural water courses, including streams with or without a well-defined channel, areas of perennial or intermittent seepage, ponds, and natural sinks. Drainage ways having short periods of spring runoff are considered to be Type 5 Waters.

A more thorough description of water typing criteria is specified in WAC 222-16-030 and is hereby incorporated by reference. Stream typing maps identifying water types within the City of Lacey are available from the State Department of Natural Resources and are on file at Lacey City Hall and are also hereby incorporated by reference.

- b. Wetland rating categories shall be applied as the regulated wetland exists on the date of adoption of the rating system by the local government; as the regulated wetland may naturally change thereafter; or as the regulated wetland may change in accordance with permitted activities. wetland rating categories shall not be altered to recognize illegal modifications.

Section 5: Regulated Activities and Allowed Activities

5.1 Regulated Activities

Site Plan Review Approval shall be obtained from the Lacey City Council upon recommendation from the City Hearing Examiner pursuant to the procedures of Chapter 16.84.030 and 2.30.090B prior to undertaking the following activities in a regulated wetland or its buffer.

- a. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- b. The dumping, discharging, or filling with any material;
- c. The draining, flooding, or disturbing of the water level or water table;
- d. The driving of pilings;
- e. The placing of obstructions;
- f. The construction, reconstruction, demolition, or expansion of any structure;
- g. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.

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

5.2 Allowed Activities

The following uses shall be allowed within a wetland or wetland buffer subject to site plan review approval from the Site Plan Review Committee pursuant to Chapter 16.84.020 to the extent that they are not prohibited by any other chapter or law and provided they are conducted using best management practices, except where such activities result in the conversion of a regulated wetland or wetland buffer to a use to which it was not previously subjected.

- a. Construction of a single family residence within the normal required wetland buffer on any legally established lot of record. Provided it is not possible to locate said single family residence on said lot without reduction of the normally required buffer area and provided the Site Plan Review Committee shall require as large a buffer from the wetland as can reasonably be accommodated on said lot. In no case shall a dwelling be permitted to be developed in the wetland area except through the provisions and procedures of section 7.2 of this chapter;
- b. Efforts of public and private organizations, clubs or memberships for the conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;
- c. Outdoor recreational activities developed for the public or private organizations, clubs or memberships, including hunting, fishing, bird watching, hiking, boating, swimming, and canoeing, provided they do not adversely impact the wetland or wetland buffer;
- d. The maintenance (but not construction) of drainage ditches;
- e. Development of nature trails;
- f. Boat mooring buoys;
- g. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road; and
- h. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions.

5.3 Special Uses

Any activity other than those specified in Section 5.2 and 5.4 may not be conducted in wetlands or wetland buffers except upon site plan review approval by the City Council upon recommendation from the City Hearing Examiner pursuant to procedures of Chapters 16.84.030. and 2.30.090B.

5.4 Exempt Activities

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

- a. conservation or preservation of soil, water vegetation, fish, shellfish and other wildlife in consultation with the State Department of Wildlife and when undertaken by a property owner on his or her property for his or her personal non-commercial purposes.
- b. Non-public outdoor recreation activities such as fishing, bird watching, hiking, boating and swimming when undertaken by a property owner on his or her property for his or her personal non-commercial purposes.
- c. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources.
- d. Existing and ongoing agricultural activities including farming, horticulture, aquaculture, irrigation, ranching or grazing, of animals. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations.
- e. Navigation aids and boundary markers.
- f. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, wetland impacts shall be minimized and disturbed areas shall be immediately restored; and
- g. Wetland educational activities and scientific research.

Section 6. Procedures for Wetland Applications

6.1 Site Plan Review Compliance

No regulated or special use shall occur or be permitted to occur within a regulated wetland or wetland buffer without a written approval from City Council upon recommendation from the Hearing Examiner pursuant to the requirements of section 5.1, 5.3, or 6.4, whichever is applicable. No allowed activity shall be permitted to occur without approval from the Site Plan Review Committee pursuant to section 5.2. Any alteration approved by such written permit shall comply fully with the requirements and purposes of this chapter, other applicable regulations, and any terms or conditions of said permit. All activities that are not allowed or permitted shall be prohibited.

6.2 Wetland Permits, Extensions

Application for a Wetland Permit to conduct any regulated activity not specifically authorized by Section 5.2 within a wetland or wetland buffer shall be made to the City of Lacey on forms furnished by that office. Approvals shall normally be valid for a period of eighteen months from the date of issue and shall expire at the end of that time pursuant to requirements of section 16.84LMC unless an underlying action such as subdivision approval has a longer approval period, in which case the longer approval period shall apply.

An extension of an original approval may be granted upon written request to the City of Lacey by the original permit holder or the successor in title. Prior to the granting of an extension, the City of Lacey shall require updated studies and/or additional hearings if, in its judgement, the original intent of the permit is altered or enlarged by the renewal, if the circumstances relevant to the review and issuance of the original permit have changed substantially, or if the applicant failed to abide by the terms of the original permit.

6.3 Wetland Site Plan Review Approval

a. Request for Determination of Applicability

Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request in writing a determination from the City of Lacey. Such a request for determination shall contain plans, data, and other information as may be specified by the City. Determination of applicability shall be valid for a period of one year from the date of issuance.

b. Pre-application Consultations

Any person intending to apply for a Wetland Site Plan Review Approval is required, to meet with the City of Lacey during the earliest possible stages of project planning in order to discuss wetland impact avoidance and minimization, and compensation before large commitments have been made to a particular project design. Effort put into preapplication consultations and planning will

help applicants create projects which will be more quickly and easily processed.

c. Information Requirements

Unless the City of Lacey waives one or more of the following information requirements, applications for a Wetland Site Plan Review Approval under this chapter shall include:

- 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 Section 4.3 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 5 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 Section 7.2 of this chapter; and
- 8) Specific means to mitigate any potential adverse environmental impacts of the applicant's proposal.

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

d. Filing Fees

At the time of an application or request for letter of delineation, the applicant shall pay a filing fee as determined by the City of Lacey. Sufficient fees shall be charged to the applicant to cover the costs of evaluation of the application or request for delineation. These fees may be used by the City of Lacey to retain expert consultants to provide services pertaining to wetland boundary determinations, functional assessments, and evaluation of mitigation measures. As deemed necessary by the City of Lacey, the City of Lacey may assess additional reasonable fees as needed to monitor and evaluate permit compliance and mitigation measures.

e. Notification

Upon receipt of the completed site plan review application for a regulated or special use activity, the City of Lacey shall notify the individuals and agencies, including federal and state agencies, having jurisdiction over or an interest in the matter to provide such individuals and agencies an opportunity to comment.

The City of Lacey shall establish a mailing list of all interested persons and agencies who wish to be notified of such applications.

f. Notice on Title

- 1) The owner of any property with field verified presence of wetland or wetland buffer pursuant to Section 4.3 on which a development proposal is submitted shall file for record with the appropriate Records Division a notice approved by the City of Lacey in a form substantially as set forth in (2), below. Such notice shall provide notice in the public record of the presence of a wetland or wetland buffer, the application of this chapter to the property, and that limitations on actions in or affecting such wetlands and their buffers may exist.

The applicant shall submit proof that the notice has been filed for record before the City of Lacey shall approve any development proposal for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.

- 2) Form of Notice:

WETLAND AND/OR WETLAND BUFFER NOTICE

Legal Description: _____

Present owner: _____

NOTICE: This property contains wetlands or their buffers as defined by the City of Lacey Ordinance. The property was the subject of a development proposal for

(type of permit) _____ application # _____

filed on (date) . Restrictions on use or alteration of the wetlands or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of wetlands or wetland buffers and restrictions on their use through setback areas. A copy of the plan showing such setback areas is attached hereto.

Signature of owner

STATE OF WASHINGTON)
COUNTY OF _____)

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

Given under my hand and official seal this

_____ day of _____,
19____. NOTARY PUBLIC in and for the state of Washington, residing at
_____.

6.4 Permit Processing

a. Consolidation

The City of Lacey shall, to the extent practicable and feasible, consolidate the processing of wetlands related aspects of other City regulatory programs which affect activities in wetlands, such as shoreline permits, subdivision, clearing and grading, floodplain, and environmentally sensitive area requirements, with the Wetland Permit process established herein so as to provide a timely and coordinated permit process. When another permit or approval process is applicable such as shoreline, subdivision, or conditional use which require a hearing before the Hearings Examiner wetland site plan review shall be combined and considered through the same process and at the same time as the other said action is considered. Provided, however, all informational requirements of section 6.3 are satisfied as well as all other informational requirements and standards of this chapter.

b. Completeness of Application

No later than 10 working days after receipt of the wetland application the City of Lacey shall notify the applicant as to the completeness of the application. An application shall not be deemed complete until and unless all information necessary to evaluate the proposed activity, its impacts, and its compliance with the provisions of this chapter have been provided to the satisfaction of the City of Lacey. Such determination of completeness shall not be construed as an approval or denial of the permit application.

c. Public Hearings

Following the submittal of an application determined to be complete by the City of Lacey, the City of Lacey shall hold a public hearing on applications for regulated or special uses. Applications associated with other review processes pursuant to section 6.4 above shall be processed according to procedures outlined for said review.

Public notifications shall be given pursuant to the requirements of chapter 16.84 or the applicable review process pursuant to section 6.4 of this chapter.

The notices shall include a brief description of the project, including the location; notice of the time and place of the hearing; notice that the file regarding the permit application is available for public inspection during regular business hours; the address where the file may be inspected; a request for written comments prior to the hearing, and attendance and oral testimony by concerned parties at the hearing.

All hearings shall be open to the public. A record of the hearings shall be made. Any person may present evidence and testimony at the hearing. At the hearing, the applicant shall have the burden of demonstrating that the proposed activity will be in accordance with the purposes of this chapter and the standards set forth below.

d. Action on Wetland Applications

- 1) Upon receipt of a complete application for approval authorizing activities on a category I wetland or its buffer, the City of Lacey shall submit the application to the Washington State Department of Ecology and other State and local Agencies having 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 15 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.

- 2) The Council shall approve, approve with conditions, or deny a permit application within (30) working days of the public hearing, except that where additional information is required by the Council it may extend this period by 60 days. In acting on the application, the Council shall in writing deny, permit, or conditionally permit the proposed activity. If a decision must be made in a 90 day period and there is insufficient information or time to process the application, a denial will be issued.

Section 7: Standards for Wetland Decisions

- a. An approval shall only be granted if the approval, as conditioned, is consistent with the provisions of this chapter. Additionally, approvals shall only be granted if:
 - 1) A proposed action avoids adverse impacts to regulated wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
 - 2) The proposed activity results in no net loss; or
 - 3) Denial of a permit would cause an extraordinary hardship on the applicant.
- b. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal.

7.1 Wetland Buffers

- a. Standard Buffer Zone Widths

Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field pursuant to the requirements of Section 2. The width of the wetland buffer zone shall be determined according to wetland category and the proposed land use. Where an area may be classified under more than one category, the category having the greatest buffer area shall apply.

- 1) Category I
 - High intensity 300 feet
 - Low intensity 200 feet
- 2) Category II
 - High intensity 200 feet
 - Low intensity 100 feet

- 3) Category III
 - High intensity 100 feet
 - Low intensity 50 feet
- 4) Category IV
 - High intensity 50 feet
 - Low intensity 25 feet
- 5) Category V
 - Type 2-3 waters 200 feet
 - Type 4 waters 100 feet
 - Type 5 waters 50 feet

b. 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:

- 1) a larger buffer is necessary to maintain viable populations of existing species; or
- 2) 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
- 3) the adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
- 4) the adjacent land has minimal vegetative cover or slopes greater than 15 percent.

c. Reduction of Standard Wetland Buffer Zone Width

The City of Lacey may reduce the standard wetland buffer zone widths by no more than 50% on a case-by-case basis where it can be demonstrated that:

- 1) the adjacent land is extensively vegetated and has less than 15 percent slopes and that no direct or indirect, short term or long-term, adverse impacts to regulated wetlands, will result from a regulated activity as determined by the City of Lacey in consultation with the Department of Ecology. Provided such reduction shall not result in greater than a

25% reduction of the recommended buffer width and the reduced buffer shall not be less than 25 feet. The City of Lacey may require long-term monitoring of the project and subsequent corrective actions if adverse impacts to regulated wetlands are discovered; or

- 2) the project includes a buffer enhancement plan using native vegetation which substantiates that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetlands functions and values. An enhanced buffer shall not result in greater than a 25 percent reduction in the buffer width, and the reduced buffer shall not be less than 25 feet.

d. 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:

- 1) that averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property;
- 2) that the wetland contains variations in sensitivity due to existing physical characteristics;
- 3) 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;
- 4) that width averaging will not adversely impact the wetland functional values; and
- 5) 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 50% of the standard buffer or be less than 25 feet.

- e. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation may be required.

f. Permitted Uses in a Wetland Buffer Zone

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

- 1) activities having minimal adverse impacts on buffers and no adverse impacts on regulated wetlands. These may include low intensity, passive recreational activities such as pervious

trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing or hunting;

- 2) with respect to category III and IV wetlands, stormwater management facilities having no reasonable alternative on-site location; or
- 3) with respect to category III and IV wetlands, development having no feasible alternative location.

g. Building Setback Lines.

A building setback line corresponding to the required yard area setback for the underlying zone is required from the edge of any wetland buffer. The setback shall be identified on a site plan which is filed as an attachment to the notice on title required by section 6.2.f.

7.2 Avoiding Wetland Impacts

- a. Regulated activities and special uses shall not be authorized in a regulated wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied.
- b. With respect to category I and V wetlands, an applicant must demonstrate that denial would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.
- c. With respect to category II and III wetlands, the following provisions shall apply:
 - 1) For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences.
 - 2) Where nonwater-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:
 - A. the basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and
 - B. a reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and

- C. in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.
- d. With respect to category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the applicant's objectives.
- e. Reasonable Use

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

1. that the proposed project is water-dependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative pursuant to Section 7.2;
2. that no reasonable use with less impact on the wetland and its buffer is possible (e.g., agriculture, aquaculture, transfer or sale of development rights or credits, sale of open space easements, etc.);
3. that there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to wetlands and wetland buffers;
4. that the proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;
5. that disturbance of wetlands has been minimized by locating any necessary alteration in wetland buffers to the extent possible;
6. that the proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, rare, sensitive, or as documented priority species or priority habitats;
7. that the proposed activities will not cause significant degradation of groundwater or surface-water quality;

8. that the proposed activities comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
9. that any and all alterations to wetlands and wetland buffers will be mitigated as provided in Section 7.5.g.
10. that there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and
11. that the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter.

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

7.3 Minimizing Wetlands Impacts

- a. After it has been determined by the City of Lacey pursuant to Section 7.2 that losses of wetland are necessary and unavoidable or that all reasonable economic use has been denied, the applicant shall take deliberate measures to minimize wetland impacts.
- b. Minimizing impacts to wetlands shall include but is not limited to:
 - 1) limiting the degree or magnitude of the regulated activity;
 - 2) limiting the implementation of the regulated activity;
 - 3) using appropriate and best available technology;
 - 4) taking affirmative steps to avoid or reduce impacts;
 - 5) sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;
 - 6) involving resource agencies early in site planning; and
 - 7) providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities.

7.4 Limited Density Transfer and Open Space Credit

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

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

The maximum number of dwelling units (DU) for a lot or parcel which contains wetlands and wetland buffers shall be equal to: The buffer density credit + upland non buffer area density computed as follows:

the buffer density credit;
(acres in wetland buffer)(DU/acre)(Density credit)

added to

the upland non buffer area density;
(acres out of wetland buffer)(DU/acre)

The density credit figure is derived from the following table:

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

The density credit can only be transferred within the development proposal site. To the extent that application of the formula may result in lot sizes and other zoning standards less than the minimum allowed by the underlying district, they may be authorized up to a 50% reduction of said standards provided that the resultant lot is of sufficient size to reasonably accommodate the intended use with room for adequate setbacks, private yard areas and other provisions deemed important to neighborhood quality and that any reduced standards result in a more innovative and superior design and provided further that uses allowed within the zoning district shall not be varied from. Additionally, lots must be of sufficient size to meet applicable health requirements. In cases where reduced lot sizes or departure from other standards is

requested, the minimum standards shall be up to the sole discretion of the Site Plan Review Committee or City Hearings Examiner and City Council through the review process of Section 5 of this ordinance.

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

- b. Up to fifty (50) 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 (50) 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.

7.5 Acting on the Application

a. Special Conditions

1) 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 Section 4.3. 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.

A. 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 Section 7.5.a be protected by one of the following methods determined by the City of Lacey:

- i. 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

- ii. 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.

B. Specific Language for Deed Restrictions

Deed restrictions required in Section 7.5a 1)Aii above shall be set forth in substantially the following form:

i. "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."

ii. 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.

iii. 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 home owners 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.

C) 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.

2) Additional Conditions

- A. 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.
- B. 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.

b. Financial Security

1) Financial security for performance

The City of Lacey shall require the applicant of a development proposal to provide financial security acceptable to the City of Lacey in an amount and with surety and conditions sufficient to fulfill the requirements of Section 7.5.f and, in addition, to secure compliance with other conditions and limitations set forth in the approval. The amount and the conditions of the financial security shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such financial security, the City of Lacey may utilize the financial security to fulfill obligations of the approval and take any other steps necessary to gain compliance with approval conditions including instituting an appropriate action in a court of competent jurisdiction. The City of Lacey shall release the financial security upon determining that:

- A. all activities, including any required compensatory mitigation, have been completed in compliance with the terms and conditions of the approval and the requirements of this chapter;
- B. 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.

2) Maintenance Security

The City of Lacey shall require the holder of an approval issued pursuant to this chapter to post financial security acceptable to the City of Lacey in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two (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 compensatory mitigation have been satisfactorily met for the required period. For compensation projects, the performance standards shall be those contained in the mitigation plan developed and approved during the review process pursuant to Section 7.5.g. The maintenance security applicable to a compensation project shall not be released until the City of Lacey determines that performance standards established for evaluating the effect and success of the project have been met.

c. 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.

d. Suspension, Revocation

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

e. Notice of Action

The City of Lacey shall provide notice of its actions pursuant to the requirements of Chapter 16.84L, the site plan review process, or other applicable review processes.

f. Compensating for Wetlands Impacts.

As a condition of any approval allowing alteration of wetlands and/or wetland buffers, or as an enforcement action pursuant to Section 8.2, the City of Lacey shall require that the applicant engage in the restoration, creation or enhancement of wetlands and their buffers in order to offset the impacts resulting from the applicant's or violator's actions. The Applicant shall develop a plan that provides for land acquisition, construction, maintenance

and monitoring of replacement wetlands that recreate as nearly as possible the original wetlands in terms of acreage, function, geographic location and setting, and that are larger than the original wetlands. The overall goal of any compensatory project shall be no net loss of wetlands function and acreage and to strive for a net resource gain in wetlands over present conditions. Compensation shall be completed prior to wetland destruction, where possible.

Compensatory mitigation shall follow an approved mitigation plan pursuant to Section 7.5.g and shall meet the following minimum performance standards:

- 1) Given the uncertainties in scientific knowledge and the need for expertise and monitoring, wetland compensatory projects may be permitted only when the City of Lacey finds that the compensation project is associated with an activity or development otherwise permitted and that the restored, created, or enhanced wetland will be as persistent as the wetland it replaces. Additionally, Applicants shall:
 - A. demonstrate sufficient scientific expertise, supervisory capability, and financial resources to carry out the project;
 - B. demonstrate the capability for monitoring the site and to make corrections during this period if the project fails to meet projected goals; and
 - C. protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for long-term persistence of the compensation area.
- 2) Wetlands Restoration and Creation.
 - A. Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses.
 - B. Where feasible, restored or created wetlands shall be a higher category than the altered wetland.
 - C. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self sustaining and projected success. Wetland functions and values shall be calculated using the best professional judgement of a qualified wetland ecologist using the best available techniques. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss.
 - D. Acreage replacement ratio. The following ratios apply to creation or restoration which is in-kind, onsite,

timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from illegal alterations. The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered.

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

i. Increased Replacement Ratio.

The City of Lacey may increase the ratios under the following circumstances:

- uncertainty as to the probable success of the proposed restoration or creation;
- significant period of time between destruction and replication of wetland functions;
- projected losses in functional value; or
- offsite compensation.

ii. Decreased Replacement Ratio.

The City of Lacey may decrease these ratios under the following circumstance:

- findings of special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value is attained under the decreased ratio.

iii. In all cases, a minimum acreage replacement ratio of 1:1 shall be required.

3) Wetlands Enhancement.

- A. Any Applicant proposing to alter wetlands may propose to enhance existing significantly degraded wetlands in order to compensate for wetland losses. Applicants proposing to enhance wetlands shall identify how enhancement conforms to the overall goals and

requirements of the local wetlands protection program and established regional goals.

- B. A wetlands enhancement compensation project shall be determined pursuant to Sections 7.5.f, provided that enhancement for one function and value will not degrade another function or value and that acreage replacement ratios shall be doubled to recognize existing functional values and, provided further, that category I wetlands shall not be enhanced.

4) Wetland Type

- A. In-kind compensation shall be provided except where the applicant can demonstrate that:
 - i. the wetland system is already significantly degraded and out-of-kind replacement will result in a wetland with greater functional value;
 - ii. scientific problems such as exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation impossible; or
 - iii. out-of-kind replacement will best meet identified regional goals (eg., replacement of historically diminished wetland types).
 - iv. where out-of-kind replacement is accepted, greater acreage replacement ratios may be required to compensate for lost functional values.

5) Location.

- A. On-site compensation shall be provided except where the applicant can demonstrate that:
 - i. the hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the onsite loss; and
 - ii. onsite compensation is not scientifically feasible due to problems with hydrology, soils, waves, or other factors; or
 - iii. compensation is not practical due to potentially adverse impact from surrounding land uses; or
 - iv. existing functional values at the site of the proposed restoration are significantly greater than lost wetland functional values; or

v. that established regional goals for flood storage, flood conveyance, habitat or other wetland functions have been established and strongly justify location of compensatory measures at another site.

- B. Offsite compensation shall occur within the same watershed as the wetland loss occurred, provided that category IV wetlands may be replaced outside of the watershed when there is no reasonable alternative.
- C. In selecting compensation sites, applicants shall pursue siting in the following order of preference:
 - i. upland sites which were formerly wetlands;
 - ii. idled upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds, or emergent vegetation;
 - iii. other disturbed upland.

6) Timing.

- A. Where feasible, compensatory projects shall be completed prior to activities that will disturb wetlands, and immediately after activities that will temporarily disturb wetlands. In all other cases, except for category I wetlands, compensatory projects should be completed prior to use or occupancy of the activity or development which was conditioned upon such compensation. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and flora.

7) Cooperative Restoration, Creation or Enhancement Projects.

- A. The City of Lacey may encourage, facilitate, and approve cooperative projects wherein a single applicant or other organization with demonstrated capability may undertake a compensation project with funding from other applicants under the following circumstances:
 - i. restoration, creation or enhancement at a particular site may be scientifically difficult or impossible; or
 - ii. creation of one or several larger wetlands may be preferable to many small wetlands.
- B. Persons proposing cooperative compensation projects shall:
 - i. submit a joint permit application;
 - ii. demonstrate compliance with all standards;

iii. demonstrate the organizational and fiscal capability to act cooperatively; and

iv. demonstrate that long term management can and will be provided.

g. Mitigation Plans

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

1) **Baseline Information.** A written assessment and accompanying maps of the:

-impacted wetland including, at a minimum, wetland delineation; existing wetland acreage; vegetative, faunal and hydrologic characteristics; soil and substrate conditions; topographic elevations and

-compensation site, if different from the impacted wetland site, including at a minimum: existing acreage; vegetative, faunal and hydrologic conditions; relationship within watershed and to existing waterbodies; soil and substrate conditions, topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership.

2) **Environmental Goals and Objectives.** A written report shall be provided identifying goals and objectives and describing:

-the purposes of the compensation measures including a description of site selection criteria, identification of compensation goals; identification of target evaluation species and resource functions, dates for beginning and completion, and a complete description of the structure and functional relationships sought in the new wetland. The goals and objectives shall be related to the functions and values of the original wetland or if out-of-kind, the type of wetland to be emulated; and

-A review of the available literature and/or experience to date in restoring or creating the type of wetland proposed shall be provided. An analysis of the likelihood of success of the compensation project at duplicating the original wetland shall be provided based on the experiences of comparable projects, if any. An analysis of the likelihood of persistence of the created or restored wetland shall be provided based on such factors as surface and ground water supply and flow patterns, dynamics of the wetland ecosystem; sediment or pollutant influx and/or erosion, periodic flooding and drought, etc., presence of invasive flora or fauna, potential human or animal disturbance, and previous comparable projects, if any.

- 3) Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the project and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.
- 4) Detailed Construction Plans. Written specifications and descriptions of compensation techniques shall be provided including the proposed construction sequence, grading and excavation details, erosion and sediment control features needed for wetland construction and long-term survival, a planting plan specifying plant species, quantities, locations, size, spacing, and density; source of plant materials, propagules, or seeds; water and nutrient requirements for planting; where appropriate, measures to protect plants from predation; specification of substrate stockpiling techniques and planting instructions; descriptions of water control structures and water-level maintenance practices needed to achieve the necessary hydrocycle/hydroperiod characteristics; etc. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. The plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data.
- 5) Monitoring Program. A program outlining the approach for monitoring construction of the compensation project and for assessing a completed project shall be provided. Monitoring may include, but is not limited to:
 - A. Establishing vegetation plots to track changes in plant species composition and density over time;

- B. using photo stations to evaluate vegetation community response;
- C. sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);
- D. measuring base flow rates and storm water runoff to model and evaluate water quality predictions, if appropriate;
- E. measuring sedimentation rates, if applicable; and
- F. sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity.

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

- 6) Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.
- 7) Approval Conditions. Any compensation project prepared pursuant to this section and approved by the City of Lacey shall become part of the application for approval.
- 8) Financial Security and Demonstration of Competence.

A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training and experience with comparable projects. In addition, financial security ensuring fulfillment of the compensation project, monitoring program, and any contingency measure shall be posted pursuant to Section 7.5 in the amount of one hundred fifty (150) percent of the expected cost of compensation.

- 9) Regulatory authorities are encouraged to consult with and solicit comments of any federal, state, regional, or local

agency, including tribes, having any special expertise with respect to any environmental impact prior to approving a mitigation proposal which includes wetlands compensation. The compensation project proponents should provide sufficient information on plan design and implementation in order for such agencies to comment on the overall adequacy of the mitigation proposal.

10) Compensatory mitigation is not required for regulated activities:

- A. For which an approval has been obtained that occur only in the buffer or expanded buffer and which have not adverse impacts to regulated wetlands; or
- B. allowed activities pursuant to Section 5.2 provided such activities utilize best management practices to protect the functions and values of regulated wetlands.

7.6 Appeals

Any decision of the City of Lacey in the administration of this chapter may be appealed to the City Hearing Examiner pursuant to the requirements for zoning appeals of LMC 2.40. The Hearings Examiner shall give substantial weight to any discretionary decision of the City of Lacey rendered pursuant to this Chapter.

7.7 Modification of Wetland Approvals

An applicant may request modification of a previously issued Wetland Approval by applying and going through the appropriate review process as described in Section 5 and Section 6 of this chapter.

7.8 Resubmittal of Denied Permit Applications

A Wetland application which has been denied may be modified and resubmitted no earlier than one hundred eighty (180) days following action on the original application. An application shall be considered a resubmittal if the site proposed for development was the subject of a Wetland application within the previous one hundred eighty (180) days.

Section 8: Temporary Emergency Approval, Enforcement

8.1 Temporary Emergency Approval

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 Section 5.2 of this chapter may issue a temporary emergency wetlands approval if:

- a. 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

- b. 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.

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:

- a. be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and
- b. require, within this 90 day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

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.

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.

8.2 Enforcement

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.

- a. Enforcement actions shall include:

- 1) Civil Penalties, Administrative Orders and Actions for Damages and Restoration.

- A. The City of Lacey may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a regulated wetland or their buffers which are inconsistent with this chapter or an applicable wetlands protection program.
- B. The City of Lacey may serve upon a person a cease and desist order if an activity being undertaken on regulated wetlands or its buffer is in violation of the

act, these rules or a local wetlands protection program. Whenever any person violates this chapter or any permit issued to implement this chapter, the City of Lacey may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

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

-A description of the specific nature, extent, and time of violation and the damage or potential damage; and

-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.

-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.

-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.

- C. Any person who undertakes any activity within a regulated wetland or its buffer without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection B 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.
- D. 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.
- E. 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.

- F. 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 LMC 2.30 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.
- G. Orders and penalties issued pursuant to this subsection may be appealed as provided for by in Section 7.6.
- H. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to a Wetland Permit.

Section 9: Non-Conforming Activities

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

- a. No such activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its nonconformity without a permit issued pursuant to the provisions of this chapter;
- b. Except for cases of discontinuance as part of normal agricultural practices, if a non-conforming activity is discontinued for 12 consecutive months, any resumption of the activity shall conform to this chapter;
- c. If a non-conforming use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter;
- d. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as non-conforming activities.

Section 10: Judicial Review

Any decision or order issued by the City of Lacey pursuant to this chapter, including decisions concerning denial, approval, or conditional approval may be judicially reviewed by the Thurston County Superior Court, provided that:

- a. available administrative remedies, including appeals available pursuant to Section 7.6, have been exhausted; and
- b. such review is commenced by the filing with the court and the City of Lacey of a legal action within thirty (30) days after service of such order or issuance of notice of such decision, as the case may be.

Based on these proceedings and the decision of the court, the City of Lacey may, within the time specified by the court, elect to:

- a. Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land;
- b. Approve the permit application with lesser restrictions or conditions; or
- c. other appropriate actions ordered by the court that fall within the jurisdiction of the City of Lacey.

Section 11: Amendments

These regulations and the City of Lacey Zoning Map may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning wetland Location, soils, hydrology, flooding, or wetland plants and wildlife become available.

Section 12: 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 13: Assessment Relief

The Assessors of the City of Lacey shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a perpetual conservation restriction with the City of Lacey or a nonprofit organization to permanently control some or all regulated activities in the wetland shall have that portion of land assessed consistent with those restrictions. Such

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

SECTION TWO: Section 14.24.160 subsections D 3 and 4 are hereby amended to read as follows:

"3. The city adopts by reference the policies in the following city codes, ordinances and plans:

- a. Lacey zoning ordinance;
- b. Lacey comprehensive plan and associated elements;
- c. Lacey platting and subdivision ordinance;
- d. Six-year street plan;
- e. Shoreline master program for the Thurston region;
- f. Transportation system plan for the Thurston metropolitan area;
- g. Uniform Building Code (as adopted by the city);
- h. Lacey bikeway plan;
- i. Comprehensive plan for outdoor recreation;
- j. Land clearing code (Chapter 14.32 of Lacey Municipal Code;
- k. Wetlands Protection Ordinance.

"4. The city establishes the following additional policies: The city may apply any mitigation conditions necessary to properly mitigate identified adverse environmental impacts associated with license or permit applications. In implementation of this policy for each individual license application the city shall review all of the elements of the environment listed in WAC 197-11-444 and shall attempt to apply conditions as appropriate to mitigate identified adverse environmental impacts under all elements of the environment. Mitigation conditions may include but shall not be limited to: timing and scheduling of construction and operation, modification of site design, project design or location, modification of the physical environment, installation of physical and vegetative improvements, providing of or upgrading of on- and off-site infrastructure improvements, preservation or protection of specified habitat and species of flora and fauna, provision for buffers and open spaces, layout and design of open space including centralization and consolidation, provision of safe and attractive pedestrian improvements, provision of bus stop improvements to Intercity Transit and North Thurston School District Standards, site restoration and improvements after surface mining or mineral extraction or other activity, and provision for lot owners or homeowners maintenance associations, and requiring of conditions identified in a wetlands mitigation plan or report for protection of wetlands or wetland buffers."

SECTION THREE: Section 15.10.060 is hereby amended by adding a new subsection G to read as follows:

"G. Up to 50 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 50 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 FOUR: There is hereby added to the Lacey Municipal Code a new section, 15.10.080 to read as follows:

"All provisions of Chapter 14.28 (Wetlands Protection Ordinance) shall be satisfied. Wetland areas, as well as required buffers, dedications and other conditions designed to protect wetland resources shall be shown on the fact of the plat and incorporated into protective covenants, homeowners or lot owners association agreements and articles of incorporation."

SECTION FIVE: Section 15.12.060 is hereby amended by adding a new subsection to read as follows:

"H. Wetland information. A preliminary plat application that involves wetlands or wetland buffer areas pursuant to Chapter 14.28 shall include all information required by Chapter 14.28 for proper consideration of wetlands and wetland issues during preliminary plat review."

SECTION SIX: Section 15.16.020 is hereby amended by adding a new subsection to read as follows:

"T. Final application shall include information necessary for the administrator to determine whether all conditions of Chapter 14.28 have been satisfied. Additionally, all conditions applied to the plat dealing with the protection of wetlands, including buffer areas, fences, and other improvements shall be shown in the fact of the final plat and discussed and described in protective covenants, homeowners or lot owners association agreements and articles of incorporation."

SECTION SEVEN: Section 15.18.010 is hereby amended by adding a new subsection to read as follows:

"G. All wetland and buffer areas shall be shown dedicated to the City of Lacey or other entity approved by the City of Lacey on the final plat map."

SECTION EIGHT: Section 15.32.060 is hereby amended by adding a new subsection to read as follows:

"I. For short plats containing wetlands or wetland buffer areas as defined in Chapter 14.28, all requirements and standards of said chapter shall be satisfied."

SECTION NINE: Section 15.32.080 is hereby amended by adding a new subsection to read as follows:

"F. Each application for short plat including wetlands or wetland buffers as defined in Chapter 14.28 shall include all informational requirements of said chapter."

SECTION TEN: Section 15.32.090 is hereby amended by adding a new subsection to read as follows:

"I. Preliminary short plat maps shall show the location of wetlands and wetland buffer areas and other pertinent information required by Chapter 14.28 deemed necessary by the administrator for review of the preliminary short plat application. Final short plat maps shall have wetland areas and buffer areas and any physical improvements for the protection of wetland or buffer areas shown on the face of the short plat. Additionally, discussion of wetland and buffer areas and applicable restrictions shall be shown on the face of the short plat and shall also be incorporated into protective covenants."

SECTION ELEVEN: Chapter 15.36.010 of the Lacey Municipal Code is hereby amended to read as follows:

"The following words and phrases, when used in this chapter, have the meanings as set out in this section:

"A. "Community facility" or "community facilities" means stormwater control facilities or open space, park and recreation facilities, wetlands and wetland buffers, or any combination thereof.

"B. "Open space, park and recreation facilities" means any public facility, improvement, development, property or right or interest therein for public park, recreational, greenbelt, wetlands and wetland buffers, arboretum, athletic, historic, scenic viewpoint, aesthetic, ornamental or natural resource preservation purposes and shall include the surface land over interim common sewerage facilities.

"C. "Planned unit development" includes planned residential developments in accordance with Chapter 16.56 and similar developments of a nonresidential nature.

"D. "Stormwater control facilities" means any facility, improvement, development, property or interest therein, made, constructed or acquired for the purpose of controlling or protecting life or property from any storm, waste, flood or surplus waters wherever located."

SECTION TWELVE: Section 16.54.050 of the Lacey Municipal Code is hereby amended to read as follows:

"Development standards. The development standards shall be those of the underlying district and all requirements of Chapter 14.28 (Wetlands Protection Ordinance) where wetlands or wetland buffer areas are involved provided ~~except~~ that more restrictive

requirements may be imposed by the site plan review committee consistent with the intent of this chapter."

SECTION THIRTEEN: Section 16.54.060 subsection C is hereby amended to read as follows:

"C. Design standards in environmentally sensitive areas shall be those of the underlying district and Chapter 14.28 (Wetlands Protection Ordinance) when the wetlands or wetland buffers are involved, except that, where conditions justify it, the city or its officers may require, in addition to the minimum standards of the underlying district or the Wetlands Protection Ordinance, more stringent:

- "1. Building and development coverage;
- "2. Setbacks;
- "3. Size of lots and development sites;
- "4. Height limits;
- "5. Density limits;
- "6. Restoration of ground cover and vegetation."

SECTION FOURTEEN: Section 16.84.010 subsection A is hereby amended to read as follows:

"A. Site plan review and approval shall be required prior to the use of land for the location of any commercial, industrial or public building or activity, and for the location of any building in which more than two dwelling units would be contained. Additionally, site plan review shall be required for any allowed, regulated or conditional use activity on lands containing a wetland or wetland buffer areas pursuant to the requirements of Chapter 14.28."

SECTION FIFTEEN: Section 16.84.030 is hereby amended to read as follows:

"Review by the hearings examiner. The land use hearings examiner shall, in accordance with Chapter 2.30, review site plan applications referred or appealed to the examiner and wetland applications for regulated uses or special uses pursuant to requirements of Chapter 14.28 and approve, or approve with conditions, site plans which conform to the standards, provisions and policies of the city as expressed in its various plans and ordinances including the Lacey Shoreline Master Program and Wetlands Protection Ordinance Chapter 14.28. Similarly, the examiner shall disapprove site plans which do not conform to such standards, provisions and policies."

SECTION SIXTEEN: Section 16.84.060 is hereby amended to add a new subsection to read as follows:

"L. For properties containing wetlands or wetland buffers pursuant to Chapter 14.28 all informational requirements specified in Chapter 14.28 shall be included in the applications."

SECTION SEVENTEEN: The summary of this ordinance, which is attached hereto, is approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, this 25 day of July, 1991.

CITY COUNCIL

By Gene Carquhar Liddell
Mayor

Attest:

Charlotte M Taylor
City Clerk

Approved as to form:

[Signature]
City Attorney

Published Sunday, July 28, 1991

SUMMARY FOR PUBLICATION
ORDINANCE 912

CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on March 14, 1991, Ordinance No. 912 entitled "AN ORDINANCE ADOPTING THE CITY'S "WETLANDS PROTECTION ORDINANCE" PROVIDING FOR THE COORDINATION OF THE PROVISIONS OF SAID ORDINANCE WITH OTHER PROVISIONS OF THE CODE, ADDING A NEW CHAPTER 14.28, A NEW SECTION 15.10.080 AND AMENDING SECTIONS 14.24.160, 15.10.060, 15.12.060, 15.16.020, 15.18.010, 15.32.060, 15.32.080, 15.32.090, 15.36.010, 16.54.050, 16.54.060, 16.84.010, 16.84.030 AND 16.84.060 ALL OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION."

A section by section summary of this ordinance is as follows:

Section One adopts a Wetlands Protection Ordinance for the City of Lacey to be designated as Chapter 14.28 of the Lacey Municipal Code. Within said chapter a section by section description is as follows:

Section 1 sets forth findings of fact showing the need for a Wetlands Protection Ordinance and stating the purpose of the ordinance.

Section 2 defines the terms used in the Wetlands Protection Ordinance.

Section 3 contains general provisions related to the coordination of this chapter with other restrictions relating to the use of land, establishes principals regarding interpretation of the ordinance and sets forth the expectations regarding the use of qualified professional consultants in submitting applications.

Section 4 specifies the types and descriptions of land to which the ordinance applies including provisions for maps and an inventory, determination of wetland boundaries and detailed criteria for rating wetlands.

Section 5 details regulated and permitted activities and provides for special uses and exempt activities.

Section 6 specifies the procedure for wetland applications and the processing of such applications by the city.

Section 7 sets forth standards for the making of wetland decisions by the city.

Section 8 details procedures for temporary emergency approval of wetland applications and the manner and type of enforcement actions which may be taken by the city in enforcing the wetlands ordinance.

Section 9 provides for pre-existing nonconforming activities.

Section 10 provides for judicial review and the standards for such review.

Section 11 provides for amendments to the ordinance.

Section 12 is a severability clause.

Section 13 provides for relief for wetland areas from value determinations and local assessments.

Section Two Amends Section 14.24.160 of the Lacey Municipal Code listing the substantive SEPA authority of the city by referencing the Wetlands Protection Ordinance and requiring mitigation and protection of wetlands or wetland buffers.

Section Three amends Section 15.10.060 of the Lacey Municipal Code to specify the relationship of wetlands and wetland buffers to the calculation of open space requirements.

Section Four adds a new Section, 15.10.080 of the Lacey Municipal Code to include the Wetlands Protection Ordinance requirements as part of the design standards for subdivisions within the city.

Section Five amends Section 15.12.060 of the Lacey Municipal Code to require wetland information in conjunction with preliminary plat applications.

Section Six amends Section 15.16.020 of the Lacey Municipal Code to require conformance with wetland requirements in the development of a final plat application.

Section Seven amends Section 15.18.010 of the Lacey Municipal Code to provide that wetland and buffer areas are required to be shown as dedicated on final plat maps.

Section Eight amends Section 15.32.060 of the Lacey Municipal Code to add a provision requiring short plats containing wetlands or wetland buffer areas to comply with the new Chapter 14.28.

Section Nine amends Section 15.32.080 of the Lacey Municipal Code to require wetland or wetland buffer information on short plat applications.

Section Ten amends Section 15.32.090 of the Lacey Municipal Code to add a provision requiring the showing of wetlands and wetland buffer areas on final short plat maps.

Section Eleven amends Section 15.36.010 of the Lacey Municipal Code to include wetlands and wetland buffers in the definition of the terms "community facility", "community facilities" and "open space, park and recreation facilities."

Section Twelve amends Section 16.54.050 of the Lacey Municipal Code to require compliance with Chapter 14.28 in specifying the development standards for environmentally sensitive areas.

Section Thirteen amends Section 16.54.060 of the Lacey Municipal Code to coordinate the requirements of the Wetlands Protection Ordinance with requirements relating to other environmental impacts.

Section Fourteen amends Section 16.84.010 of the Lacey Municipal Code to add areas containing wetland or wetland buffer areas to the list of the types of lands requiring site plan review.

Section Fifteen amends Section 16.84.030 of the Lacey Municipal Code to add wetland applications for regulated uses or special uses to the list of matters subject to review by the land use hearings examiner pursuant to Chapter 2.30 of the Lacey Municipal Code.

Section Sixteen amends Section 16.84.060 of the Lacey Municipal Code to require that site plan review applications contain information regarding wetlands or wetland buffers pursuant to the requirements of Chapter 14.28.

Section Seventeen approves this summary.

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.

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Charlotte M. Taylor
City Clerk