

ORDINANCE NO. 935

CITY OF LACEY

AN ORDINANCE ENACTING THOSE ORDINANCE CHANGES CALLED FOR IN THE CITY'S ENVIRONMENTAL PROTECTION AND RESOURCE CONSERVATION PLAN ADOPTED BY THE CITY COUNCIL AND AMENDING THE LACEY MUNICIPAL CODE BY REPEALING SECTIONS 14.28.100, 14.28.300, 14.32.090 AND CHAPTER 16.54 THEREOF, ADDING NEW SECTIONS 14.28.065, 14.28.067, 14.28.100, 14.28.300, 14.32.090 AND 14.32.095 AND NEW CHAPTERS 14.33, 14.36, 14.37 AND 16.54 AND AMENDING SECTIONS 14.28.030, 14.28.120, 14.28.140, 14.28.450 AND 14.24.180 ALL OF SAID CODE.

WHEREAS, the City has, after soliciting public involvement through presentations, meetings and public hearings, adopted the Environmental Protection and Resource Conservation Plan for Lacey's Environmentally Sensitive/Critical Areas and Natural Resource Lands, which plan called for the modification of the ordinances of the City through the adoption of new chapters to the Lacey Municipal Code and the amendment of existing chapters and sections, which additions and amendments were included as appendices to said Plan, now, therefore,

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

Section 1. Sections 14.28.100, 14.28.300, 14.32.090 and Chapter 16.54 of the Lacey Municipal Code are hereby repealed.

Section 2. The following new sections are added to Chapter 14.32 of the Lacey Municipal Code relating to Tree and Vegetation Protection and Preservation:

14.32.090 Violations. A. Violation of the provisions of this chapter or failure to comply with any of the requirements shall

constitute a misdemeanor and such violation shall be punished as provided by Title 9 of this code for the commission of a misdemeanor. Each day such violation continues shall be considered a separate, distinct offense.

B. Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection A hereof.

C. In addition to the penalties set forth in subsections A and B hereof, any violation of the provisions of this chapter shall be mitigated by comprehensive treatment of environmental impacts through revegetation of the affected site. In assessing environmental damage, the City's tree protection professional shall determine the extent and value of vegetation removed or damaged and other environmental damage inconsistent with the intent and requirements of this chapter. In assessing environmental damage, the tree protection professional shall consider what the outcome of the site should have been had the proposed project been designed around existing topography and vegetation and all appropriate vegetation saved. The tree protection professional shall use the recommendations of the International Society of Arboriculture in determining the value of removed and damaged vegetation.

If the violation is discovered after evidence has been removed, the City tree protection professional shall use whatever resources are immediately available to determine environmental damage which may include aerial photographs, other photographs, interviews with adjacent property owners, receipts of timber sales off the site, and

any other records available that have a bearing on the quantity and quality of vegetation removed from the site or environmental damage sustained. The tree protection professional also may estimate the probable worth of removed vegetation at the site by analyzing the best case growing capability of the site given soil conditions, health of surrounding tree stands and type of species suspected of removal. The determination of environmental damage made by the tree protection professional shall be given substantial weight in a court of law.

Once the value of the environmental damage is determined, a comprehensive plan for revegetation of the site shall be prepared by the tree protection professional considering the purposes of this chapter and the specific elements provided in Section 14.32.069 of this chapter. The plan shall provide for a value of new vegetation commensurate with the determined value of environmental damage at the site. The violator shall be fully responsible for implementation of the plan, accomplishment of all improvements and maintenance of said improvements.

If the cost of restoration of the site is less than the true value of environmental damage at the site, the balance shall be paid to the City to an urban tree planting fund. The City shall then utilize those funds for planting trees in other areas of the City.

The determination of the City tree protection professional regarding the environmental damage at the site may be appealed to the City Hearing Examiner pursuant to the requirements of Chapter 14.32.080.

In review of the tree protection professional's decision, the Hearing Examiner shall determine if the tree protection professional's decision accurately reflects the criteria set forth in Section 14.32.020.

Additionally, the City Hearing Examiner may consider any other facts the Examiner determines are relevant to the specific situation.

In cases where the determined value of environmental damage far exceeds the site restoration requirements, and extenuating circumstances the examiner determines are relevant to the case are present, the Hearing Examiner may reduce the monetary value assigned to the environmental damage. Provided the Hearing Examiner shall reduce the determined compensation only when all of the following criteria are demonstrated by the applicant:

- A. A professional forester or other professional who could have alerted the applicant of tree protection requirements was not involved in the action leading to the violation:
- B. The violation action was not associated with a tree harvesting operation for monetary gain:
- C. The applicant has no previous record of tree and vegetation protection and preservation ordinance violations.

If all of the above criteria are demonstrated, the Hearing Examiner may reduce the monetary compensation required. In determining the monetary compensation reduction, the Hearing Examiner shall consider the following factors:

- A. Whether the person responded to staff attempts to contact

the person and cooperated with efforts to review the site and arrive at an agreement on site restoration:

- B. Whether the person showed due diligence and/or substantial progress in site restoration:
- C. Whether a genuine code interpretation issue exists:
- D. Any other factors considered relevant to the situation by the Hearing Examiner.

In fixing the amount of compensation, the Hearing Examiner shall not reduce the determined compensation by more than 30% of the true value of the environmental damage as determined by the tree protection professional. Provided further, that no reduction shall be given in cases where the true value of environmental damage does not exceed the cost of restoration determined necessary by the City's tree protection professional.

Provided further the Hearing Examiner may double the monetary compensation if the violation is a repeat violation. In determining the amount of increased compensation, the Examiner shall also consider the criteria of this section.

Appeals of violation determinations by the City Hearing Examiner shall be appealable to Superior Court. An appeal of the Hearing Examiner decision must be filed with Thurston County Superior Court within 20 calendar days from the date the Hearing Examiner decision was mailed to the person to whom the decision on monetary compensation was made.

14.32.095 Requirements for Foresters and Contractors Doing Landclearing Work in Lacey. In order to assure compliance with the

standards and requirements of Chapter 14.32, "Tree and Vegetation Protection and Preservation" of the Lacey Municipal Code, private foresters and heavy equipment operators involved in landclearing operations in the City of Lacey shall be required to sign and submit a "Statement of Tree and Vegetation Protection and Preservation Acknowledgement" to the City of Lacey. This statement shall attest such forester's or contractor's knowledge of the City of Lacey's tree and vegetation protection requirements. This statement shall be required in conjunction with normal City licensing requirements for persons performing work in the City of Lacey. The required statement shall be in substantially the following form:

"I, _____, a duly licensed professional contractor in the State of Washington, or professional forester, hereby attest that I have read and am knowledgeable of Chapter 14.32, "Tree and Vegetation Protection and Preservation", of the City of Lacey.

"I further attest that, as a professional doing landclearing work in the City of Lacey, I am accountable for following the City's tree and vegetation protection and conservation requirements, including obtaining a landclearing permit or exemption prior to performing landclearing work, as defined by Chapter 14.32.030(c) of the Lacey Municipal Code, as well as following all conditions and requirements of said permit or exemption.

"I attest that if I fail to follow tree protection requirements I will be held jointly responsible with the

landowner for any restitution required as a result of environmental damage determined by the City tree protection professional to be the result of improper landclearing activities at the site. This may result in claims against my bond pursuant to Chapter 18.27.040 of the Revised Code of Washington and other monetary penalties as allowed by this Chapter or State law.'

Private professionals involved in landclearing operations who do not provide the above statement shall be prohibited from performing landclearing services in the City of Lacey. Said professionals who do not provide this statement and perform landclearing services in the City of Lacey shall be considered in violation of this Chapter and may be prosecuted under this Chapter, the City's Civil Penalties Ordinance, or as otherwise provided by law.

All professional foresters or heavy equipment operators involved in landclearing operations shall be jointly responsible with the landowner for any landclearing violation and restitution required at a site as a result of improper landclearing activity.

Section 3. There is hereby added to the Lacey Municipal Code a new chapter, Chapter 16.54, to read as follows:

2 16.54.010 Intent. It is the intent of this chapter to:

- A. Regulate use of designated environmentally critical areas consistent with the intent of the Growth Management Act and the Lacey Environmental Protection and Resources Conservation Plan.

- B. Recognize there are qualitative differences between and among specific types of critical areas. Not all areas and ecosystems are critical for the same reasons. Some areas are critical because of the hazard they present to public health and safety, some because of the values they represent to the public welfare. In some cases, the risk posed to the public by use or development of a critical area can be mitigated or reduced by engineering or design; in other cases that risk cannot be effectively reduced except by avoidance of the critical area. Hence, classification, designation and protection of critical areas is intended to recognize the differences among these areas, and to develop appropriate regulatory actions in response.
- C. Identify special review procedures, standards and mitigating conditions when construction or other human activity is proposed for any parcel of land within or reasonably close to the boundaries of environmentally sensitive/critical areas as designated in a generalized manner on that map titled official zoning map of the City of Lacey or other environmental maps referenced in Chapters 14.28, 14.33, 14.34, 14.36, or 14.37 or on lands meeting the requirements as an environmentally sensitive area as defined in said code sections.
- D. Provide Environmentally Sensitive Area designation for critical exemptions policy under WAC 1979-11-908.

16.54.020 Environmentally Sensitive/Critical Areas Defined.

Environmentally sensitive/critical areas are those areas described or referenced in this Chapter as wetlands, flood hazard areas, aquifer recharge areas, geological sensitive areas, or habitat conservation areas. The approximate locations and type of most environmentally sensitive/critical areas are designated on the official Zoning Map of the City of Lacey and environmental maps referenced or contained within the City Environmental Protection and Resource Conservation Plan. However, environmentally sensitive/critical areas not shown on maps are presumed to exist in the City of Lacey and the Lacey urban growth area and are protected under all the provisions of this chapter. In the event of a conflict between designation shown on the zoning map, referenced environmental maps or specific criteria defining an environmentally sensitive area set forth in this Chapter or Chapters 14.28, 14.33, 14.34, 14.36 or 14.37, the criteria shall control.

16.54.030 General Standards. Allowed uses and development standards shall be those of the underlying district except that more restrictive requirements shall be imposed by the City consistent with the intent and according to the processes and procedures described or referenced in this Chapter and Chapters 14.28, 14.33, 14.34, 14.36 or 14.37.

16.54.040 Review of Uses. All uses shall be subject to the review process specified or referenced herein dependent upon the type of environmentally sensitive area concerned and the type of proposed action.

16.54.050 Environmental Review. Pursuant to WAC 197-11-908, Environmental Review shall be required within designated environmentally sensitive/critical areas for uses which may normally be exempt. All categorical exemptions which may be removed from exempt status because of environmentally sensitive area designations pursuant to WAC 197-11-908(2) are hereby removed.

16.54.060 Wetland Areas. All regulated wetland areas as designated or described by Chapter 14.28 shall be subject to the review processes, standards and conditions as specified in Chapter 14.28.

16.54.070 Flood Hazard Areas. All flood hazard areas as designated or described by Chapter 14.34 shall be subject to the review process, standards and conditions as specified in Chapter 14.34.

16.54.080 Habitat Conservation Areas. All habitat conservation areas as designated or described by Chapter 14.33 shall be subject to the review process, standards and conditions as specified in Chapter 14.33

16.54.090 Aquifer Recharge Areas. All aquifer recharge areas as designated or described by Chapter 14.36 shall be subject to the review process, standards and conditions as specified in Chapter 14.36.

16.54.100 Geologically Sensitive Areas. All geologically sensitive areas as designated or described by Chapter 14.37 shall be subject to the review process, standards and conditions as specified in Chapter 14.37.

Section 4. Subsection 32 of Section 14.28.030 is hereby amended to read as follows:

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

Section 5. The following new sections are added to Chapter 14.28 of the Lacey Municipal Code relating to wetlands protection:

14.28.065 Listing of Qualified Professional or Technical Wetlands Consultants or Scientists. The City of Lacey, in consultation with adjacent local jurisdictions and the State Department of Ecology, shall review the qualifications and experience of available wetland consultants and scientists. The City shall prepare a list of such individuals and firms that can satisfy the needs and requirements of the wetland protection ordinance to prepare boundary surveys, mitigation reports, wetland classifications and other reports, complex studies, and recommendations that adequately protect the City wetland resources. The evaluation of these professionals shall consider such things as academic background, relevant experience,

past performance in development of wetland reports, studies and recommendations, considering the accuracy and quality of said reports, studies and recommendations, and the success of such reports, studies and recommendations in meeting staff needs for implementation of ordinance requirements and purposes. The City and adjacent jurisdictions may use the required list of qualified consultants and scientists to contract for both public and private projects, pursuant to the requirements of Section 14.28.067 of this Chapter. The list shall be reviewed on an annual basis.

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

Individual applicants will be responsible for payment of costs of the professional for projects necessitating work to be performed by the professional. Provided, however, that the City shall be responsible for billing and collecting costs charged to the applicant and transferring said payment to the professional unless the City has opted for some other mechanism of providing for the cost, such as inclusion of cost in application fees. The applicant shall also be responsible for the City's administrative fees in carrying out this service. The Director of Community Development is authorized to

prepare administrative guidelines for carrying out the requirements of this section.

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

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

The criteria for Category I wetlands are as follows:

1. Documented habitat recognized by federal or state agencies for threatened or endangered plant (or potentially extirpated plant), animal, or fish species;
2. Documented Natural Heritage wetland sites or high quality native wetland communities which qualify as Natural Heritage wetland sites;
3. Documented habitat of regional (Pacific Coast) or national significance for migratory birds;
4. Regionally rare native wetland communities;

5. Wetlands with irreplaceable ecological functions; or
6. Documented wetlands of local significance.

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

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

1. Documented habitat recognized by federal or state agencies for sensitive plant, animal, or fish species;
2. Documented priority habitats and species recognized by state agencies;
3. Wetlands with significant functions which may not be adequately replicated through creation or restoration;
4. Wetlands with significant habitat value of 22 or more points from the rating system; or
5. Documented wetlands of local significance.

C. "Category III Wetlands" occur more frequently throughout the state than do Category I and Category II wetlands.

Generally these wetlands will be smaller, less diverse and/or more isolated than Category II wetlands. These wetlands also provide important functions and values and are important for a variety of wildlife species. These wetlands would be difficult to replace.

The criteria for Category III wetlands do not contain

features outlined in Category I, II, or IV and are as follows:

1. Wetlands with significant habitat value of 21 points or less from the rating system;
2. Estuarine wetlands which do not satisfy the Category I or II wetland criteria; or
3. Documented wetlands of local significance.

D. "Category IV Wetlands" are smaller, more isolated and have less diverse vegetation than the other wetland categories.

These wetlands do have important values and function, but could be replaced. In some cases it may be able to improve its value for habitat.

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

1. Wetlands less than 1 acre, and hydrologically isolated, and comprised of one vegetated class that is dominated (>80% areal cover) by soft rush, hard hack or cattail; or
2. Wetlands less than 2 acres, and hydrologically isolated, with one vegetated class, and >90% of areal cover is any combination of invasive or exotic species from the rating system.

E. "Category V Wetlands"

1. All 2-5 waters as defined by the Washington Forest Practice Rules and Regulations that do not meet requirements of Categories I-IV.
 - a. Type 1 waters as defined by WAC222-16-020 are specifically excluded from Category V. Type 1 water

means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under chapter 90.58 RCW.

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

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

- i. Domestic water supplies,
- ii. Public recreation,
- iii. Fish spawning, rearing, or migration or wildlife uses; or
- iv. 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:

- i. Domestic use,
- ii. Public recreation,
- iii. Fish spawning, rearing, or migration or wildlife uses; or
- iv. 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.

F. The City of Lacey shall have the authority to reevaluate Category II and III wetlands when the calculation from the rating manual results in point values from 27-17 points. This reevaluation shall be documented in writing and the City may use the descriptions of these wetland classes as guidance in determining the appropriate wetland rating.

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

14.28.300 Reduction of Standard Wetland Buffer Zone Width.

A. The City of Lacey may reduce the standard buffer zone widths for Category III, IV, and V wetlands up to 50% on a case-by-case basis when an existing wetland or wetland buffer area is significantly degraded, and it can be shown that the activities described below are in the best interest of wetland protection. The full 50% reduction may be allowed when all of the activities listed below are deemed necessary to protect the wetland. A 25% reduction may be permitted when 3 of the 5 activities listed below are deemed necessary to protect the wetland.

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

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

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

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

Section 6. There is hereby added to Section 14.28.120 of the Lacey Municipal Code subsections I and J, to read as follows:

I. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less when required by a local governmental agency.

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

Section 7. There is hereby added to Section 14.28.140 of the

Lacey Municipal Code's subsections H, I and J, to read as follows:

- H. Normal and routine maintenance or repair of existing utility structures or right-of-way.
- I. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less in improved City road right-of-way.
- J. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved City road right-of-way.

Section 8. Section 14.28.450 of the Lacey Municipal Code is hereby amended to read as follows:

14.28.450 Application Approval - Compensatory Mitigation - Wetlands Restoration and Creation.

- A. Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses.
- B. Where feasible, restored or created wetlands shall be a higher category than the altered wetland.
- C. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self-sustaining and projected success. Wetland functions and values shall be calculated using the best professional 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, ~~on-site~~, time prior to or concurrent with alteration, and has a high probability of success and with on site restoration, enhancement or replacement given priority. These ratios do not apply to remedial actions resulting from illegal alterations. 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
Type 2 water	6:1
Type 3 water	3:1
Type 4 water	2:1
Type 5 water	1.25:1

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

- a. Uncertainty as to the probable success of the proposed restoration or creation;
- b. Significant period of time between destruction and replication of wetland functions;

- c. projected losses in functional value; or
2. Decreased Replacement Ratio. The City of Lacey may decrease these ratios under the following circumstance:
 - a. findings of special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value is attained under the decreased ratio.
 3. In all cases, a minimum acreage replacement ratio of 1:1 shall be required.

Section 9. There is hereby added to the Lacey Municipal Code a new Chapter 14.33 relating to Habitat Conservation Areas Protection, to read as follows:

14.33.020 Purpose/Intent.

- A. It is the policy of the City of Lacey to require site planning and habitat management planning to avoid or minimize damage to habitat conservation areas wherever possible;
- B. It is the intent of the City of Lacey that activities in or affecting habitat conservation areas, not degrade habitat conservation areas functions and values by:

1. decreasing breeding, nesting, and feeding areas for many species of birds, including those rare and endangered;
2. decreasing habitat for fish and other forms of wildlife, including those rare and endangered;
3. destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;

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

1. Preserving, protecting and restoring habitat conservation areas by regulating development within habitat conservation areas;
2. Protecting the public against losses from publicly funded mitigation of avoidable impacts;
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of habitat conservation areas;
4. Providing City of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;
5. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, chapter 43.21C RCW, the City Environmental Protection and Resource Conservation Plan, the City Comprehensive Land use Plan, the City Zoning Code (Title 16 LMC), the City Environmental Policy Ordinance (Chapter 14.24 LMC), the City Tree Protection and Preservation Ordinance (Chapter 14.32 LMC), and all related environmental and community plans and programs.

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

1. "Applicant" means a person who files an application for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
2. "Habitat Conservation Area" means local areas with identified priority species or priority habitats that require special management.
3. "Priority Habitats" means a seasonal range or habitat element with which a given species has a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.

4. "Priority Species" means those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state listed endangered, threatened, and sensitive species, as well as other species of concern, and game species.
5. "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.
6. "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.
7. "Functions", "beneficial functions", or "functions and values" means the beneficial roles served by habitat conservation areas including, but not limited to, fish and wildlife habitat, aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.

14.33.040 Qualified professional habitat biologist. It is expected that applications will require a qualified professional habitat biologist to provide the information necessary to fulfil the requirements of this chapter. A qualified professional habitat biologist is a person who makes his or her livelihood performing this type of work with the appropriate academic and field experience to provide the services required by this chapter. It shall be the responsibility of the applicant to acquire the services of a qualified habitat biologist.

14.33.050 Applicability

- A. When any provision of any other chapter of the City of Lacey conflicts with this chapter, that which provides more protection to habitat conservation areas shall apply unless specifically provided otherwise in this chapter.
- B. The City of Lacey is authorized to adopt written administrative procedures for the purposes of carrying out the provisions of this chapter.
- C. The City of Lacey shall not grant any approval or permission to conduct a non-exempt activity in a habitat conservation area until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; 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.

14.33.060 Maps and inventory. This chapter shall apply to all lots or parcels on which habitat conservation areas are located within the jurisdiction of the city of Lacey. The approximate location and extent of habitat conservation areas in the City of Lacey is shown in maps provided in the City of Lacey Environmental Protection and Resource Conservation Plan and on the City zoning map. The City Environmental Protection and Resource Conservation Plan maps and zoning maps are to be used as a guide to the general location and extent of habitat conservation areas. Habitat conservation areas not shown on the maps are presumed to exist in the City of Lacey and are protected under all the provisions of this chapter. In the event that any of the habitat conservation area designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control.

14.33.070 Determination of habitat conservation area.

- A. The exact location of the habitat conservation area shall be determined by the applicant through the performance of a field investigation applying specific habitat or species recommendations pursuant to the Department of Wildlife. A qualified professional wildlife habitat biologist shall perform habitat conservation area delineations using the methodology prescribed by the State of Washington Department of Wildlife. The applicant is required under Section 14.33.120 of this chapter to show the location of the habitat conservation area on a scaled drawing as a part of the approval application.
- B. The City of Lacey shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the City of Lacey shall, at the applicant's expense, obtain expert services to render a final delineation.

14.33.080 Exempt activities. The following activities shall be exempt from the review requirements of this chapter provided such activities are undertaken using best management practices in a manner that does not adversely impact the habitat conservation area:

- A. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife in consultation with the State Department of 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 habitat conservation area

by changing existing topography, water conditions or other natural parameters important to the conservation area;

- D. Navigation aids and boundary markers;
- E. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, habitat impacts shall be minimized and disturbed areas shall be immediately restored; and
- F. Educational activities and scientific research.
- G. Normal and routine maintenance or repair of existing utility structures or right-of-way.
- H. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less in improved city road right-of-way.
- I. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way.

14.33.090 Habitat conservation areas - site plan review approval - Pre-application consultation. Any person intending to undertake non-exempt activities in a habitat conservation area is required to meet with the City of Lacey at a pre-application conference during the earliest possible stages of project planning in order to discuss habitat impact avoidance and minimization.

14.33.100 Habitat Conservation Area applications - Site plan review compliance. No non-exempted use shall occur or be permitted to occur within a habitat conservation area without approval from the site plan review committee pursuant to procedures of Chapter 16.84.

14.33.110 Habitat conservation areas - Site plan review approval - Information requirements.

- A. Application to conduct any activity not specifically exempted by Section 14.33.080 within a habitat conservation area shall be made to the Department of Community Development on forms furnished by that office.
- B. Unless the City of Lacey waives one or more of the following information requirements, applications for activities undertaken in a habitat conservation area must provide the following information:

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

14.33.120 Habitat Conservation Area site plan review approval and extensions.

- A. Approvals shall normally be valid for a period of eighteen (18) months from the date of issue and shall expire at the end of that time pursuant to requirements of Chapter 16.84 LMC unless an underlying action such as subdivision approval has a longer approval period, in which case the longer approval period shall apply.
- B. An extension of an original approval may be granted upon written request to the City of Lacey by the original approval holder or the successor in title. Prior to the granting of an extension, the City of Lacey shall require updated

studies if, in its judgment, the original intent of the approval is altered or enlarged by the renewal, if the circumstances relevant to the review and issuance of the original approval have changed substantially.

14.33.130 Habitat Conservation Areas - Site plan review approval - Filing Fees. At the time of an application, 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. These fees may be used by the City of Lacey to retain expert consultants to provide services pertaining to habitat 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 approval compliance and mitigation measures.

14.33.140 Permit processing - consolidation. The City of Lacey shall, to the extent practicable and feasible, consolidate the processing of habitat conservation areas review with other city regulatory programs which affect activities in habitat conservation areas, such as shoreline permits, subdivision, clearing and grading, floodplain, and other environmentally sensitive area requirements, with the habitat conservation area review 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 habitat conservation area site plan review shall be combined and considered though the same process and at the same time as the other said action is considered. Provided, however, all informational requirements of Section 14.33.10 are satisfied as well as all other standards of this chapter.

14.33.150 Interagency coordination for Habitat Conservation Area applications. Upon receipt of a complete application for approval authorizing activities within a habitat conservation area, the City of Lacey shall submit the application to the Washington State Department of Wildlife and other state and local agencies having jurisdiction over or an interest in such applications for review and comment. When such applications are submitted, said agencies should submit comments or should request an extension of the review period within fifteen (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.

14.33.160 Standards for Habitat Conservation area approvals - Generally.

- 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 habitat conservation areas, protecting identified priority habitats and priority species

pursuant to recommendations from the Washington State Department of Wildlife and the required priority habitat and priority species management plan.

2. Denial of an approval would cause an extraordinary hardship on the applicant.
- B. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal.
- C. Except as otherwise specified, habitat conservation areas and buffer zones as required in a priority habitat or priority species management plan shall be retained in their natural condition.

14.33.170 Habitat conservation area - Uses allowed in a designated buffer zone.

Non-exempt activities shall not be allowed in a buffer zone recommended in a habitat management plan except for the following:

- A. Activities having minimal adverse impacts on the designated priority habitat or priority species present as determined in the management plan. These may include low intensity, passive recreational activities such as previous trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing or hunting;
- B. Denial of a use in a buffer zone would cause extraordinary hardship on the applicant.

14.33.190 Permit processing - Building setback lines. A building setback line corresponding to the required yard area setback for the underlying zone is required from the edge of any designated priority habitat or species buffer. The setback shall be identified on the site plan filed with the City.

14.33.200 Acting on the application - Special conditions.

- A. Sensitive Area Tracts. As a condition of any approval issued pursuant to this chapter, the applicant shall be required to create a separate sensitive area tract or tracts containing the areas determined to be habitat conservation areas for priority habitats or priority species in field investigations performed pursuant to Sections 14.33.070 and 14.33.100. Sensitive area tracts are legally created tracts containing priority habitats or species and their required buffers that shall remain protected in perpetuity. Sensitive area tracts are an integral part of the lot or land division in which they are created, are not intended for sale, lease or transfer, and shall be included in the area of the parent lot when

a land division is not part of the application. When a land division is part of the application, the tract shall designate the habitat conservation area as a separate tract.

- B. Protection of Sensitive Area Tracts. The City of Lacey shall require, as a condition of any approval issued pursuant to this chapter, that the sensitive area tract or tracts created pursuant to this section be protected by one of the following methods determined by the City of Lacey:
1. The applicant shall convey an irrevocable offer to dedicate to the City of Lacey or other public or non-profit entity specified by the City of Lacey the habitat conservation area and its buffer to ensure management of the habitat conservation area resource in the best interest of the public; or
 2. The applicant shall establish and record a permanent and irrevocable deed restriction on the property title and where a division of property is involved on the subdivision, short subdivision or binding site plan map, and in home or lot owners association agreements, covenants and articles of incorporation. All such tracts within a subdivision, short subdivision or binding site plan shall be designated as common open space separate and distinct from private lot areas. Such deed restriction(s) shall prohibit in perpetuity the development, alteration, or disturbance of vegetation within the sensitive area tract except for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from the City of Lacey, and any other agency with jurisdiction over such activity.
- C. Specific Language for Deed Restrictions. Deed restrictions required in subsection B.2 above shall be set forth in substantially the following form:
1. "Before beginning and during the course of any grading, building construction, or other development activity adjacent to a common open space subject to this deed restriction, the common boundary between the area subject to the deed restriction and the area of development activity must be fenced or otherwise marked to the satisfaction of the City of Lacey."
 2. Responsibility for maintaining open space tracts shall be held by a lot or homeowners association, or other appropriate entity as approved by the City of Lacey.

3. The following note shall appear on the face of all plats, short plats, PUDs, binding site plans, or other approved site plans containing separate sensitive area tracts to be managed by a lot or 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. No alteration shall occur and all vegetation should remain undisturbed unless the express written authorization of the City of Lacey has been received.

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

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

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

- E. Additional Conditions.

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

14.33.210 Financial Security

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

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

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

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

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

14.33.230 Application approval - Suspension, revocation. In addition to other penalties provided for elsewhere, the City of Lacey may suspend or revoke an approval if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations

set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application.

14.33.240 Application approval - Notice of action. The City of Lacey shall provide notice of its actions pursuant to the requirements of Chapter 16.84 LMC, the site plan review process, or other applicable review processes.

14.33.250 Appeals. Any decision of the City of Lacey in the administration of this chapter may be appealed to the city hearings examiner pursuant to the requirements of LMC Chapter 2.40. The hearings examiner shall give substantial weight to any discretionary decision of the City of Lacey rendered pursuant to this chapter.

14.33.260 Enforcement.

- A. The City of Lacey shall have authority to enforce this chapter, any rule or regulation adopted, and any permit or order issued pursuant to this chapter, against any violation or threatened violation thereof. The City of Lacey is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.
- B. Enforcement actions shall include civil penalties, administrative orders and actions for damages and restoration.
 - 1. The City of Lacey may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a habitat conservation area which are inconsistent with this chapter or an applicable habitat or species protection program.
 - 2. The City of Lacey may serve upon a person a cease and desist order if an activity being undertaken on sites with habitat conservation areas or required buffer is in violation of this chapter. Whenever any person violates this chapter or any permit issued to implement this chapter, the City of Lacey may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

- a) Content of order. The order shall set forth and contain:
 - i) A description of the specific nature, extent, and time of violation and the damage or potential damage; and
 - ii) 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.
 - iii) 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.
 - iv) Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.
3. Any person who undertakes any activity within a habitat conservation area without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection B.2 of this section shall incur a penalty allowed per violation. In the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the superior court within the subject jurisdiction.
4. Aiding or Abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty.
5. Notice of Penalty. Civil penalties imposed under this section shall be imposed by a notice to the person incurring the same from the City of Lacey. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.
6. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within thirty (30) days of receipt of the penalty to the City of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the City of Lacey by action

of the city hearing examiner under the provision of LMC Chapter 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.

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in Section ~~2.24.250~~
14.33.250
8. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to an approval.

14.33.270 Non-conforming activities. A non-exempt 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. If a non-conforming activity is discontinued for twelve (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.

14.33.280 Judicial Review

- A. 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:
 1. Available administrative remedies, including appeals available pursuant to Section ~~14.24.250~~, have been exhausted; and

2. 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.
- B. Based on these proceedings and the decision of the court, the City of Lacey may, within the time specified by the court, elect to:
1. Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land;
 2. Approve the application with lesser restrictions or conditions; or
 3. Other appropriate actions ordered by the court that fall within the jurisdiction of the City of Lacey.

14.33.290 Amendments These regulations and the City of Lacey zoning map may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning become available.

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

14.33.310 Assessment relief. The assessors of the City of Lacey shall consider priority habitats or priority species regulations in determining the fair market value of land. Any owner of an undeveloped area designated as habitat conservation area who has dedicated an easement or entered into a perpetual conservation restriction with the City of Lacey or a nonprofit organization to permanently control some or all regulated activities in said area shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the controlled area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains.

Section 10. There is hereby added to the Lacey Municipal Code a new Chapter 14.36 relating to Critical Aquifer Recharge Areas Protection, to read as follows:

14.36.020 Purpose/Intent

The purpose of this chapter is to protect the public health, safety, and welfare by protecting the City's water resources. Specifically, the purpose of the ordinance is to implement the following goals of the Environmental Protection and Resource Conservation Plan:

1. To protect the quality and to manage the quantity of groundwater for all uses in the present and in the future.
2. To prevent groundwater contamination by protecting the entire resource as effectively as possible, but within the limits of what is acceptable and affordable to the community.
3. To prevent contamination of drinking water supplies, and if efforts fail, to have a contingency plan to provide additional sources should existing sources become unusable.
4. To assure that preventive actions are taken to protect water quality from further degradation and, in cooperation with the Department of Ecology, promote corrective actions in areas where degradation has occurred so that the net effect is a gradual improvement of the ground and surface water quality.
5. To provide interim legislation regulating land uses within aquifer sensitive areas until more precise information can be attained, including completion of a grant project to develop a wellhead protection program that includes:
 - a. Determination of hydrogeologic boundaries;
 - b. Land use inventory that identifies sources and potential sources of pollution;
 - c. Additional monitoring;
 - d. Recommendations for land use and other regulatory controls;
 - e. Contingency planning for replacement and/or response to contaminated wells;
 - f. Implementation of a public involvement and education plan.

14.36.030 Critical Aquifer Recharge Areas - Definitions

1. "Applicant" means a person who files an application for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
2. "Critical Aquifer Recharge Areas" means those areas of Thurston County which have a significant aquifer under them and which allow water to enter the soil and geological materials in ways and in quantities that replenish natural ground water systems and aquifers.
3. "Equivalent Residential Unit, ERU" means the average quantity of wastewater generated from a single family residence, or for other than single family residences, the water quantity of 900 cubic feet per month at average waste strength, Biochemical Oxygen Demand and Suspended Solids.
4. "Health Expert" means a person employed or contracted by the City of Lacey and licensed by the State as a registered sanitarian and with the necessary expertise and experience to provide information required by this chapter relating to health issues and concerns.
5. "Health Officer" means the Thurston county Health Officer as defined in Chapter 70.05 RCW or his or her authorized representative.
6. "Underlying Permit" means the permit or approval process triggering City review of activities undertaken in the aquifer sensitive area.
7. "Well Head Protection Areas" means the surface and subsurface area surrounding a well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

14.26.040 Critical Aquifer Recharge Areas - Rating System.

The following system shall be used to group soil series listed in the Thurston County Soil Survey into four categories. A listing of the soil series by categories is contained in Section 14.36.210.

1. "Category I, Extreme Aquifer Sensitivity" means those areas which provide very rapid recharge with little protection, contain coarse soil textures and soil materials, and are derived from glacial outwash materials.
2. "Category II, High Aquifer Sensitivity" are those areas which provide slightly lower recharge, also provide little protection, and are from materials of glacial deposit.
3. "Category III, Moderate Aquifer Sensitivity" are those areas with aquifers present but which have a surface soil material that encourages run-off and slows water entry into the ground.
4. "Category IV, Low Aquifer Sensitivity" are those areas of low ground water availability and whose soil series are derived from Basaltic or Andesitic rock or ancient glacial till (more consolidated, more clays at surface), and which have not formed geological formations that provide abundant ground water.
5. "Aquifer Fringe" means the area adjacent to (within 50 feet) and up-gradient (topographically or hydrologically) which contributes drainage to an aquifer recharge area. Aquifer fringe areas shall be evaluated on a case by case basis where the down gradient is of greater sensitivity.
6. "Disputed Areas"
 - A. In cases of disputed soil series, or series boundary, and resulting Category, the City of Lacey in consultation with the Health Officer, and the Soil Conservation Service, shall determine the Category.
 - B. In areas that have been disturbed or the surface soil removed as in gravel pits, the City of Lacey in consultation with the Health Officer and the Soil Conservation Service shall determine the most appropriate category with geological and hydrological information.

14.36.050 Applicability

1. When any provision of any other chapter of the City of Lacey conflicts with this chapter, the most restrictive will prevail.
2. The City of Lacey is authorized to adopt written administrative procedures for the purposes of carrying out the provisions of this chapter.

3. The City of Lacey shall not grant any approval or permission to conduct a non-exempt activity in an area classified as a Category I or II aquifer sensitive area until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or multifamily residential; site plan review, special or conditional use permit, master plan development, planned unit development, shoreline substantial development permit, shoreline conditional use permit, shoreline environmental redesignation, zone reclassification, subdivision, short subdivision, binding site plan zone reclassification, or any subsequently adopted permit or required approval not expressly exempted by this chapter.

14.36.060 Maps and Inventory

A map has been developed classifying the aquifer sensitivity of areas within Thurston County. This map is identified as Map 5 of the Environmental Protection and Resource Conservation Plan titled "City of Lacey critical Aquifer Protection Areas and Well Heads. The standards of this chapter shall apply to all lots or parcels on which aquifer sensitive areas classified as Category I or II, are located within the jurisdiction of the City of Lacey. In the event that any of the aquifer sensitive area designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control.

14.37.070 Determination of Aquifer Sensitive Area

1. The exact presence and location of the aquifer sensitive area shall be determined by a field investigation applying specific criteria described by the health officer or health expert. A professional soil scientist or geohydrological expert shall perform soils analysis necessary to make determinations. Hiring the services of a soil scientist or geohydrological expert shall be the responsibility of the applicant. The applicant is required under Section 14.36.115 of this chapter to show the location of the aquifer sensitive area on a scaled drawing as a part of the application.
2. The City of Lacey in consultation with the health officer shall verify the accuracy of, and may render changes to, the geological sensitive area determinations or delineations and technical information provided by the applicant and his/her consultant. In the event the changes are contested by the applicant, the City of Lacey shall, at the applicant's expense, obtain its own expert services to render a final determination. (Ord. 912 S 1 Sec. 4.3, 1991).

14.36.080 Exempt activities

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

1. Building projects for individual single family residence or duplex;
2. Boundary line adjustments;
3. Franchise right-of-way construction permit;
4. Grading permit for less than 500 cubic yards of material;
5. Conservation or preservation of soil, water, vegetation and wildlife in consultation with the Soil Conservation Service, State Department of Wildlife, or other appropriate federal or state agency.
6. Non-commercial outdoor recreation activities that have no impact on aquifer recharge, such as bird watching or hiking, but shall not include such things as golf courses that may impact aquifer recharge.
7. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the aquifer sensitive area by changing existing topography, water conditions or other natural parameters important to the aquifer sensitivity;
8. Location of boundary markers;
9. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be immediately restored;
10. Non-development educational activities and scientific research; and
11. Normal and routine maintenance or repair of existing utility structures or right-of-way, except situations involving the application of chemical substances.
12. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including

substations, with an associated voltage of 55,000 volts or less in improved city road right-of-way, except situations involving the application of chemical substances.

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

14.36.090 Review Standards - General Review Requirements

1. No non-exempt action shall be undertaken by any person which results in any alteration of a aquifer sensitive area except in compliance with the requirements, goals, purposes and objectives of this chapter.
2. In association with normal permit requirements every non-exempt activity will require a written authorization or notation on the underlying permit of compliance with this chapter prior to undertaking the activity.
3. The City may approve, approve with conditions or deny any development proposal in order to comply with the requirements and carry out the goals, purposes and objectives of this chapter.

14.36.100 Permit processing - consolidation

The City of Lacey shall consolidate sensitive areas review with underlying city permit requirements to provide a timely and coordinated permit process. Whichever process is utilized to process the underlying permit this same process shall be used to review, analyze and apply standards and conditions to satisfy the requirements for this chapter. This may result in an administrator, the site plan review committee or the City hearing examiner and Council acting on requirements of this chapter depending upon the underlying permit.

14.36.110 Interagency coordination for aquifer sensitive area applications

Upon receipt of a complete application for approval authorizing activities within a geologically sensitive area, the City of Lacey shall submit the application to the Health officer. When such applications are submitted, said health officer should submit comments or should request an extension of the review period within fifteen (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.

14.36.115 Information Requirements

Unless the City of Lacey waives one or more of the following information requirements, non-exempt applications for activities undertaken in an aquifer sensitive area must provide the following information:

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the entire parcel of land owned by the applicant and the exact boundary and description of the aquifer sensitive features of the site;
2. A description of the vegetative cover of the site and adjacent area including dominant species;
3. A site development plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations at the site;
4. The exact sites and specifications for all proposed activities including the amounts and methods;
5. Elevations of the site and adjacent lands within the aquifer sensitive area at contour intervals of no greater than five (5) feet;
6. A report describing the aquifer sensitive features with an analysis of specific limitations of the site, including soils and geology with a description of the methods of analysis and special means used to make such determination and recommendations. The report shall indicate what engineering steps are required to overcome soils and geological limitations at the site for proper aquifer protection; see requirements in special reports, chapter 16.36.160.

14.36.120 Critical Aquifer Recharge Areas - Uses and activities in critical aquifer recharge areas.

1. To protect the public health and safety, prevent aquifer contamination, and preserve the ground water resource for continual beneficial use, uses shall be most limited in those areas which have the highest degree of risk.
2. Stormwater Runoff. Stormwater impacts shall be mitigated through the application of the Drainage design and Erosion control Manual for the Thurston Region. In addition to this manual, spill prevention and contamination shall be considered during project review, to avoid accidental release of pollutants.

3. Agricultural Activities. Agricultural impacts shall be mitigated through implementation of the Northern Thurston County Ground Water Management Plan (1991), where applicable. In areas not covered by this plan, the City of Lacey in consultation with the health officer or other qualified health expert shall employ methods that result in protection from aquifer contamination.
4. Solid Waste. Solid waste disposal facilities shall comply with WAC 173.304 and WAC 173.200. Solid waste landfills, and other solid waste disposal facilities likely to produce leachate shall be prohibited in Critical Aquifer Recharge Area Categories I and II. Handling and transfer facilities within these two categories may be placed with source control measures appropriate to the facility. Special care shall be employed to avoid the impacts of spills and leachate.
5. Hazardous Materials.
 - A. Review for presence and containment of hazardous materials shall be performed and conditions set by the City in consultation with others having expertise and jurisdiction.
 - B. Persons that possess hazardous materials as defined in SARA III (the Superfund Amendments) shall provide a secondary containment method.
 - C. These standards may be modified by the adoption of a Ground Water Management Plan under WAC 173-100, or adoption of other regulations.
 - D. The City of Lacey in consultation with the health officer or other qualified health expert are authorized to permit facilities with methods that show a reasonable association between the material possessed and the containment strategy proposed.
5. Fertilizer and Pesticides.

Reserved.

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14.36.140 Critical Aquifer Recharge Areas - Residential Density

1. Residential densities are intended to limit the amount of sewage effluent and other pollutants associated with human activities, at levels which will achieve compliance with WAC 1737-200, the State Ground Water Quality Standards, WAC 246.272, the State on-site sewage disposal regulations WAC 246.272 and Article IV of the Thurston county Sanitary Code governing sewage disposal.

2. All sewage system proposals must comply with Article IV of the Thurston county Sanitary Code, adopted Sewerage General Plans, and all applicable local, State and Federal regulations.
3. Residential densities for temporary on-site sewage systems are contained in Table 1. Densities for projects other than residential shall use a sewage volume equivalent (equivalent residential unit - ERU) to achieve a similar level of control of sewage application per unit area. These densities shall govern until amended or replaced by a system of allowable density by a ground water management plan or similar analysis. "Temporary on-site sewage systems" includes those systems constructed in areas where there is an adopted Sewerage General Plan which contains a strategy for the interception of the on-site systems.
4. Residential densities for permanent on-site sewage systems are contained in Table 2. Densities for projects other than residential shall use a sewage volume equivalent (equivalent residential unit - ERU) to achieve a similar level of control of sewage application per unit area. These densities shall govern until amended or replaced by a system of allowable density by a ground water management plan or similar analysis. "Permanent on-site sewage systems" includes those on-site sewage disposal systems constructed in areas for which no Sewerage General Plan has been adopted.
5. Achievement of the densities contained in Tables 1 and 2 depends on review and approval of the proposed projects. The approval of such projects will depend on review of the Geohydrological Report, when required and whether the project is temporarily or permanently on-site disposal, and compliance with existing public health and environmental laws and standards. Maximum density in critical aquifer recharge area Category I, also known as Type I soils, are limited to a maximum of two units per acre with enhanced treatment.
6. The standard for compliance for review and approval of projects for which a geohydrological report has been required, shall be a maximum of doubling of the background Nitrate concentration or 5 milligrams per liter, whichever is lower. For projects which do not meet a nitrate loading and concentration model, they must meet the standards contained in WAC 173.200. The City, in consultation with the health officer or other health expert, shall require reasonably available treatment and containment methods in the performance of these tasks.

**TABLE 1 -
RESIDENTIAL DENSITIES: TEMPORARY ON-SITE SEWAGE SYSTEMS**

CRITICAL AQUIFER RECHARGE AREAS					
	CATEGORY I	CATEGORY II	CATEGORY III	CATEGORY IV	REGULATION LOCATION
Density	Up to 2.0 U/Acre	Up to 3.5. U/acre	Up to 3.5 U/acre	Up to 3.5 U/acre	Critical Areas & Article IV
Individual Systems, Sewer connection	Sewer connection strategy required	Sewer connection strategy required	Sewer connection strategy required	Sewer connection strategy required	Article IV & Sewerage General Plan
Community On-site Systems, Sewer Connection	Sewer connection strategy required	Sewer connection strategy required	Sewer connection strategy required	Sewer connection strategy required	Article IV & Sewerage General Plan
Design	Pressure Distribution or per approved plan	Pressure Distribution or per approved plan	Article IV	Article IV	Article IV
Use of Existing Lots	Uses allowed if Health Standards met	Use allowed if Health Standards met	Use allowed if Health Standards met	Use allowed if health Standards met	Article IV

TABLE 2 - RESIDENTIAL DENSITIES: PERMANENT ON-SITE SEWAGE SYSTEMS

CRITICAL AQUIFER RECHARGE AREAS					
	CATEGORY I	CATEGORY II	CATEGORY III	CATEGORY IV	REGULATION LOCATION
Density Outside Sewer Service Areas	1 unit/5 acres	1 unit/5 acres	1 unit/5 acres	1 unit/5 acres	Critical Areas & Article IV
Small Areas of existing higher density	1 unit/2 acres *	1 unit/2 acres *	1 unit/2 acres *	1 unit/2 acres *	Article IV
Existing Lots, used for Single Family Residences	May be used if Health Standards met	May be used if Health Standards Met	May be used if Health Standards met	May be used if Health Standards met	
Design of On-site Systems	Pressure distribution or as determined by Health Officer	Pressure distribution or as determined by Health Officer	See Article IV	See Article IV	Article IV

* Small areas of density higher than 1 unit/5 acres, usually less than one half of one square mile, are being considered by the County and may be adopted if the public interest is served and aquifer protection can still be achieved.

14.36.140 Critical Aquifer Recharge Areas - Well Head Protection Areas - Designation

1. Well head protection areas shall be designated as provided in the Northern Thurston County Ground Water Management Plan (1991).
2. Special protection standards beyond those in this Chapter may be adopted which address local groundwater conditions, based upon information and analysis instituted under a comprehensive well head protection study.
3. The following geographic area has been identified as a well head protection area:
 - A. McAllister Spring Geologically Sensitive Area

14.36.150 Critical Aquifer Recharge Areas - Departmental Cooperation

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

14.36.160 Critical Aquifer Recharge Area - Special Reports

1. A Geohydrological Report shall be required for a project located in a Category I or II critical aquifer recharge area by the City if:
 - A. There is insufficient ground water information to perform an adequate review to assure aquifer protection, or
 - B. The project is likely to possess, store, use, transport, or dispose of hazardous materials.
2. The City of Lacey may waive the Geohydrological Report requirements if the nature of the project and its impacts are generally known, or the impacts of the project have been mitigated by source control strategies.

14.36.170 Geohydrological Reports - General Comments

1. A geohydrological report for critical areas shall include maps of the development proposal site as required under Section 14.36.115 of this Chapter and a written report.
2. The special report shall identify and characterize the aquifer recharge area as it relates to the development site, assess impacts of the development

proposal on the aquifer protection and assess the impacts of any alteration proposed for the aquifer recharge area.

3. The special report shall propose adequate protection mechanisms and include mitigation, maintenance and monitoring plans and financial security measures if appropriate.
4. The special report shall be prepared by experts as described in the following sections.
5. The City of Lacey may retain health experts and other consultants with applicable expertise at the applicant's expense to assist in the review of special studies outside the range of staff expertise.

14.36.180 Geohydrological reports - Reimbursement for costs

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

1. This report shall identify the proposed development plan and the risks associated with on-site septic systems and other on-site activities which may potentially degrade the groundwater aquifer beneath the site.
2. This report shall be prepared by a licensed professional engineer, licensed in the State of Washington, with expertise in geohydrology, qualified to analyze geological and hydrological information and ground water systems, or prepared by a geologist, schooled and trained in geology and ground water or a hydrologist schooled and trained in geohydrological information and systems.
3. A geohydrological report shall contain:
 - A. A description of the general geological and hydrological characteristics of the area under permit application consideration;
 - B. A description of the local characteristics associated with site drainage and water movement;
 - C. A description of conditions prior to project development;

- D. A description of conditions as they are likely to exist after complete development of the proposed project, and their impact on ground water quantity and quality;
 - E. The post development description shall include the effects of the activities likely to occur as a result of the complete development and use of the project, at final equilibrium;
 - F. As part of five above, the effects of sewage disposal, lawn and yard activities, agricultural and animal husbandry, storm water impacts and any other impact reasonably associated with the project type shall be described.
4. Review and evaluation of the report may be delegated to other City departments and to qualified private consultants at the applicant's expense.

14.36.210 Criteria for aquifer protection categories

1. Category I. Extreme Aquifer Sensitivity

Typified by the presence of usable aquifer(s), moderate to rapid drainage, coarse soil materials (sands and gravels, fine sands and silts), examples of aquifer contamination incidents in similar soils and geology, and a general estimate of run-off versus run-in. This last point is best illustrated by the simple test question, are there streams and other surface water run-off channels in an area, thus indicating whether rainwater runs off instead of absorbing through the soil, into the aquifer systems below.

CATEGORY I SOIL SERIES	
Series Name	SCS Map Symbol #
Baldhill	5, 6, 7, 8
Cagey	20
Everett	32, 33, 34, 35
Grove	42
Indianola	46, 47, 48
Newberg	71, 72
Nisqually	73, 74

CATEGORY I SOIL SERIES	
Series Name	SCS Map Symbol #
Pilchuck	84
Pits, gravel	85
Puyallup	89
Spanaway	110, 111, 112, 113, 114
Sultan	115
Tenino	117, 118, 119

2. Category II, High Aquifer Susceptibility

Typified by the presence of an aquifer or aquifers below the surface, with surface soils acting as a slowing layer for water absorption. Soils are generally described as having slow, impeded, or poor drainage. An undetected fuel spill of the same magnitude would not absorb as quickly or deeply into the soil, would not travel quickly through the soil to the aquifer, but if undetected would travel to the aquifer below. These soil series still pass water on to the aquifers below, but at a lower rate than Category I soils.

CATEGORY II SOIL SERIES	
Series Name	SCS Map Symbol #
Alderwood	1, 2, 3, 4,
Chehalis	26
Delphi	27, 28
Eld	31
Giles	38, 39, 40
Maytown	64
Spana	109
Yelm	126, 127, 128

3. Category III. Moderate Aquifer Sensitivity

Typified by the presence of an aquifer or aquifers below the surface, these soil series contribute to recharge, but more run-of occurs where topography and drainage patterns allow it to do so. These soil series contribute substantially to local aquifers of lower available quantity. The soils are generally described as having slow, impeded, or poor drainage.

CATEGORY III SOIL SERIES	
Series Name	SCS Map Symbol #
Bellingham	14
Dupont	29
Everson	36
Galvin	37
Godfrey	41
Hoogdal	43, 44
Kapowskin	50, 51, 52, 53, 54, 55
Mashel	62, 63
McKenna	65
Mukilteo	69, 70
Norma	75, 76
Puget	88
Scammen	100, 101
Semiamoo	104
Shalkar	105
Shalkar Variant	106
Skipopa	107, 108
Tacoma	116
Tisch	120

4. Category IV. Low Aquifer Susceptibility

Soil areas in Category IV are typified by the absence of abundant ground water, with soils developed from basaltic, andesitic or sedimentary bedrock or ancient glacial till. This has produced conditions not conducive to rapid aquifer recharge or to abundant quantities of ground water. Water wells when found are usually adequate for single family use only and usually produce below ten gallons per minute, commonly in the two to seven GPM range. A fuel spill may not be absorbed into the soil if wet and when dry, will not travel rapidly laterally or vertically. Run-off and stream channel development is much more pronounced than is associated with prairie or low-lands soils and geology.

CATEGORY IV SOIL SERIES	
Series Name	SCS Map Symbol #
Baumgard	9, 10, 11, 12, 13
Boitfort <i>Boistfort</i>	15, 16
Bunker	17, 18, 19
Cathcart	21, 22
Centralia	23, 24, 25
Jonas	49
Katula	56, 57
Lates	58, 59
Mal	60, 61
Melbourne	66, 67, 68
Olympic	77, 78
Pheenev	78, 79, 80, 81, 82, 83, 96
Prather	86, 87
Rainier	90, 91, 92
Raught	93

CATEGORY IV SOIL SERIES	
Series Name	SCS Map Symbol #
Salkum	97, 98, 99
Schneider	102, 103
Vailton	121,122
Wilkeson	123, 124

SCS SOIL SERIES, AND CRITICAL AQUIFER RECHARGE AREA CATEGORIES		
Series Name	Map Symbol #	Category
Alderwood	1, 2, 3, 4,	II
Baldhill	5, 6,7, 8	I
Baumgard	9, 10, 11, 12, 13	IV
Bellingham	14	III
Boistfort	15, 16	IV
Bunker	17, 18, 19	IV
Cagey	20	I
Cathcart	21, 22	IV
Centralia	23, 24, 25	IV
Chehalis	26	II
Delphi	27, 28	II
Dupont Muck	29	III
Dystric Xerochrepts	30	III
Eld	31	II
Everett	32, 33, 34, 35	I
Everson	36	III
Galvin	37	III

**SCS SOIL SERIES, AND
CRITICAL AQUIFER RECHARGE AREA CATEGORIES**

Series Name	Map Symbol #	Category
Giles	38, 39, 40	II
Godfrey	41	III
Grove	42	I
Hoogdal	43, 44	III
Hydraquents, tidal	45	III
Indianola	46, 47, 48	I
Jonas	49	IV
Kapowskin	50, 51, 52, 53, 54, 55	III
Katula	56, 57	IV
Lates	58, 59	IV
Mal	60, 61	IV
Mashel	62, 63	III
Maytown	64	II
McKenna	65	III
Melbourne	66, 67, 68	IV
Mukilteo muck	69, 70	II
Newberg	71, 72	I
Nisqually	73, 74	I
Norma fine	75, 76	III
Olympic	77, 78	IV
Pheeny	79, 80, 81, 82, 83, 96	IV
Pilchuk	84	I
Pits, gravel	85	I
Prather	86, 87	IV

**SCS SOIL SERIES, AND
CRITICAL AQUIFER RECHARGE AREA CATEGORIES**

Series Name	Map Symbol #	Category
Puget	88	III
Puyallup	89	I
Rainier	90, 91, 92	IV
Raught	93, 94	IV
Riverwash	95	I
Rock outcrop	96	IV
Salkum	97, 98, 99	IV
Scammen	100, 101	III
Schneider	102, 103	IV
Semiamoo	104	III
Shalkar muck	105	III
Skipopa	107, 108	III
Spana	109	II
Spanaway	110, 111, 112, 113, 114	I
Sultan	115	I
Tacoma	116	III
Tenino	117, 118, 119	I
Tisch	120	III
Vailton	121, 122	IV
Wilkeson	123, 124	IV
Xerorthents	125	II
Yelm	126, 127, 128	II

14.36.220 Application approval - Other laws and regulations

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

14.36.230 Application approval - Suspension, revocation

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

14.36.240 Appeals

Any decision of the City of Lacey in the administration of this chapter may be appealed to the city hearings examiner pursuant to the requirements of LMC Chapter 2.40. The hearings examiner shall give substantial weight to any discretionary decision of the City of Lacey rendered pursuant to this chapter.

14.36.250 Enforcement

1. 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.
2. Enforcement actions shall include 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 an aquifer sensitive area which are inconsistent with this chapter or an applicable habitat or species protection program.

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

- i) . Content of order. The order shall set forth and contain:
 - a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and
 - b) 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;
 - c) 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;
 - d) 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 non-exempt activity within an aquifer sensitive area without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection B 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 (30) days of receipt of the penalty to the City of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the City of Lacey by action of the city hearings examiner under the provision of LMC Chapter 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 in Section 2.24.250.
- 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 an approval.

14.36.260 Non-conforming activities

A non-exempt 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:

1. 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;
2. If a non-conforming activity is discontinued for twelve (12) consecutive months, any resumption of the activity shall conform to this chapter;
3. If a non-conforming use or activity is destroyed by human activities or an act of God, the use or activity shall not be resumed except in conformity with the provisions of this chapter;
4. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as non-conforming activities.

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14.37:270 Judicial review

1. 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 14.24.250, have been exhausted; and
-36.240
 - 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.
2. 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 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.

14.36.280 Amendments

These regulations and the City of Lacey Environmental Protection and Resource Conservation Plan maps may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning becomes available.

14.36.290 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 11. There is hereby added to the Lacey Municipal Code a new Chapter 14.37 relating to Geologically Sensitive Areas Protection, to read as follows:

14.37.020 Purpose/Intent

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

1. Developing specific requirements for analysis and performance standards related to identification and protection from erosion hazard and landslide hazard;

2. Protecting the public against losses from publicly funded mitigation of avoidable impacts;
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of geologically sensitive areas;
4. Providing City of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;
5. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, chapter 43.21C RCW, the City Environmental Protection and Resource Conservation Plan, the City Comprehensive Land use plan, the City Zoning Code (Title 16 LMC), the City Environmental Policy Ordinance (Chapter 14.24 LMC), the City Tree Protection and Preservation Ordinance (Chapter 14.32 LMC), and all related environmental and community plans and programs.

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

1. "Applicant" means a person who files an application for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
2. "Artificially created hazard area" means artificially created areas of potential hazard such as fills and steep cuts. Such areas are reviewed during application for building permits or excavation and grading permits through a process provided in Chapter 70 of the Uniform Building Code, which allows application of specific conditions to insure the public health, safety and welfare. Such areas are not subject to review under this chapter.
3. "Bluff" means a steeply rising, near vertical slope which abuts and rises from Puget Sound. Bluffs occur in the area at the extreme north end of Lacey's long term growth area north of the Beachcrest area. The toe of a bluff is the beach of Puget Sound. The top of a bluff is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is either the line of vegetation separating the unvegetated steep slope from the vegetated uplands plateau or, when the bluff is vegetated, the point where the bluff slope diminishes to less than fifteen percent (15%).
4. "Buffer" means an area adjacent to hillsides which provides the margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic, and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being or property damage resulting from natural disasters.

5. "Clearing" means the destruction and removal of vegetation by burning, mechanical, or chemical methods.
6. "Director" means the Director of Community Development or his/her designee.
7. "Erosion Hazard Area" means an area designated by the City of Lacey Environmental Protection and Resources Conservation Plan which, according to the United States Department of Agriculture Soil Conservation service Soil Survey of Thurston County Washington, have severe erosion hazard potential. These soil map units are described in Table 11 of the Environmental Protection and Resource Conservation Plan.
8. "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.
9. "Geologically Sensitive Area" means an area that because of its susceptibility to erosion, sliding, earthquake or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Geologically sensitive areas do not include artificially created hazard areas.
10. "Hillsides" means geological features of the landscape having slopes of fifteen percent (15%) and greater. To differentiate between levels of hillside protection and the application of development standards, the City of Lacey categorizes hillsides into four (4) groups: hillsides of at least fifteen percent (15%) but less than twenty-five percent (25%); hillsides of twenty-five percent but less than forty percent (40%) slope; hillsides of forty percent (40%) slope and greater; and hillsides which are defined as ravine sidewalls or bluffs.
11. "Landslide" means an episodic downslope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, and earthflows.
12. "Landslide hazard areas" means areas potentially subject to landslides because of the combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors, including bedrock, soil, slope gradient, slope aspect, geologic structure, groundwater, or other factors. The following areas are considered to be subject to landslide hazard:
 - a) Any area with a combination of:
 - i) Slopes greater than fifteen percent (15%); and

- ii) Impermeable soils (usually silt and clay) frequently interbedded with granular permeable soils (usually sand and gravel); and
 - iii) Springs or groundwater seepage.
- b) Steep slopes of 40% or greater.
 - c) Any area which has shown movement during the Holocene epoch (from 10,000 years ago to present) or which is underlain by mass wastage debris of that age.
 - d) Any area potentially unstable as a result of rapid stream incision, stream bank erosion, or undercutting by wave action.
 - e) Any area with slope stability designated as "I", "U", "Urs" or "Uos" by the Coastal Zone Atlas of Washington.
13. "Native Vegetation" means plant species which are indigenous to the area in question.
14. "Ravine Sidewall" means a steep slope which abuts and rises from the valley floor of a stream and which was created by the wearing action of the stream. Ravine sidewalls contain slopes predominantly in excess of forty percent (40%), although portions may be less than forty percent (40%). The toe of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is where the slope diminishes to less than fifteen percent (15%). Minor natural or man-made breaks in the slope of ravine sidewalls shall not be considered as the top. Benches with slopes less than fifteen percent (15%) and containing developed or developable areas shall be considered as the top.
15. "Seismic Hazard Areas" means those areas subject to severe risk of earthquake damage as a result of seismically induced settlement or soil liquefaction. These conditions occur in areas underlain by cohesionless soils of low density usually in association with a shallow groundwater table.
16. "Slope" means an inclined ground surface, the inclination of which is expressed as a ratio (percentage) of vertical distance to horizontal distance by the following formula:

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

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

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

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

14.37.040 Qualified professional geotechnical engineer. It is expected that applications will require a qualified professional geotechnical engineer to provide the information necessary to fulfil the requirements of this chapter. A qualified professional geotechnical engineer is an engineer in the practice of geotechnical work and capable of providing the services required by this chapter. It shall be the responsibility of the applicant to purchase the services of a qualified geotechnical engineer.

14.37.050 Applicability

1. When any provision of any other chapter of the City of Lacey conflicts with this chapter, the most restrictive will prevail.
2. The City of Lacey is authorized to adopt written administrative procedures for the purposes of carrying out the provisions of this chapter.
3. The City of Lacey shall not grant any approval or permission to conduct a non-exempt activity in a geologically sensitive area until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline

variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, tree and vegetation protection and preservation approval, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

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

14.37.070 Determination of geologically sensitive area.

1. Where staff identifies a potential geologically sensitive area, the exact presence and location of the geologically sensitive area shall be determined by a field investigation applying specific criteria described in this chapter. A qualified professional geotechnical engineer shall perform geologically sensitive area determinations. Hiring the services of a geotechnical engineer shall be the responsibility of the applicant. The applicant is required under Section 14.37.110 of this chapter to show the location of the geologically sensitive area on a scaled drawing as a part of the application.
2. The City of Lacey shall verify the accuracy of, and may render changes to, the geological sensitive area determinations or delineations and technical information provided by the applicant and his/her consultant in consultation with other agencies with expertise in the geologically sensitive areas field. In the event the changes are contested by the applicant, the City of Lacey shall, at the applicant's expense, obtain its own expert services to render a final determination. (Ord. 912 S 1 Sec. 4.3, 1991).

14.37.080 Exempt activities. The following activities shall be exempt from the review requirements of this chapter provided such activities are undertaken using best management practices in a manner that does not adversely impact the geologically sensitive area:

1. Non-public outdoor recreation activities such as bird watching or hiking, when undertaken by a property owner on his or her property for his or her personal non-commercial purposes;
2. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the geologically sensitive area by changing existing topography, water conditions or other natural parameters important to the geological sensitivity;
3. Boundary markers;
4. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be restored immediately after investigative work has been completed;
5. Educational activities and scientific research; and
6. Normal and routine maintenance or repair of existing utility structures or right-of-way.
7. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less in improved city road right-of-way.
8. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way.

14.37.090 Geologically sensitive areas - Pre-application consultation. Any person intending to undertake non-exempt activities in a geologically sensitive area is required to meet with the City of Lacey at a pre-application conference during the earliest possible stages of project planning in order to discuss impact avoidance and minimization.

14.37.100 Geologically sensitive area applications - Site plan review compliance. No non-exempted use shall occur or be permitted to occur within a geologically sensitive area without approval from the site plan review committee or the City Hearing Examiner pursuant to procedures of Chapter 16.84 or 14.33.140 whichever is applicable.

14.37.110 Geologically sensitive areas - Site plan review approval - Information requirements.

1. Application to conduct any activity not specifically exempted by Section 14.37.080 within a geologically sensitive area shall be made to the Department of Community Development on forms furnished by that office.
2. Unless the City of Lacey waives one or more of the following information requirements, applications for activities undertaken in a geologically sensitive area must provide the following information:
 - A. A description and maps overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the entire parcel of land owned by the applicant and the exact boundary and description of the geologically sensitive features of the site;
 - B. A description of the vegetative cover of the site and adjacent area including dominant species;
 - C. A site development plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations at the site;
 - D. The exact sites and specifications for all proposed activities including the amounts and methods;
 - E. Elevations of the site and adjacent lands within the geologically sensitive area at contour intervals of no greater than five (5) feet;
 - F. Top view and typical cross-section views of the geologically sensitive features at the site to scale, and specific means to mitigate any potential adverse environmental impacts of the applicant's proposal relative to the geologically sensitive features of the site.
 - G. A soils engineering report including data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading, including the stability of slopes. Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.

- H. An engineering geology report including an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading. Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.
- I. A full drainage study identifying special precautions necessary to avoid erosion hazard at the site.

14.37.120 Geologically sensitive area - site plan review approval and extensions.

1. Approvals shall normally be valid for a period of eighteen (18) months from the date of issue and shall expire at the end of that time pursuant to requirements of Chapter 16.84 LMC unless an underlying action such as subdivision approval has a longer approval period, in which case the longer approval period shall apply.
2. An extension of an original approval may be granted upon written request to the City of Lacey by the original approval holder or the successor in title. Prior to the granting of an extension, the City of Lacey shall require updated studies if, in its judgment, the original intent of the approval is altered or enlarged by the renewal, or if the circumstances relevant to the review and issuance of the original approval have changed substantially.

14.37.130 Geologically sensitive areas - Site plan review approval - Filing Fees. At the time of an application, 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. These fees may be used by the City of Lacey to retain expert consultants to provide services pertaining to technical issues relative to a site's geological sensitivity, 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 approval compliance and mitigation measures, such as but not limited to erosion control.

14.37.140 Permit processing - consolidation. The City of Lacey shall, to the extent practicable and feasible, consolidate the processing of geologically sensitive areas review with other city regulatory programs which affect activities in geologically sensitive areas, such as Uniform Building Code requirements for excavation and grading, shoreline permits, subdivision, clearing and grading, floodplain, and other environmentally sensitive area requirements, with the geologically sensitive area review 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 geologically sensitive area site plan review shall be combined and considered though the same process and at the same time as the other said action is considered. Provided, however, all informational requirements as well as all other standards of this chapter are satisfied.

14.37.150 Interagency coordination for geologically sensitive area applications. Upon receipt of a complete application for approval authorizing activities within a geologically sensitive area, the City of Lacey shall submit the application to the U.S. Department of Agriculture Soil Conservation Service and other state and local agencies having jurisdiction over or an interest in such applications for review and comment. When such applications are submitted, said agencies should submit comments or should request an extension of the review period within fifteen (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.

14.37.160 Standards for geologically sensitive area approvals - Generally.

1. An approval shall only be granted if the approval, as conditioned, is consistent with the provisions of this chapter.
2. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal.
3. Except as otherwise specified, buffer zones as required in a geologically sensitive area shall be retained in their natural condition.

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

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

14.37.180 Standards for geologically sensitive areas - specific.

1. Undevelopable geologically sensitive areas:

Ravine sidewalls, bluffs and their buffers and hillsides with a slope greater than 40% shall remain undeveloped except as otherwise provided in this chapter. The top, toe, and edges of ravine sidewalls, bluffs and the outside edge of their buffers and hillsides with 40% slope or greater shall be determined and field marked by a qualified geotechnical engineer.

2. Landslide hazard areas: Hillsides containing or adjacent to landslide hazard areas shall be altered only when the site plan review committee concludes, based on required reports, the following:
 - A. There will be no increase in surface water discharge or sedimentation to adjacent properties; and
 - B. There will be no decrease in slope stability on adjacent properties; and
 - C. The alteration conforms to all other requirements of Section 14.37.180(5) of this chapter; and
 - D. Either:
 - i) There is no hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a quantitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or
 - ii) The landslide hazard area can be modified or the development proposal can be designed so that the landslide hazard is eliminated or mitigated so that the site is as safe as a site without a landslide hazard; or
 - iii) The alteration is so minor as not to pose a threat.
3. Ravine sidewalls and bluffs:
 - A. Buffers: A fifty foot (50') undisturbed buffer of native vegetation shall be established from the top, toe, and sides of all ravine sidewalls and bluffs.
 - B. Buffer Reduction: The buffer may be reduced when expert verification and environmental information demonstrate to the satisfaction of the site plan review committee or hearing examiner, whichever is applicable, that the proposed construction method will:
 - i) Not adversely impact the stability of ravine sidewalls and bluffs; and

- ii) Not increase erosion and mass movement potential of ravine sidewalls and bluffs; and
- iii) Use construction techniques which minimize disruption of the existing topography and vegetation; and
- iv) Include measures to overcome any geological, soils, and hydrological constraints of the site.

The buffer may be reduced by no more than 50%.

- C. **Additional Buffers:** The site plan review committee may require increased buffers if environmental studies indicate such increases are necessary to mitigate landslide, seismic and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare.
- D. **Building setback lines:** A building setback line of ten feet (10') is required from the edge of any buffer of a ravine sidewall or bluff. Minor structural intrusions into the area of the building setback line may be allowed if it is determined that such intrusions will not negatively impact the geologically sensitive area.
- E. All buffers shall be measured from the top, toe, and sides of all ravine sidewalls or bluffs.

4. **Developable geologically sensitive areas:**

Hillsides other than ravine sidewalls and bluffs and their buffers and hillsides greater than 40% slope are developable pursuant to the provisions of this chapter. The applicant shall clearly and convincingly demonstrate to the satisfaction of the site plan review committee or hearing examiner, whichever is applicable, that the proposal incorporates measures protecting the public health, safety, and welfare.

5. **Hillsides of fifteen percent (15%) slope and greater - Disturbance Limitations:**

Development on hillsides shall comply with the following requirements regarding disturbance limitations, development location, development design, construction techniques and landscaping.

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

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

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

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

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

B. Development Location:

- i) Structures and improvements shall be clustered to retain as much open space as possible and the natural topographic character of the slope; and
- ii) Structures and improvements shall conform to the natural contour of the slope, foundations must be tiered to generally conform to the existing topography of the site; and
- iii) Structures and improvements shall be located to preserve the most sensitive portion of the site and its natural landforms and vegetation.

C. Development Design:

- i) The footprint of buildings and other disturbed areas shall be minimized. The least number of buildings is desirable in order to consolidate the development; and
- ii) Use of common access drives and utility corridors is required where feasible; and
- iii) Impervious lot coverage shall be minimized. With the exception of detached single family structures, under-structure parking and multi-level structures shall be incorporated where feasible; and
- iv) Roads, walkways and parking areas shall be designed to parallel the natural contours of the hillsides while maintaining consolidated areas of natural topography and vegetation. Access shall be located in the least sensitive area feasible; and
- v) Use of retaining walls which allow the maintenance of existing natural slope areas is preferred over graded artificial slopes.

D. Construction techniques:

- i) Use of foundation walls as retaining walls is preferable to rock or concrete walls built separately and away from the building. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation; and
- ii) Structures shall be tiered to conform to existing topography and to minimize topographic modification.

E. Excavation and Grading:

- i) All requirements of Chapter 70 of the Uniform Building Code (UBC) shall be satisfied. Requirements under Chapter 14.37 shall be consolidated with review requirements of Chapter 70 of the UBC to provide a coordinated review process.

F. Landscaping:

The disturbed area of a development site not used for buildings and other improvements shall be landscaped according to a landscape design which will achieve a minimum forty percent (40%) coverage by the canopy of trees and shrubs within ten (10) years to provide habitat desirable to native western Washington birds. The trees and shrubs shall be a mix of shade, flowering, and coniferous and broad-leaf evergreens that are either native to the Puget Sound region or are valuable to western Washington birds. The Department of Wildlife "Plants for Wildlife in Western Washington" shall be used as a general guide.

- i) Trees shall be the following size at time of planting and shall conform to the "American Standard for Nursery Stock"
 - a) Single-stem shade and flowering trees shall be a minimum one and one-half inch to two inch (1 1/2-2") caliper trunk as measured six inches (6") above the ground.
 - b) Multi-stem shade and flowering trees shall be a minimum height of eight feet (8') as measured from the ground level to the average uppermost point of growth of the plant.
 - c) Coniferous evergreen trees shall be a minimum height of six feet (6') as measured from the ground to the midpoint between the uppermost whorl and the tip of the leader. For species of trees without whorls, minimum height shall be measured to the uppermost side growth. The ratio of height to spread shall not be less than five (5) to three (3).
 - d) Broad-leaf evergreen trees shall be a minimum height of four feet (4') as measured from the ground level to where the main part of the plant ends, not to the tip of a thin shoot.
- ii. Shrubs shall be the following size at time of planting and shall conform to the "American Standard for Nursery Stock":

- a) Dwarf and semi-dwarf deciduous shrubs shall be a minimum height of two to two and one-half feet (2 - 2 1/2') above grade, and either a #3 container size for container grown plants, ten inch (10") diameter root ball for balled and burlapped plants, or eleven inch (11") root spread for bare root plants.
- b) Strong-growing deciduous shrubs shall be a minimum height of two to three feet (2 - 3") above grade, and either a #3 container size for container grown plants, ten inch (10") diameter root ball for balled and burlapped plants, or eleven inch (11") root spread for bare root plants.
- c) Coniferous and broad-leaf evergreen shrubs (Types 1, 2, and 3) shall be a minimum height of two to two and one-half feet (2 - 2 1/2') spread or height, and either a minimum #3 container size for container grown plants or twelve inch (12") diameter root ball for balled and burlapped plants.

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

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

14.37.190 Acting on the application - Special conditions.

1. The location of the outer extent of the geologically sensitive area with buffers pursuant to an approval shall be marked in the field by a qualified geotechnical engineer, and such field marking shall be approved by the City of Lacey prior to the commencement of approved activities. Such field markings shall be maintained throughout the duration of the approval.
2. The City of Lacey may attach such additional conditions as deemed necessary to assure protection of property or safety of its citizens, mitigation of

environmental impacts related to the geological sensitivity present at the site, and compliance with other purposes and requirements of this chapter.

14.37.200 Financial Security

1. The City of Lacey shall require the applicant of a development proposal to provide financial security acceptable to the City of Lacey in an amount of 150% of the estimated cost of improvements sufficient to fulfill the requirements of this Chapter and to secure compliance with conditions and limitations set forth in the approval. The amount and the conditions of the financial security shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such financial security, the City of Lacey may utilize the financial security to fulfill obligations of the approval and take any other steps necessary to gain compliance with approval conditions including instituting an appropriate action in a court of competent jurisdiction. The City of Lacey shall release the financial security upon determining that:
 - A. All activities, including any required mitigating conditions, have been completed in compliance with the terms and conditions of the approval and the requirements of this chapter;
 - B. Upon the posting by the applicant of financial security for maintenance of required improvements for two (2) years.

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

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

14.37.210 Application approval - Other laws and regulations. No approval granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 912 S1 Sec. 7.5(c), 1991)

14.37.220 Application approval - Suspension, revocation. In addition to other penalties provided for elsewhere, the City of Lacey may suspend or revoke an approval if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 912 S1 Sec. 7.5(d), 1991).

14.37.230 Application approval - Notice of action. The City of Lacey shall provide notice of its actions pursuant to the requirements of Chapter 16.84 LMC, the site plan review process, or other applicable review processes.

14.37.240 Appeals. Any decision of the City of Lacey in the administration of this chapter may be appealed to the city hearings examiner pursuant to the requirements of LMC Chapter 2.40. The hearings examiner shall give substantial weight to any discretionary decision of the City of Lacey rendered pursuant to this chapter. (Ord. 912 S1 Sec. 7.6, 1991)

14.37.250 Enforcement.

1. 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.
2. Enforcement actions shall include 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 geologically sensitive area which are inconsistent with this chapter or an applicable habitat or species protection program.
 - B. The City of Lacey may serve upon a person a cease and desist order if an activity being undertaken on sites with a geologically sensitive feature or required buffers is in violation of this chapter. Whenever any person violates this chapter or any permit issued to implement this chapter, the City of Lacey may issue an order reasonably appropriate

to cease such violation and to mitigate any environmental damage resulting therefrom.

- i) Content of order. The order shall set forth and contain:
 - a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and
 - b) 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;
 - c) 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;
 - d) 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 geologically sensitive area without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection B.2 of this section shall incur a penalty allowed per violation. In the case of a continuing violation, each violation and each day of activity without a required approval shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the superior court within the subject jurisdiction.

- 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 (30) days of receipt of the penalty to the City of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the City of Lacey by action of the city hearing examiner under the provision of LMC Chapter 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 in Section 2.24.250.
- 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 an approval. (Ord. 912 S1 Sec. 8.2, 1991).

14.37.260 Non-conforming activities. A non-exempt 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:

1. 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;
2. If a non-conforming activity is discontinued for twelve (12) consecutive months, any resumption of the activity shall conform to this chapter;
3. 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;
4. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as non-conforming activities. (Ord. 912 S1 Sec. 9, 1991).

14.37.270 Judicial Review

1. 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 14.24.250, have been exhausted; and
37.240,
 - 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.
2. 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 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. (Ord. 912 S1 Sec. 10, 1991)

14.37.280 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 become available. (Ord. 912 S1, Sec. 11, 1991).

14.37.290 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.

14.37.300 Assessment relief. The assessors of the Thurston County shall consider geologically sensitive area regulations in determining the fair market value of land. Any owner of an undeveloped area designated as geologically sensitive shall have that portion of land assessed consistent with applicable restrictions. Such landowner shall also be exempted from special assessments on the controlled area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains.

Section 12. Section 14.24.180 of the Lacey Municipal Code is hereby amended to read as follows:

14.24.180 Environmentally Sensitive Areas.

A. Those areas in the City of Lacey that are considered environmentally sensitive areas designated or described pursuant to Chapter 16.54 of the City Zoning Code and are further described or designated under Chapter 14.28, 14.34, 14.33, 14.36, 14.37 and maps contained in the City Environmental Protection and Resource Conservation Plan.

Pursuant to WAC 197-11-908(2) the following activities normally exempt under the categorical exemptions are hereby removed from categorical exemption status and are required to file an environmental checklist: WAC 197-11-800: (1), (2)(a) through (h), (3), (5), (6)(a), (14)(c), (24)(a) through (g), and (25)(d), (f), (h), (i).

B. The City shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

Section 13. Severability. If any section, paragraph, subsection, clause, phrase or other provision of this ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portions of this chapter and said portions shall be deemed valid as though individually enacted.

Section 14. 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 9th day of April, 1992.

CITY COUNCIL

By Gene Conquest Fiddell
Mayor

Attest:

Charlotte M. Taylor
City Clerk

Approved as to form:

[Signature]
City Attorney

Published: Sunday, April 12, 1992
- Summary -

SUMMARY FOR PUBLICATION
ORDINANCE 935
CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on April 9, 1992, Ordinance No. 935 entitled "AN ORDINANCE ENACTING THOSE ORDINANCE CHANGES CALLED FOR IN THE CITY'S ENVIRONMENTAL PROTECTION AND RESOURCE CONSERVATION PLAN ADOPTED BY THE CITY COUNCIL AND AMENDING THE LACEY MUNICIPAL CODE BY REPEALING SECTIONS 14.28.100, 14.28.300, 14.32.090 AND CHAPTER 16.54 THEREOF, ADDING NEW SECTIONS 14.28.065, 14.28.067, 14.28.100, 14.28.300, 14.32.090 AND 14.32.095 AND NEW CHAPTER 14.33, 14.36, 14.37 AND 16.54 AND AMENDING SECTIONS 14.28.030, 14.28.120, 14.28.140, 14.28.450 AND 14.24.180 ALL OF SAID CODE."

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

Section 1 repeals three existing sections of the Lacey Municipal Code.

Section 2 adds new code sections relating to penalties and procedures for violation of the tree and vegetation protection and preservation ordinance and setting requirements for foresters and contractors doing landclearing work in the City.

Sections 3 adds a new chapter, Chapter 16.54, to the Lacey Municipal Code relating to environmentally sensitive/critical areas.

Section 4 amends a definition within Section 14.28.030 of the City's wetlands ordinance relating to the definition of qualified professional or technical wetlands consultant or scientist.

Section 5 adds new sections to the wetlands ordinance of the City dealing with the listing of qualified professional or technical wetlands consultants or scientists, providing for the contracting with such qualified professional wetlands consultants or scientists, detailing and describing the City's wetlands/rating system and setting standards for the reduction of standard wetland buffer zone width.

Section 6 adds additional exemptions to Section 14.28.120 of the City's wetlands ordinance.

Section 7 adds exemptions to Section 14.28.140 of the City's wetlands ordinance.

Section 8 amends Section 14.28.450 of the City's wetlands ordinance as the same relates to acreage replacement ratio.

Section 9 adds Chapter 14.33 to the code relating to habitat conservation areas protection.

Section 10 adds Chapter 14.36 to the code relating to critical aquifer recharge areas protection.

Section 11 adds Chapter 14.37 to the code relating to geologically sensitive areas protection.

Section 12 amends Section 14.24.180 of the code specifying environmentally sensitive areas of the City.

Section 13 is a severability clause applying to the entire ordinance.

Section 14 adopts 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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Sunday

Charpette M. Taylor
City Clerk