



City of Lacey, Washington

Lacey Planning Commission Meeting Agenda

Refer to the bottom of the agenda for meeting information.

Wednesday, October 9, 2024

6:00 PM

Council Chambers and Online

1. Call to Order

2. Roll Call

3. Land Acknowledgment

We, the City of Lacey, are on the ancestral land of the Tribal People of the Treaty of Medicine Creek, including the Nisqually Indian Tribe and Squaxin Island Tribe. We acknowledge, and remember those Tribal People not recognized today who were absorbed or relocated into other tribes for survival. We recognize the ancestors and their descendants who are still here. We recognize and respect the Tribal People of the Treaty of Medicine Creek as the traditional stewards of this land since time immemorial and their role today in taking care of these lands in perpetuity. We recognize and have the responsibility to call attention to the histories of dispossession, forced removal, and abridged treaty rights that allowed our nation, state, and city to develop as they have today. We recommend that community members read the Medicine Creek Treaty of 1854.

4. Approval of Agenda and Consent Agenda Items

A. Approval of Agenda

B. Approval of September 25, 2024 meeting minutes

1. September 25, 2024 Minutes

5. Public Comment

Refer to the bottom of the agenda for instructions on how to provide public comment.

6. Commission Members' Reports

7. Department Report

8. Public Hearing

9. New Business

- A. **24-OSB 5290 Permit Processing Requirements: Sarah Schelling, Current Planning and Economic Development Manager.** Staff will brief the Planning Commission on required amendments to comply with Senate Bill 5290 passed by the legislature in 2024 related to permit procedures and timelines. The draft amendments will be scheduled for a public hearing at a future meeting.

1. 24-OSB 5290 Attachments

10. Old Business

- A. **Critical Areas Ordinance Update: Hans Shepherd, Senior Planner.** Staff will provide a briefing on the update to the Critical Areas Ordinance (CAO) required as part of the Comprehensive Plan Update to incorporate legislative changes and best available science. The updated CAO will be scheduled for a public hearing at a future meeting.

1. CAO Attachments

- B. **Comprehensive Plan Update Outreach: Hans Shepherd, Senior Planner.** The Planning Commission will be briefed on public outreach associated with the Comprehensive Plan Update including recent public events and survey.

11. Communications and Announcements

- A. Planning Commission Schedule

12. Next Meeting - October 23, 2024

13. Adjournment

Attendance and Public Comment

Attend Remote or In-Person

The public may attend the meeting in-person, or you may view or listen to the meeting using one of the following platforms:

In-Person Council Chambers at Lacey City Hall
420 College Street SE, Lacey, WA 98503

Zoom: https://us02web.zoom.us/webinar/register/WN_0jm8CKSwTDu2E1xgu3XEnQ

Website: <https://cityoflacey.org/government/public-meetings/>

Facebook: <https://www.facebook.com/cityoflacey>

YouTube: <https://www.youtube.com/watch?v=Hi66paQdkBY>

Cable: Channel 77 with your local cable provider

Phone: (888) 788-0099 or (877) 853-5247 (Webinar ID 898 8840 7543)

Verbal Public Comment

Those wishing to provide verbal public comment may do so in-person or by Zoom:



In-Person: Use the sign-up sheet located at the meeting location.

Zoom: Preregister using the following Zoom link no later than two hours prior to the meeting:

https://us02web.zoom.us/webinar/register/WN_0jm8CKSwTDu2E1xgu3XEnQ

Instructions and access details will be provided once registration is complete.



MINUTES

Lacey Planning Commission Meeting
Wednesday, September 25, 2024 – 6:00 p.m.
Lacey City Hall Council Chambers, 420 College St SE – and via Zoom

The meeting was called to order at 6:00 p.m. by Jeff Gadman

Planning Commission members present: Jeff Gadman, Gail Madden, Kyrian MacMichael, Judith Doyle, Daphne Retzlaff, Tonya Moore, Spencer Zeman & Elliot Kirk. Staff present: Ryan Andrews, Tom Stiles, Joey Etter, and Erin Skelley.

Jeff noted a quorum present. Kyrian read the Land Acknowledgement.

Gail Madden made a motion, seconded by Daphne Retzlaff to approve the agenda for tonight's meeting. Kyrian MacMichael made a motion, seconded by Tonya Moore to approve September 11th minutes. All were in favor, both motions carried.

- 1) **Public Comments:** None
- 2) **Commission Members Reports:** Jeff Gadman debriefed the Planning Commission on the changes in format to the meetings going forward. Gail Madden mentioned she watched the City Council meeting and stated the Deputy Mayor had great comments concerning DEI. Daphne Retzlaff briefed the Commission her experience so far with the Ad Hoc Committee for Parks funding. While she is a non-voting member, she stated that she feels incredibly privileged to be involved.
- 3) **Department Report:** Ryan Andrews notified the Planning Commission the next Comprehensive Plan outreach event will be on October 5th at Huntamer Park during Kid's Day.
- 4) **New Business:**
 - a) **Public Works Standards Update: Tom Stiles, Development Review Engineer Manager.** The Planning Commission received a brief and reviewed the draft updates to Chapter 3 (Public Works Considerations) of the Public Works Standards. This was only a brief and no formal action was taken. Additional chapters will be brought to the Planning Commission for review at future dates.
 - b) **HB 1220 Housing Need Allocations: Ryan Andrews, Community Planning Manager.** The Planning Commission was briefed on the results of the regional process to develop a land capacity analysis associated with the housing allocations required under the Growth Management Act by HB 1220. The housing allocations and land capacity analysis will be included in the 2025 update to the Comprehensive Plan.
- 5) **Old Business:** None
- 6) **Communications and Announcements:** Ryan Andrews provided the Planning Commission schedule.
- 7) **Next Meeting:** October 9, 2024
- 8) **Adjournment:** 7:34 PM

To hear the full discussion of a specific topic, or the complete meeting, watch the recorded video available on YouTube: <https://www.youtube.com/watch?v=1EZWFz7GNI4>



PLANNING COMMISSION STAFF REPORT

October 9, 2024

SUBJECT: City of Lacey Development Guidelines and Public Works Standards – Chapter 1 Planning Issues

RECOMMENDATION: The Planning Commission will be briefed on required amendments to Lacey's application review process and procedures, specifically, changes to Chapter 1 of the Development Guidelines and Public Works Standards as a result of Senate Bill 5290 passed by the state legislature in 2024. The amendments will be scheduled for a public hearing in November.

TO: Lacey Planning Commission

STAFF CONTACTS: Vanessa Dolbee, Director of Community and Economic Development 
Sarah Schelling, Current Planning & Economic Development Manager 

ATTACHMENT(S): Proposed Chapter 1 Revisions

**PRIOR COUNCIL/
COMMISSION/**

COMMITTEE REVIEW: City Council briefing 8/20/24

BACKGROUND:

During the 2023 legislative session, the Washington State legislature passed several bills that introduced new requirements, or amended existing rules, for local governments planning under the State Growth Management Act especially as it relates to local project review. Among those bills was Senate Bill (SB) 5290 Local Project Review. SB 5290 amends the Local Project Review Act, Chapter 36.70B RCW, the intent of which is to increase timeliness and predictability of local project review. The bill includes updated permit review timelines, clarifications regarding the determination of completeness process, updated annual reporting requirements related to permit issuance, and included new provisions requiring partial permit fee refunds for failure to timely process permit applications, among other things.

In order to comply with the legislation, the City of Lacey will need to update ordinances and application procedural requirements to remain consistent with state law. This effort will include updating the Development Guidelines and Public Works Standards manual, specifically chapter 1, potentially creating a new ordinance that codifies permit review timelines and procedures. Although these updates will follow the regular legislative review process there is little flexibility in terms of how the new law is

applied. The state has mandated changes to codes and ordinances and the updates included in the draft chapter are designed to implement the new mandates.

Some of the notable changes required by SB 5290 that will be reflected in amendments to Chapter 1 of the Development Guidelines and Public Works Standards Manual include the following:

- SB 5290 removed the blanket 120-day time limit for project review. Currently, under the Growth Management Act, jurisdictions have 120-days to review and issue a notice of final decision for all permit application types, regardless of the level of review required. Under current law there is no penalty for exceeding this timeline. SB 5290 changes this; Under 5290 review periods are established based on notice requirements of the various levels of permit review.
- For projects that do not require public notice under [RCW 36.70B.110](#), the final decision must be issued within 65 days of the determination of completeness under [RCW 36.70B.070](#).
 - ***In Lacey this may include building permits, public works civil construction permits, land use applications like boundary line adjustments.***
- For projects that do require public notice under [RCW 36.70B.110](#), the final decision must be issued within 100 days of the determination of completeness under [RCW 36.70B.070](#).
 - ***In Lacey this includes most land use applications; site plan review, binding site plans, and short subdivisions for example.***
- For project permits which require both notice under [RCW 36.70B.110](#) and a public hearing, the final decision must be issued within 170 days of the determination of completeness under [RCW 36.70B.070](#).
 - ***In Lacey this includes conditional use permits and wetland development permits for example.***

It is worth noting that there is ambiguity in SB5290 related to timeline requirements for building permits and public works construction permits. Additional research is underway to determine whether the law applies to these types of permits. However, until additional guidance is provided by the State, it is advisable that the city apply the timelines prescribed by the law to these permits in order to avoid monetary penalties. As noted, SB 5290 allows project applicants to seek permit fee reimbursements if timelines noted above are not met. However, the bill also provides a means for jurisdictions to protect themselves financially by adopting additional measures to improve permit timeliness; adopting a program to allow for third party review of project components for example. Staff will be researching and potentially proposing measures to Council for adoption by resolution that would seek to limit financial impacts of SB 5290 in the unlikely event staff is unable to meet the new permit timelines.

The changes required by the new laws are intended to streamline permitting processes and provide timely and predictable service to citizens doing business with the City of Lacey and are required to be in place by January 1, 2025. The draft before the Planning Commission includes the required amendments based on SB 5290. At this time, staff is requesting the Planning Commission review amendments to Chapter 1 while it is part of the Development Guidelines and Public Works Standards manual, ultimately this chapter will be removed from the Guidelines and codified as part of the Lacey Municipal Code. Staff anticipates moving the chapter to the LMC in 2025 when there is opportunity to address other procedural and process improvements that may be included within the chapter. In order to meet the deadline of January 1, 2025, it is necessary to complete just the SB 5290 requirements at this time. An ordinance related to this chapter will be back before the Planning Commission in 2025.

RECOMMENDATIONS

Review the proposed changes to Chapter 1 of the Development Guidelines and Public Works Standards and discuss the proposed revisions to Chapter 1 at the October 9th 2024 Planning Commission meeting. Staff requests the Planning Commission schedule the item for a public hearing at the November 13, 2024 Planning Commission meeting.

CHAPTER 1

1.000 Development Permit Procedures and Administration

1.010 Purpose and Applicability

- A. The purpose of this chapter of the City of Lacey Development Guidelines and Public Works Standards is to enact the processes and timelines for local land development permitting. The objectives of this chapter are to encourage the preparation of appropriate information and/or materials early in the permitting process, to process permit applications in a timely manner, to provide the general public with an adequate opportunity for review and comment, and to provide the development community with a standardized process and predictability.
- B. This Chapter shall apply to permit applications for land development under the following Titles of the Lacey Municipal Code:

Title 14 -- Buildings and Construction
Title 15 -- Subdivisions
Title 16 -- Zoning
- C. Other laws, ordinances, regulations and plans have a direct impact on the development of land. These include, but are not limited to, the City of Lacey Development Guidelines and Public Works Standards, City of Lacey Environmental Protection and Resource Conservation Plan, City of Lacey Transportation Plan, Shoreline Master Program for ~~Thurston Region~~the City of Lacey, City of Lacey ~~and Thurston County Land Use Plan for the Lacey Urban Growth Area~~Comprehensive Plan, and the laws, ordinances, regulations and plans of federal, state and local agencies.

1.020 Right to Enter

In the performance of their functions and duties, duly authorized members of a committee, commission, or review staff of the City of Lacey may enter upon any land and make examinations and surveys. Provided such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof.

1.030 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Title:

- A. ~~“Application” means a request for any land use permit required from the City of Lacey for proposed development or action, including without limitation: building permits, conditional use permits, shoreline substantial development permits, binding site plans, planned developments, subdivisions, short subdivisions, variances, site plan reviews, permits or approvals required by critical area ordinances, and site specific rezones.~~
- B. “Closed record appeal” means an appeal on the record with no new evidence or information allowed to be submitted and only appeal argument allowed.
- C. “Day” refers to calendar day including weekends and City-recognized holidays; “working day” refers to a day that the City of Lacey conducts official business from Monday through Friday excluding City-recognized holidays. Should a statutory deadline end on a weekend or City-recognized holiday, the deadline shall be extended to 5:00 p.m. the next working day.
- D. “Department” means City of Lacey Community and Economic Development Department.
- E. “Full administrative review” is used when the proposed development is subject to objective and subjective standards requiring the exercise of limited discretion about non-technical issues and about which there may be limited public interest. The proposed development may or may not be subject to SEPA review. Included under this type of review are binding site plans, short subdivisions, site plan review applications, certain wetland development permits, as prescribed in LMC 14.28.120, land clearing permits and other similar applications.
- F. “Limited administrative review” is used when the proposed development is subject to clear, objective and non-discretionary standards requiring the exercise of professional judgment about technical issues and the proposed development is exempt from the State Environmental Policy Act (SEPA). Included under this type of review are interpretation of codes and ordinances, single family building permits, design review, exempt tree removal requests, accessory dwelling units and other similar applications.

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- G. "Legislative review" is used when the proposed development involves the creation, implementation or amendment of city policy or law. In contrast to the other procedure types, legislative review usually applies to a relatively large geographic area containing several property owners. Included under this type of review are comprehensive plan, sub-area plan, zoning and/or development code review, amendments and updates, site-specific zoning district reclassifications and other similar applications.
- H. "Open record hearing," means a hearing that creates the record through testimony and submission of evidence and information. An open record hearing may be held on an appeal if no open record hearing has previously been held on the application.
- I. "Party of record" means an applicant, individual, agency or department who commented in writing on the project during the public comment period for the Notice of Application, Environmental Review or provided testimony at the Public Hearing.
- J. "Permit Assistance Staff" means the staff designated by the City to handle all permit assistance questions and duties. The City has designated the Permit Technician, the Planners within the Community and Economic Development Department and the Public Works Development Review Staff as the permit assistance staff.
- K. "Project permit application" means any land use or environmental permit or license required by the department for a project action, including but not limited to subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones which do not require a comprehensive plan amendment, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations.
- L. "Public meeting" means an informal meeting, workshop, or other public gathering to obtain comments from the public or other agencies on an application. A public meeting does not constitute an open record hearing.
- ML. "Quasi-judicial review" is used when the development or use proposed under the application requires a public hearing before a

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hearing examiner. Included within this type of review shall be subdivisions, conditional use permits, planned residential developments, variances, certain wetland development permits, as prescribed in LMC14.28.110, shoreline substantial development permits administrative appeals, master plans and other similar applications.

1A APPLICATION FORMS

1A.010 Application Forms

- A. An application shall be made using the appropriate form adopted by the department.
- B. Each adopted application form shall, at a minimum, include the following information:
 - 1. The application form be filled out legibly, in blue or black ink, either hand printed or typewritten.
 - 2. The name, mailing address and telephone number of each applicant.
 - 3. The name, mailing address and telephone number of the applicant's representative, if any.
 - 4. The name, mailing address and telephone number of each owner of the subject property, if different than the applicant(s).
 - 5. The name, mailing address, telephone number and contractor registration number of the applicant's prime contractor and City of Lacey business registration number, if applicable.
 - 6. The parcel number, legal description and assessor's parcel map for each parcel which is the subject of the proposed development.
 - 7. The signature of each applicant or the applicant's authorized representative and each property owner if different than the applicant(s).
 - 8. Any other information, documents or materials as determined by the department, which may be required in the body of the form or by an attachment to the form.
 - 9. Mailing addresses for parcels within a minimum of 300-feet for projects requiring a public hearing. Village Center projects require addresses for parcels within a minimum of 1,000-feet of the subject property. The mailing list shall be

prepared by a Title Company and in the form of labels and a paper copy. The addresses shall be the actual mailing address for the parcel.

- C. Each application form shall require designation of a single person or entity to receive determinations and notices required under this Chapter, the Lacey Municipal Code or by RCW Chapter 36.70B. Where a determination or notice to the “applicant” is required by this Chapter, Lacey Municipal Code or RCW Chapter 36.70B, “applicant” shall mean the person or entity so designated.
- D. Each application shall contain the following statements: An application shall become vested on the date a determination of completeness is made pursuant to Section 1B.050 of the City of Lacey Development Guidelines and Public Works Standards. Thereafter, the application shall be reviewed under the codes, regulations and other laws in effect on the date of vesting. In the event an applicant substantially changes the proposed development after a determination of completeness, as determined by the department the application shall not be considered vested until a new determination of completeness on the changes is made pursuant to Section 1B.050 of the City of Lacey Development Guidelines and Public Works Standards. In the performance of their functions and duties, authorized members of a committee, commission or review staff of the City of Lacey may enter upon any land and make examinations as part of the review of a land use application.

1B Application Process

1B.010 Application Process

The application process shall consist of the following components:

- Pre-submission Meetings
- Application Submittal Review
- Determination of Completeness
- Notice of Application
- Comment Period
- Application Review
- Public Hearing (if applicable)
- Public Meeting (if applicable)
- Notice of Final Decision

1B.020 Pre-submission Meetings

- A. All prospective applicants shall participate in a Pre-submission Meeting. The department may waive the requirement of a Pre-submission Meeting where proposed development is subject to Limited Administrative Review.
- B. The purpose of the Pre-submission Meeting is to provide the applicant with the best available information regarding the development proposal and application processing requirements, and to assure the availability of complete and accurate information necessary for review prior to the applicant's expenditure of application fees and the scheduling of the application review process.
- C. The Pre-submission Meeting provides an opportunity for the applicant, staff and other agencies to informally discuss and review the proposed development, the application and permit requirements, fees, the review process and schedule, and applicable development standards, plans, policies, and laws.
- D. The Pre-submission Meeting shall take place virtually via electronic platform, or in person at the department's office~~at the department's office~~, unless the department and the applicant agree upon another location. The length of the Pre-submission Meeting shall be determined by the complexity of the development proposed by the applicant.
- E. An applicant may request additional Pre-submission Meetings if the proposed development changes based on information received at the previous meeting. The additional meetings shall be subject to the same procedures as the initial Pre-submission Meeting.
- F. The location of electronic application forms shall be provided to the applicant ~~Application forms shall be made available to the applicant~~ following a Pre-submission Meeting.

1B.030 Consolidated Application Process

When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time.

- A. Applications for proposed development and planned actions subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed concurrently and in accordance with state and local laws, regulations and ordinances.
- B. When more than one application is submitted under a consolidated review and the applications are subject to different types of review procedures, all of the applications for the proposed development shall be subject to the most stringent level of review procedure which applies to any of the applications.
- C. If an applicant elects a consolidated application process, the Determination of Completeness, the Notice of Application, and the Notice of Final Decision must include all applications being reviewed.

1B.040 Application Submittal Review Appointment

- A. A review of the submitted application shall be conducted at a scheduled pre-application submittal meeting with department staff to determine if the application is complete. The application submittal review shall determine if adequate information is provided in or with the application in order to begin processing the application and all required information and materials have been supplied in sufficient detail to begin the application review process. All information and materials required by the application form and from the Pre-submission Meeting must be submitted. All studies supporting the application or addressing projected impacts of the proposed development must be submitted.
- B. The purpose of the Application Submittal Review is to ensure adequate information is contained in the application materials to demonstrate consistency with applicable comprehensive plans, development regulations and other applicable city codes. Department staff will coordinate the involvement of agencies responsible for the review of setbacks, landscaping, parking, drainage, access, roads, traffic, signage, utilities and any other applicable requirements.

1B.050 Determination of Completeness

- A. Within twenty-eight (28) days after receiving an application, the department shall ~~complete the Application Submittal Review and~~ provide the applicant a written determination that the application

is complete or incomplete. . The number of days shall be calculated by counting every calendar day

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- B. An application shall be determined complete only when it contains all of the procedural submission requirements of the department, as outlined on the project permit application. Additional information or studies may be required or project modifications may be undertaken subsequent to the procedural review of the application. At a minimum all of the following information and materials shall be included:

1. A fully completed and signed application.
2. Applicable review fees as prescribed by the City of Lacey fee schedule.
3. All information and materials described on the applicable application form.
4. A fully completed and signed environmental checklist for projects subject to review under the State Environmental Policy Act.
5. A scaleable plot plan prepared by a licensed engineer, surveyor, architect, or qualified professional ~~or certified planner~~, disclosing all existing and proposed structures and features applicable to the desired development; for example, parking, landscaping, preliminary drainage plans with supporting calculations, signage, setbacks, etc.
6. Any additional information and materials identified at the Pre-submission Meeting or required by applicable development standards, plans, policies or any other federal, state or local laws.
7. Any supplemental information or special studies identified by the department.
8. If the procedural submission requirements, as outlined on the project permit application have been provided the need for additional information or studies may not preclude a completeness determination.
9. The department may be able to waive certain submittal requirements based on site and application specific factors.

- C. For applications determined to be incomplete, the department shall notify the applicant in writing that the procedural submission requirements have not been met and shall outline what is necessary to make the application procedurally complete. identify, in writing, the specific requirements, information or materials necessary to constitute a complete application. Within fourteen (14) days after its receipt of the requested requirements, information or materials, the department shall issue a Determination of Completeness or identify the additional requirements, information, or materials still necessary for completeness.
- D. A Determination of Completeness shall identify, to the extent known, other local, state or federal agencies that may have jurisdiction over some aspect of the application.
- E. A Determination of Completeness shall not preclude the department from requesting additional information or studies, if additional information is required or a change in the proposed development occurs.
- F. An application shall be deemed procedurally complete on the 29th day after receiving a project permit application if a determination is not provided in writing that the application is procedurally incomplete. When the department does not provide a written determination they may still seek additional information or studies to enable review of the application.
- G. The notice of application shall be provided within 14 days after the determination of completeness pursuant to RCW 36.70B.110.

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1B.060 Application Vesting

An application shall become vested on the date a determination of completeness is made under this Title. Thereafter, the application shall be reviewed under the codes, regulations and other laws in effect on the date of vesting. In the event an applicant substantially changes the proposed development after a determination of completeness, as determined by the department, the application shall not be considered vested until a new determination of completeness on the changes is made under this Title.

1B.070 Notice of Application

- A. Within fourteen days after issuing a determination of completeness, the department shall issue a notice of application. However, a notice of application shall not be required for project permits that are categorically exempt under chapter 43.21 RCW, unless an open record public hearing is required or an open record appeal hearing is allowed on the project permit decision. The notice shall include, but not be limited to the following:
1. The date of application, the date of the Determination of Completeness, and the date of the Notice of Application.
 2. A description of the proposed project action, a list of permits required for the application, and if applicable a list of any studies requested.
 3. The identification of other required permits not included in the application, to the extent known by the department.
 4. The identification of existing environmental documents which evaluate the proposed development and the location where the application and any studies can be reviewed.
 5. A statement of the public comment period, which shall be fourteen days following the date of the Notice of Application. The notice shall state the date which the comment period begins and the date and time on which the comment period ends, and a statement of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and receive a statement of any appeal rights.
 6. When applicable, the date, time, location and type of hearing, if scheduled at the date of the Notice of Application.
 7. A statement of the preliminary determination, if one has been made at the time of Notice of Application, of those development regulations that will be used for project mitigation and of consistency with the type of land use of the proposed site, the density and intensity of proposed development, infrastructure necessary to serve the development, and the character of the development.

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8. Any other information determined by the department to be appropriate.

B. Informing the Public

1. No notice shall be required for limited administrative review.
 2. Notice shall be provided for land use applications subject to the full administrative review procedures outlined in Section 1C.030 in the following manner, except for short subdivision applications, which shall be subject to the notification requirements of subsection (3) below:
 - a. Publishing the Notice of Application. The notice of application shall be published in the official newspaper of the City of Lacey and include at a minimum the following information: the project location, description, type of permit required, comment period dates and location where the complete application may be reviewed.
 3. Notice shall be provided for land use applications subject to the quasi-judicial or legislative review procedures outlined in Sections 1C.050 and 1C.060 and short subdivisions in the following manner:
 - a. Posting the Notice of Application. The Notice of Application shall be posted on the subject property for the duration of the public comment period and at a minimum include the following information: the project location, description, type of permit required, comment period dates and location where the complete application may be reviewed. The Notice of Application shall be posted in a manner that is highly visible to the general public from the public right-of-way adjacent to the site.
 - b. Publishing a Notice of Application. The notice of application shall be published in the official newspaper of the City of Lacey, and include at a minimum the following information: the project location, description, type of permit required, comment period dates and location where the complete application may be reviewed.
- C. The Notice of Application is not a substitute for any required notice of a public hearing.**

1C Application Review

1C.010 Application Review Criteria

Review of an application and proposed development shall be governed by and be consistent with the fundamental land use planning policies and decisions which have been made in adopted comprehensive plans and development regulations. The review process shall consider the type of land use permitted at the proposed site, the density and intensity of the proposed development, the infrastructure available and needed to serve the development, the character of the development and its consistency with development regulations. In the absence of applicable development regulations, the applicable development criteria in the comprehensive plan or sub-area plan adopted under RCW 36.70A shall be determinative.

1C.020 Application Review Classification

- A. ~~Following the issuance of a Determination of Completeness and a Notice of Application, a~~An application shall be reviewed at one of four levels: Limited Administrative Review, Full Administrative Review, Quasi-Judicial Review, or Legislative Review.
- B. If this Chapter or the Lacey Municipal Code provides that a proposed development is subject to a specific type of review, or a different review procedure is required by law, then the application for such development shall be processed and reviewed accordingly. If this Title does not provide for a specific type of review and/or if a different review procedure is not required by law, then the department shall determine the type of review to be used for the type and intensity of the proposed development.
- C. Any public meeting or required open hearing may be combined by the department with any public meeting or open record hearing that may be held on the proposed development by another local, state, federal or other agency. Hearings shall be combined if requested by the applicant. However, joint hearings must be held within the City of Lacey and within the time limits of this title and RCW Chapter 36.70B.

1C.030 Limited Administrative Review of Applications

The department may approve, approve with conditions, or deny applications subject to administrative review after the date the application is accepted as complete, without public notice. . A final

decision on the application shall be issued within 65 days of determination of completeness

1C.040 Full Administrative Review of Applications

The review procedure under Full Administrative Review shall be as follows:

- A. If the proposed development is subject to the State Environmental Policy Act (SEPA), the threshold determination shall be made after the closing of the public comment period associated with the Notice of Application.
- B. The community and economic development department shall distribute copies of the complete application to agencies and departments affected by the proposal or with review authority. The community and economic development department shall set a date for return of findings and recommendations from each commenting agency or department.
- C. Upon the completion of the application comment period and the issuance of an environmental determination, if applicable, the department may approve, approve with conditions, or deny the application. The department shall ~~mail-transmit~~ the notice of decision to the applicant and all parties of record within 100 days of the determination of completeness. The decision shall include:
 1. A statement of the applicable criteria and standards in the development codes and other applicable law.
 2. A statement of the findings of the review authority, stating the application's compliance or non-compliance with applicable criteria, and assurance of compliance with applicable standards.
 3. The decision to approve or deny the application and, if approved, conditions of approval necessary to ensure the proposed development will comply with all applicable law.
 4. A statement that the decision is final unless appealed as provided in Section 1D "Appeals" to the City of Lacey Hearing Examiner within fourteen (14) calendar days after the date the notice of decision is mailed. The appeal closing date shall be listed. The

statement shall describe how a party may appeal the decision, including applicable fees and the elements of a notice of appeal.

5. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list the place, days and times when the case file is available for review and the name and telephone number of the department's representative to contact to arrange for a review.

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1C.050 Quasi-Judicial Review of Applications

The review procedure under Quasi-Judicial Review shall be as follows:

- A. If the proposed development is subject to the State Environmental Policy Act (SEPA), the threshold determination shall be made after the closing of the public comment period associated with the Notice of Application.
- B. The community and economic development department shall distribute copies of the complete application to agencies and departments affected by the proposal or with review authority. The community and economic development department shall set a date for return of findings and recommendations from each commenting agency or department.
- C. Upon the completion of the application comment period, the issuance of an environmental determination and of the environmental appeal period, the department shall schedule a hearing with the City of Lacey Hearing Examiner, when applicable.
- D. At least ten (10) days before the date of a public hearing the department shall issue public notice of the date, time, location and purpose of the hearing by posting the subject site and the nearest intersection, posting at city hall, publishing notice in the official city newspaper and mailing notice to property owners of record located within a minimum of 300 feet of the subject property¹. If the applicant owns adjoining land, the distance of notification shall be measured from outside of the applicant's ownership. Failure to receive a public hearing notice shall not invalidate the hearing.
- E. At least ten (10) days before the date of the public hearing, the department shall issue a written staff report, integrating the SEPA review and threshold determination and recommendation regarding the application(s), shall make available to the public a copy of the

staff report for review and inspection, and shall ~~mail-provide~~ a copy of the staff report and recommendation to the applicant or the applicant's designated representative. The department shall make available a copy of the staff report, subject to payment of a reasonable charge, to other parties who request it.

- F. Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing examiner. A public hearing shall be recorded on either audio or audio-visual tape. If for any reason the hearing cannot be completed on the date set in the public notice, it may be continued during the public hearing to a specified date, time and location without further public notice required.
- G. The hearings examiner may approve, approve with conditions or deny the application and shall provide written notice of its decision to the council, department, applicant, the applicant's designated representative, the property owner(s), and any other parties of record within fourteen (14) days of the close of the public hearing. The final decision of the hearings examiner shall include:
1. A statement of the applicable criteria, standards and law;
 2. A statement of the findings the hearing examiner made showing the proposal does or does not comply with applicable approval criteria and assurance of compliance with applicable standards;
 3. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list the place, days and times when the case file is available for review and the name and telephone number of the department representative to contact to arrange for a review.
 4. A statement that the decision is final unless appealed, pursuant to Section 1D "Appeals", to Superior Court within twenty-one days of the issuance of the decision. The appeal closing date shall be listed.
 5. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for inspection. The notice shall state the place, days and times when the case file is available for inspection and the name and telephone number of the department's representative to contact to arrange inspection.

1C.060 Legislative Review of Applications

Legislative Review requires at least one public hearing before the City of Lacey Planning Commission and one public meeting before the Lacey City Council. Legislative Review shall be conducted as follows:

- A. If the proposed development is subject to the State Environmental Policy Act (SEPA), the threshold determination shall be made after the closing of the public comment period.
- B. Upon the completion of the comment period required by SEPA and the issuance of an environmental determination if applicable, the department shall schedule an open record hearing with the City of Lacey Planning Commission.
- C. At least ten (10) days before the date of the Planning Commission open record hearing the department shall issue public notice of the date, time, location and purpose of the hearing by posting at city hall and publishing notice in the official city newspaper. The notice shall include notice of the SEPA threshold determination issued by the department. If the project is site specific, in addition to the abovementioned notifications, the subject site shall be posted and notice shall be mailed to property owners of record located within a minimum of 300-feet of the subject site.
- D. At least ten (10) days prior to the open record hearing, the department shall issue a written staff report regarding the application(s), shall make available to the public a copy of the staff report for review and shall mail a copy of the staff report and recommendation to the applicant or the applicant's designated representative, and Planning Commission members. The department shall make available a copy of the staff report, subject to payment of a reasonable charge, to other parties who request it.
- E. Following the public hearing, in accordance with RCW 36.70A.035, the recommendation of the Planning Commission shall be forwarded to the City Council. Upon receiving the recommendation from the Planning Commission, the City Council shall set a public meeting to consider the proposal, at which the Council may accept, modify or reject the recommendation.
- F. The City Council may accept, modify, deny or remand the proposal back to the Planning Commission for further review. The approval of comprehensive plan amendments and zoning changes by the City Council shall be adopted by ordinance.

G. The final decision of the City Council shall be in writing and include:

1. A statement of the applicable criteria and law;
2. A statement of the findings indicating the application's or proposed development's compliance or non-compliance with each applicable approval criterion;
3. If denied, a statement that the decision is final unless appealed, pursuant to Section 1D "Appeals", to Superior Court within twenty-one (21) days of the issuance of the decision, as determined pursuant to RCW 36.70A.280. The appeal closing date shall be listed.
4. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for inspection. The notice shall state the place, days and times when the case file is available for inspection and the name and telephone number of the department representative to contact to arrange inspection.

1C.070 Notice of Final Decision*

A. A Notice of Final Decision on an application shall be issued ~~within by the Department in the following time periods based on notice requirements of the application: one hundred twenty (120) days after the date a Determination of Completeness is made. In determining the number of days that have elapsed, the following periods shall be excluded:~~

- ~~1. For project permits that do not require public notice, those projects subject to limited administrative review, a final decision shall be issued within 65 days of the determination of completeness.~~
- ~~2. For project permits requiring a public notice, project subject to full administrative review, a final decision shall be issued within 100 days of the determination of completeness.~~
- ~~3. For project permits requiring public notice AND a public hearing, quasi-judicial projects, a final decision shall be issued within 170 days of the determination of completeness.~~

~~B. The number of days an application is in review with the City shall be calculated from the day completeness is determined, to the date the final decision is issued. The number of days shall be~~

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calculated by counting every calendar day. The following time periods shall be excluded from the number of days:

1. 1. Any period following the day the City has notified the applicant, in writing, that additional information is required to further process the application and the day when the responsive information is resubmitted by the applicant;
2. Any period after the applicant has informed the City, in writing, that they would like to temporarily suspend review of the application until the time the applicant notifies the department, in writing, that they would like to resume the application
3. Any time period after an administrative appeal is filed until the administrative appeal is resolved and any additional time period provided by the administrative appeal has expired
4. The time periods to process a permit shall start over if an applicant proposes a change in use that adds or removes commercial or residential elements from the original application that would make the application fail to meet the determination of procedural completeness for the new use, as required under RCW 36.70B.070
5. If, at any time, the applicant informs the department, in writing, that they would like to temporarily suspend the review of the project for more than 60 days, or if the applicant is not responsive for more than 60 consecutive days after the City has notified the applicant that additional information is required to further process the application, an additional 30 days may be added to the time periods for action to issue a final decision for each type of project permit. Written notice to the applicant that additional information is required to process the application must include a notice that nonresponsiveness for 60 consecutive days may result in 30 days being added to the time for review. "nonresponsiveness" means that an applicant is not making demonstrable progress on providing additional requested information, or that there is no ongoing communication from the applicant on the applicants ability or willingness to provide the additional information.
- C. Annual amendments to the comprehensive plan are not subject to the timeline requirements of this section.
- D. Nothing in this section prohibits the city from extending the deadline for issuing a decision for a specific project permit application for any reasonable period of time mutually agreed upon by the applicant and the city.
- E. A notice of final decision does not apply to projects subject to legislative review.

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~~1. Any period during which the applicant has been requested by the department to correct plans, perform required studies, or provide additional information or materials. The period shall be calculated starting from the date the department issues the request to the applicant, to the earlier of either the date the department determines whether the additional information satisfies its request of fourteen (14) days after the date the information has been received by the department. If the City determines the information submitted by the applicant under this subsection is insufficient, it shall again notify the applicant of deficiencies and the procedures under this subsection shall apply to the request for information;~~

~~* Notice of Final Decision does not apply to Legislative Review of applications.~~

~~2. Any period during which an environmental impact statement (EIS) is being prepared following a determination of significance pursuant to RCW 43.21C.~~

~~3. Any period for administrative appeals, which shall not exceed ninety (90) days for open record appeals and sixty (60) days for closed record appeals.~~

~~4. Any extension of time mutually agreed upon by the applicant and the department.~~

~~B. The time limit by which the City must issue a Notice of Final Decision does not apply if an application:~~

~~1. Requires an amendment to a comprehensive plan or development regulation.~~

~~2. Is substantially revised by the applicant after a Determination of Completeness has been issued, in which case the time period shall start from the date on which the revised project application is determined to be complete.~~

~~C. If the City is unable to issue its final decision within the time limits provided for in this section, it shall provide written notice of this fact to the applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the Notice of Final Decision.~~

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~~D. In accordance with state law, the City is not liable for damages which may result from the failure to issue a timely Notice of Final Decision.~~

1D Appeals

1D.010 Appeals

- A. An administrative appeal of a decision of the department after Limited and Full Administrative Review shall be filed with the department by the applicant or any party of record pursuant to Section 1D.030. The Hearing Examiner at a public hearing shall hear the administrative appeal as an open record appeal.
- B. An appeal of a final decision by the Hearing Examiner shall be timely filed as a judicial appeal pursuant to Section 1D.070
- C. An appeal of a final decision of the City Council shall be timely filed as a judicial appeal pursuant to Section 1D.070.
- D. The City shall have no obligation to the applicant or to any party to defend an appeal of a decision of the department, Hearing Examiner or the City Council.
- E. An aggrieved person, agency or department with standing may appeal a decision made by the City of Lacey. A person, agency or department with standing is one who is a party of record, as defined in Section 1D.030.

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1D.020 Stays

All proceedings on appealed action stayed unless an imminent peril. The filing of an appeal shall stay all proceedings and furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the land use hearings examiner after the notice of the appeal is filed, that by reason of facts stated in the certificate, a stay would, in the opinion of such official, cause imminent peril to life and property. In such case the proceedings shall not be stayed unless the land use hearings examiner specifically orders such a stay.

1D.030 Appeals to hearing examiner

- A. Appellant. Appeals may be taken to the Hearing Examiner only by a party of record or by any officer, department, board, council or commission of the City affected by any order, requirement, permit, decision or determination made by an administrative official in the administration or enforcement of this title or any amendment thereto. Such appeals shall be filed in writing with the Department on forms provided by the Department within fourteen (14) days after the date of decision and shall be accompanied by the required fee. The Department shall promptly forward a copy of such appeal to the Examiner.
- B. Basis of Appeal and Relief Sought. Every appeal shall state in writing:
 - 1. The decision being appealed.
 - 2. The name and address of the appellant and his/her interest(s) in the application or proposed development.
 - 3. The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous.
 - 4. The specific relief sought by the appellant.
- C. Dismissal. Failure to state specific grounds of the appeal and relief sought may result in dismissal of such appeal. The city staff or any party may request dismissal of an appeal at any time with notice to

all parties. Upon finding that the appeal fails to state cause to reverse or modify the decision or that the Examiner lacks jurisdiction to grant relief, the Examiner may dismiss such appeal without hearing. The Examiner shall state in writing whether such dismissal is with or without prejudice.

- D. Notice and Record. Upon the finding that an appeal has sufficient merit the Hearing Examiner shall set the time and place at which the matter will be heard. At least a ten (10) day notice of the time and place of such open record appeal hearing shall be given to the parties of record and to the official whose decision is being appealed. The Department shall transmit to the Hearing Examiner a copy of all of the records pertaining to the decision being appealed, together with written reports as the Hearing Examiner deems pertinent.
- E. Waiver of Hearing. By agreement of all parties thereto, the appeal hearing may be waived. Such appeal may be decided by the Examiner on the basis of written briefs or memoranda.
- F. Standard of Review. The Examiner shall only grant the relief requested by an appellant upon finding that the appellant has established that:
 - 1. The staff failed to follow a prescribed administrative procedure related to the underlying action;
 - 2. The staff's decision was an erroneous interpretation of the law;
 - 3. The decision is not supported by substantial evidence within the context of the whole record;
 - 4. The decision is a clearly erroneous application of the law to the facts;
 - 5. The decision is outside the authority or jurisdiction of the decision-maker;
 - 6. The decision violates the constitutional rights of the party seeking relief, or
 - 7. The decision is clearly in conflict with the City's adopted plans, policies or ordinances.

G. Decision. The decision of the Examiner shall be limited to those issues timely raised on appeal. The Examiner may not reconsider or modify aspects of a project previously considered and settled by another final decision of the City. In exercising the powers granted herein, the Hearing Examiner may, in conformity with this title, reverse or affirm, wholly or in part, or may modify the order, requirements, decision or determination appealed.

H. Building Code Appeals. All appeals filed in accordance with LMC 14.18.030 shall be heard by the Hearing Examiner. Such appeals shall follow the procedures contained herein

1D.040 Reconsideration of hearing examiner decision

Decisions or recommendations of the hearing examiner may be reconsidered. Further, prior to issuing a decision, the Examiner may reconvene any hearing or continue any other proceeding in such manner as the Examiner deems appropriate to ensure a fair, timely, and reasoned decision.

A. After issuance of a final decision or recommendation any party, including the Department of Community and Economic Development, may file a motion for reconsideration on an appeal to the Hearing Examiner in accordance with subsection (B) of this Section. Such motion must be filed within fourteen days of service of the final decision or recommendation. The original of the motion for reconsideration shall be filed at the Community and Economic Development Department with a copy to the City Attorney's Office. At the same time, copies shall be served on all parties of record. Within five days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration. The Hearing Examiner may require other parties to supply an answer. All answers to motions for reconsideration shall be served on all parties of record.

B. A motion for reconsideration shall be based on at least one of the following grounds:

1. Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;
2. Irregularity in the hearing before the Hearing Examiner by which such party was prevented from having a fair hearing; or
3. Clerical mistakes in the final decision and order.

- C. In response to a motion for reconsideration, the Hearing Examiner may deny the motion, modify its decision or recommendation, or reopen the hearing. A motion is deemed denied unless the Hearing Examiner takes action within 20 days of the filing of the motion for reconsideration. A Hearing Examiner order on a motion for reconsideration is not subject to a motion for reconsideration.
- D. A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be served on each party or the party's attorney or other authorized representative of record, unless the decision is deemed denied following the 20-day time frame set forth in Subsection C of this Section.
- E. The time for an appeal does not commence until disposition of the motion for reconsideration. If the Hearing Examiner takes no action under subsection (3) of this Section, the motion for reconsideration is deemed disposed at the end of the 20-day period. The filing of a motion for reconsideration is not a prerequisite for seeking judicial review.

1D.050 Clarification of hearing examiner decision

- A. Any interested party believing that a decision or recommendation of the Hearing Examiner is ambiguous, vague, or internally inconsistent may request clarification of the decision by the Examiner. Such a request shall be submitted to the Department with the applicable fee and shall set forth the specific provision requiring additional clarity. The Department shall forward such request to the Examiner. Upon receipt of such a request, the Hearing Examiner may take action as the Examiner deems appropriate to the circumstances.
- B. A request for clarification shall not provide an opportunity for reconsideration of a decision nor for introduction of new evidence. Except as ordered by the Examiner, the filing of a request for clarification shall not alter any appeal period or delay issuance of any permit.
- C. When the Examiner determines that a clarification is in order, the Examiner may issue a supplemental or clarified decision or recommendation. As deemed appropriate by the Examiner, the Examiner may order that the supplemental or clarified decision or

recommendation be subject to appropriate notice and an opportunity for appeal.

1D.070 Judicial Appeals of Final Decisions

- A. Appeals of an action of the City, with respect to an application for which all administrative appeals specifically authorized have been timely exhausted, shall be filed in the Thurston County Superior Court and served on all necessary parties within twenty-one (21) days after the date of issuance of the Notice of Final Decision, as determined pursuant to RCW 36.70C.040.
- B. Notice of the appeal and any other pleadings required to be filed with the Superior Court shall be served on the City Manager, the City Attorney, and the Director of Community and Economic Development within the twenty-one (21) day time period.
- C. The appellant may arrange for transcription of any hearings held on the application and copies from the file. All costs of transcribing the record, copying the file, and preparing the record on appeal shall be paid by the appellant. The appellant shall, prior to the department's preparation of the record, pay an advance deposit to the department in an amount determined by the department's fee schedule for copying materials. The fee schedule shall represent the department's reasonable costs of duplicating the record. Any excess advance deposit shall be promptly refunded to the appellant.
- D. The action of the City Council approving Comprehensive Plan amendments shall be final and conclusive, unless appealed to the Growth Management Hearings Board as provided under the Revised Code of Washington. The cost of preparing and certifying the transcript of records ordered by the Board shall be borne by appellant.
- E. Appeals of a decision to grant, deny or rescind a shoreline permit shall be governed by the provisions of Chapter 90.58 of the Revised Code of Washington.

1D.080 SEPA Appeals

- A. Any appeal brought under the State Environmental Policy Act (SEPA) shall be linked to a specific governmental action. SEPA provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of RCW

Chapter 43.21C, WAC Chapter 197-11 and Title 14 of the Lacey Municipal Code. It is not intended to create an independent cause of action unrelated to a specific governmental action.

- B. Appeals of environmental determinations made (or lacking) under SEPA shall be commenced within fourteen calendar days from the date the environmental determination is made. The environmental appeal hearing shall be consolidated into the public hearing for the underlying permit application for applications subject to quasi-judicial review. Appeals of an environmental determination associated with an application subject to full administrative review or legislative review defined as a non-project action under SEPA shall be scheduled for a public hearing before the City of Lacey Hearings Examiner.
- C. Any SEPA appeal hearing associated with full administrative review shall not occur until after the underlying administrative decision has been issued.
- D. Quasi-judicial hearings shall not occur sooner than 10 days from expiration of a SEPA appeal deadline.
- E. A person aggrieved by a City action or failure to act has the right to a judicial appeal pursuant to RCW Chapter 43.21C, RCW Chapter 36.70C and WAC Chapter 197-11.



Planning Commission

October 9th, 2024

SUBJECT: Critical Areas Ordinance - 2025 Periodic Update

RECOMMENDATION: Staff will provide a briefing to the Planning Commission on the update to the Critical Areas Ordinance (CAO) required as part of the Comprehensive Plan Update to incorporate legislative changes and best available science.

STAFF CONTACTS: Vanessa Dolbee, Community & Economic Development Director
Ryan Andrews, Community Planning Manager *RA*
Hans Shepherd, Senior Planner *HS*

ATTACHMENT(S):

1. Draft Critical Areas Ordinance
2. Commerce Critical Areas Checklist
3. Best Available Science - Agency Guidance

PRIOR REVIEW: The Planning Commission received a briefing on this update process as part of their May 22nd, 2024 meeting.

BACKGROUND:

Consistent with the Growth Management Act (GMA) and [RCW 36.70A.130\(1\)](#), the City of Lacey is required to periodically review and, if needed, revise its comprehensive plan and development regulations.

As a part of this review, the City of Lacey is required to review and revise its policies and regulations on critical areas to incorporate the best available science. The statutory deadline to update critical area regulations is December 31st, 2026.

Within the City of Lacey, “Best Available Science (BAS)” is defined as:

“Current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined in WAC [365-195-900](#) through [365-195-925](#).”

There are five chapters in [Title 14](#) of the Lacey Municipal Code (LMC) that comprise our critical areas regulations; Chapter 14.28, [Wetland Protection](#); Chapter 14.33, [Habitat Conservation Areas Protection](#); Chapter 14.34, [Flood Hazard Prevention](#); Chapter 14.36, [Critical Aquifer Recharge Areas Protection](#); and Chapter 14.37, [Geologically Sensitive Areas Protection](#).

The Lacey City Council passed [Ordinance No. 1505](#) on January 3rd, 2017, adopting updated best available science regulations for City of Lacey critical areas per the guidance of local and state agency subject matter experts.

2024 UPDATE PROCESS:

Within the State of Washington, the following departments are responsible for developing resources and publishing guidance specific to critical area BAS:

- Department of Ecology: wetlands, aquifers, and frequently flooded areas
- Department of Fish and Wildlife (WDFW): priority habitats and species, water resource inventory areas, riparian management zones
- Department of Natural Resources: Geologically hazardous areas

The Department of Commerce also maintains a Critical Areas Checklist (*Attachment 2*) that is updated on an annual basis. This checklist is provided to municipalities planning under the GMA in support of their critical areas review. Commerce also publishes a [Guide to the Periodic Update Process Under the Growth Management Act](#) intended to assist municipalities in identifying and sourcing the latest legislation, updated interpretations, refined best practices, and new scientific studies relevant to critical areas.

Following a review of BAS publications and our existing Critical Areas Ordinance, staff submitted a draft CAO Checklist and code revisions to the Department of Commerce for multi-agency review. Subject matter experts from the Department of Commerce, Department of Natural Resources, Department of Fish and Wildlife, Department of Ecology, and the [Puget Sound Partnership](#) all took time to review draft language and provide additional BAS guidance.

Lacey-specific agency-provided guidance has been incorporated into the latest CAO draft update. Agency guidance has also been included as part of this packet as Attachment 3. Proposed general changes include the following:

- Updated language and definitions to improve understanding and clarity consistent with Washington Administrative Codes (WACs)
- Clarification of subdivision limitations adjacent to or containing wetlands and associated buffers based on Ecology guidance
- Updated mitigation sequencing based on WDFW guidance
- Additional language to emphasize no net loss of ecological functions and values consistent with requirement for development regulations per [WAC 365-196-830 \(4\)](#).
- Update category III and IV wetland exemptions to align with BAS
- Mitigation requirements following temporary emergency work around wetlands consistent with Department of Ecology guidance
- Updated references and text citations based on recent studies and BAS resources

The Department of Fish and Wildlife also provided guidance on the use of and potential incorporation of their [200-year Site-Potential Tree Height \(SPTH200\)](#) mapping tool as a potential replacement for currently adopted buffers within the City of Lacey Critical Areas Ordinances - specifically for Riparian Habitat Areas.

After an in-depth review of the WDFW GIS developed mapping tool, the following potential challenges were identified:

- NRCS soil data utilized within the tool was collected in 1955 at a regional level. This dataset is not site specific, has data gaps, and makes sweeping assumptions leading to imprecise results.
- WDFW stream layers are less accurate than internal City GIS databases.
- A single parcel may contain multiple Site-Potential Tree Height (SPTH) values, leading to variable, uneven buffer results.
- Applied to Woodland Creek, buffer standards would range from 95 feet in some locations to over 305 in others resulting in a net reduction in protections across the entirety of the system.
- Implementation guidance at the parcel-specific level is limited to non-existent.

Based on these findings, it is the staff's recommendation to maintain existing, currently adopted, Riparian Habitat Area Widths as the 200-year Site-Potential Tree Height (SPTH200) mapping tool has the potential to increased difficulty for community members and regulatory staff in the navigation, interpretation, and potential review times of this alternative methodology. A table of currently adopted Riparian habitat Area Widths has been provided below:

Type S streams	250 feet	(State Designated)
Type F Streams	200 feet	(Woodland Creek / Fish presence)
Type Np Streams	150 feet	(Perennial - no fish)
Type Ns Streams	150 feet	(Seasonal - no fish)

Within their provided review, WDFW stated that adopted code language and detailed descriptions were supported. An excerpt of their comments specific to this subject has been included below:

“WDFW supports this code language and the widths detailed in the Table of Riparian Habitat Area Widths. We especially appreciate the range of riparian ecosystem functions that these widths are protecting.”

Additional comments can be found within Attachment 3 of this packet.

NEXT STEPS:

At the October 9th Planning Commission meeting, commissioners will consider agency guidance on updated BAS as it relates to Lacey critical areas and suggest any additional amendments to the draft code. The draft CAO will be scheduled for a public hearing at a future meeting to take comment on the amendments.

Chapter 16.54 ENVIRONMENTALLY SENSITIVE AREAS

<https://lacey.municipal.codes/LMC/16.54>

Sections:

- [16.54.010 Intent](#)
- [16.54.020 Environmentally sensitive/-critical areas defined](#)
- [16.54.030 General standards](#)
- [16.54.040 Review of uses](#)
- [16.54.050 Environmental review](#)
- [16.54.060 Wetland areas](#)
- [16.54.070 Flood hazard areas](#)
- [16.54.080 Habitat conservation areas](#)
- [16.54.090 Aquifer recharge areas](#)
- [16.54.100 Geologically sensitive areas](#)

16.54.010 Intent.

It is the intent of this chapter to:

A. Regulate the use of designated environmentally critical areas consistent with the intent of the Growth Management Act and the Lacey ~~Environmental Protection and Resources Conservation Plan~~ Comprehensive 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, The~~ 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 on the~~ official zoning map of the city of Lacey or other environmental maps as referenced in Chapter [14.28](#), [14.33](#), [14.34](#), [14.36](#), or [14.37](#) LMC or on lands meeting the requirements as an environmentally sensitive area as defined in said code sections.

D. Provide environmentally sensitive area designations s for ~~critical~~ exemptions policy under WAC [197-11-908](#). (Ord. 935 §3 (part), 1992).

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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, geologically 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-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-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 Chapter [14.28](#), [14.33](#), [14.34](#), [14.36](#) or [14.37](#) LMC, the criteria shall control. (Ord. 935 §3 (part), 1992).

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-City](#) consistent with the intent and according to the processes and procedures described or referenced in this chapter and Chapter [14.28](#), [14.33](#), [14.34](#), [14.36](#) or [14.37](#) LMC. (Ord. 935 §3 (part), 1992).

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. (Ord. 935 §3 (part), 1992).

16.54.050 Environmental review.

RCW 36. 70A requires cities to adopt development regulations to classify, designate, and protect critical areas and to assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. RCW 36. 70A. 172(1) requires "best available science" be included in policies and regulations to protect the functions and values of critical areas and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

Pursuant to WAC 365-196-830 (4), development regulations may not allow a net loss of the function and values of the ecosystem that includes the impacted or lost critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of that harm.

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. (Ord. 935 §3 (part), 1992).

16.54.060 Wetland areas.

All regulated wetland areas as designated or described by Chapter [14.28](#) LMC shall be subject to the review processes, standards and conditions as specified in Chapter [14.28](#) LMC. (Ord. 935 §3 (part), 1992).

16.54.070 Flood hazard areas.

All flood hazard areas as designated or described by Chapter [14.34](#) LMC shall be subject to the review process, standards and conditions as specified in Chapter [14.34](#) LMC. (Ord. 935 §3 (part), 1992).

16.54.080 Habitat conservation areas.

All habitat conservation areas as designated or described by Chapter [14.33](#) LMC shall be subject to the review process, standards and conditions as specified in Chapter [14.33](#) LMC. (Ord. 935 §3 (part), 1992).

16.54.090 Aquifer recharge areas.

All aquifer recharge areas as designated or described by Chapter [14.36](#) LMC shall be subject to the review process, standards and conditions as specified in Chapter [14.36](#) LMC. (Ord. 935 §3 (part), 1992).

16.54.100 Geologically sensitive areas.

All geologically sensitive areas as designated or described by Chapter [14.37](#) LMC shall be subject to the review process, standards and conditions as specified in Chapter [14.37](#) LMC. (Ord. 935 §3 (part), 1992).

Chapter 14.28 WETLANDS PROTECTION

<https://lacey.municipal.codes/LMC/14.28>

Sections:

- [14.28.010 Findings of fact](#)
- [14.28.020 Purpose](#)
- [14.28.030 Definitions](#)
- [14.28.040 Abrogation and greater restrictions](#)
- [14.28.050 Interpretation](#)
- [14.28.060 Qualified professional or technical wetland consultant or scientist](#)
- [14.28.065 Listing of qualified professional or technical wetlands consultants or scientists](#)
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- [14.28.070 Applicability](#)
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- [14.28.110 Regulated activities](#)
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- *14.28.140 Repealed*
- *14.28.150 Repealed*
- [14.28.160 Wetland development permit extensions](#)
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- *14.28.180 Repealed*
- [14.28.190 Application information requirements](#)
- *14.28.200 Repealed*
- *14.28.210 Repealed*
- [14.28.220 Notice on title](#)
- [14.28.230 Consolidated application process](#)
- *14.28.240 Repealed*

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- *14.28.250 Repealed*
- *14.28.260 Repealed*
- [14.28.270 Standards for wetland decisions--Generally](#)
- [14.28.280 Wetland buffers--Standard buffer zone widths](#)
- [14.28.290 Increased wetland buffer zone width](#)
- *14.28.300 Repealed*
- [14.28.310 Standard wetland buffer width averaging](#)
- [14.28.320 Permit processing--Retention of natural buffer zones](#)
- *14.28.330 Repealed*
- [14.28.340 Permit processing--Building setback lines](#)
- [14.28.350 Avoiding wetland impacts](#)
- [14.28.360 Minimizing wetlands impacts](#)
- [14.28.370 Open space credit](#)
- [14.28.380 Acting on the application--Special conditions](#)
- [14.28.390 Acting on the application-- Financial security](#)
- [14.28.400 Application approval--Other laws and regulations](#)
- [14.28.410 Application approval-- Suspension, revocation](#)
- [14.28.420 Notice of final decision](#)
- [14.28.430 Application approval-- Compensating for wetlands impacts](#)
- [14.28.440 Application approval-- Compensatory mitigation--Applicant requirements](#)
- [14.28.445 Performance standards--Mitigation requirements](#)
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- [14.28.450 Application approval--Compensatory mitigation--Wetlands restoration and creation](#)
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- [14.28.460 Application approval--Compensatory mitigation--Wetlands enhancement](#)
- [14.28.465 Wetland preservation as mitigation](#)
- *14.28.470 Repealed*
- *14.28.480 Repealed*
- [14.28.490 Application approval--Compensatory mitigation--Timing](#)

- [14.28.500 Application approval--Compensatory mitigation--Cooperative restoration, creation or enhancement projects](#)
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- [14.28.560 Enforcement](#)
- [14.28.570 Non-conforming activities](#)
- *14.28.580 Repealed*
- [14.28.590 Amendments](#)
- [14.28.600 Severability](#)
- [14.28.610 Assessment relief](#)

14.28.010 Findings of fact.

The city council of the ~~city of Lacey~~ [City of Lacey](#) hereby finds that:

A. [Wetlands](#) and their buffer areas are valuable and fragile natural resources with significant development constraints due to flooding, erosion, soil liquefaction potential, and septic disposal limitations.

B. In their natural state, [wetlands](#) provide many valuable social and ecological services, including:

- ~~1.~~ ~~1.~~ Controlling flooding and stormwater runoff by storing or regulating natural flows;
- ~~2.~~ ~~2.~~ Protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation;
- ~~3.~~ ~~3.~~ Providing areas for ground water recharge;
- ~~4.~~ ~~4.~~ Preventing shoreline erosion by stabilizing the substrate;
- ~~5.~~ ~~5.~~ Providing habitat areas for many species of fish, wildlife, and vegetation, many of which are dependent on [wetlands](#) for their survival, and many of which are on Washington State and Federal Endangered Species lists;
- ~~6.~~ ~~6.~~ Providing open space and visual relief from intense development in urbanized area;
- ~~7.~~ ~~7.~~ Providing recreation opportunities; and
- ~~8.~~ ~~8.~~ Serving as areas for scientific study and natural resource education.

C. Development in [wetlands](#) results in:

- ~~1.~~ ~~1.~~ Increased soil erosion and sedimentation of downstream water bodies, including navigable channels;

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- ~~2.~~ ~~2.~~ Increased shoreline erosion;
- ~~3.~~ ~~3.~~ Degraded water quality due to increased turbidity and loss of pollutant removal processes;
- ~~4.~~ ~~4.~~ Elimination or degradation of wildlife and fisheries habitat;
- ~~5.~~ ~~5.~~ Loss of fishery resources from water quality degradation, increased peak flow rates, decreased summer low flows, and changes in the stream flow regimen;
- ~~6.~~ ~~6.~~ Loss of stormwater retention capacity and ~~slow-releases~~slow-release detention resulting in flooding, degraded water quality, and changes in the stream flow regimen of watersheds;
- ~~7.~~ ~~7.~~ Loss of ground water recharge areas;
- ~~8.~~ ~~8.~~ Loss or degradation of open space and natural aesthetics of wetland areas;
- ~~9.~~ ~~9.~~ Loss or degradation of natural recreation opportunities provided by wetland areas;
- ~~10.~~ ~~10.~~ Loss of opportunities for scientific study of wetland areas.

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

- ~~1.~~ ~~1.~~ Stabilizing soil and preventing erosion;
- ~~2.~~ ~~2.~~ Filtering suspended solids, nutrients and harmful or toxic substances;
- ~~3.~~ ~~3.~~ Moderating impacts of stormwater runoff;
- ~~4.~~ ~~4.~~ Moderating system microclimate;
- ~~5.~~ ~~5.~~ Protecting wetland wildlife habitat from adverse impacts;
- ~~6.~~ ~~6.~~ Maintaining and enhancing habitat diversity and/or integrity;
- ~~7.~~ ~~7.~~ Supporting and protecting wetlands plant and animal species and biotic communities; and
- ~~8.~~ ~~8.~~ Reducing disturbances to wetland resources caused by intrusion of humans and domestic animals.

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E. The loss of the social and ecological services provided by wetlands results in a detriment to public safety and welfare; replacement of such services, if possible at all, can require considerable public expenditure.

F. A considerable acreage of these important natural resources has been lost or degraded by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Remaining wetlands are in jeopardy of being lost, despoiled, or impaired by such acts.

G. It is therefore necessary for the ~~city of Lacey~~ City of Lacey to ensure maximum protection for wetland areas by discouraging development activities in wetlands and those activities at adjacent sites that may adversely affect wetland functions and values, to encourage restoration and enhancement of already degraded wetland systems, and to encourage creation of new wetland areas. (Ord. 912 §1 Sec. 1.1, 1991).

14.28.020 Purpose.

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

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

1. 1. Impeding flood flows, reducing flood storage capacity, or impairing natural flood control functions, thereby resulting in increased flood heights, frequencies, or velocities on other lands;
2. 2. Increasing water pollution through location of domestic waste disposal systems or stormwater systems in wetlands; unauthorized application of pesticides and herbicides; disposal of solid waste at inappropriate sites; creation of unstable fills; or the destruction of wetland soils and vegetation;
3. 3. Increasing erosion;
4. 4. Decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
5. 5. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;
6. 6. Decreasing habitat for fish and other forms of wildlife;
7. 7. Adversely altering the recharge or discharge functions of wetlands, thereby impacting ground water or surface water supplies;
8. 8. Significantly altering wetland hydrology and thereby causing either short- or long-term changes in vegetational composition, soils characteristics, nutrient cycling, or water chemistry;
9. 9. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
10. 10. Interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird watching, photography and other passive uses; or
11. 11. Destroying or damaging aesthetic and property values, including significant public view sheds.

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

1. 1. Preserving, protecting and restoring wetlands functions and values by regulating development within wetlands and wetland buffers;
2. 2. Protecting the public against losses from:
 - a. a. Unnecessary maintenance and replacement of public facilities, including the dredging of ports and navigation channels;
 - b. b. Publicly funded mitigation of avoidable impacts;
 - c. c. Cost for public emergency rescue and relief operations; and
 - d. d. Potential litigation from improper construction practices authorized for wetland areas;
3. 3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of wetlands;
4. 4. Providing ~~city of Lacey~~ City of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;
5. 5. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter 43.21C RCW, Puget Sound Water Quality Management Plan, Washington State Executive Order 90-04, the Land Use Element of the Comprehensive Plan, the City Comprehensive Plan for Outdoor Recreation, the City Zoning Code (LMC Title 16), the City

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Environmental Policy Ordinance (Chapter [14.24](#) LMC), Shoreline Master Program (Chapter [14.26](#) LMC), Tree Protection and [Preservation](#) Ordinance (Chapter [14.32](#) LMC), and all other present and future ~~city of Lacey~~ [City of Lacey](#) functional, environmental and community plans and programs. (Ord. 1505 §1, 2017; Ord. 912 §1 Sec. 1.2, 1991).

14.28.030 Definitions.

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

- A.** *“Alteration”* means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.
- B.** *“Applicant”* means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- C.** *“Best management practices”* means conservation practices or systems of practices and management measures that:
- 1.** Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and
 - 2.** Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of [wetlands](#); and
 - 3.** Protect trees and vegetation designated to be retained during the following site construction; and
 - 4.** Provide standards for proper use of chemical herbicides within critical areas.
- D.** *“Best available science”* means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined in WAC [365-195-900](#) through [365-195-925](#).
- E.** *“Compensation project”* means actions necessary to replace project-induced [wetland](#) and [wetland buffer](#) losses, including land acquisition, planning, construction plans, [monitoring](#) and contingency actions.
- F.** *“Compensatory mitigation”* means replacing project-induced [wetland](#) losses or impacts, and includes, but is not limited to, the following [list in order of preference](#):
- 1.** *“Restoration”* - Actions performed to reestablish [wetland](#) functional characteristics and processes which have been lost by [alterations](#), activities, or catastrophic events within an area which no longer meets the definition of a [wetland](#).
 - 2.** *“Creation”* - Actions performed to intentionally establish a [wetland](#) at a site where it did not formerly exist.
 - 3.** ~~*“4. “Preservation” - actions taken to ensure the permanent protection of existing high quality wetlands.*~~
 - 4.** *“Enhancement”* - Actions performed to improve the condition of existing degraded [wetlands](#) so that the [functions](#) they provide are of a higher quality.
 - ~~**4.** *“Preservation” - actions taken to ensure the permanent protection of existing high quality wetlands.*~~

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

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

I. I. "Developable area" means an area of land outside of [wetlands](#) and [wetland buffers](#).

J. J. "Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer instream water temperatures, and fish and wildlife habitats.

K. K. "Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

L. J. "Emergent wetland" means a [regulated wetland](#) with at least thirty percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

M. K. "Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a [wetland](#) to heighten, intensify, or improve specific [function](#)(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in [wetland function](#)(s) and can lead to a decline in other [wetland functions](#), but does not result in a gain in [wetland](#) acres. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to [alter](#) hydroperiods.

N. L. "Essential habitat" means habitat necessary for the survival of federally listed threatened, endangered, and sensitive species and state listed [priority species](#).

O. M. "Existing and ongoing agriculture" includes those activities conducted on lands defined in RCW [84.34.020\(2\)](#), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing [serviceable](#) structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.

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

Q. O. "Extraordinary hardship" means strict application of this chapter and/or programs adopted to implement this chapter by the ~~city of Lacey~~ [City of Lacey](#) would prevent all reasonable economic use of the parcel.

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R. P. “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.

S. Q. “Forested wetland” means a [regulated wetland](#) with at least twenty percent of the surface area covered by woody vegetation greater than twenty feet in height.

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

U. S. “High intensity land use” includes land uses which are associated with moderate or high levels of human disturbance or substantial [wetland](#) habitat impacts including, but not limited to, urban residential densities, active recreation uses, and commercial and industrial land uses.

V. T. “High quality wetlands” are those [regulated wetlands](#) which meet the following criteria:

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

W. U. “Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the “Federal Manual for Identifying and Delineating Jurisdictional [Wetlands](#).”

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

Y. W. “In-kind compensation” means to replace [wetlands](#) with substitute [wetlands](#) whose characteristics closely approximate those destroyed or degraded by a [regulated activity](#). It does not necessarily mean replacement “in-category.”

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

AA. Y. “Isolated wetlands” means a [wetland](#) that is hydrologically isolated from other aquatic resources as determined by the United States Army Corps of Engineers (USACE). Isolated

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wetlands may perform important [functions](#) and are protected by state law (Chapter [90.48](#) RCW) whether or not they are protected by federal law.

BB. Z. “*Lot of record*” means a lot legally established by survey or legal description and recorded at the county auditor’s office prior to adoption of the ~~city of Lacey~~ [City of Lacey](#) subdivision ordinance or a lot legally established after adoption of the ~~city of Lacey~~ [City of Lacey](#) subdivision regulations by recording of a building site plan, subdivision or short subdivision at the county auditor’s office. The definition of lot shall be that definition used in the Lacey subdivision ordinance (LMC [15.02.020\(Y\)](#)).

CC. AA. “*Low intensity land use*” includes land uses which are associated with low levels of human disturbance or low [wetland](#) habitat impacts, including, but not limited to, passive recreation, open space, agricultural, or forest management land uses.

A. BB. “*Mitigation*” or “*mitigation sequencing*” means a prescribed order of steps taken to reduce the impacts of activities on critical areas. As defined in Chapter 197-11-768 WAC, mitigation means: includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation in the following order of preference is:

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

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

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

D. EE. “*Off-site compensation*” means to replace [wetlands](#) away from the site on which a [wetland](#) has been impacted by a [regulated activity](#).

E. FF. “*On-site compensation*” means to replace [wetlands](#) at or adjacent to the site on which a [wetland](#) has been impacted by a [regulated activity](#).

F. GG. “*Out-of-kind compensation*” means to replace [wetlands](#) with substitute [wetlands](#) whose characteristics do not closely approximate those destroyed or degraded by a [regulated activity](#). It does not refer to replacement “out-of-category.”

G. HH. “*Practicable alternative*” means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to [regulated wetlands](#). It may include an area not

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owned by the [applicant](#) which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

- H.** II. “*Preservation*” means the removal of a threat to, or preventing the decline of, [wetland](#) conditions by an action in or near a [wetland](#). This term includes the purchase of land or conservation easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of [wetland](#) acres but may result in a gain in [functions](#) over the long term.
- I.** JJ. “*Priority habitats*” are a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to [alteration](#).
- J.** KK. “*Priority species*” are those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened, and sensitive species as well as other species of concern and game species.
- K.** LL. “*Puget Sound*” means all salt waters of the state of Washington inside the international boundary line between the state of Washington and the province of British Columbia, lying east of one hundred twenty-three degrees, twenty-four minutes west longitude.
- L.** MM. “*Qualified professional or technical wetlands consultant or scientist*” means an individual or team that has both the academic qualifications and field experience to provide the technical expertise for making competent [wetland](#) delineations and recommendations necessary to implement the goals and requirements of this chapter. Said persons must have previous demonstrated competence in [wetland](#) work by having successfully prepared complex [wetland](#) studies that have been approved and accepted by the State [Department](#) of Ecology, and must be accepted by the [city of Lacey City of Lacey](#) pursuant to the requirements of LMC [14.28.065](#) and [14.28.067](#).
- M.** NN. “*Regulated activities*” means any of the following activities which are directly undertaken or originate in a [regulated wetland](#) or its buffer:
- 1.** 1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
 - 2.** 2. The dumping, discharging, or filling with any material;
 - 3.** 3. The draining, flooding, or disturbing of the water level or water table;
 - 4.** 4. The driving of pilings;
 - 5.** 5. The placing of obstructions;
 - 6.** 6. The construction, reconstruction, demolition, or expansion of any structure;
 - 7.** 7. The destruction or [alteration](#) of [wetlands](#) vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would [alter](#) the character of a [regulated wetland](#) or any other activity taking place in a [wetland](#) or buffer involving the modification of vegetation falling under the jurisdiction of the city’s Tree and Vegetation Protection and [Preservation](#) Ordinance;
 - 8.** 8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of [wetlands](#) water sources, including quantity, or the introduction of pollutants.

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N. OO. "Regulated wetlands" means all [wetlands](#) as defined herein and [wetlands](#) which fall waterward of the ordinary high water mark of lakes; except that the following [wetlands](#) may be filled if the impacts are fully mitigated based on the requirements of LMC [14.28.445](#). In order to verify the following conditions, a [wetland](#) report shall be submitted:

1. 1. All isolated Category IV [wetlands](#) less than four thousand square feet that:

- a.** Are not associated with riparian areas or their buffers;
- b.** Are not associated with shorelines of the state or their associated buffers;
- c.** Are not part of a [wetland mosaic](#);
- d.** Do not score five or more points for habitat [function](#) based on the 2014 update to the Washington State [Wetland](#) Rating System for Western Washington: 2014 Update or as revised and approved by Ecology; and
- e.** Do not contain a [Priority Habitat](#) or a Priority Area for a [Priority Species](#) identified by the Washington [Department](#) of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter [14.33](#) LMC.

2. 2. [Wetlands](#) less than one thousand square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter;

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

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

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

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

R. SS. "Serviceable" means presently usable.

S. TT. "Unavoidable and necessary impacts" are impacts to [regulated wetlands](#) that remain after a person proposing to [alter regulated wetlands](#) has demonstrated that no [practicable alternative](#) exists for the proposed project.

T. UU. "Watercourse," "river" or "stream" means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high-water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance

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systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

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

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

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

X. ~~XXYY~~. “*Wetland buffers*” or “*wetland buffer zones*” is an area that surrounds and protects a wetland from adverse impacts to the functions and values of a regulated wetland.

Y. ~~YYZZ~~. “*Wetland classes*,” “*classes of wetlands*” or “*wetland types*” means descriptive classes of the wetlands taxonomic classification system of the United States Fish and Wildlife Service (Cowardin, et al., 1978).

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

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

BB. ~~BBBCCC~~. “*Wetland mosaic*” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than one hundred feet from each other; and areas delineated as vegetated wetland are more than fifty percent of the total area of the entire mosaic, including uplands and open water. (Ord. 1505 §2, 2017; Ord. 1449 §1, 2014; Ord. 1215 §2, 2003; Ord. 935 §4, 1992; Ord. 912 §1 Sec. 2, 1991).

14.28.040 Abrogation and greater restrictions.

It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 912 §1 Sec. 3.1, 1991).

14.28.050 Interpretation.

The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 912 §1 Sec. 3.2, 1991).

14.28.060 Qualified professional or technical wetland consultant or scientist.

It is expected that most applications for [wetland](#) approval will require a qualified professional or technical [wetland](#) consultant or scientist to provide the information necessary to fulfill the requirements of this chapter. It shall be the responsibility of the [applicant](#) to purchase the services of a qualified consultant or scientist. (Ord. 912 §1 Sec. 3.3, 1991).

14.28.065 Listing of qualified professional or technical wetlands consultants or scientists.

The ~~city of Lacey~~ [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 LMC [14.28.067](#). The list shall be reviewed on an annual basis. (Ord. 935 §5 (part), 1992).

14.28.067 Contracting with qualified professional wetland consultants or scientists.

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

Individual [applicants](#) will be responsible for payment of costs of the professional for projects necessitating work to be performed by the professional; provided, however, that the city shall be responsible for billing and collecting costs charged to the [applicant](#) and transferring said payment to the professional unless the city has opted for some other mechanism of providing for the cost, such as inclusion of cost in application fees. The [applicant](#) shall also be responsible for the city's administrative fees in carrying out this service. The director of community and economic development is authorized to prepare administrative guidelines for carrying out the requirements of this section. (Ord. 1505 §3, 2017; Ord. 935 §5 (part), 1992).

14.28.070 Applicability.

- A. When any provision of any other ordinance of the ~~city of Lacey~~ City of Lacey conflicts with this chapter, that which provides more protection to wetlands and wetland buffers shall apply unless specifically provided otherwise in this chapter.
- B. The ~~city of Lacey~~ City of Lacey is authorized to adopt written administrative procedures for the purpose of carrying out the provisions of this chapter.
- C. The ~~city of Lacey~~ City of Lacey shall not grant any approval or permission to conduct a regulated activity in a wetland or wetland buffer until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 912 §1 Sec. 4.1, 1991).

14.28.080 Maps and inventory.

This chapter shall apply to all lots or parcels on which wetlands and/or wetland buffers are located within the jurisdiction of the ~~city of Lacey~~ City of Lacey. The approximate location and extent of wetlands in the ~~city of Lacey~~ City of Lacey is displayed on the city zoning map and wetland maps based upon National Wetland Inventory maps and local aerial photograph studies. The city zoning map and inventory maps are to be used as a guide to the general location and extent of wetlands. Wetlands not shown on the zoning map or National Wetlands Inventory are presumed to exist in the ~~city of Lacey~~ City of Lacey and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control. (Ord. 1505 §4, 2017; Ord. 1215 §3, 2003; Ord. 912 §1 Sec. 4.2, 1991).

14.28.090 Determination of regulatory wetland boundary.

- A. The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation applying the wetland definition provided in LMC 14.28.030. Qualified professional and technical scientists shall perform wetland delineations using the approved federal wetland delineation manual and applicable regional supplements. The applicant is required under LMC 14.28.190 to show the location of the wetland boundary on a scaled drawing as a part of the permit application.
- B. The ~~city of Lacey~~ City of Lacey, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The ~~city of Lacey~~ City of Lacey shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant may be charged for the costs incurred.
- C. Where the ~~city of Lacey~~ City of Lacey performs a wetland delineation at the request of the applicant, such delineation shall be considered a final determination.

D. Where the [applicant](#) has provided a delineation of the [wetland](#) boundary, the ~~city of Lacey~~ [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~~ [City of Lacey](#) shall, at the [applicant](#)'s expense, obtain expert services to render a final delineation. (Ord. 1449 §2, 2014; Ord. 1215 §4, 2003; Ord. 1192 §25, 2002; Ord. 912 §1 Sec. 4.3, 1991).

14.28.100 Wetlands rating system.

The following system shall be used to rate, establish and administer buffer widths and replacement ratios for [wetlands](#). For a detailed explanation of this system, refer to Washington State [Wetland](#) Rating System for Western Washington: 2014 Update [V2](#) (~~Revised, Publication No. 14-06-029, October 2014~~ [Ecology Publication # 23-06-009](#)), or as hereafter amended.

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

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

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

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

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

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

recognize illegal modifications. (Ord. 1505 §5, 2017; Ord. 1449 §3, 2014; Ord. 1215 §5, 2003; Ord. 935 §5 (part), 1992).

14.28.110 Regulated activities.

A [wetland](#) development permit shall be obtained from the ~~city of Lacey~~ [City of Lacey](#) pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the ~~city of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards prior to undertaking the following activities in a [regulated wetland](#) or its buffer.

- A. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- B. The dumping, discharging, or filling with any material;
- C. The draining, flooding, or disturbing of the water level or water table;
- D. The driving of pilings;
- E. The placing of obstructions;
- F. The construction, reconstruction, demolition, or expansion of any structure;
- G. The destruction or [alteration](#) of [wetlands](#) vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would [alter](#) the character of a [regulated wetland](#);
- H. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of [wetlands](#) water sources, including quantity, or the introduction of pollutants. (Ord. 1192 §26, 2002; Ord. 912 §1 Sec. 5.1, 1991).

14.28.120 Allowed activities.

The activities listed below are allowed in [wetlands](#) and/or their buffers. These activities do not require submission of a [wetland](#) report, except where noted. These activities include:

- A. Conservation or [preservation](#) of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or [functions](#) of the existing [wetland](#).
- B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or [alteration](#) of the [wetland](#) by changing existing topography, water conditions, or water sources.
- C. Drilling for utilities/utility corridors under a [wetland](#), with entrance/exit portals located completely outside of the [wetland buffer](#), provided that the drilling does not interrupt the ground water connection to the [wetland](#) or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the [wetland](#) or percolation of surface water down through the soil column will be disturbed.
- D. [Enhancement](#) of a [wetland](#) through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed

plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

E. Educational and scientific research activities.

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

G. Site investigation related to development of a [wetland](#) report.

H. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.

I. *Stormwater Management Facilities.* A [wetland](#) or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment or Flow Control BMP if all of the following criteria are met:

1. The [wetland](#) is classified as a Category IV or a Category III [wetland](#) with a habitat score of three to ~~four-five~~ points; and
2. There will be no net loss of [functions and values](#) of the [wetland](#); and
3. The [wetland](#) does not contain a breeding population of any native amphibian species; and
4. The hydrologic [functions](#) of the [wetland](#) can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the "Guide for Selecting [Mitigation](#) Sites Using a Watershed Approach" (available here: <http://www.ecy.wa.gov/biblio/0906032.html>); or the [wetland](#) is part of a priority [restoration](#) plan that achieves [restoration](#) goals identified in a Shoreline Master Program or other local or regional watershed plan; and
5. The [wetland](#) lies in the natural routing of the runoff, and the discharge follows the natural routing; and
6. All regulations regarding stormwater and [wetland](#) management are followed, including but not limited to local and state [wetland](#) and stormwater codes, manuals, and permits.

Stormwater LID BMPs required as part of new and redevelopment projects can be considered within [wetlands](#) and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site. (Ord. 1505 §6, 2017; Ord. 1215 §6, 2003; Ord. 1192 §27, 2002; Ord. 1012 §1, 1995; Ord. 935 §6, 1992; Ord. 912 §1 Sec. 5.2, 1991).

14.28.130 Special uses.

Any activity other than those specified in LMC [14.28.120](#) may not be conducted in [wetlands](#) or [wetland buffers](#) except upon [wetland](#) development approval from the ~~city of Lacey~~ [City of Lacey](#) pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1505 §7, 2017; Ord. 1192 §28, 2002; Ord. 912 §1 Sec. 5.3, 1991).

14.28.140 Repealed

Repealed by [Ord. 1505](#).

14.28.150 Repealed

Repealed by [Ord. 1192](#).

14.28.160 Wetland development permit extensions.

A. Approvals of a [wetland](#) development permit shall normally be valid for a period of eighteen months from the date of issue and shall expire at the end of that time pursuant to requirements of 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 submitted to the ~~city of Lacey~~ [City of Lacey](#) at least thirty days prior to the permit expiration date, by the original permit holder or the successor in title. Prior to the granting of an extension, the ~~city of Lacey~~ [City of Lacey](#) shall require updated studies and/or additional hearings if, in its judgment, the original intent of the permit is altered or enlarged by the renewal, if the circumstances relevant to the review and issuance of the original permit have changed substantially, or if the [applicant](#) failed to abide by the terms of the original permit. (Ord. 1192 §30, 2002; Ord. 912 §1 Sec. 6.2, 1991).

14.28.170 Request for determination of applicability.

Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request in writing a determination from the ~~city of Lacey~~ [City of Lacey](#). Such a request for determination shall contain plans, data, and other information as may be specified by the city. Determination of applicability shall be valid for a period of one year from the date of issuance. (Ord. 1192 §31, 2002; Ord. 912 §1 Sec. 6.3(a), 1991).

14.28.180 Repealed

Repealed by [Ord. 1192](#).

14.28.190 Application information requirements.

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

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the entire parcel of land owned by the [applicant](#) and the exact boundary pursuant to LMC [14.28.090](#) of the [wetland](#) on the parcel;

2. A description of the vegetative cover of the [wetland](#) and adjacent area including dominant species;
 3. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations within the [wetland](#) and its buffer;
 4. The exact sites and specifications for all [regulated activities](#) including the amounts and methods;
 5. Elevations of the site and adjacent lands within the [wetland](#) and its buffer at contour intervals of no greater than five feet;
 6. Top view and typical cross section views of the [wetland](#) and its buffer to scale;
 7. The purposes of the project and an explanation why the proposed activity cannot be located at other sites including an explanation of how the proposed activity is dependent upon [wetlands](#) or water-related resources as described in LMC [14.28.350](#); and
 8. Specific means to mitigate any potential adverse environmental impacts of the [applicant](#)'s proposal.
- B. The ~~city of Lacey~~ [City of Lacey](#) may require additional information, including, but not limited to, a [wetland](#) report that contains an assessment of [wetland](#) functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic, or other values of a [wetland](#); a study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter. The ~~city of Lacey~~ [City of Lacey](#) shall maintain and make available to the public all information applicable to any [wetland](#) and its buffer. (Ord. 1505 §9, 2017; Ord. 1192 §33, 2002; Ord. 912 §1 Sec. 6.3(c), 1991).

14.28.200 Repealed

Repealed by [Ord. 1192](#).

14.28.210 Repealed

Repealed by [Ord. 1192](#).

14.28.220 Notice on title.

A. The owner of any property with field verified presence of [wetland](#) or [wetland buffer](#) pursuant to LMC [14.28.090](#) on which a development proposal is submitted shall file for record with the Thurston County Auditors Office a notice in the form set forth in subsection B of this section. Such notice shall provide in the public record the presence of a [wetland](#) or [wetland buffer](#), the application of this chapter to the property, and that limitations on actions in or affecting such [wetlands](#) and their buffers may exist. The [applicant](#) shall submit proof that the notice has been filed for record before an activity is commenced on the subject property. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.

B. Form of Notice:

WETLAND AND/OR WETLAND BUFFER NOTICE

Legal Description: _____

Present owner: _____

NOTICE: This property contains wetlands or their buffers as defined by the ~~city of Lacey~~ City of Lacey Ordinance. The property was the subject of a development proposal for (type of permit) application # _____ filed on (date). Restrictions on use or alteration of the wetlands or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of wetlands or wetland buffers and restrictions on their use through setback areas. A copy of the plan showing such setback areas is attached hereto.

Signature of owner

STATE OF WASHINGTON)

COUNTY OF _____)

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

Given under my hand and official seal this _____ day of _____, 19____. NOTARY PUBLIC in and for the state of Washington, residing at _____.

(Ord. 1192 §36, 2002; Ord. 912 §1 Sec. 6.3(f), 1991).

14.28.230 Consolidated application process.

When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time in conformance with Section 1B.030 of the ~~City of Lacey~~ City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §37, 2002; Ord. 912 §1 Sec. 6.4(a), 1991).

14.28.240 Repealed

Repealed by Ord. 1192.

14.28.250 Repealed

Repealed by Ord. 1192.

14.28.260 Repealed

Repealed by Ord. 1192.

14.28.270 Standards for wetland decisions--Generally.

A. An approval shall only be granted if, as conditioned, the decision is consistent with the provisions of this chapter including the following:

1. A proposed action avoids adverse impacts to [regulated wetlands](#) or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
2. The proposed activity results in no net loss;
3. Denial of a permit would cause an [extraordinary hardship](#) on the [applicant](#).

4. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undeveloped condition.

B. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal. (Ord. 1192 §41, 2002; Ord. 912 §1 Sec. 7, 1991).

14.28.280 Wetland buffers--Standard buffer zone widths.

A. [Wetland buffer zones](#) shall be required for all [regulated activities](#) adjacent to [regulated wetlands](#). Any [wetland](#) created, restored or enhanced as compensation for approved [wetland alterations](#) shall also include the standard buffer required for the category of the created, restored, or enhanced [wetland](#). All buffers shall be measured from the [wetland](#) boundary as surveyed in the field pursuant to the requirements of LMC [14.28.090](#).

B. The width of the [wetland buffer zone](#) shall be determined according to [wetland](#) category, the proposed land use and the [wetland's](#) identified [functions and values](#). This methodology shall be applied except when the community and economic development director, through consultation with the [Department](#) of Ecology, determines that another methodology better addresses [best available science](#) and/or the specific circumstances of the [wetland](#) and [wetland](#) protection needs.

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

1. For [wetlands](#) that score six or more points for habitat [function](#), the following conditions must be maintained in order to use the standard buffers, as follows:

- a. If an existing, relatively undisturbed vegetated corridor at least one hundred feet wide exists between the on-site [wetland](#) and other [priority habitats](#), as defined by the Washington State [Department](#) of Fish and Wildlife, and the off-site portion of the corridor is already protected via an existing conservation easement, critical areas regulations, or other legal requirement, the portion of the corridor on-site must also be protected by a similar legal protection. All other applicable criteria found in subsection [\(C\)\(2\)](#) of this section must also be met. The evaluation of presence or absence of the conditions described above must be completed as part of the critical areas report.

b. If no such corridor is present to protect, the standard buffers alone may be used with the other applicable criteria contained in this section. If an option for protection of a corridor, as defined under subsection (C)(1)(a) of this section, exists on the parcel, but is not provided, standard buffer widths must be increased by thirty-three percent.

2. The buffer widths in Table 14T-19 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

a. Table 14T-19. Wetland Buffer Table.

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score		
	3--5 (Low)	6--7 (Medium)	8--9 (High)
I: Estuarine and Coastal Lagoons	150 (buffer width not based on habitat scores)		
I: Bogs and Wetlands of High Conservation Value	190		225
I: All Others	75	110	225
II: Estuarine and Coastal Lagoons	110 (buffer width not based on habitat scores)		
II: All	75	110	225
III: All	60	110	225
IV: All	40		

b. Table 14T-68. Required measures to minimize impacts to wetlands. Measures are required, where applicable to a specific proposal. If not implemented, wetland buffers as indicated in Table 14T-69 will be used.

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source

	For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	- Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered - Establish covenants limiting use of pesticides within 150 ft of wetland - Apply integrated pest management
Stormwater runoff	- Retrofit stormwater detention and treatment for roads and existing adjacent development - Prevent channelized flow from lawns that directly enters the buffer - Use Low Intensity Development techniques (per PSAT publication on LID techniques)
Change in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	- Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion - Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust

c. *Table 14T-69.* The following [wetland buffer](#) requirements if habitat corridor is not provided per subsection [\(C\)\(1\)](#) of this section or minimization measures per subsection [\(C\)\(2\)\(b\)](#) of this section are not implemented:

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score (if minimization measures are not met)		
	3--5 (Low)	6--7 (Medium)	8--9 (High)
I: Estuarine and Coastal Lagoons	200 (buffer width not based on habitat scores)		
I: Bogs and Wetlands of High Conservation Value	250		300
I: All Others	100	150	300
II: Estuarine and Coastal Lagoons	150 (buffer width not based on habitat scores)		

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II: All	100	150	300
III: All	80	150	300
IV: All	50		

(Ord. 1585 §3, 2021; Ord. 1505 §10, 2017; Ord. 1449 §7, 2014; Ord. 1295 §1, 2007; Ord. 1215 §8, 2003; Ord. 912 §1 Sec. 7.1(a), 1991).

14.28.290 Increased wetland buffer zone width.

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

- A. A larger buffer is necessary to maintain viable populations of existing species; or
- B. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
- C. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
- D. The adjacent land has minimal vegetative cover or slopes greater than thirty percent. (Ord. 1505 §11, 2017; Ord. 912 §1 Sec. 7.1(b), 1991).

14.28.300 Repealed

Repealed by Ord. 1505.

14.28.310 Standard wetland buffer width averaging.

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

- A. That averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property and there are no feasible alternatives to the site design that could be accomplished without buffer averaging;
- B. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower- functioning or less-sensitive portion as demonstrated by a critical area report from a qualified wetland professional;
- C. ~~That w~~Width averaging will not adversely impact the wetland functions and values as demonstrated by a wetland report; and

~~C.D.~~ That the total area contained within the [wetland buffer](#) after averaging is no less than that contained within the standard buffer prior to averaging. In no instance shall the buffer width be reduced by more than twenty-five percent of the standard. (Ord. 1505 §13, 2017; Ord. 912 §1 Sec. 7.1(d), 1991).

14.28.320 Permit processing--Retention of natural buffer zones.

Except as otherwise specified, [wetland buffer zones](#) shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with [native vegetation](#) may be required. (Ord. 912 §1 Sec. 7.1(e), 1991).

14.28.330 Repealed

Repealed by [Ord. 1505](#).

14.28.340 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 [wetland buffer](#). The setback shall be identified on a site plan which is filed as an attachment to the notice on title required by LMC [14.28.220](#). (Ord. 912 §1 Sec. 7.1(g), 1991).

14.28.350 Avoiding wetland impacts.

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

B. With respect to Category I [wetlands](#), an [applicant](#) must demonstrate that denial would impose an [extraordinary hardship](#) on the part of the [applicant](#) brought about by circumstances peculiar to the subject property.

C. With respect to Category II and III [wetlands](#), the following provisions shall apply:

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

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

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

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

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

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

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

1. That the proposed project is [water-dependent](#) or requires access to the [wetland](#) as a central element of its basic [function](#), or is not [water-dependent](#) but has no [practicable alternative](#) pursuant to this section;
2. That no reasonable use with less impact on the [wetland](#) and its buffer is possible (e.g., agriculture, aquaculture, transfer or sale of development rights or credits, sale of open space easements, etc.);
3. That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to [wetlands](#) and [wetland buffers](#);
4. That the proposed activities will result in minimum feasible [alteration](#) or impairment to the [wetland's](#) functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;
5. That disturbance of [wetlands](#) has been minimized by locating any necessary [alteration](#) in [wetland buffers](#) to the extent possible;
6. That the proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, rare, sensitive, or as documented [priority species](#) or [priority habitats](#);
7. That the proposed activities will not cause significant degradation of ground water or surface water quality;
8. That the proposed activities comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
9. That any and all [alterations](#) to [wetlands](#) and [wetland buffers](#) will be mitigated as provided in LMC [14.28.510](#);
10. That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and
11. That the inability to derive reasonable economic use of the property is not the result of actions by the [applicant](#) in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter.

If the ~~city of Lacey~~ [City of Lacey](#) determines that [alteration](#) of a [wetland](#) and/or [wetland buffer](#) is necessary and unavoidable, the ~~city of Lacey~~ [City of Lacey](#) shall set forth in writing in the file it maintains

regarding a permit application its findings with respect to each of the items listed in this subsection. (Ord. 1215 §10, 2003; Ord. 912 §1 Sec. 7.2, 1991).

14.28.360 Minimizing wetlands impacts.

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

B. Minimizing impacts to [wetlands](#) shall include but is not limited to:

1. Limiting the degree or magnitude of the [regulated activity](#);
2. Limiting the implementation of the [regulated activity](#);
3. Using appropriate and best available technology and [best available science](#);
4. Taking affirmative steps to avoid or reduce impacts;
5. Sensitive site design and siting of facilities and construction staging areas away from [regulated wetlands](#) and their buffers;
6. Involving resource agencies early in site planning; and
7. Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the [regulated activity](#) to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities. (Ord. 1215 §11, 2003; Ord. 912 §1 Sec. 7.3, 1991).

14.28.370 Open space credit.

Up to fifty percent of a development's open space requirement may be satisfied by [wetland](#) and [wetland](#) area buffers in consideration of the significant passive recreation opportunities provided by said lands. The remaining fifty percent open space requirement must be set aside outside of the [wetland](#) and [wetland buffer](#) area to provide for and accommodate proposed or potential future active (high intensity) recreational use. (Ord. 1505 §15, 2017; Ord. 1243 §9, 2005; Ord. 1215 §11, 2003; Ord. 1192 §42, 2002; Ord. 912 §1 Sec. 7.4(b), 1991).

14.28.380 Acting on the application--Special conditions.

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

1. *Protection of Sensitive Area Tracts.* The ~~city of Lacey~~ [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~~ [City of Lacey](#):

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

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

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

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

b. Responsibility for maintaining open space tracts shall be held by a lot or homeowners association, or other appropriate entity as approved by the ~~city of Lacey~~ [City of Lacey](#).

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

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

3. *Signage.*

a. *Temporary Markers.* The outer perimeter of the [wetland buffer](#) and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the ~~city of Lacey~~ [City of Lacey](#) prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs are in place.

b. *Permanent Signs.* As a condition of any permit or authorization issued pursuant to this chapter, the city shall require the [applicant](#) to install permanent signs along the boundary of a [wetland](#) or buffer.

c. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one every fifty

feet, or one per lot if the lot is less than fifty feet wide, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the city:

Protected Wetland Area

Do Not Disturb

Contact ~~City of Lacey~~ City of Lacey Regarding Uses, Restrictions, and Opportunities for Stewardship

4. *Fencing.*

- a. The applicant shall be required to install a permanent split-rail fence constructed of non-treated wood around the wetland or buffer when domestic animals are present or may be introduced on site.
- b. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

5. *Subdivisions.* The subdivision and/or short subdivision of land where wetlands and/or associated buffers are present are subject to the following:

a. Land that is located wholly within a wetland and/or wetland buffer may not be subdivided

b. Land that is located partially within a wetland and/or wetland buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

1. Located outside of the wetland and buffer; and
2. Meets the minimum lot size requirements of the underlying zoning.

B. *Additional Conditions.*

1. The location of the outer extent of the wetland buffer and the areas to be disturbed pursuant to an approval shall be marked in the field by a qualified professional or technical wetland consultant or scientist, and such field marking shall be approved by the ~~city of Lacey~~ 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~~ City of Lacey may attach such additional conditions to the granting of approvals as deemed necessary to assure the preservation and protection of affected wetlands and to assure compliance with the purposes and requirements of this chapter. (Ord. 1505 §16, 2017; Ord. 912 §1 Sec. 7.5(a), 1991).

14.28.390 Acting on the application-- Financial security.

A. *Financial Security for Performance.* The ~~city of Lacey~~ City of Lacey shall require the applicant of a development proposal to provide financial security acceptable to the ~~city of Lacey~~ City of Lacey in an amount and with surety and conditions sufficient to fulfill the requirements of LMC 14.28.430 through 14.28.510 and, in addition, to secure compliance with other conditions and limitations set forth in the approval. The amount and the conditions of the financial security shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any

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such [financial security](#), the ~~city of Lacey~~ [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~~ [City of Lacey](#) shall release the [financial security](#) upon determining that:

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

Until such written release of the [financial security](#) by the city such security cannot be released to the [applicant](#).

B. *Maintenance Security.* The ~~city of Lacey~~ [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~~ [City of Lacey](#) in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and [mitigation](#) required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The ~~city of Lacey~~ [City of Lacey](#) shall release the [financial security](#) upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or [compensatory mitigation](#) have been satisfactorily met for the required period. For [compensation projects](#), the performance standards shall be those contained in the [mitigation](#) plan developed and approved during the review process pursuant to LMC [14.28.510](#). The maintenance security applicable to a [compensation project](#) shall not be released until the ~~city of Lacey~~ [City of Lacey](#) determines that performance standards established for evaluating the effect and success of the project have been met. (Ord. 912 §1 Sec. 7.5(b), 1991).

14.28.400 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 §1 Sec. 7.5(c), 1991).

14.28.410 Application approval-- Suspension, revocation.

In addition to other penalties provided for elsewhere, the ~~city of Lacey~~ [City of Lacey](#) may suspend or revoke an approval if it finds that the [applicant](#) or permittee has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 912 §1 Sec. 7.5(d), 1991).

14.28.420 Notice of final decision.

The ~~city of Lacey~~ [City of Lacey](#) shall provide notice of its actions pursuant to the requirements of Section 1C.070 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §43, 2002; Ord. 912 §1 Sec. 7.5(e), 1991).

14.28.430 Application approval-- Compensating for wetlands impacts.

“Mitigation” and “mitigation sequencing” are not always clearly understood. Those terms are easily confused with “compensatory mitigation”. The latter is the step in the mitigation sequence that occurs after avoidance and minimization. It involves restoring (re-establishing, rehabilitating), creating (establishing), ~~enhancing, or preserving, or enhancing~~ wetlands to replace those lost or degraded through permitted activities. “Mitigation” and “mitigation sequencing” have a broader meaning: they include as the first option, avoidance of any impact. If avoidance is not possible, the second step in mitigation sequencing is minimization. Only after those first steps does one then consider compensatory mitigation.

As a condition of any approval allowing alteration of wetlands and/or wetland buffers, or as an enforcement action pursuant to LMC 14.28.560, the ~~city of Lacey~~ City of Lacey shall require that the applicant engage in the restoration, creation or enhancement of wetlands and their buffers in order to offset the impacts resulting from the applicant’s or violator’s actions. The applicant shall develop a plan that provides for land acquisition, construction, maintenance and monitoring of replacement wetlands that recreate as nearly as possible the original wetlands in terms of acreage, function, geographic location and setting, and that are larger than the original wetlands. The overall goal of any compensatory project shall be no net loss of wetlands function and acreage and to strive for a net resource gain in wetlands over present conditions. Compensation shall be completed prior to wetland destruction, where possible.

Compensatory mitigation shall follow an approved mitigation plan pursuant to LMC 14.28.510 and shall meet the following minimum performance standards set forth in LMC 14.28.440 through 14.28.510. (Ord. 912 §1 Sec. 7.5(f), 1991).

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

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

A. Demonstrate the proposal minimizes the impact on critical areas in accordance with mitigation sequencing.

AB. Demonstrate sufficient scientific expertise, supervisory capability, and financial resources to carry out the project;

BC. Demonstrate the capability for monitoring the site and to make corrections during this period if the project fails to meet projected goals; and

CD. Protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for long-term persistence of the compensation area.

DE. Projects shall meet requirements of best available science. (Ord. 1215 §12, 2003; Ord. 912 §1 Sec. 7.5(f)(1), 1991).

14.28.445 Performance standards--Mitigation requirements.

A. [Mitigation](#) shall achieve equivalent or greater biological [functions](#). [Mitigation](#) for [alterations](#) to [wetlands](#) shall achieve equivalent or greater biologic [functions](#) and shall be consistent with the [Department](#) of Ecology's [Wetland Mitigation](#) in Washington State--Part 2, Developing [Mitigation](#) Plans--Volume 1, and Selecting [Wetland Mitigation](#) Sites Using a Watershed Approach, as revised.

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

1. The lost [wetland](#) area provides minimal [functions](#) and the [mitigation](#) action(s) results in net gain in [wetland functions](#) as determined by a site-specific [function](#) assessment; or
2. The lost [wetland](#) area provides minimal [functions](#) as determined by a site-specific [function](#) assessment and other protected or enhanced habitats provide greater benefits to the [functioning](#) of the watershed, such as riparian habitat protection and [enhancement](#).

C. *Mitigation for Lost Functions and Values.* [Mitigation](#) actions shall address [functions](#) affected by the [alteration](#) to achieve functional equivalency or improvement, and shall provide similar [wetland functions](#) as those lost except when:

1. The lost [wetland](#) provides minimal [functions](#) as determined by a site-specific [function](#) assessment and the proposed [mitigation](#) action(s) will provide equal or greater [functions](#) or will provide [function](#) shown to be limiting within a watershed through a formal watershed assessment protocol; or
2. Out of kind replacement will best meet formally identified regional goals, such as replacement of historically diminished [wetland types](#).

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

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, but using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. Rectify the impact by repairing, rehabilitating, or [restoring](#) the affected environment.
4. Reduce or eliminate the impact over time by [preservation](#) and maintenance operations.
5. Compensate for the impact by replacing, [enhancing](#), or providing substitute resources or environments.
6. [Monitor](#) the required compensation and take remedial or corrective measures when necessary. (Ord. 1505 §17, 2017; Ord. 1215 §13, 2003).

14.28.447 Type and location of mitigation.

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

- 1. There are no reasonable on-site opportunities or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;
- 2. Off-site [mitigation](#) has a greater likelihood of providing equal or improved [wetland functions](#) than the impacted [wetland](#); and
- 3. Off-site locations shall be in the same sub-drainage basin and the same Water Resource Inventory Area (WRIA) unless;
 - a. The impact is located near the boundary of a WRIA;
 - b. Established regional or watershed goals for water quality, flood or conveyance, habitat or other [wetland functions](#) have been established and strongly justify location of [mitigation](#) at another site; or
 - c. Credits from a city certified [wetland mitigation bank](#) are used as [mitigation](#), and the use of credits is consistent with the terms of the banks certification. (Ord. 1215 §14, 2003).

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

- A. Any person who [alters regulated wetlands](#) shall restore or create equivalent areas or greater areas of [wetlands](#) than those altered in order to compensate for [wetland](#) losses.
- B. Where feasible, restored or created [wetlands](#) shall be a higher category than the altered [wetland](#).
- C. Compensation areas shall be determined according to [function](#), acreage, type, location, time factors, ability to be self-sustaining and projected success. [Wetland functions and values](#) shall be calculated using the best professional judgment of a qualified [wetland](#) ecologist using the best available techniques. Multiple [compensation projects](#) may be proposed for one project in order to best achieve the goal of no net loss.
- D. *Acreage Replacement Ratio.* The following ratios apply to [creation](#) or [restoration](#) which is in-kind, on-site, the same category, timed prior to or concurrent with [alteration](#), and has a high probability of success. These ratios do not apply to remedial actions resulting from illegal [alterations](#); greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a [wetland](#) bank approved by the city, the [Department](#) of Ecology or the U.S. Corps of Engineers. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of [wetlands](#) requiring replacement and the second specifies the acreage of [wetlands](#) altered.

Wetland Mitigation Ratios

Category of impacted wetland (based on special characteristics)	Re-establishment or creation	Rehabilitation	Preservation	Enhancement

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<u>Category I forested</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>	<u>24:1</u>
<u>Bogs</u>	<u>NA</u>	<u>NA</u>	<u>24:1</u>	<u>NA</u>
<u>Wetlands of High Conservation Value</u>	<u>Consult with WA DNR</u>	<u>Consult with WA DNR</u>	<u>24:1</u>	<u>Consult with WA DNR</u>
<u>Category I Estuarine wetlands</u>	<u>4:1 (re-establishment only)</u>	<u>8:1</u>	<u>16:1</u>	<u>Limited circumstances (case by case)</u>
<u>Category II Estuarine wetlands</u>	<u>3:1 (re-establishment only)</u>	<u>6:1</u>	<u>12:1</u>	<u>Limited circumstances (case by case)</u>
<u>Category I Interdunal wetlands</u>	<u>4:1</u>	<u>8:1 (limited circumstances)</u>	<u>16:1</u>	<u>Not considered an option</u>
<u>Category II Interdunal wetlands</u>	<u>2:1</u>	<u>4:1 (limited circumstances)</u>	<u>8:1</u>	<u>Not considered an option</u>
<u>Category III and IV Interdunal wetlands</u>	<u>1.5:1</u>	<u>3:1 (limited circumstances)</u>	<u>6:1</u>	<u>Not considered an option</u>
<u>Category I Wetlands in coastal lagoons</u>	<u>4:1 (re-establishment only)</u>	<u>8:1</u>	<u>16:1</u>	<u>Not considered an option</u>
<u>Category II Wetlands in coastal lagoons</u>	<u>3:1 (re-establishment only)</u>	<u>6:1</u>	<u>12:1</u>	<u>Not considered an option</u>

<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Restoration</u>
<u>Category I:- Bog, Natural Heritage Site</u>	<u>Not considered possible</u>	<u>Case by case</u>
<u>Category I:- Mature Forested</u>	<u>6:1</u>	<u>12:1</u>

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Category I:	4:1	8:1
Based on Functions		
Category II	3:1	6:1
Category III	2:1	4:1
Category IV	1.5:1	3:1

1. *Increased Replacement Ratio.* The ~~city of Lacey~~ 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 will elapse between impact and replication of wetland functions; or
- c. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
- d. The impact was an unauthorized impact.

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2. *Decreased Replacement Ratio.* The ~~city of Lacey~~ City of Lacey may decrease these ratios under the following circumstances:

- a. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;
- b. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or
- c. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

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3. A minimum acreage replacement ratio of 1:1 shall be required except as provided by LMC 14.28.445(B). (Ord. 1449 §4, 2014; Ord. 1215 §15, 2003; Ord. 935 §8, 1992; Ord. 912 §1 Sec. 7.5(f)(2), 1991).

14.28.455 Wetland mitigation banks and in-lieu fee.

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

1. The bank is approved by the city, the Department of Ecology, or the U.S. Army Corps of Engineers.
2. The city determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
3. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

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

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

D. To aid in the implementation of off-site [mitigation](#), the city may develop an [in-lieu fee program](#). This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee [mitigation](#), and state water quality regulations. An approved [in lieu-fee program](#) sells [compensatory mitigation](#) credits to permittees whose obligation to provide [compensatory mitigation](#) is then transferred to the in-lieu program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved [in-lieu fee program](#) may be used when the following apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts; and
2. The [mitigation](#) will occur on a site identified using the site selection and prioritization process in the approved [in-lieu fee program](#) instrument; and
3. The proposed use of credits is consistent with the terms and conditions of the approved [in-lieu fee program](#) instrument; and
4. Land acquisition and initial physical and biological improvements of the [mitigation](#) site must be completed within three years of the credit sale; and
5. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the [applicant's](#) qualified [wetland](#) scientist using the method consistent with the credit assessment method specified in the approved instrument for the [in-lieu fee program](#); and
6. Credits from an approved [in-lieu fee program](#) may be used to compensate for impacts located within the service area specified in the approved in-lieu fee instrument. (Ord. 1449 §5, 2014; Ord. 1215 §16, 2003).

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

A. Impacts to [wetlands](#) may be mitigated by [enhancement](#) of existing significantly degraded [wetlands](#). [Applicants](#) proposing to enhance [wetlands](#) must produce a critical area report that identifies how [enhancement](#) will increase the [functions](#) of the degraded [wetland](#) and how this increase will adequately mitigate for the loss of [wetland](#) area and [function](#) at the impact site. An [enhancement](#) proposal must also show whether existing [wetland functions](#) will be reduced by the [enhancement](#) actions.

B. At a minimum, [enhancement](#) acreage shall be double the acreage required for [creation](#) or [restoration](#) under LMC [14.28.450](#). The ratios shall be greater than double the required acreage where the [enhancement](#) proposal would result in minimal gain in the performance of [wetland functions](#) and/or result in the reduction of other [wetland functions](#) currently being provided in the [wetland](#). (Ord. 1215 §17, 2003; Ord. 912 §1 Sec. 7.5(f)(3), 1991).

14.28.465 Wetland preservation as mitigation.

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

A. *Preservation in Combination with Other Forms of Compensation.* [Preservation](#) as [mitigation](#) is acceptable when done in combination with [restoration](#), [creation](#) or [enhancement](#) providing that a minimum of 1-to-1 acreage replacement is provided by [restoration](#) or [creation](#) and the criteria below are met:

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

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B. *Preservation as a Sole Means of Mitigation for Wetland Impacts.* [Preservation](#) of at risk, high quality habitat may be considered as the sole means of [mitigation](#) of [wetland](#) impacts when all of the following criteria are met:

1. [Preservation](#) is used as a form of [mitigation](#) only after the standard sequencing of [mitigation](#) (avoid, minimize, and then compensate) has been applied;
2. [Creation](#), [restoration](#), and [enhancement](#) opportunities have also been considered, and [preservation](#) is the best [mitigation](#) option;
3. The impact to the area is small and/or impacts are to a Category III or IV [wetland](#);
4. [Preservation](#) of a high quality system occurs in the same Water Resource Inventory Area or a watershed where the [wetland](#) impact occurs;
5. [Preservation](#) sites include areas adequate to protect the habitat and its [functions](#) from encroachment and degradation;
6. The [preservation](#) site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on or off-site activities; "potential" includes permitted, or planned, or perceived actions; and
7. The area proposed for the [preservation](#) is of a high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of ~~high-quality~~ [high-quality](#) areas;
 - a. Category I or II [wetland](#) rating;
 - b. Rare [wetland type](#) for example, bogs, estuaries;
 - c. Habitat for threatened or endangered species;

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- d. [Wetland type](#) that is rare in the area;
- e. Provides biological and/or hydrological connectivity;
- f. High regional or watershed importance for example, listed as a priority site in watershed plan; and
- g. Large size with species diversity (plants and/or animals) and/or high abundance.

C. *Mitigation Ratios for Preservation as a Sole Means of Mitigation.* [Mitigation](#) ratios for [preservation](#) as the sole means of [mitigation](#) shall range from 10-to-1 to 20-to-1, as determined by the city, depending on the quality of [wetlands](#) being mitigated and the quality of the [wetlands](#) being [preserved](#). (Ord. 1215 §18, 2003).

14.28.470 Repealed

Repealed by [Ord. 1215](#).

14.28.480 Repealed

Repealed by [Ord. 1215](#).

14.28.490 Application approval--Compensatory mitigation--Timing.

Where feasible, compensatory projects shall be completed prior to activities that will disturb [wetlands](#). In all other cases, [mitigation](#) shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of [mitigation](#) projects shall be timed to reduce impacts to existing wildlife and flora. The city may authorize a one time temporary delay, up to one-hundred-twenty days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the [mitigation](#) plan. The justification must be verified and approved by the city, and include a financial guarantee. (Ord. 1215 §19, 2003; Ord. 912 §1 Sec. 7.5(f)(6), 1991).

14.28.500 Application approval--Compensatory mitigation--Cooperative restoration, creation or enhancement projects.

A. The ~~city of Lacey~~ [City of Lacey](#) may encourage, facilitate, and approve cooperative projects wherein a single [applicant](#) or other organization with demonstrated capability may undertake a [compensation project](#) with funding from other [applicants](#) under the following circumstances:

1. [Restoration](#), [creation](#) or [enhancement](#) at a particular site or [wetland type](#) may be scientifically difficult or impossible; or
2. [Creation](#) of one or several larger [wetlands](#) may be preferable to many small [wetlands](#).

B. Persons proposing cooperative [compensation projects](#) shall:

1. Submit a joint permit application;

2. Demonstrate compliance with all standards;
3. Demonstrate the organizational and fiscal capability to act cooperatively; and
4. Demonstrate that long term management can and will be provided. (Ord. 1449 §6, 2014; Ord. 912 §1 Sec. 7.5(f)(7), 1991).

14.28.510 Application approval-- Mitigation plans.

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

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

1. Impacted [wetland](#) including, at a minimum, [wetland](#) delineation; existing [wetland](#) acreage; vegetative, faunal and hydrologic characteristics; soil and substrate conditions; topographic elevations; and
2. Compensation site, if different from the impacted [wetland](#) site, including at a minimum: existing acreage; vegetative, faunal and hydrologic conditions; relationship within watershed and to existing water bodies; soil and substrate conditions, topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership.

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

1. The purposes of the compensation measures including a description of site selection criteria, identification of compensation goals; identification of target evaluation species and resource [functions](#), dates for beginning and completion, and a complete description of the structure and functional relationships sought in the new [wetland](#). The goals and objectives shall be related to the [functions and values](#) of the original [wetland](#) or if out-of-kind, the type of [wetland](#) to be emulated; and
2. A review of the available literature and/or experience to date in [restoring](#) or creating the type of [wetland](#) proposed shall be provided. An analysis of the likelihood of success of the [compensation project](#) at duplicating the original [wetland](#) shall be provided based on the experiences of comparable projects, if any. An analysis of the likelihood of persistence of the created or restored [wetland](#) shall be provided based on such factors as surface and ground water supply and flow patterns, dynamics of the [wetland](#) ecosystem; sediment or pollutant influx and/or erosion, periodic flooding and drought, etc., presence of invasive flora or fauna, potential human or animal disturbance, and previous comparable projects, if any.

C. *Performance Standards.* Specific criteria shall be provided for evaluating whether or not the goals and objectives of the project have been met and for determining whether additional remedial action or contingency measures must be undertaken. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

D. *Detailed Construction Plans.* Written specifications and descriptions of compensation techniques shall be provided including the proposed construction sequence, grading and excavation details, erosion and sediment control features needed for [wetland](#) construction and long-term survival, a planting plan specifying plant species, quantities, locations, size, spacing, and density; source of plant materials, propagules, or seeds; water and nutrient requirements for planting; where appropriate, measures to protect plants from predation; specification of substrate stockpiling techniques and planting instructions; descriptions of water control structures and water-level maintenance practices needed to achieve the necessary hydrocycle/hydroperiod characteristics; etc. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. The plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data.

E. *Monitoring Program.* A program outlining the approach for [monitoring](#) construction of the [compensation project](#) and for assessing a completed project shall be provided. [Steps within the monitoring program shall include: \(i\) Determining the reasons for monitoring; \(ii\) Establishing key objectives and study questions; \(iii\) Designing the monitoring program; \(iv\) Determining the monitoring time frame; and \(v\) Evaluating results and making recommendations.](#) [Monitoring](#) may include, but is not limited to:

- [1.](#) ~~1.~~ Establishing vegetation plots to track changes in plant species composition and density over time;
- [2.](#) ~~2.~~ Using photo stations to evaluate vegetation community response;
- [3.](#) ~~3.~~ Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);
- [4.](#) ~~4.~~ Measuring base flow rates and stormwater runoff to model and evaluate water quality predictions, if appropriate;
- [5.](#) ~~5.~~ Measuring sedimentation rates, if applicable; and
- [6.](#) ~~6.~~ Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity.

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

F. *Contingency Plan.* Identification of potential courses of action, and any corrective measures to be taken when [monitoring](#) or evaluation indicates project performance standards are not being met.

G. *Approval Conditions.* Any [compensation project](#) prepared pursuant to this section and approved by the ~~city of Lacey~~ [City of Lacey](#) shall become part of the application for approval.

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H. *Financial Security and Demonstration of Competence.* A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing to successfully execute the [compensation project](#) shall be provided. A [compensation project](#) manager shall be named and the qualifications of each team member involved in preparing the [mitigation](#) plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training and experience with comparable projects. In addition, [financial security](#) ensuring fulfillment of the [compensation project](#), [monitoring](#) program, and any contingency measure shall be posted pursuant to LMC [14.28.380](#) through [14.28.520](#) in the amount of one hundred fifty percent of the expected cost of compensation.

I. Regulatory authorities are encouraged to consult with and solicit comments of any federal, state, regional, or local agency, including tribes, having any special expertise with respect to any environmental impact prior to approving a [mitigation](#) proposal which includes [wetlands](#) compensation. The [compensation project](#) proponents should provide sufficient information on plan design and implementation in order for such agencies to comment on the overall adequacy of the [mitigation](#) proposal.

J. [Compensatory mitigation](#) is not required for [regulated activities](#):

1. For which an approval has been obtained that occur only in the buffer or expanded buffer and which have no adverse impacts to [regulated wetlands](#); or
2. Allowed activities pursuant to LMC [14.28.120](#) provided such activities utilize [best management practices](#) to protect the [functions and values](#) of [regulated wetlands](#). (Ord. 968 §15, 1993; Ord. 912 §1 Sec. 7.5(g), 1991).

14.28.520 Appeals.

Any decision of the ~~city of Lacey~~ [City of Lacey](#) in the administration of this chapter may be appealed in accordance with Chapter 1D of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §44, 2002; Ord. 912 §1 Sec. 7.6, 1991).

14.28.530 Modification of wetland approvals.

An [applicant](#) may request modification of a previously issued [wetland](#) approval by applying and going through the appropriate review process as described in Chapter 1 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §45, 2002; Ord. 912 §1 Sec. 7.7, 1991).

14.28.540 Resubmittal of denied permit applications.

A [wetland](#) application which has been denied may be modified and resubmitted no earlier than one hundred eighty days following action on the original application. An application shall be considered a resubmittal if the site proposed for development was the subject of a [wetland](#) application within the previous one hundred eighty days. (Ord. 912 §1 Sec. 7.8, 1991).

14.28.550 Temporary emergency approval.

A. Notwithstanding the provisions of this chapter or any other laws to the contrary, the ~~city of Lacey~~ [City of Lacey](#) may issue a temporary emergency [wetlands](#) approval if:

1. The ~~city of Lacey~~ [City of Lacey](#) determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and

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

B. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act [\(including mitigation sequencing\)](#) and shall:

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

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

C. Issuance of an emergency permit by the ~~city of Lacey~~ [City of Lacey](#) does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities.

D. The emergency permit may be terminated at any time without process upon a determination by the ~~city of Lacey~~ [City of Lacey](#) that the action was not or is no longer necessary to protect human health or the environment. (Ord. 1505 §18, 2017; Ord. 912 §1 Sec. 8.1, 1991).

14.28.560 Enforcement.

A. The ~~city of Lacey~~ [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~~ [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~~ [City of Lacey](#) may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a [regulated wetland](#) or their buffers which are inconsistent with this chapter or an applicable [wetlands](#) protection program.

2. The ~~city of Lacey~~ [City of Lacey](#) may serve upon a person a cease and desist order if an activity being undertaken on [regulated wetlands](#) or its buffer is in violation of the act, these rules or a local [wetlands](#) protection program. Whenever any person violates this chapter or any permit issued to implement this chapter, the ~~city of Lacey~~ [City of Lacey](#) may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

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

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

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

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

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

3. Any person who undertakes any activity within a [regulated wetland](#) or its buffer without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection [\(B\)\(2\)](#) 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~~ [City of Lacey](#). The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

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

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC [14.28.520](#).

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 a [wetland](#) permit. (Ord. 912 §1 Sec. 8.2, 1991).

14.28.570 Non-conforming activities.

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

- A. No such activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its non-conformity without a permit issued pursuant to the provisions of this chapter;
- B. Except for cases of discontinuance as part of normal agricultural practices, if a non-conforming activity is discontinued for twelve 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. (Ord. 912 §1 Sec. 9, 1991).

14.28.580 Repealed

Repealed by [Ord. 1192](#).

14.28.590 Amendments.

These regulations and the ~~city of Lacey~~ [City of Lacey](#) zoning map may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning [wetland](#) location, soils, hydrology, flooding, or [wetland](#) plants and wildlife become available. (Ord. 912 §1 Sec. 11, 1991).

14.28.600 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. (Ord. 912 §1 Sec. 12, 1991).

14.28.610 Assessment relief.

The assessors of the ~~city of Lacey~~ [City of Lacey](#) shall consider [wetland](#) regulations in determining the fair market value of land. Any owner of an undeveloped [wetland](#) who has dedicated an easement or entered into a perpetual conservation restriction with the ~~city of Lacey~~ [City of Lacey](#) or a nonprofit organization to permanently control some or all [regulated activities](#) in the [wetland](#) shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the controlled [wetland](#) to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 912 §1 Sec. 13, 1991).

Chapter 14.33 FISH AND WILDLIFE HABITAT CONSERVATION AREAS PROTECTION

<https://lacey.municipal.codes/LMC/14.33>

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- [14.33.030 Definitions](#)
- [14.33.040 Qualified professional habitat biologist](#)
- [14.33.050 Applicability](#)
- [14.33.060 Designation, maps and inventory](#)
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- [14.33.250 Appeals](#)
- [14.33.260 Enforcement](#)
- [14.33.270 Non-conforming activities](#)
- *14.33.280 Repealed*
- [14.33.290 Amendments](#)
- [14.33.300 Severability](#)
- [14.33.310 Assessment relief](#)

14.33.020 Purpose and intent.

A. It is the policy of the ~~city of Lacey~~ [City of Lacey](#) to require site planning and habitat management planning to designate and protect the [functions and values](#) of [habitat conservation areas](#) ~~to meet no net loss~~ based on best available scientific information ~~wherever possible~~;

B. It is the intent of the ~~city of Lacey~~ [City of Lacey](#) that activities in or affecting [habitat conservation areas](#) not degrade [habitat conservation areas functions and values](#) by:

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

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

1. Preserving, protecting and [restoring habitat conservation areas](#) by regulating development within [fish and wildlife](#) ~~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~~ [City of Lacey](#) officials with information to evaluate, approve, condition, or deny public or private development proposals;
5. [Recognizing the ecosystem services provided by fish and wildlife habitat conservation areas, open spaces, and biodiversity areas by adequately conserving and connecting these areas for wildlife corridors and hazard mitigation](#);
6. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter [43.21C](#) RCW, ~~City of Lacey~~ [City of Lacey](#) and Lacey Urban Growth Area ~~Comprehensive Joint~~ Plan, the ~~city~~ [Lacey](#) Zoning Code (LMC Title [16](#)), the city Environmental Policy Ordinance (Chapter [14.24](#) LMC), the city Tree and Vegetation Protection and Preservation Ordinance

(Chapter [14.32](#) LMC), and all related environmental and community plans and programs. (Ord. 1505 §19, 2017; Ord. 935 §9 (part), 1992).

14.33.030 Definitions.

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

A. “*Anadromous fish*” means fish that spawn and rear in freshwater and mature in the marine environment. The life stages of anadromous fish can be tied to the following general habitat requirements:

- Adequate but not excessive stream flows.
- Cool, well-oxygenated, unpolluted water.
- Streambed gravels that are relatively free of fine sediments.
- Instream structural diversity (interposed pools, riffles, hiding and resting cover).
- Unimpeded migratory access to and from spawning and rearing areas.
- Complex estuarine and nearshore habitats that support food production, migratory cover, and physiological transition between fresh and saltwater.

B. “*Adaptive management*” relies on scientific methods to evaluate how well regulatory and nonregulatory actions achieve their objectives and adjusts those programs. Management, policy, and regulatory actions are treated as experiments that are purposefully monitored and evaluated to determine whether they are effective and, if not, how they should be improved to increase their effectiveness. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty.

~~B.C.~~ “*Applicant*” means a person who files an application for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

~~C.D.~~ “*Bankfull width*” means:

1. For streams--the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross section.
2. For lakes, ponds, and impoundments--line of mean high water.
3. For tidal water--line of mean high tide.
4. For periodically inundated areas of associated wetlands--line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

~~D.E.~~ “*Best available science*” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC [365-195-900](#) through [365-195-925](#).

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~~EE~~. “Best management practices” means conservation practices or systems of practices and management measures that:

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

~~FG~~. “Buffer or buffer zone” means an area contiguous to and that protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area.

~~GH~~. “Channel migration zone (CMZ)” means the lateral [outer](#) extent of likely movement along a stream or river during the next one hundred years as determined by evidence of active stream channel movement over the past one hundred years. Evidence of active movement over the one-hundred-year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics. The time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is less than two [bankfull widths](#), is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is no field evidence of secondary channels with recent scour from stream flow or progressive bank erosion at meander bends. Areas separated from the active channel by legally existing artificial channel constraints that limit bank erosion and channel avulsion without hydraulic connections shall not be considered within the CMZ.

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

~~IJ~~. “Exotic” means any [species](#) of plants or animals which are foreign to the planning area.

~~JK~~. “Extraordinary hardship” means strict application of this chapter and/or programs adopted to implement this chapter by the ~~city of Lacey~~ [City of Lacey](#) that would prevent all reasonable economic use of the parcel.

~~KL~~. “Fish and wildlife habitat conservation areas,” also referred to as “habitat conservation areas,” means areas that serve a critical role in sustaining needed habitats and [species](#) for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the [species](#) will persist over the long term. These areas shall be managed for maintaining [species](#) in suitable habitats within their natural geographic distribution so that isolated sub-populations are not created; and populations or habitats are not degraded or reduced so they are no longer viable over the long term. These areas include:

1. Areas ~~with which~~ [where](#) state or federally designated endangered, threatened, and sensitive [species](#) have a [primary association](#);
2. Habitats and [species](#) of local importance, including but not limited to areas designated as [priority habitats](#) or [priority species](#) by the Department of Fish and Wildlife;

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3. Commercial and recreational shellfish areas;
4. Kelp and eelgrass beds, herring, smelt, and other forage fish spawning areas;
5. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds, if permitted by a regulatory authority;
6. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington;
7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
8. State natural area preserves, [wildlife areas](#), and natural resource conservation areas;
9. Land essential for preserving connections between habitat blocks and open spaces; and
10. Riparian ecosystems including [channel migration zones and salmonid habitats](#) ~~s~~ (which also includes marine nearshore areas).
- [11. Rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.](#)
- [12. "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by the city.](#)

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

~~L.M.~~ *"Financial security"* means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or other financial guarantee approved by the city attorney.

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

~~N.O.~~ *"In-kind compensation"* means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

~~O.P.~~ *"Mitigation"* means avoiding, minimizing or compensating for adverse critical area impacts. Mitigation, in the following order of preference, is:

- ~~1.~~ ~~4.~~ Avoiding the impact altogether by not taking a certain action or parts of an action;

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

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

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

~~QR.~~ "Native vegetation" means plant [species](#) that are indigenous to the area in question.

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

~~ST.~~ "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. [In addition, priority habitats identified and mapped by the Washington Department of Fish and Wildlife in the Priority Habitats and Species List, as amended.](#)

~~TU.~~ "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](#), [and those listed on the Washington Department of Fish and Wildlife's Priority Habitats and Species List](#), as well as other [species](#) of concern, and game [species](#).

~~UV.~~ "Qualified professional" means a person with experience and training in the applicable critical area. A qualified professional for habitats must have obtained a Bachelor of Science or Bachelor of Arts or equivalent degree in biology, and at least two years of work experience related to the subject [species](#) or habitat.

~~VW.~~ "Restoration" means measures taken to restore an altered or damaged natural feature including:

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

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~~WX~~. "Riparian habitat" means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife.

~~XY~~. "Species" means any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

~~YZ~~. "Species, endangered" means any fish or wildlife [species](#) that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

~~ZAA~~. "Species, threatened" means any fish or wildlife [species](#) that is likely to become an [endangered species](#) within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

~~AABB~~. "Watercourse," "river" or "stream" means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high-water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

~~AABBCC~~. "Water typing system" means waters classified according to WAC [222-16-031](#) as follows:

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1. Type S water--all waters, within their [bankfull width](#), as inventoried as "shorelines of the state" under Chapter [90.58](#) RCW and the rule promulgated pursuant to Chapter [90.58](#) RCW, including periodically inundated areas of their associated wetlands.

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

a. Waters which are diverted for domestic use by more than ten residential or camping units or by a public accommodation facility licensed to serve more than ten persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F water upstream from the point of such

diversion for one thousand five hundred feet or until the drainage area is reduced by fifty percent, whichever is less;

b. Waters which are diverted for use by federal, state, tribal, or private fish hatcheries. Such waters shall be considered Type F water upstream from the point of diversion for one thousand five hundred feet, including tributaries if highly significant for protection of downstream water quality. The Department of Natural Resources may allow additional harvest beyond the requirements of Type F water designation provided the Department of Natural Resources determines after a landowner-requested on-site assessment by the Department of Fish and Wildlife, Department of Ecology, the affected tribes, and interested parties that:

(1) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(2) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

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

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

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

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

3. Type Np water--segments of natural waters within the [bankfull width](#) of the defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry at any time of the year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

4. "Type Ns" means all segments of natural waters within the [bankfull width](#) of the defined channels that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters. (Ord. 1505 §20, 2017; Ord. 1215 §1, 20, 2003; Ord. 935 §9 (part), 1992).

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 fulfill 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. (Ord. 935 §9 (part), 1992).

14.33.050 Applicability.

A. When any provision of any other chapter of the ~~city of Lacey~~ [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~~ [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~~ [City of Lacey](#) shall not grant any approval or permission to conduct a nonexempt 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 review; 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. (Ord. 1192 §56, 2002; Ord. 935 §9 (part), 1992).

14.33.060 Designation, maps and inventory.

A. This chapter shall apply to all lots or parcels on which [habitat conservation areas](#) are located within the jurisdiction of the ~~city of Lacey~~ [City of Lacey](#).

B. [Fish and wildlife habitat conservation areas](#) include:

1. Areas with which ~~city, state,~~ or federally designated endangered, threatened, and sensitive [species](#) have [primary association including, but not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.](#)

a. Federally designated endangered and [threatened species](#) are those fish and wildlife [species](#) identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted as necessary for current listing status.

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

c. "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by the city.

2. *State priority habitats and areas associated with state priority species.* [Priority habitats](#) and [species](#) are considered to be priorities for conservation and management. [Priority species](#) require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. [Priority habitats](#) are those habitat areas or elements with unique or significant value to a diverse assemblage of [species](#). A [priority habitat](#) may consist of a unique vegetation type or dominant plant [species](#), a described successional stage, or a specific structural element. [Priority habitats](#) and [species](#) are identified by the state Department of Fish and Wildlife [in the Priority Habitats and Species program, and the Washington Natural Heritage Plan establishes a list of priority plant species and ecosystems.](#);

3. *Habitat and species of local importance.* ~~Habitats and are those species that are of local concern importance due to their population status or their sensitivity to habitat alteration or that are game species. of local importance are those identified by the city of Lacey.~~ [City of Lacey](#). This includes ~~including~~ those [species](#) that possess unusual or unique habitat warranting protection because of qualitative [species](#) diversity or habitat system health indicators [as identified by the City of Lacey](#);

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

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

6. *Waters of the state.* Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC [222-16-030](#) or [222-16-031](#) and further defined in RCW [90.48.020](#) ~~depending upon the classification used~~;

7. Type S, F, Np, and Ns waters as designated by the State Department of Natural Resources. Type S, F, Np, and Ns waters are those water bodies designated by the Department of Natural Resources stream typing pursuant to WAC [222-13-030](#);

8. *State natural area preserves and natural resource conservation areas.* [and state wildlife areas](#). Natural area preserves and natural resource conservation areas are defined, established, and managed by the state Department of Natural Resources;

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

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

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

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

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

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

[Habitat conservation areas](#) not shown on the maps are presumed to exist in the ~~city of Lacey~~ [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. (Ord. 1505 §21, 2017; Ord. 1215 §21, 2003; Ord. 935 §9 (part), 1992).

14.33.070 Determination of habitat conservation area.

A. The exact location of the [fish and wildlife habitat conservation area](#) shall be determined by the [applicant](#) through the performance of a field investigation applying specific habitat or [species](#) recommendations pursuant to the Department of Fish and Wildlife. A [qualified professional](#) wildlife habitat biologist shall perform [habitat conservation area](#) delineations using the methodology prescribed by the State of Washington Department of Fish and Wildlife. Provided that if no methodology is available the consultant shall use [best available science](#) to delineate the site for the Department of Fish and Wildlife's review. The [applicant](#) is required under LMC [14.33.110](#) 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~~ [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~~ [City of Lacey](#) shall, at the [applicant](#)'s expense, obtain expert services to render a final delineation. (Ord. 1505 §22, 2017; Ord. 1215 §22, 2003; Ord. 935 §9 (part), 1992).

14.33.080 Exempt activities.

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

- A. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife in consultation with the state Department of Fish and Wildlife and when undertaken by a property owner on his or her property for his or her personal, noncommercial purposes;
- B. Nonpublic outdoor recreation activities such as fishing, bird watching, hiking, boating and swimming when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;
- C. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the [habitat conservation area](#) by changing existing topography, water conditions or other natural parameters important to the conservation area;
- D. Navigation aids and boundary markers;
- E. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, habitat impacts shall be minimized and disturbed areas shall be immediately restored; and
- F. Educational activities and scientific research;
- G. Normal and routine maintenance or repair of existing utility structures or right-of-way;
- H. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way;
- I. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way. (Ord. 1215 §23, 2003; Ord. 935 §9 (part), 1992).

14.33.090 Repealed

Repealed by [Ord. 1192](#).

14.33.100 Site plan review.

Site plan review approval shall be obtained from the ~~city of Lacey~~ [City of Lacey](#) prior to any use or activity, except exempt activities described in LMC [14.33.080](#) occurring in a [fish and wildlife habitat conservation area](#) or buffer. (Ord. 1215 §24, 2003; Ord. 1192 §58, 2002; Ord. 935 §9 (part), 1992).

14.33.110 Application information requirements.

- A. An application for site plan review within a [habitat conservation area](#) or its buffer shall be determined complete only when it contains all of the information described in Section 18.050 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards.

B. The application shall also have the following information and materials:

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the entire parcel of land owned by the [applicant](#) and the exact boundary of the [habitat conservation area](#) pursuant to guidelines established in this chapter;
2. A description of the vegetative cover of the site and adjacent area including dominant [species](#);
3. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations within the site;
4. The exact sites and specifications for all proposed activities including the amounts and methods;
5. Elevations of the site and adjacent lands within the [habitat conservation area](#) at contour intervals of no greater than five feet;
6. Top view and typical cross section views of the [habitat conservation area](#) to scale;
7. Specific means to mitigate any potential adverse environmental impacts of the [applicant](#)'s proposal;
8. A critical area report containing information required in LMC [14.33.115](#);
9. A [priority habitat](#) and [priority species](#) management plan prepared by a qualified habitat biologist based upon [best available science](#) information provided in the critical area report. The plan shall detail how the designated [fish and wildlife habitat conservation area](#) and any [priority species](#) found within said area shall be protected. The plan shall follow all recommendations provided by the Department of Fish and Wildlife in its [priority habitat](#) and [priority species](#) program according to its publication "Management Recommendations of Washington [Priority Habitats](#) and [Species](#)" or based on site specific recommendations made by the Department of Fish and Wildlife based on review of the project site. (Ord. 1505 §23, 2017; Ord. 1215 §25, 2003; Ord. 1192 §59, 2002; Ord. 935 §9 (part), 1992).

14.33.115 Critical area report requirements.

A. *Qualified Habitat Biologist.* A critical area report shall be prepared by a [qualified professional](#) habitat biologist as identified in LMC [14.33.040](#).

B. *Area Considered.* The following physical areas shall be addressed in the critical area report for [habitat conservation areas](#):

1. The project area of the proposed activity;
2. All [habitat conservation areas](#) and recommended buffers within two hundred feet of the project area; and
3. All shoreline areas, flood plains, and other critical areas, and related buffers within two hundred feet of the project area.

C. *Habitat Assessment.* A habitat assessment is an investigation of the project area to evaluate the presence or absence of a potential fish or wildlife [species](#) or habitat that is protected under this

ordinance. A critical area report for a [habitat conservation area](#) shall contain an assessment of habitats including the following minimum site and proposal related information:

1. Detailed description of vegetation on and adjacent to the project area;
2. Identification of any [species](#) of local importance, [priority species](#), or endangered, threatened, sensitive or candidate [species](#) that have a [primary association](#) with habitat on or adjacent to the project area, an assessment of potential project impacts to the use of the site by the [species](#);
3. A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for [species](#) or habitats located on or adjacent to the project area;
4. A discussion of measures, including avoidance, minimization and [mitigation](#), proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with “[mitigation](#) sequencing”; and
5. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed [monitoring](#) and maintenance programs.

D. Additional Information May Be Required. When appropriate due to the type of habitat or [species](#) present or the project area conditions, the site plan review committee may also require the habitat management program include:

1. An evaluation by the Department of Fish and Wildlife or qualified expert regarding the [applicant's](#) analysis and effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
2. An evaluation by the local Native American Indian Tribe;
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site; and
4. Any other information or review necessary to meet expectations of the growth management act, to provide adequate best available scientific information to make an informed decision on the identified environmentally sensitive site. (Ord. 1215 §26, 2003).

14.33.116 Performance standards.

A. Alterations shall not degrade the [functions and values](#) of habitat. A [habitat conservation area](#) may be altered only if the proposed alteration of the habitat or the [mitigation](#) proposed does not degrade the ~~quantitative~~ [functions and values](#) of the habitat. All new structures and land alterations shall be prohibited from [habitat conservation areas](#) except in accordance with this title.

B. Non-indigenous [species](#) shall not be introduced. No plant, wildlife, or fish [species](#) not indigenous to the region shall be introduced into a [habitat conservation area](#) unless authorized by a state or federal permit or approval.

C. [Mitigation](#) shall result in contiguous corridors. [Mitigation](#) sites shall be located to achieve continuous wildlife corridors in accordance with a [mitigation](#) plan that is part of an approved critical area report, to minimize the isolating effects of development on habitat areas. [Mitigation](#) of aquatic habitat shall be located within the same aquatic ecosystem as the area disturbed.

D. Approvals of activities may be conditioned. The city shall condition approvals of activities allowed within or adjacent to a [habitat conservation area](#) or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

1. Establishment of buffer zones;
2. Preservation of critically important vegetation [\(including but not limited to native, established or priority habitat\)](#);
3. Limitation of access to the habitat area, including fencing to deter unauthorized access;
4. Seasonal restriction of construction activities;
5. Establishment of duration and timetable for periodic review of [mitigation](#) activities;
6. Implementation of management recommendations for the [species](#) of animal or habitat in literature published or recommended by the Department of Fish and Wildlife for [priority species](#) and habitat;
7. All other conditions and management recommendations based upon [best available science](#) that are deemed necessary to meet expectations of the Growth Management Act for protection of sensitive areas;
8. Requirement of a performance bond, to ensure completion and success of proposed [mitigation](#).

E. [Mitigation](#) shall achieve equivalent or greater biological functions. [Mitigation](#) of alterations to [habitat conservation areas](#) shall achieve equivalent or greater biological functions and shall include [mitigation](#) for adverse impacts upstream or downstream of the development proposal site. [Mitigation](#) shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

F. Approvals shall be supported by the [best available science](#). Any approval of alterations or impacts to a [habitat conservation area](#) shall be supported by the [best available science](#).

G. *Buffers.*

1. *Establishment of Buffers.* The city shall require the establishment of buffer areas for activities in, or adjacent to, [habitat conservation areas](#) when needed to protect [habitat conservation areas](#). Buffers shall consist of an undisturbed area of [native vegetation](#), or areas identified for [restoration](#), established to protect the integrity, [functions, and values](#) of the affected habitat [including but not limited to the key riparian ecosystem functions \(i.e., shade, root strength, nutrient input, wood input, and pollution removal\)](#). Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the state Department of Fish and Wildlife.

2. *Seasonal Restrictions.* When a [species](#) is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

3. *Habitat Buffer Averaging.* The city may allow the recommended habitat area buffer to be reduced in accordance with the critical area report, the [best available science](#), and the management recommendations issued by the Department of Fish and Wildlife, only if:

- a. It will not reduce stream or habitat functions;
- b. It will not adversely affect salmonid habitat;
- c. It will provide natural resource protection, such as buffer enhancement;
- d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
- e. The buffer area width is not reduced by more than fifty percent in any location; and
- f. The buffer area width is not less than fifty feet.

H. *Signs and Fencing of Habitat Conservation Areas.*

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

2. *Permanent Signs.* As a condition of any permit or authorization the city may require that the [applicant](#) install permanent signs along the boundary of a [habitat conservation area](#) or buffer.

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

3. *Fencing.*

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

b. The [applicant](#) shall be required to install a permanent fence around the [habitat conservation area](#) or buffer when domestic grazing animals are present or may be introduced on site, ~~unless those animals are used as part of the restoration plan.~~

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

I. *Subdivisions.* The subdivision and short subdivision of land in [fish and wildlife habitat conservation areas](#) and associated buffers is subject to the following:

- 1. Land that is located wholly within a [habitat conservation area](#) and/or its buffer may not be subdivided.

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

3. Access roads and utilities serving the proposed may be permitted within the [habitat conservation area](#) and associated buffers only if the city determines that no other feasible alternative exists and when consistent with this title. (Ord. 1505 §24, 2017; Ord. 1215 §27, 2003).

14.33.117 Performance standards for specific habitats.

A. Endangered, Threatened, and Sensitive Species.

1. No development shall be allowed within a [habitat conservation area](#) or buffer with which state or federally endangered, threatened, or sensitive [species](#) have a [primary association](#).

2. Whenever activities are proposed adjacent to a [habitat conservation area](#) with which state or federally endangered, threatened, or sensitive [species](#) have a [primary association](#), such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified habitat biologist and approved by the city. Approval for alteration of land adjacent to the [habitat conservation area](#) or its buffer shall not occur prior to consultation with the Department of Fish and Wildlife and the appropriate federal agency.

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

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

B. Anadromous Fish.

1. All activities, uses, and alterations proposed to be located in water bodies used by [anadromous fish](#) or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of [all stages of anadromous fish and their habitats](#), including, but not limited to, adhering to the following standards:

a. Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable [species](#);

b. An alternative alignment or location for the activity is not feasible;

c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and

d. Any impacts to the [functions and values](#) of the [habitat conservation area](#) are mitigated in accordance with an approved critical area report.

2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies used by [anadromous fish](#). Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

3. Fills may only intrude into water bodies used by [anadromous fish](#) when consistent with the Lacey shoreline master program and the [applicant](#) demonstrates that the fill is for a water-dependent use that is in the public interest.

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

D. Riparian Habitat Areas. Unless otherwise allowed in this title, all structures and activities shall be located outside of the [riparian habitat](#) area.

1. *Establishment of Riparian Habitat Areas.* [Riparian habitat](#) areas shall be established for habitats that include aquatic systems.

2. *Riparian Habitat Area Widths.* Recommended [riparian habitat](#) area widths are shown in the table below. A [riparian habitat](#) area shall have the width recommended, unless a greater width is required pursuant to subsection (D)(3) of this section, or a lesser width is allowed pursuant to subsection (D)(4) of this section. Widths shall be measured outward, on the horizontal plane, from- ~~whichever of the following features is furthest from the center of the watercourse: (a) the ordinary high-water mark, (b) the top of bank, or (c) the outer edge of the channel migration zone (if one exists), the ordinary high water~~ ~~high-water mark or from the top of the bank if the ordinary high water~~ ~~high-water mark cannot be identified~~. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of in stream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

Table of Riparian Habitat Area Widths

Type S streams 250 feet

Type F streams 200 feet

Type Np streams 150 feet

Type Ns streams 150 feet

3. All developments and uses proposed for lands bordering Woodland Creek shall be required to maintain a minimum two hundred foot ~~in-depth~~ natural buffer ~~width~~ from ~~the ordinary whichever of the following features is furthest from the center of the watercourse: -(a) the ordinary high-water mark, (b) the top of bank, or (c) the outer edge of the channel migration zone (if one exists), high water mark~~ on both sides of the creek. Within the buffer area, no development or use shall be permitted except for

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natural open spaces, trails, passive recreational activities, streets and utility services. Stormwater runoff directed to Woodland Creek shall be pretreated to mitigate water quality impacts as approved by the city. In all instances, methods of low impact development (LID) consistent with best available science shall be followed.

4. *Increased Riparian Habitat Area Widths.* The recommended [riparian habitat](#) area widths shall be increased as follows:

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

5. *Riparian habitat area width averaging.* The city may allow the recommended [riparian habitat](#) area width to be reduced in accordance with a critical area report only if all of the following requirements are satisfied:

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

k. The Site Plan Review Committee shall use the recommendations of the qualified experts in making its decision on a plan that uses buffer width averaging.

6. *Riparian Habitat Mitigation.* [Mitigation](#) of adverse impacts to [riparian habitat](#) areas shall result in equivalent [functions and values](#), on a per function basis, and be located in the same sub-drainage basin as the habitat impacted.

7. *Alternative Mitigation for Riparian Habitat Areas.* The requirements set forth in this section may be modified at the city's discretion if the [applicant](#) demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative [mitigation](#) measures.

8. When a pipe or culvert that has known or potential fish habitat downstream and upstream from the pipe or culvert is daylighted, the watercourse formerly in the pipe or culvert will be regulated as a riparian watercourse, and the area adjacent to that watercourse will be regulated as a riparian habitat, as defined in this section. This section does not apply when the pipe or culvert is removed to provide a publicly owned facility designed primarily for water quality treatment, flow control, or stormwater conveyance.

E. *Riparian Habitat Areas, Ponds, Lakes, Waters of the State, and Marine Habitat.* The following specific activities may be permitted within a [riparian habitat](#) area, pond, lake, water of the state, marine habitat or associated buffer when the activity complies with the provisions set forth in the Lacey shoreline management program and subject to the following standards:

1. *Clearing and Grading.* When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:

a. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year, provided the city may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.

b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.

c. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.

d. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or re-establishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.

e. Erosion and sediment control that meets or exceeds the standards set forth in the Lacey Development Guidelines and Public Works Standards shall be provided.

2. *Shoreline Erosion Control Measures.* New replacement, or substantially improved, shoreline erosion control measures may be permitted in accordance with an approved area report that demonstrates the following:

a. Natural shoreline processes will be maintained. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the project area.

b. The shoreline erosion control measures will not degrade fish or wildlife [habitat conservation areas](#) or associated wetlands.

c. Adequate [mitigation](#) measures ensure that there is no net loss of the functions or values of intertidal habitat or [riparian habitat](#) as a result of the proposed shoreline erosion control measures.

d. The proposed shoreline erosion control measures do not result in alteration of intertidal migration corridors.

3. Stream-bank stabilization to protect new structures from future stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.

4. *Launching Ramps--Public or Private.* Launching ramps may be permitted in accordance with an approved critical area report that has demonstrated the following:

a. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the site;

b. The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands;

c. Adequate [mitigation](#) measures ensure that there is no net loss of the functions or values of intertidal habitat or [riparian habitat](#) as a result of the ramp; and

d. No alteration of intertidal migration will occur as a result of the ramp.

5. *Docks.* Repair and maintenance of an existing dock or pier may be permitted in accordance with an approved critical area report subject to the following:

a. There is no increase in the use of materials creating shade for predator [species](#) or eelgrass;

b. There is no expansion in over-water coverage;

c. There is no new spanning of waters between three and thirteen feet deep;

d. There is no increase in the size and number of pilings; and

e. There is no use of toxic materials, such as creosote, that come in contact with the water.

6. *Roads, Trails, Bridges, and Rights-of-Way.* Construction of trails, roadways, and minor road bridging, less than or equal to thirty feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:

a. There is no other feasible alternative route with less impact on the environment;

b. The crossing minimizes interruption of downstream movement of wood and gravel;

c. [Mitigation](#) for impacts is provided pursuant to a [mitigation](#) plan of an approved critical area report;

d. Road bridges are designed according to the Department of Fish and Wildlife [Water Crossing Design Guidelines \(2013\)](#) ~~Fish Passage Design at Road Culverts, 2003,~~ as amended, [Incorporating Climate Change into the Design of Water Crossing Structures: Final Project Report \(2017\)](#), as amended, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, ~~(2010),~~ as amended; and

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e. Trails and associated viewing platforms shall not be made of continuous impervious materials.

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

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

8. *Public Flood Protection Measures.* New public flood protection measures and expansion of existing ones may be permitted, subject to the city's review and approval of a critical area report, and the approval of a federal biological assessment, by the federal agency responsible for reviewing actions related to a federally listed [species](#).

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

10. *Stormwater Conveyance Facilities.* Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:

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

11. *On-Site Sewage Systems and Wells.*

a. New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system.

b. Repairs to failing on-site systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact:

- (1) Connection to an available public sanitary sewer system;
- (2) Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the Thurston County Health Department; or
- (3) Repair to the existing on-site septic system. (Ord. 1505 §25, 2017; Ord. 1215 §28, 2003).

14.33.120 Site plan review approval and extensions.

A. Activities proposed within a [habitat conservation area](#) or its buffer shall be reviewed and approved in accordance with the full administrative review process enumerated in Section 1C.040 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards and Chapter [16.84](#) LMC.

B. An extension of an original approval may be granted upon written request submitted to the ~~city of Lacey~~ [City of Lacey](#) by the original approval holder or the successor in title at thirty days prior to the expiration date. (Ord. 1192 §60, 2002; Ord. 935 §9 (part), 1992).

14.33.130 Repealed

Repealed by [Ord. 1192](#).

14.33.140 Repealed

Repealed by [Ord. 1192](#).

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~~ [City of Lacey](#) shall submit the application to the Washington State Department of Fish and 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 days. Extensions may be granted by the ~~city of Lacey~~ [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. (Ord. 1192 §63, 2002; Ord. 935 §9 (part), 1992).

14.33.160 Criteria for habitat conservation area approvals.

A. An approval shall only be granted if the approval, as conditioned, is consistent with the provisions of this chapter. Additionally, approvals shall only be granted if:

1. A proposed action avoids adverse impacts to [fish and wildlife habitat conservation areas](#), protecting identified [priority habitats](#) and [priority species](#) pursuant to recommendations from the Washington State Department of Fish and Wildlife and the required [priority habitat](#) and [priority species](#) management plan.
2. Denial of an approval would cause an [extraordinary hardship](#) on the [applicant](#).

B. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal.

C. Except as otherwise specified, [habitat conservation areas](#) and buffer zones as required in a [priority habitat](#) or [priority species](#) management plan shall be retained in their natural condition. (Ord. 1215 §29, 2003; Ord. 1192 §64, 2002; Ord. 935 §9 (part), 1992).

14.33.170 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 pervious trails, [vegetated LID facilities](#), 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](#). (Ord. 1496 §25, 2016; Ord. 1192 §65, 2002; Ord. 935 §9 (part), 1992).

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. (Ord. 935 §9 (part), 1992).

14.33.200 Special conditions.

A. *Sensitive Area Tracts.* As a condition of any approval issued pursuant to this chapter, the [applicant](#) shall be required to create a separate sensitive area tract or tracts containing the areas determined to be [habitat conservation areas](#) for [priority habitats](#) or [priority species](#) in field investigations performed pursuant to LMC [14.33.070](#) and [14.33.115](#). 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~~ [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~~ [City of Lacey](#):

1. The [applicant](#) shall convey an irrevocable offer to dedicate to the ~~city of Lacey~~ [City of Lacey](#) or other public or nonprofit entity specified by the ~~city of Lacey~~ [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~~ [City of Lacey](#), and any other agency with jurisdiction over such activity.

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

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

NOTE: The association shall be responsible for maintenance and protection of the tracts. No alteration shall occur and all vegetation should remain undisturbed unless the express written authorization of the ~~city of Lacey~~ [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 signs made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one every fifty feet or one per lot if the lot is less than fifty feet wide, and must be maintained by the property owner in perpetuity. Signs shall be worded as follows:

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

Sign locations and size specifications shall be approved by the ~~city of Lacey~~ [City of Lacey](#). The ~~city of Lacey~~ [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~~ [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~~ [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. (Ord. 1505 §26, 2017; Ord. 1192 §66, 2002; Ord. 935 §9 (part), 1992).

14.33.210 Financial security.

A. The ~~city of Lacey~~ [City of Lacey](#) shall require the [applicant](#) of a development proposal to provide [financial security](#) acceptable to the ~~city of Lacey~~ [City of Lacey](#) in an amount of one hundred fifty percent of the estimated cost of improvements sufficient to fulfill the requirements of this chapter and to secure compliance with conditions and limitations set forth in the approval. The amount and the conditions of the [financial security](#) shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such [financial security](#), the ~~city of Lacey~~ [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~~ [City of Lacey](#) shall release the [financial security](#) upon determining that:

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

Until such written release of the [financial security](#) by the city such security cannot be released to the [applicant](#).

B. The ~~city of Lacey~~ [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~~ [City of Lacey](#) in an amount of twenty percent of the cost of improvements sufficient to guarantee that structures, improvements, and [mitigation](#) required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The ~~city of Lacey~~ [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. (Ord. 935 §9 (part), 1992).

14.33.220 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. 1192 §67, 2002; Ord. 935 §9 (part), 1992).

14.33.230 Suspension, revocation.

In addition to other penalties provided for elsewhere, the ~~city of Lacey~~ [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. 1192 §68, 2002; Ord. 935 §9 (part), 1992).

14.33.240 Notice of final decision.

The ~~city of Lacey~~ [City of Lacey](#) shall provide notice of its final decision pursuant to the requirements of Section 1C.070 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §69, 2002; Ord. 935 §9 (part), 1992).

14.33.250 Appeals.

Any decision of the ~~city of Lacey~~ [City of Lacey](#) in the administration of this chapter may be appealed in accordance with Chapter 1D of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §70, 2002; Ord. 935 §9 (part), 1992).

14.33.260 Enforcement.

A. The ~~city of Lacey~~ [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~~ [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~~ [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~~ [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~~ [City of Lacey](#) may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

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

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

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

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

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

3. Any person who undertakes any activity within a [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~~ [City of Lacey](#). The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

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

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC [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. (Ord. 935 §9 (part), 1992).

14.33.270 Non-conforming activities.

A nonexempt 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 non-conformity without a permit issued pursuant to the provisions of this chapter;

B. If a non-conforming activity is discontinued for twelve 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. (Ord. 935 §9 (part), 1992).

14.33.280 Repealed

Repealed by [Ord. 1192](#).

14.33.290 Amendments.

These regulations and the ~~city of Lacey~~ [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 [priority habitats](#), [species](#) location, management techniques or wildlife become available. (Ord. 968 §16, 1993; Ord. 935 §9 (part), 1992).

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. (Ord. 935 §9 (part), 1992).

14.33.310 Assessment relief.

The Thurston County assessor's office shall consider [priority habitats](#) or [priority species](#) regulations in determining the fair market value of land. Any owner of an undeveloped area designated as [habitat conservation area](#) who has dedicated an easement or entered into a perpetual conservation restriction with the ~~city of Lacey~~ [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. (Ord. 1505 §27, 2017; Ord. 935 §9 (part), 1992).

Chapter 14.34 FLOOD HAZARD PREVENTION

<https://lacey.municipal.codes/LMC/14.34>

Sections:

- [14.34.005 Purpose and intent](#)
- [14.34.010 Definitions](#)
- [14.34.020 Lands to which this chapter applies](#)
- [14.34.030 Basis for establishing the areas of special flood hazard](#)
- [14.34.040 Compliance required and penalties for non-compliance](#)
- [14.34.050 Abrogation and greater restrictions](#)
- [14.34.060 Interpretation](#)
- [14.34.070 Warning and disclaimer of liability](#)
- [14.34.080 Establishment of development permit](#)
- [14.34.082 Prohibition on development within areas of special flood hazard](#)
- [14.34.084 General requirements applicable to exemptions permitted in LMC 14.34.082](#)
- [14.34.086 Administrative requirements](#)

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- [14.34.090 Designation of the building official](#)
- [14.34.100 Duties and responsibilities of the building official](#)
- [14.34.110 Variance procedures](#)
- [14.34.120 General standards for flood hazard protection applicable to exemptions of LMC 14.34.082 and 14.34.084](#)
- [14.34.130 Specific standards for pre-existing use exemptions](#)
- [14.34.135 AE zones with base flood elevations but no floodways](#)
- [14.34.140 Floodways](#)
- [14.34.145 Coastal high hazard--Zone VE](#)
- [14.34.150 Wetlands management](#)
- [14.34.160 Severability](#)

14.34.005 Purpose and intent.

It is the intent of this chapter to:

- Adopt policy and regulation restricting [development](#) and recurring [flood damages](#) within designated [flood](#) hazard areas where such [development](#) would put life and property at risk because of [flood](#) hazard;
- Identify those areas at risk for [flood](#) hazard by reference to appropriate maps and studies that represent the best scientific information available to the ~~city of Lacey~~ [City of Lacey](#);
- Adopt policy and regulation for Lacey's [flood](#) hazard areas that is coordinated and consistent with Lacey's sensitive area ordinances. These ordinances protect designated environmentally sensitive area resources that generally overlap with [flood](#) hazard areas;
- Adopt policy and regulation restricting [development](#) within designated [flood](#) hazard areas that would adversely impact the function and value of critical/sensitive area resources by reducing [flood](#) water retention capacity of wetlands or impacting critical habitat, including anadromous fish;
- Coordinate designation and use of land under requirements of the state Growth Management Act (GMA), recognizing adequate developable land resources have been identified and zoned to accommodate forecasted growth outside of designated [flood](#) hazard areas;
- Coordinate regulation and management of [flood](#) hazard areas and other sensitive/critical areas according to the concepts under GMA, the Comprehensive Plan, and the National [Flood](#) Insurance Program;
- Promote the natural function and values of [flood](#) hazard areas and other critical area resources that are not compatible with urbanization and need special consideration and protection;

H. Recognize there is no compelling public need to justify the adverse impacts to the public's interest that would result from [development](#) within [flood](#) hazard areas. (Ord. 1505 §28, 2017; Ord. 1375 §17, 2011).

14.34.010 Definitions.

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

A. "Alteration of watercourse" means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

B. "Appeal" means a request for a review of the building official's interpretation of any provisions of this chapter or a request for a variance.

C. "Area of shallow flooding" means a designated zone AO, AH, AR/AO or AR/AH (or VO) on a community's [flood insurance rate map \(FIRM\)](#) with a one percent or greater annual chance of [flooding](#) to an average depth of one to three feet where a clearly defined channel does not exist, where the path of [flooding](#) is unpredictable, and where velocity flow may be evident. Such [flooding](#) is characterized by ponding or sheet flow. Also referred to as the sheet flow area.

D. "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of [flooding](#) in any given year. It is shown on the [flood insurance rate map \(FIRM\)](#) as zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE). "Special [flood hazard area](#)" is synonymous in meaning with the phrase "area of special flood hazard."

E. "~~Base flood~~" and "~~Frequently flooded areas~~" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high ground water forms ponds on the ground surface. ~~means the flood having a one percent chance of being equaled or exceeded in any given year.~~ Also referred to as the "one-hundred-year [flood](#)." ~~Designated~~ Often designated on [flood insurance rate maps](#) by the letters A or V.

F. "Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.

G. "Best available information" means in absence of official [flood insurance rate map](#) data, communities can use data from federal, state, or other sources provided this data has either been generated using technically defensible methods or is based on reasonable historical analysis and experience.

H. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other [structures](#), mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the [area of special flood hazard](#) or removal of substantial amounts of vegetation, or alteration of the natural site characteristics.

I. "Elevation certificate" means the official form (FEMA Form 086-0-33) used to track [development](#), provide elevation information necessary to ensure compliance with community floodplain management

ordinances, and determine the proper insurance premium rate with Section B completed by community officials.

J. “Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subsections [\(J\)\(1\)](#) and [\(2\)](#) of this section and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

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

L. “Flood elevation study” means an examination, evaluation and determination of [flood](#) hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or [flood](#)-related erosion hazards. Also known as a [flood insurance study](#) (FIS).

M. Flood Hazard Area. See “[Area of special flood hazard](#).”

N. “Flood insurance rate map (FIRM)” means the official map on which the Federal Insurance and Mitigation Administration has delineated both the areas of special [flood](#) hazards and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a digital flood insurance rate map (DFIRM).

O. “Flood insurance study” means the official report provided by the Federal Insurance and Mitigation Administration that includes [flood](#) profiles and the water surface elevation of the [base flood](#).

P. “Floodplain administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

Q. “Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to [structures](#) which reduce or eliminate risk of [flood damage](#) to real estate or improved real property, water and sanitary facilities, [structures](#), and their contents. Floodproofed [structures](#) are those that have the structural integrity and design to be impervious to floodwater below the [base flood](#) elevation (BFE).

R. “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the [base flood](#) without cumulatively increasing the water surface elevation more than one foot. Also referred to as “regulatory floodway.”

S. “*Functionally dependent use*” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

T. “*Highest adjacent grade*” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a [structure](#).

U. “*Historic structure*” means any [structure](#) that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

V. “*Lowest floor*” means the lowest floor of the lowest enclosed area (including [basement](#)). An unfinished or [flood](#) resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a [basement](#) area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the [structure](#) in violation of the applicable nonelevation design requirements of this chapter (i.e., provided there are adequate [flood](#) ventilation openings).

W. “*Mean sea level*” means, for the purposes of the National [Flood](#) Insurance Program, the vertical datum to which [base flood](#) elevations shown on a community’s [flood insurance rate map](#) are referenced.

X. “*New construction*” means, for the purposes of determining insurance rates, [structures](#) for which the “[start of construction](#)” commenced on or after the effective date of an initial [flood insurance rate map](#) or after December 31, 1974, whichever is later, and includes any subsequent improvements to such [structures](#). For floodplain management purposes, “new construction” means [structures](#) for which the “[start of construction](#)” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such [structures](#).

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

Z. “*Recreational vehicle*” means a vehicle:

1. Built on a single chassis;

2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

AA. “*Replacement residential structure*” means a residential [structure](#) built as a substitute for a previously existing residential [structure](#) of equivalent use and size.

BB. “*Start of construction*” includes [substantial improvement](#), and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a [structure](#) on a site beyond the state of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a [basement](#), footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main [structure](#). For a [substantial improvement](#), the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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

DD. “*Substantial damage*” means damage of any origin sustained by a [structure](#) whereby the cost of restoring the [structure](#) to its before damaged condition would equal or exceed fifty percent of the market value of the [structure](#) before the damage occurred.

EE. “*Substantial improvement*” means any repair, reconstruction, rehabilitation, addition, or other improvement of a [structure](#), the cost of which equals or exceeds fifty percent of the market value of the [structure](#) either:

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

The term does not, however, include either:

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

FF. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter. (Ord. 1654 §1, 2023; Ord. 1505 §29, 2017; Ord. 1398 §1, 2012; Ord. 1375 §18, 2011; Ord. 1265 §1, 2006; Ord. 861 §2 (part), 1989).

GG. "Watercourse," "river" or "stream" means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

14.34.020 Lands to which this chapter applies.

This chapter shall apply to all areas of special [flood](#) hazards within the jurisdiction of the ~~city of Lacey~~ [City of Lacey](#). Areas of special [flood](#) hazards include zones A, AE and VE as designated on referenced [flood insurance rate maps](#). (Ord. 1398 §2, 2012; Ord. 861 §2 (part), 1989).

14.34.030 Basis for establishing the areas of special flood hazard.

The areas of special [flood](#) hazard identified by the Federal Insurance and Mitigation Administration in a scientific and engineering report entitled "The [Flood Insurance Study](#) for Thurston County, Washington and Incorporated Areas" dated October 16, 2012, and any revisions thereto, with accompanying [flood insurance rate maps \(FIRM\)](#) dated October 16, 2012, and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter. The [flood insurance study](#) and the [FIRM](#) are on file at the Lacey City Hall, 420 College Street S.E. The [best available information](#) for [flood](#) hazard area identification as outlined in LMC [14.34.100](#) shall be the basis for regulation until the new [FIRM](#) is issued that incorporates data utilized under LMC [14.34.100](#). (Ord. 1505 §30, 2017; Ord. 1398 §3, 2012; Ord. 1265 §2, 2006; Ord. 861 §2 (part), 1989).

14.34.040 Compliance required and penalties for non-compliance.

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

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

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

D. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 1505 §31, 2017; Ord. 861 §2 (part), 1989).

14.34.050 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easement, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 861 §2 (part), 1989).

14.34.060 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 861 §2 (part), 1989).

14.34.070 Warning and disclaimer of liability.

The degree of [flood](#) protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger [floods](#) can and will occur on rare occasions. [Flood](#) heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special [flood](#) hazards or uses permitted within such areas will be free from [flooding](#) or [flood damages](#). This chapter shall not create liability on the part of the ~~city of Lacey~~ [City of Lacey](#), any officer or employee thereof, or the Federal Insurance and Mitigation Administration, for any [flood damages](#) that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 1505 §32, 2017; Ord. 861 §2 (part), 1989).

14.34.080 Establishment of development permit.

A [development](#) permit shall be obtained before construction or [development](#) begins within any [area of special flood hazard](#) established in LMC [14.34.030](#). The permit shall be for all [structures](#) permitted as an exemption under LMC [14.34.082](#) and for all other [development](#) including fill and other activities, also as set forth in the "definitions." Application for a [development](#) permit shall be made on forms furnished by the building official and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed [structures](#), fill, storage of materials, or drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to [mean sea level](#) of the [lowest floor](#) (including [basement](#)) of all [structures](#) recorded on a current [elevation certificate](#) (FEMA Form 81-31) with Section B completed by the local official;
- B. Elevation in relation to [mean sea level](#) to which any [structure](#) has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential [structure](#) meet the floodproofing criteria in LMC [14.34.130\(B\)](#); and

D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed [development](#);

E. Where a [structure](#) is proposed in a V, V1-30, or VE zone, a V-zone design certificate;

F. Where [development](#) is proposed in a [floodway](#), an engineering analysis indicating no rise of the [base flood](#) elevation; and

G. Any other such information that may be reasonably required by the [floodplain administrator](#) in order to review the application. (Ord. 1654 §2, 2023; Ord. 1398 §4, 2012; Ord. 1375 §19, 2011; Ord. 861 §2 (part), 1989).

14.34.082 Prohibition on development within areas of special flood hazard.

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

A. Trails and recreational improvements for public access to water bodies consistent with the City Comprehensive Plan for Outdoor Recreation and the City Shoreline Master Program, if applicable.

B. Public works projects involving the provision or transmission of a utility where no alternative routing options are reasonable.

C. Public works projects consistent with the City Transportation Plan where no alternative routing options are reasonable.

D. Maintenance activities and improvements to pre-existing [structures](#) that do not increase the footprint of the [structure](#) and comply with the requirements contained in LMC [14.34.010\(U\)](#).

E. Public activities and improvements approved by the ~~city of Lacey~~ [City of Lacey](#) determined to be in the public's best interest. (Ord. 1505 §33, 2017; Ord. 1398 §5, 2012; Ord. 1375 §20, 2011).

14.34.084 General requirements applicable to exemptions permitted in LMC 14.34.082.

All exemptions to the siting prohibitions listed in LMC [14.34.082](#) shall meet the following requirements:

A. All applicable requirements of this chapter are satisfied.

B. It does not increase the risk of [flood](#) hazard or displace [flood](#) waters to adjacent sites.

C. The improvement has no impact to critical habitat or any impacts are fully mitigated as determined by the Washington State Department of Fish and Wildlife.

D. Any impact to riparian habitat areas is fully mitigated and all critical area buffers and standards of Chapters [14.28](#) (Wetlands Protection), [14.32](#) (Tree and Vegetation Protection and Preservation) and [14.33](#) LMC (Habitat Conservation Areas Protection) are satisfied. This includes a two-hundred-foot buffer along Woodland Creek which exceeds the distance of Woodland Creek's channel migration zone (CMZ).

E. Stormwater and drainage features shall incorporate LID techniques in accordance with the current [City of Lacey City of Lacey](#) Stormwater Design Manual.

F. Creation of new impervious surfaces shall not exceed ten percent of the surface area of the portion of the lot in the floodplain unless mitigation is provided.

G. Any loss of floodplain storage shall be avoided, rectified or compensated for. Any compensation off site must be in a priority floodplain restoration area identified in the associated ESU Recovery Plan for listed species.

H. Uses that are not permitted in the [protected area](#) because they can adversely affect water quality, habitat and other natural values and functions include:

1. Septic tanks and drainfields;
2. Dumping of any materials;
3. Hazardous or sanitary waste landfills;
4. Receiving areas for toxic or hazardous waste;
5. Other contaminants.

I. Uses shall comply with the city's tree and vegetation protection and preservation ordinance (Chapter [14.32](#) LMC) which prohibits the removal of vegetation within critical areas or associated buffers. Minimal unavoidable disturbances may be permitted if fully mitigated.

J. [Development](#) may not adversely impact water quality, water quantity, [flood](#) volume, [flood](#) velocities, spawning substrate, and/or floodplain refugia for listed salmonids. Any project with impacts to these elements of the environment that are not fully mitigated will be prohibited.

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

L. New road crossing over streams in the floodplain or buffers associated with wetlands within designated [flood](#) hazard areas is prohibited. (Ord. 1505 §34, 2017; Ord. 1496 §26, 2016; Ord. 1398 §6, 2012; Ord. 1375 §21, 2011).

14.34.086 Administrative requirements.

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

- A. The application for a permit to [develop](#) in the affected area must include the elevations of the ten-, fifty- and one-hundred-year [floods](#), where such data is available.
- B. The applicant must record a notice of title that the property contains land within a riparian habitat area and/or [area of special flood hazard](#), if applicable, before a permit may be issued.
- C. The permit will be tracked to consider cumulative impacts to [flood](#) storage capacity and fish habitat and mitigation shall be required for all identified impacts. If the proposed project is in an [area of special](#)

[flood hazard](#) and will increase the [base flood](#) elevation, a conditional letter of map revision shall be submitted on an MT-2 form by the applicant. After project completion, if the [base flood](#) elevation increases or decreases, a letter of map revisions (LOMR) shall be submitted on an MT-2 form by the applicant. (Ord. 1505 §35, 2017; Ord. 1398 §7, 2012; Ord. 1375 §22, 2011).

14.34.090 Designation of the building official.

The building official is appointed to administer and implement this chapter by granting or by denying [development](#) permit applications in accordance with its provisions. The [floodplain administrator](#) may delegate authority to implement these provisions. (Ord. 1654 §3, 2023; Ord. 861 §2 (part), 1989).

14.34.100 Duties and responsibilities of the building official.

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

A. Permit Review.

1. Review all [development](#) permits to determine that the permit requirements of this chapter have been satisfied;
2. Review all [development](#) permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;
3. Review all [development](#) permits to determine if the proposed [development](#) is located in the [area of special flood hazard](#) or [floodway](#). If located in the [area of special flood hazard](#) or [floodway](#), assure that permits are denied or meet exemption requirements according to the provisions of this chapter. If located in a [floodway](#), assure that the encroachment provisions of LMC [14.34.140](#) are met;
4. The site is reasonably safe from [flooding](#);
5. Notify FEMA when annexations occur in the special [flood hazard area](#).

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

C. Information to Be Obtained and Maintained.

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

- a. Verify and record the actual elevation (in relation to [mean sea level](#)) to which the [structure](#) was floodproofed.
- b. Maintain the floodproofing certification required in LMC [14.34.130\(B\)](#).
3. Maintain for public inspection all records pertaining to the provisions of this chapter.
4. Certification required by LMC [14.34.140\(A\)](#) ([floodway](#) encroachments).
5. Records of all variance actions, including justification for their issuance.
6. Improvement and damage calculations.
7. Documentation of the elevation of the bottom of the lowest horizontal structural member in V or VE zones.

D. Alteration of Watercourses.

1. Except in cases where the city, state, or federal government undertakes public works projects for the benefit of the general public, alteration or relocation of any watercourses is prohibited;
2. In cases where a city, state, or federal government entity undertakes such a project all appropriate city, state, and federal permits and approvals shall be required. All identified impacts shall be fully mitigated;
3. In cases of city, state, or federal government projects the building official shall notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance and Mitigation Administration;
4. In the case of a city, state, or federal government project the building official shall require that maintenance is provided within the altered or relocated portion of said watercourse so that the [flood](#) carrying capacity is not diminished and all habitat functions maintained.

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

F. *Review of Building Permits.* Where elevation data is not available, either through the FIS, [FIRM](#), or from another authoritative source (as required by LMC [14.34.100\(B\)](#)), applications for floodplain [development](#) shall be reviewed to assure that proposed construction will be reasonably safe from [flooding](#). The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past [flooding](#), etc., where available.

(Failure to elevate habitable buildings at least two feet above the [highest adjacent grade](#) in these zones may result in higher insurance rates.)

G. *Changes to Special Flood Hazard Area.* If a project will alter the [base flood](#) elevation or boundaries of the special [flood hazard area](#), then the project proponent shall provide the community with engineering documentation and analysis regarding the proposed change. If the change to the [base flood](#) elevation or

boundaries of the special [flood hazard area](#) would normally require a letter of map change, then the project approval shall be conditioned accordingly. (Ord. 1654 §4, 2023; Ord. 1505 §36, 2017; Ord. 1398 §8, 2012; Ord. 1375 §23, 2011; Ord. 1265 §3, 2006; Ord. 1197 §3, 2002; Ord. 861 §2 (part), 1989).

14.34.110 Variance procedures.

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

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

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

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

D. [Variances](#) shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the [variance](#) would result in exceptional hardship to the applicant;
3. A determination that the granting of a [variance](#) will not result in increased [flood](#) heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

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

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

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

H. The provisions of this chapter which are for the protection of the safety, health and welfare of the general public are demonstrated to not be applicable to the subject property and therefore should not be applied. (Ord. 1505 §37, 2017; Ord. 1398 §8, 2012; Ord. 1375 §24, 2011; Ord. 861 §2 (part), 1989).

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

In all areas of special [flood](#) hazards, the following standards are required:

A. Anchoring.

1. All [new construction](#) permitted under LMC [14.34.082](#) and [substantial improvements](#), including those related to manufactured homes, shall be anchored to prevent flotation, collapse or lateral movement of the [structure](#) resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
2. All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize [flood damage](#). Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

B. Construction Materials and Methods.

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

C. Utilities.

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

D. Subdivision Proposals.

1. Subdivision of areas of special [flood](#) hazard for the purpose of [developing](#) residential [structures](#) is prohibited. Where special [flood hazard areas](#) are part of an ownership with an area outside of the special [flood hazard area](#) that can be subdivided, [flood hazard areas](#) shall be designated and deeded as open space. Open space areas within a [flood hazard area](#) shall be deeded to either the subdivision lot owners association, the ~~city of Lacey~~ [City of Lacey](#), or other public entity for protection and preservation, at the sole discretion and determination of the ~~city of Lacey~~ [City of Lacey](#).
2. All subdivision proposals shall be consistent with the need to minimize [flood damage](#).

3. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed outside of the [area of special flood hazard](#).
4. All subdivision proposals shall have adequate drainage provided to reduce exposure to [flood damage](#).
5. Where [base flood](#) elevation data has not been provided or is not available from another authorized source, it shall be generated for subdivision proposals and other proposed [developments](#) which contain at least fifty lots or five acres (whichever is less).

E. Storage of Materials and Equipment.

1. The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from [flooding](#) is prohibited in special [flood hazard areas](#).
2. Storage of other material or equipment may be allowed if not subject to damage by [floods](#) and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after [flood](#) warning. (Ord. 1654 §5, 2023; Ord. 1505 §38, 2017; Ord. 1398 §9, 2012; Ord. 1375 §25, 2011; Ord. 1265 §4, 2006; Ord. 861 §2 (part), 1989).

14.34.130 Specific standards for pre-existing use exemptions.

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

A. Residential Construction.

1. [Substantial improvement](#) of any pre-existing residential [structure](#) shall have the [lowest floor](#), including [basement](#), elevated one foot or more above the [base flood](#) elevation (BFE) and shall not be permitted in the [floodway](#) (see LMC [14.34.140\(B\)](#)). Mechanical equipment and utilities shall be waterproof or elevated at least one foot above the BFE.
 - a. The [substantial improvement](#) will not increase the footprint of the [structure](#).
2. Fully enclosed areas below the [lowest floor](#) that are subject to [flooding](#) are prohibited, or shall be designed to automatically equalize hydrostatic [flood](#) forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to [flooding](#) shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.
 - d. A garage attached to a residential [structure](#), constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

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

4. [New construction](#) and [substantial improvement](#) of any residential [structure](#) in an unnumbered A zone for which a BFE is not available and cannot be reasonably obtained shall be reasonably safe from [flooding](#), but in all cases the [lowest floor](#) shall be at least two feet above the [highest adjacent grade](#).

5. [New construction](#) and [substantial improvement](#) of any residential [structure](#) in a V, V1-30, or VE zone shall meet the requirements in LMC [14.34.135](#).

B. *Nonresidential Construction.* [Substantial improvement](#) of any pre-existing commercial, industrial or other nonresidential [structure](#) and new [structures](#) permitted as an exemption identified in LMC [14.34.082](#) and [14.34.084](#), shall meet the requirements of subsection [\(B\)\(1\)](#) or [\(B\)\(2\)](#) of this section.

1. [Substantial improvement](#) of any pre-existing commercial, industrial or other nonresidential [structure](#) and new [structures](#) permitted as an exemption identified in LMC [14.34.082](#) and [14.34.084](#) shall meet the requirements:

a. In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained:

[Substantial improvement](#) of any commercial, industrial, or other nonresidential [structure](#) shall have the [lowest floor](#), including [basement](#), elevated one foot or more above the BFE, or elevated as required by ASCE 24, whichever is greater. Mechanical equipment and utilities shall be waterproofed or elevated least one foot above the BFE, or as required by ASCE 24, whichever is greater.

b. If located in an unnumbered A zone for which a BFE is not available and cannot be reasonably obtained, the [structure](#) shall be reasonably safe from [flooding](#), but in all cases the [lowest floor](#) shall be at least two feet above the [highest adjacent grade](#).

c. If located in a V, V1-30, or VE zone, the [structure](#) shall meet the requirements in LMC [14.34.135](#).

d. Fully enclosed areas below the [lowest floor](#) that are subject to [flooding](#) are prohibited, or shall meet the requirements of LMC [14.34.130\(A\)\(2\)](#).

2. If the requirements of subsection [\(B\)\(1\)](#) of this section are not met, then [substantial improvement](#) of any pre-existing commercial, industrial or other nonresidential [structure](#) shall meet all of the following requirements:

a. Be dry floodproofed so that below one foot above the [base flood](#) level the [structure](#) is watertight with walls substantially impermeable to the passage of water or dry floodproofed to the elevation required by ASCE 24, whichever is greater;

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

- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their [development](#) and/or review of the structural design, specifications and plans;
- d. Nonresidential [structures](#) that are elevated but not floodproofed must meet the same standards for space below the [lowest floor](#) as described in subsection [\(A\)\(2\)](#) of this section;
- e. The footprint of a pre-existing [structure](#) shall not be increased (LMC [14.34.082](#));
- f. Applicants floodproofing nonresidential buildings shall be notified that [flood](#) insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to one foot above the [base flood](#) level will be rated at the [base flood](#) level).

Applicants who are [floodproofing](#) nonresidential buildings shall be notified that [flood](#) insurance premiums will be based on rates that are one foot below the [floodproofed](#) level (e.g., a building [floodproofed](#) to the [base flood](#) level will be rated as one foot below). [Floodproofing](#) the building an additional foot will reduce insurance premiums.

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

C. *Manufactured Homes.*

- 1. All manufactured homes are prohibited in the [area of special flood hazard](#).

D. *Recreational Vehicles.*

- 1. Be on the site for fewer than one hundred eighty days; or
- 2. [Recreational vehicles](#) placed on sites in areas of special [flood](#) hazard shall be fully licensed and ready for highway use, on wheels or jacking systems, attached to the site by only quick disconnect type utilities and security devices and have no permanently attached additions; or
- 3. Meet the requirements of subsection [C](#) of this section.

E. *Enclosed Area Below the Lowest Floor.* If buildings or manufactured homes are constructed or substantially improved with fully enclosed areas below the [lowest floor](#), the areas shall be used solely for parking of vehicles, building access, or storage.

F. *Detached Accessory Structures (Detached Garages and Small Storage Structures).*

- 1. Detached accessory [structures](#) used solely for parking of vehicles or limited storage may be constructed such that the floor is below the BFE, provided the [structure](#) is designed and constructed in accordance with the following requirements:
 - a. In special [flood hazard areas](#) other than coastal high hazard areas (Zones A, AE, AH, AO, and A1-30), the [structure](#) is not larger than a one-story two-car garage;
 - b. In coastal high hazard areas (Zones V, VE, V1 30, and VO), the [structure](#) is not larger than one hundred square feet in area;

- c. The portions of the [structure](#) located below the BFE must be built using [flood](#) resistant materials;
- d. The [structure](#) must be adequately anchored to prevent flotation, collapse, and lateral movement;
- e. Any machinery or equipment servicing the [structure](#) must be elevated or floodproofed to or above the BFE;
- f. The [structure](#) must comply with [floodway](#) encroachment provisions in LMC [14.34.140\(A\)](#);
- g. The [structure](#) must be designed to allow for the automatic entry and exit of [flood](#) waters in accordance with LMC [14.34.130\(A\)\(2\)](#);
- h. The [structure](#) shall have low damage potential;
- i. If the [structure](#) is converted to another use, it must be brought into full compliance with the standards governing such use; and
- j. The [structure](#) shall not be used for human habitation. (Ord. 1654 §6, 2023; Ord. 1505 §39, 2017; Ord. 1398 §10, 2012; Ord. 1375 §26, 2011; Ord. 1265 §5, 2006; Ord. 861 §2 (part), 1989).

14.34.135 AE zones with base flood elevations but no floodways.

In areas with [base flood](#) elevations (but a regulatory [floodway](#) has not been designated), no [new construction](#), [substantial improvements](#), or other [development](#) (including fill) shall be permitted within zone AE on the community's [FIRM](#), except as permitted by LMC [14.34.082](#) (exemptions). Prior to issuing a permit, it must be demonstrated that the cumulative effect of the proposed [development](#), when combined with all other existing and anticipated [development](#), will not increase the water surface elevation of the [base flood](#) more than one foot at any point within the community. (Ord. 1505 §40, 2017; Ord. 1398 §11, 2012; Ord. 1375 §27, 2011; Ord. 1265 §6, 2006).

14.34.140 Floodways.

Located within areas of special [flood](#) hazard established in LMC [14.34.030](#) are areas designated as [floodways](#). Since the [floodway](#) is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Encroachments, including fill, [new construction](#), [substantial improvements](#), and other [development](#), are prohibited; except as permitted by LMC [14.34.082](#) (Exemptions). Prior to permitting, the proposed encroachment must be certified by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in [flood](#) levels during the occurrence of the [base flood](#) discharge.
- B. Construction, reconstruction, or [substantial improvement](#) of residential [structures](#) is prohibited within designated [floodways](#).
- C. If subsection [A](#) of this section is satisfied, all [new construction](#) and [substantial improvements](#) shall comply with LMC [14.34.120](#) and [14.34.130](#).
- D. If subsection [A](#) of this section is satisfied or construction is allowed pursuant to subsection [B](#) of this section, all [new construction](#) and [substantial improvements](#) shall comply with all applicable [flood](#) hazard

reduction provisions of LMC [14.34.120](#). General standards for [flood](#) hazard protection. (Ord. 1654 §7, 2023; Ord. 1398 §12, 2012; Ord. 1375 §28, 2011; Ord. 1265 §7, 2006; Ord. 861 §2 (part), 1989).

14.34.145 Coastal high hazard--Zone VE.

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

1. All [new construction](#) and [substantial improvements](#) shall be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the [lowest floor](#) (excluding the pilings or columns) is elevated one foot or more above the [base flood](#) level.
2. The pile or column foundation and [structure](#) attached thereto are anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).
3. A registered professional engineer or architect shall [develop](#) or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections [\(A\)\(1\)](#) and [\(2\)](#) of this section.
4. Obtain the elevation (in relation to [mean sea level](#)) of the bottom of the lowest structural member of the [lowest floor](#) (excluding pilings and columns) of all new and substantially improved [structures](#) and whether or not such [structures](#) contain a [basement](#). The building official shall maintain a record of all such information.

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

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

1. Breakaway wall collapse shall result from water load less than that which would occur during the [base flood](#).
2. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water

loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).

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

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

E. Prohibit manmade alteration of sand dunes which would increase potential [flood damage](#).

F. Manufactured homes are prohibited.

G. [Recreational vehicles](#) shall be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions. (Ord. 1505 §41, 2017; Ord. 1398 §13, 2012).

14.34.150 Wetlands management.

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

A. Review proposals for [development](#) within base floodplains for their possible impacts on wetlands located within the floodplain;

B. Ensure that [development](#) activities in or around wetlands do not negatively affect public safety, health, and welfare by disrupting the wetlands' ability to reduce [flood](#) and storm drainage;

C. Require compliance with the city wetland protection ordinance (Chapter [14.28](#) LMC), habitat conservation protection ordinance (Chapter [14.33](#) LMC), tree and vegetation protection ordinance (Chapter [14.32](#) LMC) and applicable environmental plans and regulations. (Ord. 1505 §42, 2017; Ord. 1375 §29, 2011; Ord. 861 §2 (part), 1989).

14.34.160 Severability.

If any section, clause, sentence or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this chapter. (Ord. 1398 §14, 2012).

Chapter 14.36 WELLHEAD PROTECTION AND CRITICAL AQUIFER RECHARGE AREAS

<https://lacey.municipal.codes/LMC/14.36>

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14.36.020 Purpose and intent.

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

- A. To protect the quality and to manage the quantity of ground water for all uses in the present and in the future.
- B. To prevent ground water contamination by protecting the entire resource as effectively as possible, but within the limits of what is acceptable and affordable to the community.
- C. To prevent contamination of drinking water supplies.

D. To assure that preventive actions are taken to protect water quality from further degradation and, in cooperation with the Department of Ecology, promote corrective actions in areas where degradation has occurred so that the net effect is a gradual improvement of the ground and surface water quality.

E. To provide legislation regulating land uses within [critical aquifer recharge areas](#) generally and more precise standards and regulations for designated [wellhead protection areas](#). (Ord. 1505 §44 (part), 2017).

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

A. "AKART" means all known, available, and reasonable methods of prevention, control, and treatment and is one component of [pollution prevention plan](#) development and implementation. AKART refers to technology-based treatments of pollutant sources that are implemented along with [BMPs](#) to treat, prevent and control the release of contaminants to surface water and groundwater. See also the State Water Pollution Control Act, RCW [90.48.010](#) and [90.48.520](#).

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

C. "Application" as defined in Section 1.030(A) of the ~~city of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards.

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

E. "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by the Department of Ecology that, when used singularly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State. See WAC [173-200-020](#).

F. "Category I critical aquifer recharge areas" means those areas with extreme [aquifer](#) sensitivity due to the presence of soils that provide very rapid recharge with little natural water quality treatment. Category I areas contain coarse soil textures and soil materials, and are derived from glacial outwash materials. The predominant soil series in Category I CARAs are listed in LMC [14.36.070\(B\)](#).

G. "Category II critical aquifer recharge areas" are those areas with high [aquifer](#) sensitivity due to soils which provide slightly lower recharge than Category I, but provide little protection and natural water quality treatment. Category II soils are derived from materials of glacial deposit. The predominant soil series in Category II CARAs are listed in LMC [14.36.070\(B\)](#).

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

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

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

K. *“Hazardous materials”* means substances that may create a public nuisance or constitute a hazard to humans, animals, fish or fowl, or any solid, dangerous, or extremely hazardous waste, as defined by Chapter [173-303](#) or [173-304](#) WAC. Harmful materials also include substances that, when released into the environment, may cause non-compliance with the following chapters of the WAC: [173-200](#), [173-201](#), [173-204](#), [173-340](#), and/or [246-290](#).

L. *“Health expert”* means a person employed or contracted by the ~~city of Lacey~~ [City of Lacey](#) and licensed by the state as a registered sanitarian and with the necessary expertise and experience to provide information required by this chapter relating to health issues and concerns.

M. *“Health officer”* means the Thurston County health officer as defined in Chapter [70.05](#) RCW or his or her authorized representative.

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

O. *“MPCs”* means reasonable methods of prevention and control. Examples of MPCs include but are not limited to [pollution prevention plan](#) development and implementation, routine maintenance, secondary containment, and measures to eliminate contaminant pathways to the source water.

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

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

R. *“Stormwater BMP/facility”* means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. Stormwater BMPs/facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil-water separators, bioretention, permeable pavement, and biofiltration swales. Stormwater BMPs/facilities are described in the Stormwater Design Manual. “Stormwater BMP/facility” includes both public and privately owned facilities.

S. *“Underground injection control well (UIC well)”* means a structure built to discharge fluids from the ground surface into the subsurface; a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or an improved sinkhole, which is a natural crevice that has been modified; or

a subsurface fluid distribution system that includes an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. Examples of UIC wells or subsurface infiltration systems include drywells, drain fields, infiltration trenches with perforated pipe, storm chamber systems with the intent to infiltrate, French drains, bioretention systems intended to distribute water to the subsurface by means of perforated pipe installed below the treatment soil, and other similar devices that discharge to the ground.

T. *“Wellhead protection area (WHPA)”* ~~means protective areas associated with public drinking water sources established by water systems and approved or assigned by the State Department of Health and or as adopted in the City of Lacey Water System Comprehensive Plan. means the surface and subsurface area surrounding a well or well field, through which contaminants are reasonably likely to move toward and reach such water well or well field within six months, one, five, and ten years. WHPAs for Lacey’s water supply wells are adopted in Lacey’s Water System Comprehensive Plan which is approved by the Washington State Department of Health. (Ord. 1638 §7, 2023; Ord. 1505 §44 (part), 2017).~~

14.36.040 Applicability.

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

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

C. The ~~city of Lacey~~ [City of Lacey](#) is authorized to adopt written administrative procedures for the purposes of carrying out the provisions of this chapter.

D. The ~~city of Lacey~~ [City of Lacey](#) shall not grant any approval or permission to conduct a nonexempt activity in an area classified as a [wellhead protection area](#) or Category I or II [critical aquifer recharge area](#) until the requirements of this chapter have been fulfilled including but not limited to action on the following: limited administrative review, full administrative review, quasi-judicial review, legislative review pursuant to Chapter 1.010C of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards, or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 1505 §44 (part), 2017).

14.36.050 Exempt activities.

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

- A. Building projects for individual single family residence or duplex;
- B. Boundary line adjustments;
- C. Franchise right-of-way construction permit;

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

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

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

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

H. Location of boundary markers;

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

J. Nondevelopment educational activities and scientific research;

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

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

M. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way, except situations involving the [application](#) of chemical substances (Ord. 1505 §44 (part), 2017).

14.36.060 Maps and inventory.

Maps of soils in the Lacey area are located on the Web Soil Survey (Natural Resource Conservation District). The soil survey maps, as amended, are the basis for the [CARA](#) categories referenced in this chapter. The standards of this chapter shall apply to all lots or parcels which include Category I or II [critical aquifer recharge areas](#), within the jurisdiction of the ~~city of Lacey~~ [City of Lacey](#). Maps relating to ~~city of Lacey~~ [City of Lacey wellhead protection areas](#) and [critical aquifer recharge areas](#) can be found in the ~~City of Lacey~~ [City of Lacey](#) Water System Plan, as amended. In the event that any of the [critical aquifer recharge areas](#) or [wellhead protection areas](#) shown on the maps conflict with the criteria set forth in this chapter, the criteria in this chapter shall control. (Ord. 1638 §8, 2023; Ord. 1505 §44 (part), 2017).

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

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

B. [Critical aquifer recharge areas](#) are determined by the soil series and types present, as listed below:

Critical Aquifer Recharge Area Soil Series

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
Pilchuck	84
Pits, gravel	85
Puyallup	89
Spanaway	110, 111, 112, 113, 114
Sultan	115
Tenino	117, 118, 119
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
CATEGORY III SOIL SERIES	
Series Name	SCS Map Symbol #
Bellingham	14
Dupont	29
Everson	36
Galvin	37
Godfrey	41
Hoogdal	43, 44
Kapowsin	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

C. The exact presence and location of soils constituting a [critical aquifer recharge area](#) shall be determined by a field investigation applying specific criteria described by the [health officer](#) or [health expert](#). A professional soil scientist or licensed hydrogeologist expert shall perform soils analysis necessary to make determinations. Hiring the services of a soil scientist or licensed hydrogeologist expert shall be the responsibility of the [applicant](#). The [applicant](#) is required under LMC [14.36.100](#) to show the location of the [aquifer](#) sensitive area on a scaled drawing as a part of the [application](#).

D. *Disputed Areas.*

1. In cases of disputed soil series, or series boundary, and resulting category, the ~~city of Lacey~~ [City of Lacey](#) in consultation with the [health officer](#), and the Natural Resources Conservation Service, shall determine the category.
2. In the event the changes are contested by the [applicant](#), the ~~city of Lacey~~ [City of Lacey](#) shall, at the [applicant](#)'s expense, obtain its own expert services to render a final determination.
3. In areas that have been disturbed or the surface soil removed as in gravel pits, the ~~city of Lacey~~ [City of Lacey](#) in consultation with the [health officer](#) and the Natural Resources Conservation Service shall determine the most appropriate category with geological and hydrological information. (Ord. 1505 §44 (part), 2017).

14.36.080 Review standards--General review requirements.

- A. No nonexempt action shall be undertaken by any person which results in any alteration of a [critical aquifer recharge area](#) or [wellhead protection area](#) except in compliance with the requirements, goals, purposes and objectives of this chapter.
- B. In association with normal permit requirements every nonexempt activity will require a written authorization or notation on the [application](#) of compliance with this chapter prior to undertaking the activity.
- C. The city may approve, approve with conditions or deny any development proposal in order to comply with the requirements and carry out the goals, purposes and objectives of this chapter. (Ord. 1505 §44 (part), 2017).

14.36.090 Consolidated application process.

When more than one [application](#) for a proposed development is required, the [applicant](#) may elect to have all [applications](#) submitted for review at one time in conformance with Section 1B.030 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards; [applications](#) for proposed development and planned actions subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed concurrently and in accordance with state and local laws, regulations and ordinances. (Ord. 1638 §9, 2023; Ord. 1505 §44 (part), 2017).

14.36.100 Information requirements.

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

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

1. The exact boundary and description of [wellhead protection areas](#), including the source well and [sanitary control area](#), on site and on adjacent properties within specified setbacks if applicable;
2. Locations of Category I and II soils on the site;
3. Groundwater contours indicating the direction of shallow groundwater flow, shown in relation to the wellhead and its [wellhead protection area](#) if applicable, and existing and proposed [stormwater BMPs](#)/facilities;
4. Any existing drinking water well(s) and/or septic systems on site, both active and abandoned;
5. All potential sources of soil or groundwater contamination on the site; and
6. Locations of proposed test pits and/or soil borings, temporary construction dewatering wells or other resource protection wells anticipated for gathering project data.

B. A description of the proposed use of the site, and descriptions of the types and quantities of [hazardous materials](#) and other pollutants that would be used or stored on the site including fuels and fuels associated with mechanical equipment and retail products.

C. A description of the engineering design and planned operation and maintenance of the projects that will mitigate impacts to groundwater quality and quantity at the development site. The description shall also identify specific limitations of the site, such as soils and geology, for mitigating impacts to site development. See requirements in LMC [14.36.140](#). (Ord. 1638 §10, 2023; Ord. 1505 §44 (part), 2017).

14.36.110 Critical aquifer recharge areas--Uses and activities in critical aquifer recharge areas that are subject to limitations in wellhead protection zones.

A. To protect the public health and safety, prevent [aquifer](#) contamination, and preserve the groundwater resource for continual beneficial use, uses and activities shall be most limited in those areas which have the highest degree of risk.

B. *Stormwater Runoff.* Stormwater impacts shall be mitigated through the [application](#) of the most current version of the ~~city of Lacey~~ [City of Lacey](#) Stormwater Design Manual. To minimize the potential for groundwater contamination, enhanced treatment and/or phosphorous treatment may be required prior to infiltration or discharge.

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

D. *Solid Waste.* Solid waste disposal facilities shall comply with Chapters [173-304](#) and [173-200](#) WAC. Solid waste landfills, and other solid waste disposal facilities likely to produce leachate shall be

prohibited in [Critical Aquifer Recharge Area](#) Categories I and II. Handling and transfer facilities within these two categories may be placed with source control [BMPs](#) appropriate to the facility. Special care shall be employed to avoid the impacts of spills and leachate.

E. *Hazardous Materials*. Projects within sites that utilize, store, or dispose of hazardous substances may be required to prepare and implement a spill, prevention, control, and countermeasures plan (SPCC plan) that is specific to the hazardous substances on the site, or [hazardous materials](#) management plan as described in LMC [14.36.160](#).

F. *Landscaping and Irrigation*. Requirements for landscaping and associated irrigation are addressed in Chapter [16.80](#) LMC. All land use projects located within a [wellhead protection area](#) will be required to develop and implement an integrated pest management (IPM) plan that addresses plant selection, irrigation, and maintenance practices for minimizing the need for pesticides and fertilizers, and for preventing the leaching of soluble fertilizers and other contaminants into groundwater. IPM plans are expected to include the elements described in Thurston County's Integrated Pest Management Plan Guidance, and IPM plans as required by Thurston County for any projects located within a ~~city of Lacey~~ [City of Lacey wellhead protection area](#) shall also be submitted to the ~~city of Lacey~~ [City of Lacey](#).

G. *On-Site Septic Systems*. On-site septic systems for new or expanding uses within the city are addressed in service policies in the ~~city of Lacey~~ [City of Lacey](#) Wastewater Comprehensive Plan. The following provisions do not apply to septic tank effluent pumping (STEP) systems that are part of the city sewer system.

1. New individual or community onsite septic systems are not allowed within the city.
2. Individual on-site septic systems for expanding uses are discouraged and will only be considered on a case-by-case basis, generally as exceptional cases when connection to city sewer is not feasible. The city may require annual testing of septic systems as a condition of approval.

H. *Abandoned Wells*. Wells that cease to be used as a water source or as a resource protection well, are unmaintained, or are in such disrepair as to be unusable shall be decommissioned consistent with Chapter [173-160](#) WAC to prevent groundwater contamination and remove any public safety hazards. (Ord. 1638 §11, 2023; Ord. 1505 §44 (part), 2017).

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

- A. The ~~city of Lacey~~ [City of Lacey](#) may coordinate with the [health officer](#) in the enforcement of these regulations.
- B. Where designated [critical aquifer recharge areas](#) and [wellhead protection areas](#) encroach into the ~~city of Lacey~~ [City of Lacey](#) from neighboring jurisdictions, the provisions of this chapter shall apply. (Ord. 1505 §44 (part), 2017).

14.36.130 Repealed

Repealed by [Ord. 1638](#).

14.36.140 Hydrogeological reports.

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

1. There is insufficient hydrogeological information to perform an adequate review to assure [aquifer](#) protection; or
2. The project is likely to possess, store, use, transport, or dispose of [hazardous materials](#).

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

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

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

E. The hydrogeological report shall contain the information required under LMC [14.36.100](#), and the following:

1. Information sources;
2. Site geology and hydrostratigraphy, supported by project-specific borings and data from other nearby wells;
3. Available data on wells and springs located within one-quarter mile of the site;
4. Location and depth of perched water tables;
5. Groundwater elevations, flow direction, and gradient;
6. Recharge potential of facility site, including [aquifer](#) permeability and transmissivity;
7. Background water quality;
8. Identification of all [hazardous materials](#) to be used or stored on the site;
9. Analysis of the increase or change in nitrate concentrations predicted to occur in groundwater beneath the site as a result of the project;
10. A description of site conditions prior to project development, including vegetation and other conditions relating to existing and historic groundwater recharge at the site;
11. An analysis of site conditions as they are likely to exist during and after construction of the proposed project, and their cumulative impacts on groundwater quantity and quality;
12. Discussion of proposed mitigation measures to minimize impacts to groundwater quality and quantity, including training, maintenance and monitoring plans, and proposed mechanisms and financial measures that will ensure long-term implementation of mitigation measures; and
13. Any other information as required by the city.

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

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

H. The ~~city of Lacey~~ City of Lacey may waive the hydrogeological report requirements if the nature of the project and its impacts are generally known, or the impacts of the project have been mitigated by source control BMPs. (Ord. 1638 §13, 2023; Ord. 1505 §44 (part), 2017).

14.36.150 Hydrogeological reports--Reimbursement for costs.

The developer shall pay for or reimburse the city for the cost incurred in the conduct of such special reports or tests and for the costs incurred by the city to engage technical consultants for review and interpretation of data and findings submitted by or on behalf of the developer. (Ord. 1505 §44 (part), 2017).

14.36.160 Hazardous materials spill plans.

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

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

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

1. A brief description of business activities and a list and map of the locations, amounts, and types of hazardous materials, hazardous waste and petroleum products, stored on site;
2. A pollution prevention evaluation that reviews whether the risk from hazardous substances could be reduced through modifying production processes, utilizing nontoxic or less toxic substances, implementing conservation techniques, or reusing materials rather than putting them in the waste stream;
3. A description of inspection procedures for hazardous material storage areas and containers and the minimum inspection intervals. An inspection logbook shall be maintained for periodic review by the city or county;
4. Provision of an appropriate spill kit with adequate spill supplies and protective clothing;

5. Detailed spill cleanup and emergency response procedures identifying how the [applicant](#) will satisfy the requirements of the Dangerous Waste Regulations, Chapter [173-303](#) WAC, in the event that [hazardous material](#) is released into the ground, ground water, or surface water;
 6. Procedures to report spills immediately to the Department of Ecology and the Environmental Health Division of the Thurston County Public Health and Social Services Department, in that order;
 7. A list of emergency phone numbers (e.g., the local fire district and ambulance);
 8. Procedures to ensure that all employees with access to locations where [hazardous materials](#) are used or stored receive adequate spill training. A training logbook shall be maintained for periodic review by the city or county;
 9. A map showing the location of all floor drains and any [hazardous material](#) and petroleum product transfer areas; and
 10. Additional information determined by the approval authority to be necessary to demonstrate that the use or activity will not have an adverse impact on ground water quality.
- D. Any existing use which uses, stores, handles or disposes of [hazardous materials](#) above these minimum cumulative quantities will meet requirements described in subsection [\(A\)](#) of this section:
1. Chemical substances that are ignitable, corrosive, reactive or toxic, consistent with WAC [173-303-090](#), as amended, except as provided for below. Minimum cumulative quantity: one hundred sixty pounds or the equivalent of twenty gallons.
 2. Cleaning substances for janitorial use or retail sale in the same size, packaging and concentrations as a product packaged for use by the general public. Chlorinated solvents and nonchlorinated solvents which are derived from petroleum or coal tar will not be considered a cleaning substance under this subsection, but rather a chemical substance identified in subsection [\(D\)\(1\)](#) of this section. Minimum cumulative quantity: eight hundred pounds (or the equivalent one hundred gallons), not to exceed fifty-five gallons for any single package.
 3. Businesses which use, store, handle or dispose of chemicals listed in WAC as “P” chemicals. Minimum cumulative quantity: two and two-tenths pounds. (Ord. 1638 §14, 2023; Ord. 1505 §44 (part), 2017).

14.36.170 Wellhead protection area standards of mitigation.

- A. Every [application](#) for a non-exempt development permit for a new use or expansion of an existing use within a [wellhead protection area](#) shall meet these minimum standards for mitigation:
1. If the proposal indicates the use, storage, handling or disposal of [hazardous materials](#) above the minimum quantity thresholds listed in LMC [14.36.160](#), the [applicant](#) shall submit a [hazardous materials](#) management (spill) plan as outlined in LMC [14.36.160](#).
 2. Any existing wells on the site that are not actively used for domestic water use, irrigation or monitoring, or are not maintained and in such disrepair as to be unusable, will be decommissioned by the [applicant](#) following the procedures in WAC [173-160-381](#).

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

4. The proposal must ensure compliance with the ~~city of Lacey~~ [City of Lacey](#) stormwater maintenance requirements, as described in Section 5.100 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards, and in LMC [14.27.060](#).

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

- a. The project has been evaluated by a hydrogeological report as described in LMC [14.36.140](#); and
- b. Based upon the hydrogeological report and the best available science the proposed alternative mitigation measures will be adequate to protect the drinking water source. (Ord. 1638 §15, 2023; Ord. 1505 §44 (part), 2017).

14.36.180 Wellhead protection area standards for new uses.

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

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

1. Land spreading disposal facilities (as defined by Chapters 13-304 and 173-308 WAC--disposed above agronomic rates);
2. Direct groundwater recharge or surface percolation using reclaimed water (as defined under RCW [90.46.010](#));
3. *Animal operations with over two hundred animal units.* For purposes of this section, one animal unit is the equivalent number of livestock and/or poultry as defined by the U.S. Department of Agriculture Natural Resource Conservation Service Animal Waste Field Handbook;
4. Petroleum products refinement, reprocessing, and storage (except underground storage of heating oil or agricultural fueling in quantities less than one thousand one hundred gallons for consumptive use on the parcel where stored), and liquid petroleum products pipelines;
5. Retail gas stations and non-retail fueling stations, and mobile on-site fueling of commercial or residential vehicles;
6. Automobile wrecking and salvage yards;
7. Dry cleaning and garment care facilities, excluding drop-off only facilities, that utilize solvents (including but not limited to perchloroethylene (PERC), trichloroethylene (TCE), toluene, methyl ethyl ketone (MEK), glycol ethers, liquid silicone, liquid carbon dioxide, or brominated solvents) as part of their service;
8. Deep underground injection control (UIC) wells that extend below an upper confining layer and discharge stormwater into the underlying vadose zone;

9. Asphalt and asphalt recycling plants, and cement concrete plants; and

10. Machine shops, metal finishing/fabricating, metal plating and electroplating.

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

1. Landfills (municipal sanitary solid waste and hazardous waste), demolition (inert), and wood waste;

2. Chemical/hazardous waste manufacturing, reprocessing, transfer, storage and disposal facilities;

3. Wood and wood products preserving; and

4. Retail gas stations and non-retail fueling stations without attendant (i.e., operated with no attendant on site to respond to fuel spills related to the dispensing of gasoline or equipment failure).

C. The following uses may be restricted on a case-by-case basis in the designated five-year time of travel zone:

1. Deep underground injection control (UIC) wells that extend below an upper confining layer and discharge stormwater into the underlying vadose for a production well that is rated as having a higher susceptibility to contamination, by the water system or by the Washington State Department of Health. (Ord. 1638 §16, 2023; Ord. 1505 §44 (part), 2017).

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

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

A. Expansion of all uses prohibited in LMC [14.36.180\(A\)](#) shall be prohibited within the designated one-year time of travel zone.

B. Expansion of all uses prohibited in LMC [14.36.180\(B\)](#) shall be prohibited within the designated one-, five- and ten-year time of travel zones.

C. For any expansion of an existing use proposed within the designated one-, five- and ten-year time of travel zones, the [applicant](#) shall meet the minimum standards of mitigation described in LMC [14.36.170](#). The [health officer](#) at the [health officer](#)’s discretion and with reasonable expectation of risk to ground water, may require [pollution prevention plan](#) development and implementation of [MPCs](#) on any use located within the one-, five- or ten-year time of travel zones. The [health officer](#) will review the documentation to determine whether the expansion shall be approved, denied or approved with conditions to ensure adequate protection of the source water supply. (Ord. 1505 §44 (part), 2017).

14.36.200 Special management areas--Wellhead protection area standards for existing uses.

The following shall apply to existing uses located within the designated [wellhead protection areas](#) defined in LMC [14.36.030](#):

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

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

C. For any existing agricultural use located within the designated one-, five- and ten-year time of travel zones, the owner, upon request of the [health officer](#), at the [health officer](#)'s discretion, for good cause and with reasonable expectation of risk to ground water and with consultation with the Thurston Conservation District, shall develop a farm conservation plan in conformance with the U.S. Natural Resources Conservation Service Field Office Technical Guide and obtain approval of the Thurston Conservation District board of supervisors. (Ord. 1638 §17, 2023; Ord. 1505 §44 (part), 2017).

14.36.210 Other laws and regulations.

No approval granted pursuant to this chapter shall remove an [applicant](#)'s obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 1505 §44 (part), 2017).

14.36.220 Suspension, revocation.

In addition to other penalties provided for elsewhere, the ~~city of Lacey~~ [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. 1505 §44 (part), 2017).

14.36.230 Appeals.

Any decision of the ~~city of Lacey~~ [City of Lacey](#) in the administration of this chapter may be appealed in accordance with Chapter 1D of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1505 §44 (part), 2017).

14.36.240 Enforcement.

A. The ~~city of Lacey~~ [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~~ [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~~ [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 [critical aquifer recharge area](#) or [wellhead protection area](#) which are inconsistent with this chapter or an applicable habitat or species protection program.

2. The ~~city of Lacey~~ [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~~ [City of Lacey](#) may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

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

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

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

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

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

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

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

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

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

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in Section 1D.030 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards.

8. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any [application](#), record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to an approval. (Ord. 1505 §44 (part), 2017).

14.36.250 Non-conforming activities.

A. All nonexempt activities that were approved prior to the passage of this chapter shall be subject to the provisions of LMC [14.36.200](#).

B. No activity specified in subsection A of this section shall be expanded, changed, enlarged or altered in any way unless it complies with all of the provisions of LMC [14.36.190](#).

C. When in conflict, provisions of this section shall supersede the normal nonconforming use provisions of Chapter [16.93](#) LMC. Activities or adjuncts thereof that are nuisances shall not be entitled to continue. (Ord. 1505 §44 (part), 2017).

14.36.270 Amendments.

These regulations and wellhead protection maps referenced in LMC [14.36.060](#) may from time to time be amended in accordance with the procedures and requirements in the general statutes, the ~~City of Lacey~~ [City of Lacey](#) Comprehensive Plan, adopted development regulations, and as new information concerning becomes available. (Ord. 1505 §44 (part), 2017).

14.36.280 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the [application](#) thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 1505 §44 (part), 2017).

Chapter 14.37 GEOLOGICALLY SENSITIVE AREAS PROTECTION

<https://lacey.municipal.codes/LMC/14.37>

Sections:

- [14.37.020 Purpose/intent](#)
- [14.37.030 Definitions](#)
- [14.37.040 Qualified professional geotechnical engineer](#)
- [14.37.050 Applicability](#)
- [14.37.060 Maps and inventory](#)
- [14.37.070 Determination of geologically sensitive area](#)

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Field Code Changed

- [14.37.080 Exempt activities](#)
- [14.37.090 Geologically sensitive areas-- Presubmission consultation](#)
- [14.37.100 Geologically sensitive area applications](#)
- [14.37.110 Geologically sensitive areas --Information requirements](#)
- [14.37.120 Geologically sensitive areas-- Approval and extensions](#)
- [14.37.130 Geologically sensitive areas-- Filing fees](#)
- [14.37.140 Consolidated application process](#)
- [14.37.150 Interagency coordination for geologically sensitive area applications](#)
- [14.37.160 Standards for geologically sensitive area approvals--Generally](#)
- [14.37.170 Geologically sensitive areas-- Uses allowed in a designated buffer zone](#)
- [14.37.180 Standards for geologically sensitive areas--Specific](#)
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14.37.020 Purpose/intent.

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

- A. Developing specific requirements for analysis and performance standards related to identification and protection from erosion hazard and [landslide](#) hazard;
- B. Protecting the public against losses from publicly funded mitigation of avoidable impacts;

C. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of [geologically sensitive areas](#);

D. Providing ~~city of Lacey~~ [City of Lacey](#) officials with information to evaluate, approve, condition, or deny public or private development proposals;

E. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter [43.21C](#) RCW, the city Comprehensive Plan, the city Zoning Code (LMC Title [16](#)), the city Environmental Policy Ordinance (Chapter [14.24](#) LMC), the city Tree Protection and Preservation Ordinance (Chapter [14.32](#) LMC), and all related environmental and community plans and programs. (Ord. 1505 §45, 2017; Ord. 935 §11 (part), 1992).

14.37.030 Definitions.

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

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

B. “*Artificially created hazard area*” means artificially created areas of potential hazard such as fills and steep cuts. Such areas are reviewed during application for building permits or excavation and grading permits through a process provided in the grading chapter of the city’s adopted building code, which allows application of specific conditions to insure the public health, safety and welfare. Such areas are not subject to review under this chapter.

C. “*Bluff*” means a steeply rising, near vertical [slope](#) which abuts and rises from Puget Sound. Bluffs occur in the area at the extreme north end of Lacey’s long term growth area north of the Beachcrest area. The toe of a bluff is the beach of Puget Sound. The top of a bluff is typically a distinct line where the [slope](#) abruptly levels out. Where there is no distinct break in [slope](#), the top is either the line of vegetation separating the unvegetated steep [slope](#) from the vegetated uplands plateau or, when the bluff is vegetated, the point where the bluff [slope](#) diminishes to less than fifteen percent.

D. “*Buffer*” means an area adjacent to [hillsides](#) which provides the margin of safety through protection of [slope](#) stability, attenuation of surface water flows and [landslide](#), seismic, and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being or property damage resulting from natural disasters.

E. “*Clearing*” means the destruction and removal of vegetation by burning, mechanical, or chemical methods.

F. “*Director*” means the director of community and economic development or his/her designee.

G. ~~“Erosion hazard areas” are those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.~~ “*Erosion hazard area*” means an area designated by the ~~city of Lacey~~ [City of Lacey](#) Environmental Protection and Resources Conservation Plan which, according to the United States Department of

Agriculture Soil Conservation Service Soil Survey of Thurston County, Washington, have severe erosion hazard potential. These soil map units are described in Table 11 of the Environmental Protection and Resource Conservation Plan.

H. "Financial security" means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or other financial guarantee approved by the city attorney.

I. "Geologically sensitive area" means an area that because of its susceptibility to erosion, sliding, earthquake or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Types of geologically hazardous areas include: erosion, landslide, seismic, mine, and volcanic hazards. Geologically sensitive areas do not include artificially created hazard areas.

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

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

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

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

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

N. "Ravine sidewall" means a steep [slope](#) which abuts and rises from the valley floor of a stream and which was created by the wearing action of the stream. Ravine sidewalls contain [slopes](#) predominantly in excess of forty percent, although portions may be less than forty percent. The toe of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is typically a distinct line where the [slope](#) abruptly levels out. Where there is no distinct break in [slope](#), the top is where the [slope](#) diminishes to less than fifteen percent. Minor natural or manmade breaks in the [slope](#) of ravine sidewalls shall not be considered as the top. Benches with [slopes](#) less than fifteen percent and containing developed or developable areas shall be considered as the top.

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

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

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

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

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

Q. "Soil Survey of Thurston County Washington" is a soil survey published by the U.S. Department of Agriculture Natural Resource 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. (Ord. 1505 §46, 2017; Ord. 1208 §58, 2003; Ord. 935 §11 (part), 1992).

R. "Volcanic hazard areas" shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

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 fulfill the requirements of this chapter. A qualified professional geotechnical engineer is an engineer [licensed in the state of Washington](#) 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. (Ord. 935 §11 (part), 1992).

14.37.050 Applicability.

A. When any provision of any other chapter of the ~~city of Lacey~~ [City of Lacey](#) conflicts with this chapter, the most restrictive will prevail.

B. The ~~city of Lacey~~ [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~~ [City of Lacey](#) shall not grant any approval or permission to conduct a nonexempt activity in a [geologically sensitive area](#) until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land [clearing](#) permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, tree and vegetation protection and preservation approval, utility and other use permit; or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 1505 §47, 2017; Ord. 935 §11 (part), 1992).

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~~ [City of Lacey](#). The approximate location and extent of [geologically sensitive areas](#) in the ~~city of Lacey~~ [City of Lacey](#) is shown on the city's Arc Geographic Information System (GIS) maps. The city zoning map also shows such areas as environmentally sensitive pursuant to Chapter [16.54](#) LMC. The city Arc GIS maps and zoning map are to be used as a guide to the general location and extent of [geologically sensitive areas](#). [Geologically sensitive areas](#) not shown on the maps are presumed to exist in the ~~city of Lacey~~ [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. (Ord. 1505 §48, 2017; Ord. 935 §11 (part), 1992).

14.37.070 Determination of geologically sensitive area.

A. 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 LMC [14.37.110](#) to show the location of the [geologically sensitive area](#) on a scaled drawing as a part of the application.

B. The ~~city of Lacey~~ [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~~ [City of Lacey](#) shall, at the [applicant](#)'s expense, obtain its own expert services to render a final determination. (Ord. 935 §11 (part), 1992).

14.37.080 Exempt activities.

The following activities shall be exempt from the review requirements of this chapter and Chapter 1C of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards provided such activities are undertaken using best management practices in a manner that does not adversely impact the [geologically sensitive area](#):

- A. Nonpublic outdoor recreation activities such as bird watching or hiking, when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;
- B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the [geologically sensitive area](#) by changing existing topography, water conditions or other natural parameters important to the geological sensitivity;
- C. Boundary markers;
- D. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be restored immediately after investigative work has been completed;
- E. Educational activities and scientific research;
- F. Normal and routine maintenance or repair of existing utility structures or right-of-way;
- G. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way; and
- H. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way. (Ord. 1505 §49, 2017; Ord. 1192 §81, 2002; Ord. 935 §11 (part), 1992).

14.37.090 Geologically sensitive areas-- Presubmission consultation.

Any person intending to undertake nonexempt activities in a [geologically sensitive area](#) is required to meet with the ~~city of Lacey~~ [City of Lacey](#) at a presubmission conference during the earliest possible stages of project planning in order to discuss impact avoidance and minimization in accordance with the process outlined in Section 1B.020 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §82, 2002; Ord. 935 §11 (part), 1992).

14.37.100 Geologically sensitive area applications.

No nonexempt use shall occur or be permitted to occur within a [geologically sensitive area](#) without full administrative review or quasi-judicial review of the application pursuant to Chapter 1C of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards, whichever is applicable. (Ord. 1505 §50, 2017; Ord. 1192 §83, 2002; Ord. 935 §11 (part), 1992).

14.37.110 Geologically sensitive areas --Information requirements.

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

B. Unless the ~~city of Lacey~~ [City of Lacey](#) waives one or more of the following information requirements, applications for activities undertaken in a [geologically sensitive area](#) must provide the following information:

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the entire parcel of land owned by the [applicant](#) and the exact boundary and description of the geologically sensitive features of the site;
2. A description of the vegetative cover of the site and adjacent area including dominant species;
3. A site development plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations at the site;
4. The exact sites and specifications for all proposed activities including the amounts and methods;
5. Elevations of the site and adjacent lands within the [geologically sensitive area](#) at contour intervals of no greater than five feet;
6. Top view and typical cross section views of the geologically sensitive features at the site to scale, and specific means to mitigate any potential adverse environmental impacts of the [applicant](#)'s proposal relative to the geologically sensitive features of the site;
7. A soils engineering report [completed by a qualified professional geotechnical engineer](#) including data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading, including the stability of [slopes](#). Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.
8. An engineering geology report [completed by a qualified professional geotechnical engineer](#) including an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading. Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.
9. A full drainage study identifying special precautions necessary to avoid erosion hazard at the site. (Ord. 1505 §51, 2017; Ord. 1192 §84, 2002; Ord. 935 §11 (part), 1992).

14.37.120 Geologically sensitive areas-- Approval and extensions.

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

B. One extension of an original approval may be granted upon written request to the ~~city of Lacey~~ [City of Lacey](#) by the original approval holder or the successor in title at least thirty days prior to the expiration for a six-month time period. Prior to the granting of an extension, the ~~city of Lacey~~ [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. (Ord. 1505 §52, 2017; Ord. 1192 §85, 2002; Ord. 935 §11 (part), 1992).

14.37.130 Geologically sensitive areas-- Filing fees.

At the time of an application, the [applicant](#) shall pay a filing fee as determined by the ~~city of Lacey~~ [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~~ [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~~ [City of Lacey](#), the ~~city of Lacey~~ [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. (Ord. 1192 §80, 2002; Ord. 935 §11 (part), 1992).

14.37.140 Consolidated application process.

When more than one application for a proposed development is required, the [applicant](#) may elect to have all applications submitted for review at one time in conformance with Section 1B.030 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §87, 2002; Ord. 935 §11 (part), 1992).

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~~ [City of Lacey](#) shall submit the application to the U.S. Department of Agriculture Natural Resource Conservation Service and other state and local agencies having jurisdiction over or an interest in such applications for review and comment. When such applications are submitted, said agencies should submit comments or should request an extension of the review period within fourteen days. Extensions may be granted by the ~~city of Lacey~~ [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. (Ord. 1505 §53, 2017; Ord. 1192 §88, 2002; Ord. 935 §11 (part), 1992).

14.37.160 Standards for geologically sensitive area approvals--Generally.

A. An approval shall only be granted if the approval, as conditioned, is consistent with the provisions of this chapter.

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, [buffer](#) zones as required in a [geologically sensitive area](#) shall be retained in their natural condition. (Ord. 935 §11 (part), 1992).

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

Nonexempt activities shall not be allowed in a [buffer](#) zone recommended in a [geologically sensitive area](#) development plan except for activities having minimal adverse impacts on the geological sensitivity as determined in the development plan. These may include low intensity, passive recreational activities such as previous trails. (Ord. 1505 §54, 2017; Ord. 935 §11 (part), 1992).

14.37.180 Standards for geologically sensitive areas--Specific.

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

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

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

C. *Ravine Sidewalls and Bluffs.*

1. *Buffers.* A fifty-foot undisturbed [buffer](#) of [native vegetation](#) shall be established from the top, toe, and sides of all [ravine sidewalls](#) and [bluffs](#).
2. *Buffer Reduction.* The [buffer](#) may be reduced when expert verification and environmental information demonstrate to the satisfaction of the site plan review committee or hearings examiner, whichever is applicable, that the proposed construction method will:
 - a. Not adversely impact the stability of [ravine sidewalls](#) and [bluffs](#); and

- b. Not increase erosion and mass movement potential of [ravine sidewalls](#) and [bluffs](#); and
- c. Use construction techniques which minimize disruption of the existing topography and vegetation; and

d. Include measures to overcome any geological, soils, and hydrological constraints of the site. The [buffer](#) may be reduced by no more than fifty percent.

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

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

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

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

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

1. *Amount of Disturbance Allowed.* The following chart sets forth the maximum [slope](#) disturbance allowed on a development site:

[Slope](#) Amount of [Slope](#) Which Can be Disturbed Factor

0-15%	100%	1.00
15-25%	60%	.60
25-40%	45%	.45
40%+	0%	.00

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

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

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

2. *Development Location.*

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

3. *Development Design.*

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

4. *Construction Techniques.*

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

5. *Excavation and Grading.*

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

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

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

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

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

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

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

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

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

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

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

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

F. *Seismic Hazard Areas.* The ~~city of Lacey~~ [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~~ [As specific](#) areas are [further](#) identified, [building code provisions and](#) specific criteria designed to protect the public safety shall be developed. (Ord. 1505 §55, 2017; Ord. 1496 §27, 2016; Ord. 1208 §59, 2003; Ord. 935 §11 (part), 1992).

14.37.190 Special conditions.

A. 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~~ [City of Lacey](#) prior to the commencement of approved activities. Such field markings shall be maintained throughout the duration of the approval.

B. The ~~city of Lacey~~ [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. (Ord. 1192 §89, 2002; Ord. 935 §11 (part), 1992).

14.37.200 Financial security.

A. The ~~city of Lacey~~ City of Lacey shall require the applicant of a development proposal to provide financial security acceptable to the ~~city of Lacey~~ City of Lacey in an amount of one hundred fifty percent of the estimated cost of improvements sufficient to fulfill the requirements of this chapter and to secure compliance with conditions and limitations set forth in the approval. The amount and the conditions of the financial security shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such financial security, the ~~city of Lacey~~ 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~~ City of Lacey shall release the financial security upon determining that:

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

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

B. The ~~city of Lacey~~ 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~~ City of Lacey in an amount of twenty percent of the cost of improvements sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The ~~city of Lacey~~ 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. (Ord. 1505 §56, 2017; Ord. 935 §11 (part), 1992).

14.37.210 Other laws and regulations.

No approval granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 1192 §90, 2002; Ord. 935 §11 (part), 1992).

14.37.220 Suspension, revocation.

In addition to other penalties provided for elsewhere, the ~~city of Lacey~~ 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. 1192 §91, 2002; Ord. 935 §11 (part), 1992).

14.37.230 Notice of final decision.

The ~~city of Lacey~~ City of Lacey shall provide notice of its actions pursuant to the requirements of Section 1C.070 of the ~~City of Lacey~~ City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §92, 2002; Ord. 935 §11 (part), 1992).

14.37.240 Appeals.

Any decision of the ~~city of Lacey~~ City of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the ~~City of Lacey~~ City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §93, 2002; Ord. 935 §11 (part), 1992).

14.37.250 Enforcement.

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

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

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

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

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

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

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

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

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

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

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

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC [14.37.240](#).

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. (Ord. 1505 §57, 2017; Ord. 935 §11 (part), 1992).

14.37.260 Non-conforming activities.

A nonexempt activity that was approved prior to the passage of the ordinance codified in 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 non-conformity without a permit issued pursuant to the provisions of this chapter;

B. If a non-conforming activity is discontinued for twelve 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. (Ord. 935 §11 (part), 1992).

14.37.270 Repealed

Repealed by [Ord. 1192](#).

14.37.280 Amendments.

These regulations and the ~~city of Lacey~~ [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. 935 §11 (part), 1992).

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. (Ord. 935 §11 (part), 1992).

14.37.300 Assessment relief.

The Thurston County assessor's office shall consider [geologically sensitive area](#) regulations in determining the fair market value of land. Any owner of an undeveloped area designated as geologically sensitive shall have that portion of land assessed consistent with applicable restrictions. Such landowner shall also be exempted from special assessments on the controlled area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 1505 §58, 2017; Ord. 935 §11 (part), 1992).

Critical Areas Checklist

A Technical Assistance Tool from Growth Management Services – updated March 2024

Name of city or county:	
Staff contact, phone, and e-mail address:	
INSTRUCTIONS This checklist is intended to help local governments update their development regulations, pursuant to the schedule in RCW 36.70A.130(5). We strongly encourage but do not require jurisdictions to complete the checklist and return it to Growth Management Services (GMS), along with their updates. This checklist may be used by all jurisdictions, including those local governments planning for resource lands and critical areas only. For general information on update requirements, refer to A Guide to the Periodic Update Process Under the Growth Management Act – Fully Planning Counties & Cities, 2022 and WAC 365-196-610. Bold items are a GMA requirement or may be related requirements of other state or federal laws. <u>Underlined</u> items are links to Internet sites and may include best practices or other ideas to consider. Commerce WAC provisions are advisory under Commerce’s statutory mandate to provide technical assistance, RCW 43.330.120 which states that the Department of Commerce “...<i>shall help local officials interpret and implement the different requirements of the act through workshops, model ordinances, and information materials.</i>” If you have questions, call GMS at (360) 725-3066. How to fill out the checklist Using the current version of your critical areas regulations, fill out each item in the checklist. Select the check box or type in text fields, answering the following question: Is this item addressed in your current Critical Areas Ordinance (CAO)? If YES, fill in the form with citation(s) to where in the plan or code the item is addressed. We recommend using citations rather than page numbers because they stay the same regardless of how the document is printed. If you have questions about the requirement, follow the hyperlinks to the relevant statutory provision or rules. If you still have questions, visit the Commerce Growth Management Services Web page or contact one of the Commerce planners assigned to your region.	Contents Instructions.....1 Overall Requirements.....2 Wetlands.....3 Critical Aquifer Recharge Areas.....4 Frequently Flooded Areas.....4 Geologically Hazardous Areas.....6 Fish and Wildlife Habitat Conservation Areas.....7 Designating and Protecting Waters of the State.....8 Anadromous Fisheries.....9 Reasonable Use Exceptions.....9 Agricultural Activities.....9 Forest Practices Regulations.....10 Good Ideas.....10

CRITICAL AREAS

Regulations protecting critical areas are required by **RCW 36.70A.060(2)** and **RCW 36.70A.172(1)**. [WAC 365-195-900 through 925](#) provide guidelines. Guidance can also be found in [Commerce's Critical Areas Handbook](#) (2022); the Minimum Guidelines [WAC 365-190-080 through 130](#); Best Available Science [WAC 365-195](#); and Procedural Criteria, [WAC 365-196-485](#) and [WAC 365-196-830](#), and on Growth Management's [Critical Areas](#) webpage.

Regulations required to protect critical areas	Addressed in current plan or regulations? If yes, note where
OVERALL REQUIREMENTS The CAO includes best available science to clearly designate and protect all critical areas that might be found within the jurisdiction. 1. Designation of Critical Areas RCW 36.70A.170(1)(d) requires all counties and cities to designate critical areas. RCW 36.70A.170(2) requires that counties and cities consider the Commerce Minimum Guidelines pursuant to RCW 36.70A.050. RCW 36.70A.050 directs Commerce to adopt the Minimum Guidelines to classify critical areas. WAC 365-190-080 through 130 provide guidance on defining or "designating" each of the five critical areas. WAC 365-190-040 outlines the process to classify and designate natural resource lands and critical areas. 2. Definition of Critical Areas RCW 36.70A.030(11) provides definitions for critical areas. Sections (20) regarding geologically hazardous areas; and (48) regarding wetlands were updated in 2010. WAC 365-190-030 provides definitions in the Minimum Guidelines. 3. Protection of Critical Areas RCW 36.70A.060(2) requires counties and cities to adopt development regulations that protect the critical areas required to be designated under RCW 36.70A.170. RCW 36.70A.172(1) requires the inclusion of best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. WAC 365-196-830 provides guidance on protection of critical areas.	Was BAS documented in the record for the review and updates to the critical areas regulations? ☐ Yes ☐ No Location in Text: Do your regulations address no net loss and require compensatory mitigation? ☐ Yes ☐ No Location in Text:

4. Inclusion of Best Available Science RCW 36.70A.172(1) requires inclusion of the best available science (BAS). WAC 365-195-900 through 925 outlines recommended criteria for determining which information is the BAS, for obtaining the BAS, for including BAS in policies and regulations, for addressing inadequate scientific information, and for demonstrating “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fisheries. WAC 365-195-915 provides criteria for including BAS in the record. 5. No net loss of critical area functions and values is a requirement for development regulations in WAC 365-196-830(4). If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm.	
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WETLANDS DEFINITION The definition of wetlands is consistent with RCW 36.70A.030(48).	Is the wetland definition consistent with RCW 36.70A.030(48)? ☐ Yes ☐ No ☐ N/A Location in Text:
WETLANDS DELINEATION Wetlands are delineated using the approved federal wetland delineation manual and applicable regional supplements in accordance with WAC 173-22-035. See Ecology’s Wetland Delineation page and WAC 365-190-090 for additional assistance.	Are wetlands delineated using the approved Federal Wetland Delineation Manual and Regional Supplements? ☐ Yes ☐ No ☐ N/A Location in Text:

WETLANDS PROTECTION Policies and regulations protect the functions and values of wetlands. <u>RCW 36.70A.172(1)</u>. Counties and cities are encouraged to make their actions consistent with the intent and goals of “protection of wetlands”, Executive Order 89-10 as it existed on September 1, 1990. WAC 365-190-090(3) recommends using a wetlands rating system that evaluates the existing wetland functions and values to determine what functions must be protected. Ecology updated its recommended wetlands rating systems effective January 2015. For information on the rating system, including the July 2018 adjustments to ranges for habitat scores, see: • 2014 Updates to the Washington State Wetland Rating Systems • Washington State Wetland Rating System for Western Washington • Washington State Wetland Rating System for Eastern Washington For other resources and guidance on protecting wetlands, go to Ecology’s Local Wetland Regulations: Growth Management Act technical assistance and see: • Wetland Guidance for Critical Areas Ordinance (CAO) Updates: Western and Eastern Washington (2022)	Do the regulations use a rating system to determine wetlands protection? ☐ Yes ☐ No ☐ N/A Location in Text:
CRITICAL AQUIFER RECHARGE AREAS Policies and regulations protect the functions and values of critical aquifer recharge areas. <u>RCW 36.70A.172(1)</u>. Policies and regulations protect the quality and quantity of groundwater used for public water supplies. <u>RCW 36.70A.070(1)</u> and <u>WAC 365-196-485(1)(d)</u>. The following references also relate to protection of groundwater resources: • <u>RCW 90.44</u> – Regulation of Public Groundwaters • <u>RCW 90.48</u> – Water Pollution Control • <u>RCW 90.54</u> – Water Resources Act of 1971 • <u>RCW 36.36.020</u> - Creation of aquifer protection area (1985) • WAC 365-190-100 Critical Aquifer Recharge Areas 2023 • WAC 173-100 Groundwater Management Areas and Programs (1988) • WAC 173-200 Water Quality Standards for Groundwaters of the State of Washington (1990) • WAC 365-196-735 Consideration of state and regional planning provisions (list) (2010) The Critical Aquifer Recharge Areas Guidance Document (2021) provides information on protecting functions and values of critical aquifer recharge areas, best available science, how to work with state and local regulations and adaptive management.	If groundwater is used for potable water, do regulations protect the quality and quantity of ground water? ☐ Yes ☐ No ☐ N/A Location in text:

Also, consider the following:

- Are the critical aquifer recharge regulations consistent with current mapping of these critical areas?

Location in text:

Regulations protect the functions and values of frequently flooded areas and safeguard the public from hazards to health and safety. [RCW 36.70A.172\(1\)](#).

WAC 365-190-110 directs counties and cities to consider the following when designating and classifying frequently flooded areas:

- Are frequently flooded areas designated and regulated using FEMA and Ecology guidance?

Location in Text:

Are you utilizing your CAO as part of a programmatic response to the BiOp?

Location in Text:

Page 5 – Updated through laws of 2023

Note: Bold items and checkboxes are a requirement of the GMA.

Other items are other state or federal laws or examples of best practices. Underlined items are links to Internet sites.

FREQUENTLY FLOODED AREAS requirements of the Endangered Species Act (ESA) in the Puget Sound watershed. FEMA Region X has developed an implementation plan that allows communities to apply the performance standards contained in the Biological Opinion by implementing: 1) a model ordinance; 2) a programmatic Checklist; or 3) on a permit by permit basis as long as it can be demonstrated that there is no adverse effect to listed species. Communities have the <u>option</u> of utilizing their CAOs as part of a programmatic response to address the requirements of the biological opinion. FEMA must approve a community's biological opinion compliance strategy. Additional resources: RCW 86.12 Flood Control by Counties RCW 86.16 Floodplain Management RCW 86.26 State Participation in Flood Control Maintenance RCW 86.16.041 Floodplain Management Ordinance and Amendments WAC 173-158-070 Requirements for construction in Special Flood Hazard Areas	
DEFINITION OF GEOLOGICALLY HAZARDOUS AREAS The definition of geologically hazardous areas is consistent with <u>RCW 36.70A.030(20)</u> and WAC 365-190-120(1). "Geologically hazardous areas" means areas that because of their 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.	Is the geologically hazardous areas definition consistent with RCW 36.70A.030(20)? ☐ Yes ☐ No ☐ N/A Location in Text:
PROTECTION OF GEOLOGICALLY HAZARDOUS AREAS Regulations protect the functions and values of geologically hazardous areas and safeguard the public from hazards to health and safety. <u>RCW 36.70A.172(1)</u>. WAC 365-196-830 provides: "'Protection"' in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety." Geologically hazardous areas are designated, and their use is regulated or limited consistent with public health and safety concerns. <u>RCW 36.70A.030(20)</u> WAC 365-190-120 describes the different types of hazardous areas:	Are uses in geologically hazardous areas designated and regulated or limited consistent with public health and safety? ☐ Yes ☐ No ☐ N/A Location in Text:

- Geologically hazardous areas include: - Erosion hazards Landslide hazards seismic hazards tsunami hazards volcanic hazards channel migration zones - areas subject to other geological events such as coal mine hazards including: mass wasting, debris flows, rock falls, and differential settlement. The Department of Natural Resource's Washington Geological Survey Geologic Hazards and the Environment website includes information on earthquakes and faults, landslides, volcanoes and lahars, tsunamis, hazardous minerals, emergency preparedness, historic mines and includes geologic hazard maps that can be accessed from the Geologic Information Portal.	
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DEFINITION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS The definition of fish and wildlife habitat conservation areas is consistent with WAC 365-190-030(6). The definition of fish and wildlife habitat conservation areas was amended to state that they do not include: <i>"such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company"</i>.	Is the FWHCA definition consistent with WAC 365-190-030(6)? ☐ Yes ☐ No ☐ N/A Location in Text:
PROTECTION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS Policies and regulations protect the functions and values of fish and wildlife habitat conservation areas. RCW 36.70A.172(1) and WAC 365-190-030(6). WAC 365-190-130(4) says local jurisdictions must consult current information on priority habitats and species identified by WDFW. Additional information that must be consulted is available from DNR's natural heritage program and aquatic resources program. BAS regarding biodiversity areas and corridors has advanced significantly. Recent updates and resources include: Aquatic Habitat Guidelines Priority Habitat and Species maps Priority Habitats and Species List (updated June 2023) Priority Habitats and Species: Management recommendations: Landscape Planning for Washington's Wildlife (2009) Land Use Planning for Salmon, Steelhead and Trout (2009) Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications (2020) Riparian Ecosystems, Volume 2: Management Recommendations (2020)	Have you reviewed your regulations regarding any applicable changes in management recommendations for priority habitats and species? ☐ Yes ☐ No ☐ N/A Location in Text

ANADROMOUS FISHERIES

Policies and regulations for protecting critical areas give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. **RCW 36.70A.172(1)** is the requirement and [WAC 365-195-925](#) lists criteria involved. This requirement applies to all five types of critical areas.

[WAC 365-190-130\(4\)\(i\)](#) recommends sources and methods for protecting fish and wildlife habitat conservation areas, including salmonid habitat. Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington State Department of Fish and Wildlife, the State Recreation and Conservation Office, and the Puget Sound Partnership to designate, protect and restore salmonid habitat. Counties and cities should consider recommendations found in the regional and watershed specific salmon recovery plans (see the [Governor's Salmon Recovery Office webpage](#) and the Puget Sound Partnership's [Salmon Recovery webpage](#)).

[Land Use Planning for Salmon, Steelhead and Trout](#): A land use planner's guide to salmonid habitat protection and recovery (October 2009) is an excellent resource.

Do your regulations give special consideration to anadromous fisheries?

☐ Yes

☐ No

☐ N/A

Location in Text:

REASONABLE USE EXCEPTIONS

The Critical Areas Ordinance (CAO) allows for "reasonable use" if the CAO would otherwise deny all reasonable use of property. Reasonable use provisions should limit intrusions into critical areas to the greatest extent possible and apply the mitigation sequence as needed for no net loss of ecosystem functions and values **RCW 36.70A.370**. Common exemptions include emergencies, remodels that do not further extend into critical areas, surveying, walking, and development that has already been completed with critical areas review under a previous permit. See [Critical Areas Handbook, Chapter 3: Structuring Critical Areas Regulations, p.10 \(Updated 2022\)](#).

Do you have reasonable use provisions?

☐ Yes

☐ No

Location in Text:

AGRICULTURAL ACTIVITIES (COUNTIES ONLY)

Non-VSP Counties

Critical areas regulations as they specifically apply to agricultural activities in counties or watersheds not participating in the [Voluntary Stewardship Program \(VSP\)](#) have been reviewed, and if needed, revised pursuant to **RCW 36.70A.130**. **RCW 36.70A.710(6)**

"Agricultural activities" means all agricultural uses and practices as defined in **RCW 90.58.065**.

Did you review your regulations as they apply to agricultural activities?

☐ Yes

☐ No

☐ N/A

Location in Text:

VSP Counties

After watershed work plan approval, [VSP counties](#) are encouraged to reference and describe their participation in the program within their critical areas development regulations ([WAC 365-196-832](#)). See [Critical Areas Handbook](#), Chapter 5: Protecting Critical Areas in Natural Resource Lands (2022).

FOREST PRACTICES APPLICATION REGULATIONS

If applicable, regulations for forest practices have been adopted: RCW 36.70A.570.

RCW 76.09.240, requires many counties over 100,000 in population, and the cities and towns within those counties to adopt regulations for forest practices. These are often included in clearing and grading ordinances.

Have you adopted forest practices regulations?

- ☐ Yes
☐ No
☐ N/A

Location in Text:

GOOD IDEAS

Non-regulatory measures to protect or enhance functions and values of critical areas may be used to complement regulatory methods. These may include:

- public education
- stewardship programs
- pursuing grant opportunities
- water conservation
- joint planning with other jurisdictions and non-profit organizations
- stream and wetland restoration activities
- [transfer of development rights](#)

Monitoring and adaptive management is encouraged in [WAC 365-195-905\(6\)](#) to improve implementation of your regulations. See Commerce’s Monitoring and Adaptive Management chapter in the [Critical Areas Handbook](#), Chapter 7: Monitoring and Adaptive Management of Critical Areas (2022).

Are you using non-regulatory measures to protect critical areas?

- ☐ Yes
☐ No

Location in Text:

Do you have a monitoring and adaptive management program for your CAO?

- ☐ Yes
- ☐ No

Location in Text:

Attachment 3
Critical Areas Ordinance Update
Best Available Science Agency Guidance



State of Washington
DEPARTMENT OF FISH AND WILDLIFE
Coastal Region • Region 6 • 48 Devonshire Road, Montesano, WA 98563-9618
Telephone: (360) 249-4628 • Fax: (360) 249-1229

August 15, 2024

City of Lacey
ATTN: Hans Shepherd, Senior Planner
420 College Street SE
Lacey, WA 98503

Subject: WDFW Comment on the City of Lacey 2024 Draft Critical Area Ordinances Updates, Planview 2024-S-7153

Dear Mr. Shepherd:

On behalf of the Washington Department of Fish and Wildlife (WDFW), thank you for the opportunity to comment on the draft changes to the City of Lacey's Critical Areas Ordinance (CAO) as part of the current periodic update. Within the State of Washington's land use decision-making framework, WDFW's role is that of technical advisor with respect to the habitat needs of fish and wildlife and the likely implications of various land use decisions on those resources over time.

WDFW provides our comments and recommendations in keeping with our legislative mandate to preserve, protect, and perpetuate fish, wildlife, and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities – a mission we can only accomplish in partnership with local jurisdictions. We submit the following comments at this time and may submit additional comments in the future.

Critical Areas Code Amendments:

Table 1. Recommended changes to proposed CAO language from WDFW. Policy language suggestions and their legal implications should be vetted by the jurisdiction receiving them.

Policy Number	Policy Language (with WDFW suggestions in red)	WDFW comment
Chapter 16. 54 – Environmentally Sensitive Areas		
16.54.050 Environmental Review	...RCW 36. 70A. 172(1) requires "best available science" be included in policies and regulations to protect the functions and values of critical areas and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.	No net loss of critical area functions and values is a requirement for development regulations per WAC 365-196-830 (4) . WDFW suggests adding a new section to this policy to highlight this requirement on environmental reviews. Our suggested additional section can be seen in red.

	Pursuant to WAC 365-196-830 (4) , development regulations may not allow a net loss of the function and values of the ecosystem that includes the impacted or lost critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of that harm.	
Chapter 14.33 – Fish and Wildlife Habitat Conservation Areas		
14.33.020 A. Purpose and intent.	It is the policy of the City of Lacey to require site planning and habitat management planning to designate and protect the functions and values of habitat conservation areas to meet no net loss based on best available scientific information wherever possible	WDFW suggests adding the statement of no net loss per WAC 365-196-830 (4) as mentioned above. We also suggest removing “wherever possible” from this code because RCW 36.70A. 172 requires that best available science (BAS) shall be included for designation and protection of critical areas.
14.33.020 C. 1. Purpose and intent.	Preserving, protecting and restoring habitat conservation areas by regulating development within Fish and Wildlife Habitat Conservation Areas; Recognizing the ecosystem services provided by fish and wildlife habitat conservation areas, open spaces, and biodiversity areas by adequately conserving and connecting these areas for wildlife corridors and hazard mitigation.	We suggest updating this text to match the updated heading for this chapter. In addition to update, WDFW suggests adding a statement that highlights the importance of fish and wildlife habitat conservation areas, open spaces, and biodiversity areas to this section. These areas are critical to provide wildlife with habitat and movement corridors to prevent population isolation from occurring. Our Landscape Planning for Washington’s Wildlife: Managing for Biodiversity in Developing Areas provides guidance to consider biodiversity in the planning process.
14.33.030 G. Definitions.	“Channel migration zone (CMZ)”...	WDFW suggests adding a statement that clarifies how CMZs are measured within the City of Lacey and that a habitat conservation area will be measured from the outer edge of the CMZ to the extent possible. See Thurston County’s municipal code 24.25.040 for an example, and Ecology’s CMZ resources .

14.33.030 K. 10. Definitions.	Riparian ecosystems including salmonid habitat, which also includes marine nearshore areas.	BAS emphasizes the importance of all streams, not just fish bearing streams, for full riparian ecosystem function. See WDFW's Riparian Ecosystems, Volume 1 : Science Synthesis and Management Implications, and Riparian Ecosystems, Volume 2 : Management Recommendations. WDFW strongly recommends adopting Riparian Management Zones (RMZ) terminology and designating RMZs as a Critical Area.
14.33.030 S. Definitions.	"Priority habitats"...These might also include habitats that are of limited availability or high vulnerability to alteration. In addition, priority habitats identified and mapped by the Washington Department of Fish and Wildlife in the Priority Habitats and Species List, as amended.	WDFW's Priority Habitats and Species (PHS) program should be directly referenced and linked to this definition. The PHS information is designed to be used by cities and local jurisdictions to implement and update land use plans and development regulations as a source of BAS. Examples of how other jurisdictions have referred to WDFW's PHS program: Anacortes MC 19.70.315 A.8 & B.1.b, Burlington MC 14.15.380 A.5 & B.1, and Yakima CC 16C.06.02 (1), (3), (4).
14.33.030 T. Definitions.	"Priority species"... Priority species include those which are state listed endangered, threatened, and sensitive species, those on Washington Department of Fish and Wildlife's Priority Habitats and Species List , as well as other species of concern, and game species.	Please see note above. WDFW's Priority Habitats and Species (PHS) program should be directly referenced within this definition as well.
14.33.030 BB. Definitions.	"Water typing system" means waters classified according to WAC 222-16-031 as follows:...	WAC 222 is for forest practices by DNR and the water typing system for the forested areas of the state. The maps developed for these water types may be unreliable within urban areas. Due to this limitation and WDFW's definition of fish habitat, WAC 220-660-030 (52) , we encourage the City to follow the BAS in WDFW's Riparian Ecosystems, Volume 2 : Management Recommendations for protecting the full functions and values

		of riparian management zones. The Site Potential Tree Height at age 200 (SPTH ₂₀₀) GIS mapping tool follows the BAS for these protections.
14.33.050 A. Applicability.	When any provision of any other chapter of the city of Lacey 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.	WDFW encourages the City to alter this code to ensure that the most protective measure for habitat conservation areas is followed at all times.
14.33.060 B. 1. b. Designation, maps and inventory.	State designated endangered, threatened, and sensitive species native to the state of Washington identified by the Department of Fish and Wildlife in the Priority Habitats and Species program , that are...	As noted in the comment for 14.33.030 S above, WDFW encourages the City to include a direct reference to the agency's Priority Habitats and Species (PHS) program.
14.33.060 B. 2. Designation, maps and inventory.	...A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife in the Priority Habitats and Species program , and the Washington Natural Heritage Plan establishes a list of priority plant species and ecosystems.	WDFW suggests that the City of Lacey include a reference to the Washington Department of Natural Resources' Natural Heritage Program for this list of plant species. As noted in the comment for 14.33.030 S above, WDFW encourages the City to include a direct reference to the agency's Priority Habitats and Species (PHS) program.
14.33.060 B. 7. Designation, maps and inventory.	Type S, F, Np, and Ns waters as designated by the State Department of Natural Resources. Type S, F, Np, and Ns waters are those water bodies designated by the Department of Natural Resources stream typing pursuant to WAC 222-13-030;	We suggest a different type of stream protection system based on BAS found in WDFW's Riparian Ecosystems, Volume 1 : Science Synthesis and Management Implications and in WDFW's Riparian Ecosystems, Volume 2 : Management Recommendations. As described our comment on 14.33.030 BB. above, RMZs that provide full riparian function are not restrictive to just fish bearing streams. We suggest this section incorporate RMZ language. Please see above comment, as well as RMZ mapping resources:

		• RMZ web app map • RMZ downloads for jurisdiction mapping purposes We also recommend using WDFW's RMZ checklist as a tool to supplement the city's current CAO with these suggestions. The checklist addendum provides code language used by other local jurisdictions. See also Anacortes municipal code, section 19.70.330 Specific standards for riparian management zones.
14.33.116 A. Performance standards.	Alterations shall not degrade the functions and values of habitat. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas except in accordance with this title.	Given the complex nature of calculating the quantitative measurement of functions and values of a habitat, WDFW recommends removing the wording here. No net loss of critical area functions and values is a requirement for development regulations per WAC 365-196-830 (4) with any unavoidable impacts undergoing the mitigation sequence outlined in 14.33.030 O .
14.33.116 D. Performance standards.	Approvals of activities may be conditioned...	WDFW encourages the City of Lacey to establish a monitoring plan and adaptive management program to collect information on the CAO effectiveness, evaluate the potential for exemptions and variances to cumulatively affect habitat conservation areas, and improve permit implementation. Monitoring and adaptive management is encouraged in WAC 365-195-905 (6) to improve implementation of the regulations outlined in local CAOs. See Commerce's Monitoring and Adaptive Management Critical Areas Handbook, Chapter 7: Monitoring and Adaptive Management of Critical Areas (2022). An example of adaptive management being implemented into a CAO can be found in Jefferson County Code 18.22.280.

14.33.116 D. 2. Performance standards.	Preservation of critically important vegetation;	WDFW requests that the City define what type of vegetation this section of code is referring to. Please define if this is native, established, and/or priority habitat vegetation.
14.33.116 G. 1. Performance standards.	Buffers shall consist of an undisturbed area of native vegetation, or areas identified for restoration, established to protect the integrity, functions and values, including but not limited to the key riparian ecosystem functions (i.e., shade, root strength, nutrient input, wood input, and pollution removal) , of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the state Department of Fish and Wildlife.	WDFW requests that the key riparian ecosystem functions that are outlined in our WDFW's Riparian Ecosystems, Volume 2: Management Recommendations be added to this code in addition to a direct link to our management recommendations .
14.33.116 H. 3. b. Performance standards.	The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site, unless those animals are used as part of the restoration plan.	Some restoration plans use domestic grazing animals as a tool to aid in site restoration and management even within habitat conservation areas. This exception should be available for restoration plans of this sort.
14.33.117 D. 2. Performance standards for specific habitats.	Riparian Habitat Area Widths... Table Of Riparian Habitat Area Widths: Type S streams – 250 feet Type F Streams – 200 feet Type Np Streams – 150 feet Type Ns Streams – 150 feet	WDFW supports this code language and the widths detailed in the Table of Riparian Habitat Area Widths. We especially appreciate the range of riparian ecosystem functions that these widths are protecting. However, WDFW recommends that riparian management zones follow Site Potential Tree Height at age 200 (SPTH ₂₀₀ , where it exceeds 100 feet). SPTH ₂₀₀ captures the full functions and values of riparian management zones based on the BAS outlined in WDFW's Volume 2: Management Recommendations . WDFW encourages

		the City of Lacey to use SPTH₂₀₀ values indicated in the SPTH₂₀₀ GIS mapping tool for all stream buffers with any deviations from this BAS detailed with a reasoned justification. The City may consider designating an alternative buffer width at SPTH₂₀₀ that could potentially be chosen and/or incentivized to reach full riparian functions now or in the future. Kitsap County's draft CAO update includes an example of using SPTH₂₀₀ as an alternative buffer: 19.300.315 A. 3. Kitsap County's draft CAO states: 3.General Buffer Alternative. As an alternative method for determining a site-specific buffer, the Site Potential Tree Height model from the Washington Department of Fish and Wildlife may be voluntarily utilized...
14.33.117 D. 3. Performance standards for specific habitats.	All developments and uses proposed for lands bordering Woodland Creek shall be required to maintain a minimum two hundred foot in depth natural buffer from the ordinary high water mark on both sides of the creek. Within the buffer area, no development or use shall be permitted except for natural open spaces, trails, passive recreational activities, streets and utility services. Stormwater runoff directed to Woodland Creek shall be pretreated to mitigate water quality impacts as approved by the city.	WDFW suggests that the City consider implementing requirements for low impact development (LID) for all development projects within this watershed if not city-wide. The Department of Commerce's Menu of Measures and Ecosystem Services Program provide resources on how to incorporate this suggestion.
14.33.117 E. 5. d. Performance standards for specific habitats.	Road bridges are designed according to the Department of Fish and Wildlife Fish Passage Design at Road Culverts, 2003 Water Crossing Design Guidelines (2013), as amended, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2010 as amended; and	WDFW requests that that this reference be updated to the Agency's 2013 Water Crossing Design Guidelines. In addition to this requested update, reducing the risk of culvert failure by designing culverts and bridges to be climate-resilient prevents fish barriers and accommodates higher stream flows. Please see WDFW's climate-change-resilient culvert webpage and

		Incorporating Climate Change into the Design of Water Crossing Structures: Final Project Report (2017) for resources on how to incorporate climate-resiliency into culvert designs.
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As you know, during the periodic update the Growth Management Act (GMA) requires jurisdictions to "review and, if needed, revise" their CAOs using the best available science (BAS). We ask that you carefully consider amending your CAO consistent with our BAS and management recommendations to designate and protect riparian ecosystems and other [Priority Habitats and Species](#) consistent with the goals of the GMA. A good tool to assist with Fish and Wildlife Habitat Conservation Area code review and amendment is our [Riparian Management Zone Checklist for CAOs](#). For additional resources in support of WDFW's land use planning conservation priorities, [please see this website](#).

Thank you for taking time to consider our recommendations to better reflect the BAS for fish and wildlife habitat and ecosystems. We value the relationship we have with the City of Lacey and the opportunity to work collaboratively with you throughout this periodic update cycle. If you have any questions or need our technical assistance or resources at any time during this process, please don't hesitate to contact me at 360-280-6622 or Elliott.Winter@dfw.wa.gov.

Sincerely,


 Elliott Winter (Aug 15, 2024 16:11 PDT)

Elliott Winter
 Assistant Regional Habitat Program Manager
 1111 Washington St. SE
 Olympia, WA 98501

Cc: Gwen Lentes, Regional Habitat Program Manager (Gwendolen.Lentes@dfw.wa.gov)
 Jessica Bryant, Regional Land Use Lead (Jessica.Bryant@dfw.wa.gov)
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From: Sears, Tricia (DNR) <Tricia.Sears@dnr.wa.gov>
Sent: Friday, June 21, 2024 11:21 AM
To: Hans Shepherd
Cc: Sears, Tricia (DNR); Holman, Carol (COM)
Subject: Lacey Critical Areas Ordinance: WGS comments

You don't often get email from tricia.sears@dnr.wa.gov. [Learn why this is important](#)

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6/21/24

Hello,

In keeping with the interagency correspondence principles, I am providing you with comments on the proposed changes to the Lacey Critical Areas Ordinance (Commerce ID# 2024-S-7153).

For this proposal submitted via Planview, I looked at the proposal and focused on areas related to WGS work. Of note, but not limited to, I look for language around the geologically hazardous areas, mineral resource lands, mining climate change, and natural hazards mitigation plans.

Specifically in this proposal, I reviewed the Chapter 16.54 ENVIRONMENTALLY SENSITIVE AREAS and Chapter 14.37 GEOLOGICALLY SENSITIVE AREAS PROTECTION provisions. Kudus to you for making changes! Some of the provisions could be made clearer, more detailed, and potentially strengthened. My comments are here.

14.37.040 Qualified professional geotechnical engineer. "A qualified professional geotechnical engineer is an engineer in the practice of geotechnical work and capable of providing the services required by this chapter." Suggest adding a requirement that the person be licensed in Washington.

14.37.110 Geologically sensitive areas --Information requirements. Refers to a soils engineering report and an engineering geology report. There is no reference to whom should do these reports. Is it assumed that the qualified professional geotechnical engineer will do them? Suggest clarifying this provision.

14.37.190 Special conditions. Refers to a qualified geotechnical engineer. Requires physically marking the outer extent of the geologically hazardous areas and buffers for the duration of the approval. Does "duration of approval" mean the area is permanently identified with a marker of some sort? So after a proposed development is finished, the area is still marked? Or is the marking removed after a development is completed? Suggest clarifying this provision.

In the wetlands section you have language about recording a notice on the title about wetlands. Suggest you consider having a record a notice title for the geologically hazardous areas too.

In 14.37.180.F Seismic hazard areas. Good to acknowledge. Some jurisdictions refer to building code provisions as a cross reference. Suggest considering that.

Recognizing the limitations of the current proposals, I want to mention that it would be great for you to consider these in future work, be it in your comprehensive plan, development code, and SMP updates, and in your work in general:

- Consider adding a reference to WAC 365-190-120 geologically hazardous areas for definitions. In addition, consider adding a reference to WAC 365-196-480 for natural resource lands.
- Consider adding a reference to the WGS Geologic Information Portal. If you have not checked our interactive database, the WGS Geologic Information Portal, lately, you may wish to do so. [Geologic Information Portal | WA - DNR](#)
- If you have not checked out our Geologic Planning page, you may wish to do so. [Geologic Planning | WA - DNR](#)

Thank you for considering our comments. If you have any questions or need additional information, please contact me. For your convenience, if there are no concerns or follow-up discussion, you may consider these comments to be final as of the 60-day comment deadline of 8/17/24.

Cheerio,
Tricia

Tricia R. Sears (she/her/hers)
Geologic Planning Liaison
Washington Geological Survey (WGS)
Washington Department of Natural Resources (DNR)
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Chapter 16.54 ENVIRONMENTALLY SENSITIVE AREAS

<https://lacey.municipal.codes/LMC/16.54>

Sections:

- [16.54.010 Intent](#)
- [16.54.020 Environmentally sensitive/-critical areas defined](#)
- [16.54.030 General standards](#)
- [16.54.040 Review of uses](#)
- [16.54.050 Environmental review](#)
- [16.54.060 Wetland areas](#)
- [16.54.070 Flood hazard areas](#)
- [16.54.080 Habitat conservation areas](#)
- [16.54.090 Aquifer recharge areas](#)
- [16.54.100 Geologically sensitive areas](#)

16.54.010 Intent.

It is the intent of this chapter to:

- Regulate the use of designated environmentally critical areas consistent with the intent of the Growth Management Act and the Lacey ~~Environmental Protection and Resources Conservation Plan~~Comprehensive Plan.
- 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,~~The classification, designation and protection of critical areas is intended to recognize the differences among these areas, and to develop appropriate regulatory actions in response.
- 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 on the~~ official zoning map of the city of Lacey or other environmental maps as referenced in Chapter [14.28](#), [14.33](#), [14.34](#), [14.36](#), or [14.37](#) LMC or on lands meeting the requirements as an environmentally sensitive area as defined in said code sections.
- Provide environmentally sensitive area designations for ~~-critical~~ exemptions policy under WAC [197-11-908](#). (Ord. 935 §3 (part), 1992).

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, geologically 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-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-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 Chapter [14.28](#), [14.33](#), [14.34](#), [14.36](#) or [14.37](#) LMC, the criteria shall control. (Ord. 935 §3 (part), 1992).

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-City](#) consistent with the intent and according to the processes and procedures described or referenced in this chapter and Chapter [14.28](#), [14.33](#), [14.34](#), [14.36](#) or [14.37](#) LMC. (Ord. 935 §3 (part), 1992).

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. (Ord. 935 §3 (part), 1992).

16.54.050 Environmental review.

RCW 36. 70A requires cities to adopt development regulations to classify, designate, and protect critical areas and to assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. RCW 36. 70A. 172(1) requires "best available science" be included in policies and regulations to protect the functions and values of critical areas and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

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. (Ord. 935 §3 (part), 1992).

16.54.060 Wetland areas.

All regulated wetland areas as designated or described by Chapter [14.28](#) LMC shall be subject to the review processes, standards and conditions as specified in Chapter [14.28](#) LMC. (Ord. 935 §3 (part), 1992).

16.54.070 Flood hazard areas.

All flood hazard areas as designated or described by Chapter [14.34](#) LMC shall be subject to the review process, standards and conditions as specified in Chapter [14.34](#) LMC. (Ord. 935 §3 (part), 1992).

16.54.080 Habitat conservation areas.

All habitat conservation areas as designated or described by Chapter [14.33](#) LMC shall be subject to the review process, standards and conditions as specified in Chapter [14.33](#) LMC. (Ord. 935 §3 (part), 1992).

16.54.090 Aquifer recharge areas.

All aquifer recharge areas as designated or described by Chapter [14.36](#) LMC shall be subject to the review process, standards and conditions as specified in Chapter [14.36](#) LMC. (Ord. 935 §3 (part), 1992).

16.54.100 Geologically sensitive areas.

All geologically sensitive areas as designated or described by Chapter [14.37](#) LMC shall be subject to the review process, standards and conditions as specified in Chapter [14.37](#) LMC. (Ord. 935 §3 (part), 1992).

Chapter 14.28 WETLANDS PROTECTION

<https://lacey.municipal.codes/LMC/14.28>

Sections:

- [14.28.010 Findings of fact](#)
- [14.28.020 Purpose](#)
- [14.28.030 Definitions](#)
- [14.28.040 Abrogation and greater restrictions](#)
- [14.28.050 Interpretation](#)
- [14.28.060 Qualified professional or technical wetland consultant or scientist](#)
- [14.28.065 Listing of qualified professional or technical wetlands consultants or scientists](#)
- [14.28.067 Contracting with qualified professional wetland consultants or scientists](#)
- [14.28.070 Applicability](#)
- [14.28.080 Maps and inventory](#)
- [14.28.090 Determination of regulatory wetland boundary](#)
- [14.28.100 Wetlands rating system](#)
- [14.28.110 Regulated activities](#)
- [14.28.120 Allowed activities](#)
- [14.28.130 Special uses](#)
- *14.28.140 Repealed*
- *14.28.150 Repealed*
- [14.28.160 Wetland development permit extensions](#)
- [14.28.170 Request for determination of applicability](#)
- *14.28.180 Repealed*
- [14.28.190 Application information requirements](#)
- *14.28.200 Repealed*
- *14.28.210 Repealed*
- [14.28.220 Notice on title](#)
- [14.28.230 Consolidated application process](#)

- *14.28.240 Repealed*
- *14.28.250 Repealed*
- *14.28.260 Repealed*
- [14.28.270 Standards for wetland decisions--Generally](#)
- [14.28.280 Wetland buffers--Standard buffer zone widths](#)
- [14.28.290 Increased wetland buffer zone width](#)
- *14.28.300 Repealed*
- [14.28.310 Standard wetland buffer width averaging](#)
- [14.28.320 Permit processing--Retention of natural buffer zones](#)
- *14.28.330 Repealed*
- [14.28.340 Permit processing--Building setback lines](#)
- [14.28.350 Avoiding wetland impacts](#)
- [14.28.360 Minimizing wetlands impacts](#)
- [14.28.370 Open space credit](#)
- [14.28.380 Acting on the application--Special conditions](#)
- [14.28.390 Acting on the application-- Financial security](#)
- [14.28.400 Application approval--Other laws and regulations](#)
- [14.28.410 Application approval-- Suspension, revocation](#)
- [14.28.420 Notice of final decision](#)
- [14.28.430 Application approval-- Compensating for wetlands impacts](#)
- [14.28.440 Application approval-- Compensatory mitigation--Applicant requirements](#)
- [14.28.445 Performance standards--Mitigation requirements](#)
- [14.28.447 Type and location of mitigation](#)
- [14.28.450 Application approval--Compensatory mitigation--Wetlands restoration and creation](#)
- [14.28.455 Wetland mitigation banks and in-lieu fee](#)
- [14.28.460 Application approval--Compensatory mitigation--Wetlands enhancement](#)
- [14.28.465 Wetland preservation as mitigation](#)
- *14.28.470 Repealed*
- *14.28.480 Repealed*

- [14.28.490 Application approval--Compensatory mitigation--Timing](#)
- [14.28.500 Application approval--Compensatory mitigation--Cooperative restoration, creation or enhancement projects](#)
- [14.28.510 Application approval-- Mitigation plans](#)
- [14.28.520 Appeals](#)
- [14.28.530 Modification of wetland approvals](#)
- [14.28.540 Resubmittal of denied permit applications](#)
- [14.28.550 Temporary emergency approval](#)
- [14.28.560 Enforcement](#)
- [14.28.570 Non-conforming activities](#)
- *14.28.580 Repealed*
- [14.28.590 Amendments](#)
- [14.28.600 Severability](#)
- [14.28.610 Assessment relief](#)

14.28.010 Findings of fact.

The city council of the ~~city of Lacey~~ [City of Lacey](#) hereby finds that:

A. [Wetlands](#) and their buffer areas are valuable and fragile natural resources with significant development constraints due to flooding, erosion, soil liquefaction potential, and septic disposal limitations.

B. In their natural state, [wetlands](#) provide many valuable social and ecological services, including:

- ~~1.~~ ~~1.~~ Controlling flooding and stormwater runoff by storing or regulating natural flows;
- ~~2.~~ ~~2.~~ Protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation;
- ~~3.~~ ~~3.~~ Providing areas for ground water recharge;
- ~~4.~~ ~~4.~~ Preventing shoreline erosion by stabilizing the substrate;
- ~~5.~~ ~~5.~~ Providing habitat areas for many species of fish, wildlife, and vegetation, many of which are dependent on [wetlands](#) for their survival, and many of which are on Washington State and Federal Endangered Species lists;
- ~~6.~~ ~~6.~~ Providing open space and visual relief from intense development in urbanized area;
- ~~7.~~ ~~7.~~ Providing recreation opportunities; and
- ~~8.~~ ~~8.~~ Serving as areas for scientific study and natural resource education.

C. Development in [wetlands](#) results in:

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

D. Buffer areas surrounding [wetlands](#) are essential to maintenance and protection of [wetland functions and values](#). Buffer areas protect [wetlands](#) from degradation by:

- ~~1.~~ ~~1.~~ Stabilizing soil and preventing erosion;
- ~~2.~~ ~~2.~~ Filtering suspended solids, nutrients and harmful or toxic substances;
- ~~3.~~ ~~3.~~ Moderating impacts of stormwater runoff;
- ~~4.~~ ~~4.~~ Moderating system microclimate;
- ~~5.~~ ~~5.~~ Protecting [wetland](#) wildlife habitat from adverse impacts;
- ~~6.~~ ~~6.~~ Maintaining and [enhancing](#) habitat diversity and/or integrity;
- ~~7.~~ ~~7.~~ Supporting and protecting [wetlands](#) plant and animal species and biotic communities; and
- ~~8.~~ ~~8.~~ Reducing disturbances to [wetland](#) resources caused by intrusion of humans and domestic animals.

E. The loss of the social and ecological services provided by [wetlands](#) results in a detriment to public safety and welfare; replacement of such services, if possible at all, can require considerable public expenditure.

F. A considerable acreage of these important natural resources has been lost or degraded by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Remaining [wetlands](#) are in jeopardy of being lost, despoiled, or impaired by such acts.

G. It is therefore necessary for the ~~city of Lacey~~ [City of Lacey](#) to ensure maximum protection for [wetland](#) areas by discouraging development activities in [wetlands](#) and those activities at adjacent sites that may adversely affect [wetland functions and values](#), to encourage [restoration](#) and [enhancement](#) of already degraded [wetland](#) systems, and to encourage [creation](#) of new [wetland](#) areas. (Ord. 912 §1 Sec. 1.1, 1991).

14.28.020 Purpose.

A. It is the policy of the ~~city of Lacey~~ [City of Lacey](#) to require site planning to avoid or minimize damage to [wetlands](#) wherever possible; to require that activities not dependent upon a [wetland](#) location be located at upland sites; and to achieve no net loss of [wetlands](#) by

requiring [restoration](#) or [enhancement](#) of degraded [wetlands](#) or [creation](#) of new [wetlands](#) to offset losses that are unavoidable.

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

- [1.](#) 1. Impeding flood flows, reducing flood storage capacity, or impairing natural flood control [functions](#), thereby resulting in increased flood heights, frequencies, or velocities on other lands;
- [2.](#) 2. Increasing water pollution through location of domestic waste disposal systems or stormwater systems in [wetlands](#); unauthorized application of pesticides and herbicides; disposal of solid waste at inappropriate sites; [creation](#) of unstable fills; or the destruction of [wetland](#) soils and vegetation;
- [3.](#) 3. Increasing erosion;
- [4.](#) 4. Decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
- [5.](#) 5. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;
- [6.](#) 6. Decreasing habitat for fish and other forms of wildlife;
- [7.](#) 7. Adversely [altering](#) the recharge or discharge [functions](#) of [wetlands](#), thereby impacting ground water or surface water supplies;
- [8.](#) 8. Significantly [altering wetland](#) hydrology and thereby causing either short- or long-term changes in vegetational composition, soils characteristics, nutrient cycling, or water chemistry;
- [9.](#) 9. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
- [10.](#) 10. Interfering with public rights in navigable waters and the recreation opportunities provided by [wetlands](#) for fishing, boating, hiking, bird watching, photography and other passive uses; or
- [11.](#) 11. Destroying or damaging aesthetic and property values, including significant public view sheds.

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

- [1.](#) 1. [Preserving](#), protecting and [restoring wetlands functions and values](#) by regulating development within [wetlands](#) and [wetland buffers](#);
- [2.](#) 2. Protecting the public against losses from:
 - [a.](#) a. Unnecessary maintenance and replacement of public facilities, including the dredging of ports and navigation channels;
 - [b.](#) b. Publicly funded [mitigation](#) of avoidable impacts;
 - [c.](#) c. Cost for public emergency rescue and relief operations; and
 - [d.](#) d. Potential litigation from improper construction practices authorized for [wetland](#) areas;
- [3.](#) 3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of [wetlands](#);
- [4.](#) 4. Providing ~~city of Lacey~~ [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, [Puget Sound](#) Water Quality Management Plan, Washington State Executive Order 90-04, the Land Use Element of the Comprehensive Plan, the City Comprehensive Plan for Outdoor Recreation, the City Zoning Code (LMC Title [16](#)), the City Environmental Policy Ordinance (Chapter [14.24](#) LMC), Shoreline Master Program (Chapter [14.26](#) LMC), Tree Protection and [Preservation](#) Ordinance (Chapter [14.32](#) LMC), and all other present and future ~~city of Lacey~~ [City of Lacey](#) functional, environmental and community plans and programs. (Ord. 1505 §1, 2017; Ord. 912 §1 Sec. 1.2, 1991).

14.28.030 Definitions.

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

- A. *“Alteration”* means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.
- B. *“Applicant”* means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- C. *“Best management practices”* means conservation practices or systems of practices and management measures that:
1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and
 2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of [wetlands](#); and
 3. Protect trees and vegetation designated to be retained during the following site construction; and
 4. Provide standards for proper use of chemical herbicides within critical areas.
- D. *“Best available science”* means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined in WAC [365-195-900](#) through [365-195-925](#).
- E. *“Compensation project”* means actions necessary to replace project-induced [wetland](#) and [wetland buffer](#) losses, including land acquisition, planning, construction plans, [monitoring](#) and contingency actions.
- F. *“Compensatory mitigation”* means replacing project-induced [wetland](#) losses or impacts, and includes, but is not limited to, the following:
1. *“Restoration”* - Actions performed to reestablish [wetland](#) functional characteristics and processes which have been lost by [alterations](#), activities, or catastrophic events within an area which no longer meets the definition of a [wetland](#).
 2. *“Creation”* - Actions performed to intentionally establish a [wetland](#) at a site where it did not formerly exist.
 3. *“Enhancement”* - Actions performed to improve the condition of existing degraded [wetlands](#) so that the [functions](#) they provide are of a higher quality.

4. 4. “[Preservation](#)” - actions taken to ensure the permanent protection of existing [high quality wetlands](#).
- G. G. “*Creation*” means the manipulation of the physical, chemical, or biological characteristics to develop a [wetland](#) on an upland or deepwater site where a [wetland](#) did not previously exist. Creation results in a gain in [wetland](#) acreage and [function](#). A typical action is the excavation of upland soils to elevations that will produce a [wetland](#) hydroperiod and [hydric soils](#), and support the growth of hydrophytic plant species.
- H. H. “*Department*” means the Washington State Department of Ecology.
- I. I. “*Developable area*” means an area of land outside of [wetlands](#) and [wetland buffers](#).
- J. J. “*Ecosystem functions*” are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer instream water temperatures, and fish and wildlife habitats.
- K. K. “*Ecosystem values*” are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.
- L. J. “*Emergent wetland*” means a [regulated wetland](#) with at least thirty percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.
- M. K. “*Enhancement*” means the manipulation of the physical, chemical, or biological characteristics of a [wetland](#) to heighten, intensify, or improve specific [function](#)(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in [wetland function](#)(s) and can lead to a decline in other [wetland functions](#), but does not result in a gain in [wetland](#) acres. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to [alter](#) hydroperiods.
- N. L. “*Essential habitat*” means habitat necessary for the survival of federally listed threatened, endangered, and sensitive species and state listed [priority species](#).
- O. M. “*Existing and ongoing agriculture*” includes those activities conducted on lands defined in RCW [84.34.020\(2\)](#), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing [serviceable](#) structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.
- P. N. “*Exotic*” means any species of plants or animals that are foreign to the planning area.

- Q.** O. “*Extraordinary hardship*” means strict application of this chapter and/or programs adopted to implement this chapter by the ~~city of Lacey~~ [City of Lacey](#) would prevent all reasonable economic use of the parcel.
- R.** P. “*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.
- S.** Q. “*Forested wetland*” means a [regulated wetland](#) with at least twenty percent of the surface area covered by woody vegetation greater than twenty feet in height.
- T.** R. “*Functions,*” “*beneficial functions,*” or “*functions and values*” means the beneficial roles served by [wetlands](#) including, but not limited to, water quality protection and [enhancement](#), fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.
- U.** S. “*High intensity land use*” includes land uses which are associated with moderate or high levels of human disturbance or substantial [wetland](#) habitat impacts including, but not limited to, urban residential densities, active recreation uses, and commercial and industrial land uses.
- V.** T. “*High quality wetlands*” are those [regulated wetlands](#) which meet the following criteria:
- 1.** 1. No, or isolated, human [alteration](#) of the [wetland](#) topography;
 - 2.** 2. No human-caused [alteration](#) of the hydrology or else the [wetland](#) appears to have recovered from the [alteration](#);
 - 3.** 3. Low cover and frequency of [exotic](#) plant species;
 - 4.** 4. Relatively little human-related disturbance of the [native vegetation](#), or recovery from past disturbance;
 - 5.** 5. If the [wetland](#) system is degraded, it still contains a viable and high quality example of a native [wetland](#) community; and
 - 6.** 6. No known major quality problems.
- W.** U. “*Hydric soil*” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the “Federal Manual for Identifying and Delineating Jurisdictional [Wetlands](#).”
- X.** V. “*Hydrophytic vegetation*” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the “Federal Manual for Identifying and Delineating Jurisdictional [Wetlands](#).”
- Y.** W. “*In-kind compensation*” means to replace [wetlands](#) with substitute [wetlands](#) whose characteristics closely approximate those destroyed or degraded by a [regulated activity](#). It does not necessarily mean replacement “in-category.”
- Z.** X. “*In-lieu-fee program*” means an agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the [mitigation](#) sponsor collects funds from an individual or a number of individuals who are required to conduct [compensatory mitigation](#) required under a [wetland](#) regulatory program. The sponsor may use the funds pooled

from multiple permittees to create one or a number of sites under the authority of the agreement to satisfy the permittees' required [mitigation](#).

AA. Y. *"Isolated wetlands"* means a [wetland](#) that is hydrologically isolated from other aquatic resources as determined by the United States Army Corps of Engineers (USACE). Isolated wetlands may perform important [functions](#) and are protected by state law (Chapter [90.48](#) RCW) whether or not they are protected by federal law.

BB. Z. *"Lot of record"* means a lot legally established by survey or legal description and recorded at the county auditor's office prior to adoption of the ~~city of Lacey~~ [City of Lacey](#) subdivision ordinance or a lot legally established after adoption of the ~~city of Lacey~~ [City of Lacey](#) subdivision regulations by recording of a building site plan, subdivision or short subdivision at the county auditor's office. The definition of lot shall be that definition used in the Lacey subdivision ordinance (LMC [15.02.020\(Y\)](#)).

CC. AA. *"Low intensity land use"* includes land uses which are associated with low levels of human disturbance or low [wetland](#) habitat impacts, including, but not limited to, passive recreation, open space, agricultural, or forest management land uses.

A. BB. *"Mitigation" or "mitigation sequencing" means a prescribed order of steps taken to reduce the impacts of activities on critical areas. As defined in Chapter 197-11-768 WAC, mitigation means: includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation in the following order of preference is:*

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

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

C. DD. *"Native vegetation"* means plant species which are indigenous to the area in question.

D. EE. *"Off-site compensation"* means to replace [wetlands](#) away from the site on which a [wetland](#) has been impacted by a [regulated activity](#).

E. FF. *"On-site compensation"* means to replace [wetlands](#) at or adjacent to the site on which a [wetland](#) has been impacted by a [regulated activity](#).

F. GG. *"Out-of-kind compensation"* means to replace [wetlands](#) with substitute [wetlands](#) whose characteristics do not closely approximate those destroyed or degraded by a [regulated activity](#). It does not refer to replacement "out-of-category."

- G.** HH. “*Practicable alternative*” means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to [regulated wetlands](#). It may include an area not owned by the [applicant](#) which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.
- H.** II. “*Preservation*” means the removal of a threat to, or preventing the decline of, [wetland](#) conditions by an action in or near a [wetland](#). This term includes the purchase of land or conservation easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of [wetland](#) acres but may result in a gain in [functions](#) over the long term.
- I.** JJ. “*Priority habitats*” are a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to [alteration](#).
- J.** KK. “*Priority species*” are those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened, and sensitive species as well as other species of concern and game species.
- K.** LL. “*Puget Sound*” means all salt waters of the state of Washington inside the international boundary line between the state of Washington and the province of British Columbia, lying east of one hundred twenty-three degrees, twenty-four minutes west longitude.
- L.** MM. “*Qualified professional or technical wetlands consultant or scientist*” means an individual or team that has both the academic qualifications and field experience to provide the technical expertise for making competent [wetland](#) delineations and recommendations necessary to implement the goals and requirements of this chapter. Said persons must have previous demonstrated competence in [wetland](#) work by having successfully prepared complex [wetland](#) studies that have been approved and accepted by the State [Department](#) of Ecology, and must be accepted by the ~~city of Lacey~~ [City of Lacey](#) pursuant to the requirements of LMC [14.28.065](#) and [14.28.067](#).
- M.** NN. “*Regulated activities*” means any of the following activities which are directly undertaken or originate in a [regulated wetland](#) or its buffer:
- 1.** 1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
 - 2.** 2. The dumping, discharging, or filling with any material;
 - 3.** 3. The draining, flooding, or disturbing of the water level or water table;
 - 4.** 4. The driving of pilings;
 - 5.** 5. The placing of obstructions;
 - 6.** 6. The construction, reconstruction, demolition, or expansion of any structure;
 - 7.** 7. The destruction or [alteration](#) of [wetlands](#) vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would [alter](#) the character of a [regulated wetland](#) or any other activity taking place in a [wetland](#) or buffer involving the modification of vegetation falling under the jurisdiction of the city’s Tree and Vegetation Protection and [Preservation](#) Ordinance;

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

N. OO. “*Regulated wetlands*” means all [wetlands](#) as defined herein and [wetlands](#) which fall waterward of the ordinary high water mark of lakes; except that the following [wetlands](#) may be filled if the impacts are fully mitigated based on the requirements of LMC [14.28.445](#). In order to verify the following conditions, a [wetland](#) report shall be submitted:

1. 1. All isolated Category IV [wetlands](#) less than four thousand square feet that:

- a. a. Are not associated with riparian areas or their buffers;
- b. b. Are not associated with shorelines of the state or their associated buffers;
- c. c. Are not part of a [wetland mosaic](#);
- d. d. Do not score five or more points for habitat [function](#) based on the 2014 update to the Washington State [Wetland](#) Rating System for Western Washington: 2014 Update or as revised and approved by Ecology; and
- e. e. Do not contain a [Priority Habitat](#) or a Priority Area for a [Priority Species](#) identified by the Washington [Department](#) of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter [14.33](#) LMC.

2. 2. [Wetlands](#) less than one thousand square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter;

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

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

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

Q. RR. “*Scrub-shrub wetland*” means a [regulated wetland](#) with at least thirty percent of its surface area covered by woody vegetation less than twenty feet in height as the uppermost strata.

R. SS. “*Serviceable*” means presently usable.

S. TT. “*Unavoidable and necessary impacts*” are impacts to [regulated wetlands](#) that remain after a person proposing to [alter regulated wetlands](#) has demonstrated that no [practicable alternative](#) exists for the proposed project.

T. UU. “*Watercourse, “river” or “stream”* means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high-water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all

surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

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

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

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

X. ~~XX~~YY. “Wetland buffers” or “wetland buffer zones” is an area that surrounds and protects a wetland from adverse impacts to the functions and values of a regulated wetland.

Y. ~~YY~~ZZ. “Wetland classes,” “classes of wetlands” or “wetland types” means descriptive classes of the wetlands taxonomic classification system of the United States Fish and Wildlife Service (Cowardin, et al., 1978).

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

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

BB. ~~BB~~CCC. “Wetland mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than one hundred feet from each other; and areas delineated as vegetated wetland are more than fifty percent of the total area of the entire mosaic, including uplands and open water. (Ord. 1505 §2, 2017; Ord. 1449 §1, 2014; Ord. 1215 §2, 2003; Ord. 935 §4, 1992; Ord. 912 §1 Sec. 2, 1991).

14.28.040 Abrogation and greater restrictions.

It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 912 §1 Sec. 3.1, 1991).

14.28.050 Interpretation.

The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 912 §1 Sec. 3.2, 1991).

14.28.060 Qualified professional or technical wetland consultant or scientist.

It is expected that most applications for [wetland](#) approval will require a qualified professional or technical [wetland](#) consultant or scientist to provide the information necessary to fulfill the requirements of this chapter. It shall be the responsibility of the [applicant](#) to purchase the services of a qualified consultant or scientist. (Ord. 912 §1 Sec. 3.3, 1991).

14.28.065 Listing of qualified professional or technical wetlands consultants or scientists.

The ~~city of Lacey~~ [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 LMC [14.28.067](#). The list shall be reviewed on an annual basis. (Ord. 935 §5 (part), 1992).

14.28.067 Contracting with qualified professional wetland consultants or scientists.

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

Individual [applicants](#) will be responsible for payment of costs of the professional for projects necessitating work to be performed by the professional; provided, however, that the city shall be responsible for billing and collecting costs charged to the [applicant](#) and transferring said payment to the professional unless the city has opted for some other mechanism of providing for the cost, such as inclusion of cost in application fees. The [applicant](#) shall also be responsible for the city's administrative fees in carrying out this service. The director of community and economic development is authorized to prepare administrative guidelines for carrying out the requirements of this section. (Ord. 1505 §3, 2017; Ord. 935 §5 (part), 1992).

14.28.070 Applicability.

- A. When any provision of any other ordinance of the ~~city of Lacey~~ City of Lacey conflicts with this chapter, that which provides more protection to wetlands and wetland buffers shall apply unless specifically provided otherwise in this chapter.
- B. The ~~city of Lacey~~ City of Lacey is authorized to adopt written administrative procedures for the purpose of carrying out the provisions of this chapter.
- C. The ~~city of Lacey~~ City of Lacey shall not grant any approval or permission to conduct a regulated activity in a wetland or wetland buffer until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 912 §1 Sec. 4.1, 1991).

14.28.080 Maps and inventory.

This chapter shall apply to all lots or parcels on which wetlands and/or wetland buffers are located within the jurisdiction of the ~~city of Lacey~~ City of Lacey. The approximate location and extent of wetlands in the ~~city of Lacey~~ City of Lacey is displayed on the city zoning map and wetland maps based upon National Wetland Inventory maps and local aerial photograph studies. The city zoning map and inventory maps are to be used as a guide to the general location and extent of wetlands. Wetlands not shown on the zoning map or National Wetlands Inventory are presumed to exist in the ~~city of Lacey~~ City of Lacey and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control. (Ord. 1505 §4, 2017; Ord. 1215 §3, 2003; Ord. 912 §1 Sec. 4.2, 1991).

14.28.090 Determination of regulatory wetland boundary.

- A. The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation applying the wetland definition provided in LMC 14.28.030. Qualified professional and technical scientists shall perform wetland delineations using the approved federal wetland delineation manual and applicable regional supplements. The applicant is required under LMC 14.28.190 to show the location of the wetland boundary on a scaled drawing as a part of the permit application.
- B. The ~~city of Lacey~~ City of Lacey, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The ~~city of Lacey~~ City of Lacey shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant may be charged for the costs incurred.
- C. Where the ~~city of Lacey~~ City of Lacey performs a wetland delineation at the request of the applicant, such delineation shall be considered a final determination.

D. Where the [applicant](#) has provided a delineation of the [wetland](#) boundary, the ~~city of Lacey~~ [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~~ [City of Lacey](#) shall, at the [applicant](#)'s expense, obtain expert services to render a final delineation. (Ord. 1449 §2, 2014; Ord. 1215 §4, 2003; Ord. 1192 §25, 2002; Ord. 912 §1 Sec. 4.3, 1991).

14.28.100 Wetlands rating system.

The following system shall be used to rate, establish and administer buffer widths and replacement ratios for [wetlands](#). For a detailed explanation of this system, refer to Washington State [Wetland Rating System for Western Washington: 2014 Update \(Revised, Publication No. 14-06-029, October 2014\)](#), or as hereafter amended.

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

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

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

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

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

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

recognize illegal modifications. (Ord. 1505 §5, 2017; Ord. 1449 §3, 2014; Ord. 1215 §5, 2003; Ord. 935 §5 (part), 1992).

14.28.110 Regulated activities.

A [wetland](#) development permit shall be obtained from the ~~city of Lacey~~ [City of Lacey](#) pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the ~~city of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards prior to undertaking the following activities in a [regulated wetland](#) or its buffer.

- A. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- B. The dumping, discharging, or filling with any material;
- C. The draining, flooding, or disturbing of the water level or water table;
- D. The driving of pilings;
- E. The placing of obstructions;
- F. The construction, reconstruction, demolition, or expansion of any structure;
- G. The destruction or [alteration](#) of [wetlands](#) vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would [alter](#) the character of a [regulated wetland](#);
- H. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of [wetlands](#) water sources, including quantity, or the introduction of pollutants. (Ord. 1192 §26, 2002; Ord. 912 §1 Sec. 5.1, 1991).

14.28.120 Allowed activities.

The activities listed below are allowed in [wetlands](#) and/or their buffers. These activities do not require submission of a [wetland](#) report, except where noted. These activities include:

- A. Conservation or [preservation](#) of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or [functions](#) of the existing [wetland](#).
- B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or [alteration](#) of the [wetland](#) by changing existing topography, water conditions, or water sources.
- C. Drilling for utilities/utility corridors under a [wetland](#), with entrance/exit portals located completely outside of the [wetland buffer](#), provided that the drilling does not interrupt the ground water connection to the [wetland](#) or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the [wetland](#) or percolation of surface water down through the soil column will be disturbed.
- D. [Enhancement](#) of a [wetland](#) through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed

plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

E. Educational and scientific research activities.

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

G. Site investigation related to development of a [wetland](#) report.

H. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.

I. *Stormwater Management Facilities.* A [wetland](#) or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment or Flow Control BMP if all of the following criteria are met:

1. The [wetland](#) is classified as a Category IV or a Category III [wetland](#) with a [habitat score of three to four points](#); and
2. There will be no net loss of [functions and values](#) of the [wetland](#); and
3. The [wetland](#) does not contain a breeding population of any native amphibian species; and
4. The hydrologic [functions](#) of the [wetland](#) can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting [Mitigation](#) Sites Using a Watershed Approach” (available here: <http://www.ecy.wa.gov/biblio/0906032.html>); or the [wetland](#) is part of a priority [restoration](#) plan that achieves [restoration](#) goals identified in a Shoreline Master Program or other local or regional watershed plan; and
5. The [wetland](#) lies in the natural routing of the runoff, and the discharge follows the natural routing; and
6. All regulations regarding stormwater and [wetland](#) management are followed, including but not limited to local and state [wetland](#) and stormwater codes, manuals, and permits.

Stormwater LID BMPs required as part of new and redevelopment projects can be considered within [wetlands](#) and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site. (Ord. 1505 §6, 2017; Ord. 1215 §6, 2003; Ord. 1192 §27, 2002; Ord. 1012 §1, 1995; Ord. 935 §6, 1992; Ord. 912 §1 Sec. 5.2, 1991).

14.28.130 Special uses.

Any activity other than those specified in LMC [14.28.120](#) may not be conducted in [wetlands](#) or [wetland buffers](#) except upon [wetland](#) development approval from the ~~city of Lacey~~ [City of Lacey](#) pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1505 §7, 2017; Ord. 1192 §28, 2002; Ord. 912 §1 Sec. 5.3, 1991).

14.28.140 Repealed

Repealed by [Ord. 1505](#).

14.28.150 Repealed

Repealed by [Ord. 1192](#).

14.28.160 Wetland development permit extensions.

A. Approvals of a [wetland](#) development permit shall normally be valid for a period of eighteen months from the date of issue and shall expire at the end of that time pursuant to requirements of 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 submitted to the ~~city of Lacey~~ [City of Lacey](#) at least thirty days prior to the permit expiration date, by the original permit holder or the successor in title. Prior to the granting of an extension, the ~~city of Lacey~~ [City of Lacey](#) shall require updated studies and/or additional hearings if, in its judgment, the original intent of the permit is altered or enlarged by the renewal, if the circumstances relevant to the review and issuance of the original permit have changed substantially, or if the [applicant](#) failed to abide by the terms of the original permit. (Ord. 1192 §30, 2002; Ord. 912 §1 Sec. 6.2, 1991).

14.28.170 Request for determination of applicability.

Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request in writing a determination from the ~~city of Lacey~~ [City of Lacey](#). Such a request for determination shall contain plans, data, and other information as may be specified by the city. Determination of applicability shall be valid for a period of one year from the date of issuance. (Ord. 1192 §31, 2002; Ord. 912 §1 Sec. 6.3(a), 1991).

14.28.180 Repealed

Repealed by [Ord. 1192](#).

14.28.190 Application information requirements.

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

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1"=400' showing the entire parcel of land owned by the [applicant](#) and the exact boundary pursuant to LMC [14.28.090](#) of the [wetland](#) on the parcel;

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

B. The ~~city of Lacey~~ [City of Lacey](#) may require additional information, including, but not limited to, a [wetland](#) report that contains an assessment of [wetland](#) functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic, or other values of a [wetland](#); a study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter. The ~~city of Lacey~~ [City of Lacey](#) shall maintain and make available to the public all information applicable to any [wetland](#) and its buffer. (Ord. 1505 §9, 2017; Ord. 1192 §33, 2002; Ord. 912 §1 Sec. 6.3(c), 1991).

14.28.200 Repealed

Repealed by [Ord. 1192](#).

14.28.210 Repealed

Repealed by [Ord. 1192](#).

14.28.220 Notice on title.

A. The owner of any property with field verified presence of [wetland](#) or [wetland buffer](#) pursuant to LMC [14.28.090](#) on which a development proposal is submitted shall file for record with the Thurston County Auditors Office a notice in the form set forth in subsection B of this section. Such notice shall provide in the public record the presence of a [wetland](#) or [wetland buffer](#), the application of this chapter to the property, and that limitations on actions in or affecting such [wetlands](#) and their buffers may exist. The [applicant](#) shall submit proof that the notice has been filed for record before an activity is commenced on the subject property. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.

B. Form of Notice:

WETLAND AND/OR WETLAND BUFFER NOTICE

Legal Description: _____

Present owner: _____

NOTICE: This property contains wetlands or their buffers as defined by the ~~city of Lacey~~ City of Lacey Ordinance. The property was the subject of a development proposal for (type of permit) application # _____ filed on (date). Restrictions on use or alteration of the wetlands or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of wetlands or wetland buffers and restrictions on their use through setback areas. A copy of the plan showing such setback areas is attached hereto.

Signature of owner

STATE OF WASHINGTON)

COUNTY OF _____)

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

Given under my hand and official seal this _____ day of _____, 19____. NOTARY PUBLIC in and for the state of Washington, residing at _____.

(Ord. 1192 §36, 2002; Ord. 912 §1 Sec. 6.3(f), 1991).

14.28.230 Consolidated application process.

When more than one application for a proposed development is required, the applicant may elect to have all applications submitted for review at one time in conformance with Section 1B.030 of the ~~City of Lacey~~ City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §37, 2002; Ord. 912 §1 Sec. 6.4(a), 1991).

14.28.240 Repealed

Repealed by Ord. 1192.

14.28.250 Repealed

Repealed by Ord. 1192.

14.28.260 Repealed

Repealed by Ord. 1192.

14.28.270 Standards for wetland decisions--Generally.

A. An approval shall only be granted if, as conditioned, the decision is consistent with the provisions of this chapter including the following:

1. A proposed action avoids adverse impacts to [regulated wetlands](#) or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
2. The proposed activity results in no net loss;
3. Denial of a permit would cause an [extraordinary hardship](#) on the [applicant](#).

B. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal. (Ord. 1192 §41, 2002; Ord. 912 §1 Sec. 7, 1991).

14.28.280 Wetland buffers--Standard buffer zone widths.

A. [Wetland buffer zones](#) shall be required for all [regulated activities](#) adjacent to [regulated wetlands](#). Any [wetland](#) created, restored or enhanced as compensation for approved [wetland alterations](#) shall also include the standard buffer required for the category of the created, restored, or enhanced [wetland](#). All buffers shall be measured from the [wetland](#) boundary as surveyed in the field pursuant to the requirements of LMC [14.28.090](#).

B. The width of the [wetland buffer zone](#) shall be determined according to [wetland](#) category, the proposed land use and the [wetland](#)'s identified [functions and values](#). This methodology shall be applied except when the community and economic development director, through consultation with the [Department](#) of Ecology, determines that another methodology better addresses [best available science](#) and/or the specific circumstances of the [wetland](#) and [wetland](#) protection needs.

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

1. For [wetlands](#) that score six or more points for habitat [function](#), the following conditions must be maintained in order to use the standard buffers, as follows:

- a. If an existing, relatively undisturbed vegetated corridor at least one hundred feet wide exists between the on-site [wetland](#) and other [priority habitats](#), as defined by the Washington State [Department](#) of Fish and Wildlife, and the off-site portion of the corridor is already protected via an existing conservation easement, critical areas regulations, or other legal requirement, the portion of the corridor on-site must also be protected by a similar legal protection. All other applicable criteria found in subsection [\(C\)\(2\)](#) of this section must also be met. The evaluation of presence or absence of the conditions described above must be completed as part of the critical areas report.
- b. If no such corridor is present to protect, the standard buffers alone may be used with the other applicable criteria contained in this section. If an option for protection of a corridor, as defined under subsection [\(C\)\(1\)\(a\)](#) of this section, exists on the parcel, but is not provided, standard buffer widths must be increased by thirty-three percent.

2. The buffer widths in Table [14T-19](#) assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed [functions](#), the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate [functions](#) of the buffer are provided.

a. Table 14T-19. [Wetland Buffer](#) Table.

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score		
	3--5 (Low)	6--7 (Medium)	8--9 (High)
I: Estuarine and Coastal Lagoons	150 (buffer width not based on habitat scores)		
I: Bogs and Wetlands of High Conservation Value	190		225
I: All Others	75	110	225
II: Estuarine and Coastal Lagoons	110 (buffer width not based on habitat scores)		
II: All	75	110	225
III: All	60	110	225
IV: All	40		

b. Table 14T-68. Required measures to minimize impacts to [wetlands](#). Measures are required, where applicable to a specific proposal. If not implemented, [wetland buffers](#) as indicated in Table [14T-69](#) will be used.

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland

	• Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (per PSAT publication on LID techniques)
Change in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust

c. *Table 14T-69.* The following [wetland buffer](#) requirements if habitat corridor is not provided per subsection [\(C\)\(1\)](#) of this section or minimization measures per subsection [\(C\)\(2\)\(b\)](#) of this section are not implemented:

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score (if minimization measures are not met)		
	3--5 (Low)	6--7 (Medium)	8--9 (High)
I: Estuarine and Coastal Lagoons	200 (buffer width not based on habitat scores)		
I: Bogs and Wetlands of High Conservation Value	250		300
I: All Others	100	150	300
II: Estuarine and Coastal Lagoons	150 (buffer width not based on habitat scores)		
II: All	100	150	300
III: All	80	150	300
IV: All	50		

(Ord. 1585 §3, 2021; Ord. 1505 §10, 2017; Ord. 1449 §7, 2014; Ord. 1295 §1, 2007; Ord. 1215 §8, 2003; Ord. 912 §1 Sec. 7.1(a), 1991).

14.28.290 Increased wetland buffer zone width.

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

- A. A larger buffer is necessary to maintain viable populations of existing species; or
- B. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
- C. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
- D. The adjacent land has minimal vegetative cover or slopes greater than thirty percent. (Ord. 1505 §11, 2017; Ord. 912 §1 Sec. 7.1(b), 1991).

14.28.300 Repealed

Repealed by Ord. 1505.

14.28.310 Standard wetland buffer width averaging.

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

- A. That averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property and there are no feasible alternatives to the site design that could be accomplished without buffer averaging;
- B. That width averaging will not adversely impact the wetland functions and values as demonstrated by a wetland report; and
- C. That the total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging. In no instance shall the buffer width be reduced by more than twenty-five percent of the standard. (Ord. 1505 §13, 2017; Ord. 912 §1 Sec. 7.1(d), 1991).

14.28.320 Permit processing--Retention of natural buffer zones.

Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation may be required. (Ord. 912 §1 Sec. 7.1(e), 1991).

14.28.330 Repealed

Repealed by Ord. 1505.

14.28.340 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 [wetland buffer](#). The setback shall be identified on a site plan which is filed as an attachment to the notice on title required by LMC [14.28.220](#). (Ord. 912 §1 Sec. 7.1(g), 1991).

14.28.350 Avoiding wetland impacts.

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

B. With respect to Category I [wetlands](#), an [applicant](#) must demonstrate that denial would impose an [extraordinary hardship](#) on the part of the [applicant](#) brought about by circumstances peculiar to the subject property.

C. With respect to Category II and III [wetlands](#), the following provisions shall apply:

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

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

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

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

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

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

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

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

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

3. That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to [wetlands](#) and [wetland buffers](#);
4. That the proposed activities will result in minimum feasible [alteration](#) or impairment to the [wetland](#)'s functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;
5. That disturbance of [wetlands](#) has been minimized by locating any necessary [alteration](#) in [wetland buffers](#) to the extent possible;
6. That the proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, rare, sensitive, or as documented [priority species](#) or [priority habitats](#);
7. That the proposed activities will not cause significant degradation of ground water or surface water quality;
8. That the proposed activities comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
9. That any and all [alterations](#) to [wetlands](#) and [wetland buffers](#) will be mitigated as provided in LMC [14.28.510](#);
10. That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and
11. That the inability to derive reasonable economic use of the property is not the result of actions by the [applicant](#) in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter.

If the ~~city of Lacey~~ [City of Lacey](#) determines that [alteration](#) of a [wetland](#) and/or [wetland buffer](#) is necessary and unavoidable, the ~~city of Lacey~~ [City of Lacey](#) shall set forth in writing in the file it maintains regarding a permit application its findings with respect to each of the items listed in this subsection. (Ord. 1215 §10, 2003; Ord. 912 §1 Sec. 7.2, 1991).

14.28.360 Minimizing wetlands impacts.

- A. After it has been determined by the ~~city of Lacey~~ [City of Lacey](#) pursuant to LMC [14.28.350](#) that losses of [wetland](#) are necessary and unavoidable or that all reasonable economic use has been denied, the [applicant](#) shall take deliberate measures to minimize [wetland](#) impacts.
- B. Minimizing impacts to [wetlands](#) shall include but is not limited to:
 1. Limiting the degree or magnitude of the [regulated activity](#);
 2. Limiting the implementation of the [regulated activity](#);
 3. Using appropriate and best available technology and [best available science](#);

4. Taking affirmative steps to avoid or reduce impacts;
5. Sensitive site design and siting of facilities and construction staging areas away from [regulated wetlands](#) and their buffers;
6. Involving resource agencies early in site planning; and
7. Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the [regulated activity](#) to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities. (Ord. 1215 §11, 2003; Ord. 912 §1 Sec. 7.3, 1991).

14.28.370 Open space credit.

Up to fifty percent of a development's open space requirement may be satisfied by [wetland](#) and [wetland](#) area buffers in consideration of the significant passive recreation opportunities provided by said lands. The remaining fifty percent open space requirement must be set aside outside of the [wetland](#) and [wetland buffer](#) area to provide for and accommodate proposed or potential future active (high intensity) recreational use. (Ord. 1505 §15, 2017; Ord. 1243 §9, 2005; Ord. 1215 §11, 2003; Ord. 1192 §42, 2002; Ord. 912 §1 Sec. 7.4(b), 1991).

14.28.380 Acting on the application--Special conditions.

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

1. *Protection of Sensitive Area Tracts.* The ~~city of Lacey~~ [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~~ [City of Lacey](#):

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

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

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

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

b. Responsibility for maintaining open space tracts shall be held by a lot or homeowners association, or other appropriate entity as approved by the ~~city of Lacey~~ [City of Lacey](#).

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

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

3. *Signage.*

a. *Temporary Markers.* The outer perimeter of the [wetland buffer](#) and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the ~~city of Lacey~~ [City of Lacey](#) prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs are in place.

b. *Permanent Signs.* As a condition of any permit or authorization issued pursuant to this chapter, the city shall require the [applicant](#) to install permanent signs along the boundary of a [wetland](#) or buffer.

c. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one every fifty feet, or one per lot if the lot is less than fifty feet wide, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the city:

Protected Wetland Area

Do Not Disturb

Contact ~~City of Lacey~~ [City of Lacey](#) Regarding Uses, Restrictions, and Opportunities for Stewardship

4. *Fencing.*

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

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

B. Additional Conditions.

1. The location of the outer extent of the [wetland buffer](#) and the areas to be disturbed pursuant to an approval shall be marked in the field by a qualified professional or technical [wetland](#) consultant or scientist, and such field marking shall be approved by the ~~city of Lacey~~ [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~~ [City of Lacey](#) may attach such additional conditions to the granting of approvals as deemed necessary to assure the [preservation](#) and protection of affected [wetlands](#) and to assure compliance with the purposes and requirements of this chapter. (Ord. 1505 §16, 2017; Ord. 912 §1 Sec. 7.5(a), 1991).

14.28.390 Acting on the application-- Financial security.

A. *Financial Security for Performance.* The ~~city of Lacey~~ [City of Lacey](#) shall require the [applicant](#) of a development proposal to provide [financial security](#) acceptable to the ~~city of Lacey~~ [City of Lacey](#) in an amount and with surety and conditions sufficient to fulfill the requirements of LMC [14.28.430](#) through [14.28.510](#) and, in addition, to secure compliance with other conditions and limitations set forth in the approval. The amount and the conditions of the [financial security](#) shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such [financial security](#), the ~~city of Lacey~~ [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~~ [City of Lacey](#) shall release the [financial security](#) upon determining that:

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

Until such written release of the [financial security](#) by the city such security cannot be released to the [applicant](#).

B. *Maintenance Security.* The ~~city of Lacey~~ [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~~ [City of Lacey](#) in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and [mitigation](#) required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The ~~city of Lacey~~ [City of Lacey](#) shall release the [financial security](#) upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or [compensatory mitigation](#) have been satisfactorily met for the required period. For [compensation projects](#), the performance standards shall be those contained in the [mitigation](#) plan developed and approved during the review process pursuant to LMC [14.28.510](#). The maintenance security applicable to a [compensation project](#) shall not be released until the ~~city of Lacey~~ [City of Lacey](#) determines that performance standards established for evaluating the effect and success of the project have been met. (Ord. 912 §1 Sec. 7.5(b), 1991).

14.28.400 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 §1 Sec. 7.5(c), 1991).

14.28.410 Application approval-- Suspension, revocation.

In addition to other penalties provided for elsewhere, the ~~city of Lacey~~ [City of Lacey](#) may suspend or revoke an approval if it finds that the [applicant](#) or permittee has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 912 §1 Sec. 7.5(d), 1991).

14.28.420 Notice of final decision.

The ~~city of Lacey~~ [City of Lacey](#) shall provide notice of its actions pursuant to the requirements of Section 1C.070 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §43, 2002; Ord. 912 §1 Sec. 7.5(e), 1991).

14.28.430 Application approval-- Compensating for wetlands impacts.

"Mitigation" and "mitigation sequencing" are not always clearly understood. Those terms are easily confused with "compensatory mitigation". The latter is the step in the mitigation sequence that occurs after avoidance and minimization. It involves restoring (re-establishing, rehabilitating), creating (establishing), enhancing, or preserving wetlands to replace those lost or degraded through permitted activities. "Mitigation" and "mitigation sequencing" have a broader meaning: they include as the first option, avoidance of any impact. If avoidance is not possible, the second step in mitigation sequencing is minimization. Only after those first steps does one then consider compensatory mitigation.

As a condition of any approval allowing [alteration](#) of [wetlands](#) and/or [wetland buffers](#), or as an enforcement action pursuant to LMC [14.28.560](#), the ~~city of Lacey~~ [City of Lacey](#) shall require that the [applicant](#) engage in the [restoration](#), [creation](#) or [enhancement](#) of [wetlands](#) and their buffers in order to offset the impacts resulting from the [applicant](#)'s or violator's actions. The [applicant](#) shall develop a plan that provides for land acquisition, construction, maintenance and [monitoring](#) of replacement [wetlands](#) that recreate as nearly as possible the original [wetlands](#) in terms of acreage, [function](#), geographic location and setting, and that are larger than the original [wetlands](#). The overall goal of any compensatory project shall be no net loss of [wetlands function](#) and acreage and to strive for a net resource gain in [wetlands](#) over present conditions. Compensation shall be completed prior to [wetland](#) destruction, where possible.

[Compensatory mitigation](#) shall follow an approved [mitigation](#) plan pursuant to LMC [14.28.510](#) and shall meet the following minimum performance standards set forth in LMC [14.28.440](#) through [14.28.510](#). (Ord. 912 §1 Sec. 7.5(f), 1991).

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

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

~~A.~~ [Demonstrate the proposal minimizes the impact on critical areas in accordance with mitigation sequencing.](#)

~~AB.~~ Demonstrate sufficient scientific expertise, supervisory capability, and financial resources to carry out the project;

~~BC.~~ Demonstrate the capability for [monitoring](#) the site and to make corrections during this period if the project fails to meet projected goals; and

~~CD.~~ Protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for long-term persistence of the compensation area.

~~DE.~~ Projects shall meet requirements of [best available science](#). (Ord. 1215 §12, 2003; Ord. 912 §1 Sec. 7.5(f)(1), 1991).

14.28.445 Performance standards--Mitigation requirements.

A. [Mitigation](#) shall achieve equivalent or greater biological [functions](#). [Mitigation](#) for [alterations](#) to [wetlands](#) shall achieve equivalent or greater biologic [functions](#) and shall be consistent with the [Department](#) of Ecology's [Wetland Mitigation](#) in Washington State--Part 2, Developing [Mitigation](#) Plans--Volume 1, and Selecting [Wetland Mitigation](#) Sites Using a Watershed Approach, as revised.

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

1. The lost [wetland](#) area provides minimal [functions](#) and the [mitigation](#) action(s) results in net gain in [wetland functions](#) as determined by a site-specific [function](#) assessment; or
2. The lost [wetland](#) area provides minimal [functions](#) as determined by a site-specific [function](#) assessment and other protected or enhanced habitats provide greater benefits to the [functioning](#) of the watershed, such as riparian habitat protection and [enhancement](#).

C. *Mitigation for Lost Functions and Values.* [Mitigation](#) actions shall address [functions](#) affected by the [alteration](#) to achieve functional equivalency or improvement, and shall provide similar [wetland functions](#) as those lost except when:

1. The lost [wetland](#) provides minimal [functions](#) as determined by a site-specific [function](#) assessment and the proposed [mitigation](#) action(s) will provide equal or greater [functions](#) or will provide [function](#) shown to be limiting within a watershed through a formal watershed assessment protocol; or

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

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

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, but using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. Rectify the impact by repairing, rehabilitating, or [restoring](#) the affected environment.
4. Reduce or eliminate the impact over time by [preservation](#) and maintenance operations.
5. Compensate for the impact by replacing, [enhancing](#), or providing substitute resources or environments.
6. [Monitor](#) the required compensation and take remedial or corrective measures when necessary. (Ord. 1505 §17, 2017; Ord. 1215 §13, 2003).

14.28.447 Type and location of mitigation.

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

1. There are no reasonable on-site opportunities or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;
2. Off-site [mitigation](#) has a greater likelihood of providing equal or improved [wetland functions](#) than the impacted [wetland](#); and
3. Off-site locations shall be in the same sub-drainage basin and the same Water Resource Inventory Area (WRIA) unless;
 - a. The impact is located near the boundary of a WRIA;
 - b. Established regional or watershed goals for water quality, flood or conveyance, habitat or other [wetland functions](#) have been established and strongly justify location of [mitigation](#) at another site;
or
 - c. Credits from a city certified [wetland mitigation bank](#) are used as [mitigation](#), and the use of credits is consistent with the terms of the banks certification. (Ord. 1215 §14, 2003).

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

- A. Any person who [alters regulated wetlands](#) shall restore or create equivalent areas or greater areas of [wetlands](#) than those altered in order to compensate for [wetland](#) losses.
- B. Where feasible, restored or created [wetlands](#) shall be a higher category than the altered [wetland](#).

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

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

Wetland Mitigation Ratios

Category of impacted wetland (based on special characteristics)	Re-establishment or creation	Rehabilitation	Preservation	Enhancement
Category I forested	6:1	12:1	24:1	24:1
Bogs	NA	NA	24:1	NA
Wetlands of High Conservation Value	Consult with WA DNR	Consult with WA DNR	24:1	Consult with WA DNR
Category I Estuarine wetlands	4:1 (re-establishment only)	8:1	16:1	Limited circumstances (case by case)
Category II Estuarine wetlands	3:1 (re-establishment only)	6:1	12:1	Limited circumstances (case by case)
Category I Interdunal wetlands	4:1	8:1 (limited circumstances)	16:1	Not considered an option
Category II Interdunal wetlands	2:1	4:1 (limited circumstances)	8:1	Not considered an option

<u>Category III and IV Interdunal wetlands</u>	<u>1.5:1</u>	<u>3:1 (limited circumstances)</u>	<u>6:1</u>	<u>Not considered an option</u>
<u>Category I Wetlands in coastal lagoons</u>	<u>4:1 (re-establishment only)</u>	<u>8:1</u>	<u>16:1</u>	<u>Not considered an option</u>
<u>Category II Wetlands in coastal lagoons</u>	<u>3:1 (re-establishment only)</u>	<u>6:1</u>	<u>12:1</u>	<u>Not considered an option</u>

<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Restoration</u>
<u>Category I:</u> <u>Bog, Natural Heritage Site</u>	<u>Not considered possible</u>	<u>Case by case</u>
<u>Category I:</u> <u>Mature Forested</u>	<u>6:1</u>	<u>12:1</u>
<u>Category I:</u> <u>Based on Functions</u>	<u>4:1</u>	<u>8:1</u>
<u>Category II</u>	<u>3:1</u>	<u>6:1</u>
<u>Category III</u>	<u>2:1</u>	<u>4:1</u>
<u>Category IV</u>	<u>1.5:1</u>	<u>3:1</u>

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

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

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

- Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;

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

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

3. A minimum acreage replacement ratio of 1:1 shall be required except as provided by LMC [14.28.445\(B\)](#). (Ord. 1449 §4, 2014; Ord. 1215 §15, 2003; Ord. 935 §8, 1992; Ord. 912 §1 Sec. 7.5(f)(2), 1991).

14.28.455 Wetland mitigation banks and in-lieu fee.

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

1. The bank is approved by the city, the [Department](#) of Ecology, or the U.S. Army Corps of Engineers.
2. The city determines that the [wetland mitigation bank](#) provides appropriate compensation for the authorized impacts; and
3. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

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

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

D. To aid in the implementation of off-site [mitigation](#), the city may develop an [in-lieu fee program](#). This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee [mitigation](#), and state water quality regulations. An approved [in-lieu-fee program](#) sells [compensatory mitigation](#) credits to permittees whose obligation to provide [compensatory mitigation](#) is then transferred to the in-lieu program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved [in-lieu fee program](#) may be used when the following apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts; and
2. The [mitigation](#) will occur on a site identified using the site selection and prioritization process in the approved [in-lieu fee program](#) instrument; and
3. The proposed use of credits is consistent with the terms and conditions of the approved [in-lieu fee program](#) instrument; and
4. Land acquisition and initial physical and biological improvements of the [mitigation](#) site must be completed within three years of the credit sale; and

5. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the [applicant](#)'s qualified [wetland](#) scientist using the method consistent with the credit assessment method specified in the approved instrument for the [in-lieu fee program](#); and
6. Credits from an approved [in-lieu fee program](#) may be used to compensate for impacts located within the service area specified in the approved in-lieu fee instrument. (Ord. 1449 §5, 2014; Ord. 1215 §16, 2003).

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

A. Impacts to [wetlands](#) may be mitigated by [enhancement](#) of existing significantly degraded [wetlands](#). [Applicants](#) proposing to enhance [wetlands](#) must produce a critical area report that identifies how [enhancement](#) will increase the [functions](#) of the degraded [wetland](#) and how this increase will adequately mitigate for the loss of [wetland](#) area and [function](#) at the impact site. An [enhancement](#) proposal must also show whether existing [wetland functions](#) will be reduced by the [enhancement](#) actions.

B. At a minimum, [enhancement](#) acreage shall be double the acreage required for [creation](#) or [restoration](#) under LMC [14.28.450](#). The ratios shall be greater than double the required acreage where the [enhancement](#) proposal would result in minimal gain in the performance of [wetland functions](#) and/or result in the reduction of other [wetland functions](#) currently being provided in the [wetland](#). (Ord. 1215 §17, 2003; Ord. 912 §1 Sec. 7.5(f)(3), 1991).

14.28.465 Wetland preservation as mitigation.

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

A. *Preservation in Combination with Other Forms of Compensation.* [Preservation](#) as [mitigation](#) is acceptable when done in combination with [restoration](#), [creation](#) or [enhancement](#) providing that a minimum of 1-to-1 acreage replacement is provided by [restoration](#) or [creation](#) and the criteria below are met:

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

B. *Preservation as a Sole Means of Mitigation for Wetland Impacts.* [Preservation](#) of at risk, high quality habitat may be considered as the sole means of [mitigation](#) of [wetland](#) impacts when all of the following criteria are met:

1. [Preservation](#) is used as a form of [mitigation](#) only after the standard sequencing of [mitigation](#) (avoid, minimize, and then compensate) has been applied;

2. [Creation](#), [restoration](#), and [enhancement](#) opportunities have also been considered, and [preservation](#) is the best [mitigation](#) option;
3. The impact to the area is small and/or impacts are to a Category III or IV [wetland](#);
4. [Preservation](#) of a high quality system occurs in the same Water Resource Inventory Area or a watershed where the [wetland](#) impact occurs;
5. [Preservation](#) sites include areas adequate to protect the habitat and its [functions](#) from encroachment and degradation;
6. The [preservation](#) site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on or off-site activities; “potential” includes permitted, or planned, or perceived actions; and
7. The area proposed for the [preservation](#) is of a high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of ~~high-quality~~[high-quality](#) areas;
 - a. Category I or II [wetland](#) rating;
 - b. Rare [wetland type](#) for example, bogs, estuaries;
 - c. Habitat for threatened or endangered species;
 - d. [Wetland type](#) that is rare in the area;
 - e. Provides biological and/or hydrological connectivity;
 - f. High regional or watershed importance for example, listed as a priority site in watershed plan; and
 - g. Large size with species diversity (plants and/or animals) and/or high abundance.

C. *Mitigation Ratios for Preservation as a Sole Means of Mitigation.* [Mitigation](#) ratios for [preservation](#) as the sole means of [mitigation](#) shall range from 10-to-1 to 20-to-1, as determined by the city, depending on the quality of [wetlands](#) being mitigated and the quality of the [wetlands](#) being [preserved](#). (Ord. 1215 §18, 2003).

14.28.470 Repealed

Repealed by [Ord. 1215](#).

14.28.480 Repealed

Repealed by [Ord. 1215](#).

14.28.490 Application approval--Compensatory mitigation--Timing.

Where feasible, compensatory projects shall be completed prior to activities that will disturb [wetlands](#). In all other cases, [mitigation](#) shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of [mitigation](#) projects shall be timed to reduce impacts to existing wildlife and flora. The city may authorize a one time temporary delay, up to

one-hundred-twenty days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the [mitigation](#) plan. The justification must be verified and approved by the city, and include a financial guarantee. (Ord. 1215 §19, 2003; Ord. 912 §1 Sec. 7.5(f)(6), 1991).

14.28.500 Application approval--Compensatory mitigation--Cooperative restoration, creation or enhancement projects.

A. The ~~city of Lacey~~ [City of Lacey](#) may encourage, facilitate, and approve cooperative projects wherein a single [applicant](#) or other organization with demonstrated capability may undertake a [compensation project](#) with funding from other [applicants](#) under the following circumstances:

1. [Restoration](#), [creation](#) or [enhancement](#) at a particular site or [wetland type](#) may be scientifically difficult or impossible; or
2. [Creation](#) of one or several larger [wetlands](#) may be preferable to many small [wetlands](#).

B. Persons proposing cooperative [compensation projects](#) shall:

1. Submit a joint permit application;
2. Demonstrate compliance with all standards;
3. Demonstrate the organizational and fiscal capability to act cooperatively; and
4. Demonstrate that long term management can and will be provided. (Ord. 1449 §6, 2014; Ord. 912 §1 Sec. 7.5(f)(7), 1991).

14.28.510 Application approval-- Mitigation plans.

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

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

1. Impacted [wetland](#) including, at a minimum, [wetland](#) delineation; existing [wetland](#) acreage; vegetative, faunal and hydrologic characteristics; soil and substrate conditions; topographic elevations; and

2. Compensation site, if different from the impacted [wetland](#) site, including at a minimum: existing acreage; vegetative, faunal and hydrologic conditions; relationship within watershed and to existing water bodies; soil and substrate conditions, topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership.

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

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

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

C. *Performance Standards.* Specific criteria shall be provided for evaluating whether or not the goals and objectives of the project have been met and for determining whether additional remedial action or contingency measures must be undertaken. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

D. *Detailed Construction Plans.* Written specifications and descriptions of compensation techniques shall be provided including the proposed construction sequence, grading and excavation details, erosion and sediment control features needed for [wetland](#) construction and long-term survival, a planting plan specifying plant species, quantities, locations, size, spacing, and density; source of plant materials, propagules, or seeds; water and nutrient requirements for planting; where appropriate, measures to protect plants from predation; specification of substrate stockpiling techniques and planting instructions; descriptions of water control structures and water-level maintenance practices needed to achieve the necessary hydrocycle/hydroperiod characteristics; etc. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. The plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data.

E. *Monitoring Program.* A program outlining the approach for [monitoring](#) construction of the [compensation project](#) and for assessing a completed project shall be provided. [Steps within the monitoring program shall include: \(i\) Determining the reasons for monitoring; \(ii\) Establishing key objectives and study questions; \(iii\) Designing the monitoring program; \(iv\) Determining the monitoring](#)

time frame; and (v) Evaluating results and making recommendations. Monitoring may include, but is not limited to:

- ~~1.~~ 1. Establishing vegetation plots to track changes in plant species composition and density over time;
- ~~2.~~ 2. Using photo stations to evaluate vegetation community response;
- ~~3.~~ 3. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);
- ~~4.~~ 4. Measuring base flow rates and stormwater runoff to model and evaluate water quality predictions, if appropriate;
- ~~5.~~ 5. Measuring sedimentation rates, if applicable; and
- ~~6.~~ 6. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity.

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

F. *Contingency Plan*. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

G. *Approval Conditions*. Any compensation project prepared pursuant to this section and approved by the ~~city of Lacey~~ City of Lacey shall become part of the application for approval.

H. *Financial Security and Demonstration of Competence*. A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training and experience with comparable projects. In addition, financial security ensuring fulfillment of the compensation project, monitoring program, and any contingency measure shall be posted pursuant to LMC 14.28.380 through 14.28.520 in the amount of one hundred fifty percent of the expected cost of compensation.

I. Regulatory authorities are encouraged to consult with and solicit comments of any federal, state, regional, or local agency, including tribes, having any special expertise with respect to any environmental impact prior to approving a mitigation proposal which includes wetlands compensation. The compensation project proponents should provide sufficient information on plan design and implementation in order for such agencies to comment on the overall adequacy of the mitigation proposal.

J. Compensatory mitigation is not required for regulated activities:

1. For which an approval has been obtained that occur only in the buffer or expanded buffer and which have no adverse impacts to regulated wetlands; or

2. Allowed activities pursuant to LMC [14.28.120](#) provided such activities utilize [best management practices](#) to protect the [functions and values](#) of [regulated wetlands](#). (Ord. 968 §15, 1993; Ord. 912 §1 Sec. 7.5(g), 1991).

14.28.520 Appeals.

Any decision of the ~~city of Lacey~~ [City of Lacey](#) in the administration of this chapter may be appealed in accordance with Chapter 1D of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §44, 2002; Ord. 912 §1 Sec. 7.6, 1991).

14.28.530 Modification of wetland approvals.

An [applicant](#) may request modification of a previously issued [wetland](#) approval by applying and going through the appropriate review process as described in Chapter 1 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §45, 2002; Ord. 912 §1 Sec. 7.7, 1991).

14.28.540 Resubmittal of denied permit applications.

A [wetland](#) application which has been denied may be modified and resubmitted no earlier than one hundred eighty days following action on the original application. An application shall be considered a resubmittal if the site proposed for development was the subject of a [wetland](#) application within the previous one hundred eighty days. (Ord. 912 §1 Sec. 7.8, 1991).

14.28.550 Temporary emergency approval.

A. Notwithstanding the provisions of this chapter or any other laws to the contrary, the ~~city of Lacey~~ [City of Lacey](#) may issue a temporary emergency [wetlands](#) approval if:

1. The ~~city of Lacey~~ [City of Lacey](#) determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and
2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.

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

1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days; and
2. Require, within this ninety-day period, the [restoration](#) of any [wetland](#) altered as a result of the emergency activity, except that if more than the ninety days from the issuance of the emergency permit is required to complete [restoration](#), the emergency permit may be extended to complete this [restoration](#).

C. Issuance of an emergency permit by the ~~city of Lacey~~ [City of Lacey](#) does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities.

D. The emergency permit may be terminated at any time without process upon a determination by the ~~city of Lacey~~ City of Lacey that the action was not or is no longer necessary to protect human health or the environment. (Ord. 1505 §18, 2017; Ord. 912 §1 Sec. 8.1, 1991).

14.28.560 Enforcement.

A. The ~~city of Lacey~~ 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~~ 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~~ City of Lacey may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a regulated wetland or their buffers which are inconsistent with this chapter or an applicable wetlands protection program.

2. The ~~city of Lacey~~ City of Lacey may serve upon a person a cease and desist order if an activity being undertaken on regulated wetlands or its buffer is in violation of the act, these rules or a local wetlands protection program. Whenever any person violates this chapter or any permit issued to implement this chapter, the ~~city of Lacey~~ City of Lacey may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

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

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

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

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

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

3. Any person who undertakes any activity within a regulated wetland or its buffer without first obtaining an approval required by this chapter, or any person who violates one or more conditions of any approval required by this chapter or of any order issued pursuant to subsection (B)(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~~ [City of Lacey](#). The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

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

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC [14.28.520](#).

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 a [wetland](#) permit. (Ord. 912 §1 Sec. 8.2, 1991).

14.28.570 Non-conforming activities.

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

A. No such activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its non-conformity without a permit issued pursuant to the provisions of this chapter;

B. Except for cases of discontinuance as part of normal agricultural practices, if a non-conforming activity is discontinued for twelve 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. (Ord. 912 §1 Sec. 9, 1991).

14.28.580 Repealed

Repealed by [Ord. 1192](#).

14.28.590 Amendments.

These regulations and the ~~city of Lacey~~ [City of Lacey](#) zoning map may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning [wetland](#) location, soils, hydrology, flooding, or [wetland](#) plants and wildlife become available. (Ord. 912 §1 Sec. 11, 1991).

14.28.600 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. (Ord. 912 §1 Sec. 12, 1991).

14.28.610 Assessment relief.

The assessors of the ~~city of Lacey~~ [City of Lacey](#) shall consider [wetland](#) regulations in determining the fair market value of land. Any owner of an undeveloped [wetland](#) who has dedicated an easement or entered into a perpetual conservation restriction with the ~~city of Lacey~~ [City of Lacey](#) or a nonprofit organization to permanently control some or all [regulated activities](#) in the [wetland](#) shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the controlled [wetland](#) to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 912 §1 Sec. 13, 1991).

Chapter 14.33 FISH AND WILDLIFE HABITAT CONSERVATION AREAS PROTECTION

<https://lacey.municipal.codes/LMC/14.33>

Sections:

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- [14.33.050 Applicability](#)
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- *14.33.280 Repealed*
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- [14.33.310 Assessment relief](#)

14.33.020 Purpose and intent.

A. It is the policy of the ~~city of Lacey~~ [City of Lacey](#) to require site planning and habitat management planning to designate and protect the [functions and values](#) of [habitat conservation areas](#) based on best available scientific information wherever possible;

B. It is the intent of the ~~city of Lacey~~ [City of Lacey](#) that activities in or affecting [habitat conservation areas](#) not degrade [habitat conservation areas functions and values](#) by:

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

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

1. Preserving, protecting and [restoring habitat conservation areas](#) by regulating development within [habitat conservation areas](#);
2. Protecting the public against losses from publicly funded [mitigation](#) of avoidable impacts;
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of [habitat conservation areas](#);

4. Providing ~~city of Lacey~~ [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, ~~City of Lacey~~ [City of Lacey](#) and Lacey Urban Growth Area ~~Comprehensive-Joint~~ Plan, the ~~city~~[Lacey](#) Zoning Code (LMC Title [16](#)), the city Environmental Policy Ordinance

(Chapter [14.24](#) LMC), the city Tree and Vegetation Protection and Preservation Ordinance (Chapter [14.32](#) LMC), and all related environmental and community plans and programs. (Ord. 1505 §19, 2017; Ord. 935 §9 (part), 1992).

14.33.030 Definitions.

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

A. “*Anadromous fish*” means fish that spawn and rear in freshwater and mature in the marine environment. The life stages of anadromous fish can be tied to the following general habitat requirements:

- Adequate but not excessive stream flows.
- Cool, well-oxygenated, unpolluted water.
- Streambed gravels that are relatively free of fine sediments.
- Instream structural diversity (interposed pools, riffles, hiding and resting cover).
- Unimpeded migratory access to and from spawning and rearing areas.
- Complex estuarine and nearshore habitats that support food production, migratory cover, and physiological transition between fresh and saltwater.

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

C. “*Bankfull width*” means:

1. For streams--the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross section.
2. For lakes, ponds, and impoundments--line of mean high water.
3. For tidal water--line of mean high tide.
4. For periodically inundated areas of associated wetlands--line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

D. “*Best available science*” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC [365-195-900](#) through [365-195-925](#).

E. “*Best management practices*” means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;

2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to chemical, physical, and biological characteristics of wetlands;
3. Protect trees and vegetation designated to be retained during and following site construction; and
4. Provide standards for proper use of chemical herbicides within critical areas.

F. “*Buffer or buffer zone*” means an area contiguous to and that protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area.

G. “*Channel migration zone (CMZ)*” means the lateral extent of likely movement along a stream or river during the next one hundred years as determined by evidence of active stream channel movement over the past one hundred years. Evidence of active movement over the one-hundred-year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics. The time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is less than two [bankfull widths](#), is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is no field evidence of secondary channels with recent scour from stream flow or progressive bank erosion at meander bends. Areas separated from the active channel by legally existing artificial channel constraints that limit bank erosion and channel avulsion without hydraulic connections shall not be considered within the CMZ.

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

I. “*Exotic*” means any [species](#) of plants or animals which are foreign to the planning area.

J. “*Extraordinary hardship*” means strict application of this chapter and/or programs adopted to implement this chapter by the ~~city of Lacey~~ [City of Lacey](#) that would prevent all reasonable economic use of the parcel.

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

1. Areas ~~with which~~ [where](#) state or federally designated endangered, threatened, and sensitive [species](#) have a [primary association](#);
2. Habitats and [species](#) of local importance, including but not limited to areas designated as [priority habitats](#) or [priority species](#) by the Department of Fish and Wildlife;
3. Commercial and recreational shellfish areas;
4. Kelp and eelgrass beds, herring, smelt, and other forage fish spawning areas;

5. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds, if permitted by a regulatory authority;
6. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington;
7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
8. State natural area preserves, [wildlife areas](#), and natural resource conservation areas;
9. Land essential for preserving connections between habitat blocks and open spaces; and
10. Riparian ecosystems including salmonid habitat, which also includes marine nearshore areas.
- [11. Rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.](#)
- [12. "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by the city.](#)

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

L. *"Financial security"* means a method of providing surety of financial performance and may include provision of a bond, assignment of savings, letter of credit or other financial guarantee approved by the city attorney.

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

N. *"In-kind compensation"* means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

O. *"Mitigation"* means avoiding, minimizing or compensating for adverse critical area impacts. Mitigation, in the following order of preference, is:

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

- ~~3.~~ ~~3.~~ Rectifying the impact to [habitat conservation areas](#) by repairing, rehabilitating or [restoring](#) the affected environment to the conditions existing at the time of the initiation of the project;
- ~~4.~~ ~~4.~~ Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- ~~5.~~ ~~5.~~ Compensating for the impact to [habitat conservation areas](#) by replacing, enhancing, or providing substitute resources or environments; and
- ~~6.~~ ~~6.~~ [Monitoring](#) the required mitigation and taking remedial action when necessary.

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

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

Q. “*Native vegetation*” means plant [species](#) that are indigenous to the area in question.

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

S. “*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.

T. “*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](#).

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

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

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

W. “*Riparian habitat*” means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic

ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife.

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

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

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

AA. “*Watercourse, “river” or “stream” means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high-water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.*”

AABB. “*Water typing system*” means waters classified according to WAC [222-16-031](#) as follows:

1. Type S water--all waters, within their [bankfull width](#), as inventoried as “shorelines of the state” under Chapter [90.58](#) RCW and the rule promulgated pursuant to Chapter [90.58](#) RCW, including periodically inundated areas of their associated wetlands.

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

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

b. Waters which are diverted for use by federal, state, tribal, or private fish hatcheries. Such waters shall be considered Type F water upstream from the point of diversion for one thousand five hundred feet, including tributaries if highly significant for protection of downstream water quality. The Department of Natural Resources may allow additional harvest beyond the requirements of Type F water designation provided the Department of Natural Resources determines after a landowner-

requested on-site assessment by the Department of Fish and Wildlife, Department of Ecology, the affected tribes, and interested parties that:

(1) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(2) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

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

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

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

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

3. Type Np water--segments of natural waters within the [bankfull width](#) of the defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry at any time of the year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

4. "Type Ns" means all segments of natural waters within the [bankfull width](#) of the defined channels that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters. (Ord. 1505 §20, 2017; Ord. 1215 §1, 20, 2003; Ord. 935 §9 (part), 1992).

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 fulfill 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. (Ord. 935 §9 (part), 1992).

14.33.050 Applicability.

A. When any provision of any other chapter of the ~~city of Lacey~~ [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~~ [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~~ [City of Lacey](#) shall not grant any approval or permission to conduct a nonexempt 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 review; 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. (Ord. 1192 §56, 2002; Ord. 935 §9 (part), 1992).

14.33.060 Designation, maps and inventory.

A. This chapter shall apply to all lots or parcels on which [habitat conservation areas](#) are located within the jurisdiction of the ~~city of Lacey~~ [City of Lacey](#).

B. [Fish and wildlife habitat conservation areas](#) include:

1. Areas with which ~~city, state,~~ or federally designated endangered, threatened, and sensitive [species](#) have [primary association including, but not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.-](#)

a. Federally designated endangered and [threatened species](#) are those fish and wildlife [species](#) identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted as necessary for current listing status.

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

c. ["Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by the city.](#)

2. *State priority habitats and areas associated with state priority species.* [Priority habitats](#) and [species](#) are considered to be priorities for conservation and management. [Priority species](#) require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. [Priority habitats](#) are those habitat areas or elements with unique or significant value to a diverse assemblage of [species](#). A [priority](#)

[habitat](#) may consist of a unique vegetation type or dominant plant [species](#), a described successional stage, or a specific structural element. [Priority habitats](#) and [species](#) are identified by the state Department of Fish and Wildlife;

3. *Habitat and species of local importance.* ~~Habitats and are those~~ [species that are of local concern importance due to their population status or their sensitivity to habitat alteration or that are game species. of local importance are those identified by the city of Lacey.](#) [City of Lacey.](#) This includes including those [species](#) that possess unusual or unique habitat warranting protection because of qualitative [species](#) diversity or habitat system health indicators [as identified by the City of Lacey](#);

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

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

6. *Waters of the state.* Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC [222-16-030](#) or [222-16-031](#) and further defined in RCW [90.48.020](#) ~~depending upon the classification used~~;

7. Type S, F, Np, and Ns waters as designated by the State Department of Natural Resources. Type S, F, Np, and Ns waters are those water bodies designated by the Department of Natural Resources stream typing pursuant to WAC [222-13-030](#);

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

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

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

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

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

The approximate location and extent of [habitat conservation areas](#) in the ~~city of Lacey~~ [City of Lacey](#) is shown in maps provided in the ~~city of Lacey~~ [City of Lacey](#) ~~Environmental Protection and Resource Conservation Plan and on the city~~ zoning map. The ~~se city~~ [Environmental Protection and Resource](#)

~~Conservation Plan maps and zoning~~ maps are to be used as a guide to the general location and extent of [habitat conservation areas](#). Other maps to be used to identify these areas include the following:

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

[Habitat conservation areas](#) not shown on the maps are presumed to exist in the ~~city of Lacey~~ [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. (Ord. 1505 §21, 2017; Ord. 1215 §21, 2003; Ord. 935 §9 (part), 1992).

14.33.070 Determination of habitat conservation area.

- A. The exact location of the [fish and wildlife habitat conservation area](#) shall be determined by the [applicant](#) through the performance of a field investigation applying specific habitat or [species](#) recommendations pursuant to the Department of Fish and Wildlife. A [qualified professional](#) wildlife habitat biologist shall perform [habitat conservation area](#) delineations using the methodology prescribed by the State of Washington Department of Fish and Wildlife. Provided that if no methodology is available the consultant shall use [best available science](#) to delineate the site for the Department of Fish and Wildlife's review. The [applicant](#) is required under LMC [14.33.110](#) 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~~ [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~~ [City of Lacey](#) shall, at the [applicant](#)'s expense, obtain expert services to render a final delineation. (Ord. 1505 §22, 2017; Ord. 1215 §22, 2003; Ord. 935 §9 (part), 1992).

14.33.080 Exempt activities.

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

- A. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife in consultation with the state Department of Fish and Wildlife and when undertaken by a property owner on his or her property for his or her personal, noncommercial purposes;

- B. Nonpublic outdoor recreation activities such as fishing, bird watching, hiking, boating and swimming when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;
- C. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the [habitat conservation area](#) by changing existing topography, water conditions or other natural parameters important to the conservation area;
- D. Navigation aids and boundary markers;
- E. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, habitat impacts shall be minimized and disturbed areas shall be immediately restored; and
- F. Educational activities and scientific research;
- G. Normal and routine maintenance or repair of existing utility structures or right-of-way;
- H. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way;
- I. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way. (Ord. 1215 §23, 2003; Ord. 935 §9 (part), 1992).

14.33.090 Repealed

Repealed by [Ord. 1192](#).

14.33.100 Site plan review.

Site plan review approval shall be obtained from the ~~city of Lacey~~ [City of Lacey](#) prior to any use or activity, except exempt activities described in LMC [14.33.080](#) occurring in a [fish and wildlife habitat conservation area](#) or buffer. (Ord. 1215 §24, 2003; Ord. 1192 §58, 2002; Ord. 935 §9 (part), 1992).

14.33.110 Application information requirements.

- A. An application for site plan review within a [habitat conservation area](#) or its buffer shall be determined complete only when it contains all of the information described in Section 1B.050 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards.
- B. The application shall also have the following information and materials:
 - 1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the entire parcel of land owned by the [applicant](#) and the exact boundary of the [habitat conservation area](#) pursuant to guidelines established in this chapter;
 - 2. A description of the vegetative cover of the site and adjacent area including dominant [species](#);

3. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations within the site;
4. The exact sites and specifications for all proposed activities including the amounts and methods;
5. Elevations of the site and adjacent lands within the [habitat conservation area](#) at contour intervals of no greater than five feet;
6. Top view and typical cross section views of the [habitat conservation area](#) to scale;
7. Specific means to mitigate any potential adverse environmental impacts of the [applicant](#)'s proposal;
8. A critical area report containing information required in LMC [14.33.115](#);
9. A [priority habitat](#) and [priority species](#) management plan prepared by a qualified habitat biologist based upon [best available science](#) information provided in the critical area report. The plan shall detail how the designated [fish and wildlife habitat conservation area](#) and any [priority species](#) found within said area shall be protected. The plan shall follow all recommendations provided by the Department of Fish and Wildlife in its [priority habitat](#) and [priority species](#) program according to its publication "Management Recommendations of Washington [Priority Habitats](#) and [Species](#)" or based on site specific recommendations made by the Department of Fish and Wildlife based on review of the project site. (Ord. 1505 §23, 2017; Ord. 1215 §25, 2003; Ord. 1192 §59, 2002; Ord. 935 §9 (part), 1992).

14.33.115 Critical area report requirements.

A. *Qualified Habitat Biologist.* A critical area report shall be prepared by a [qualified professional](#) habitat biologist as identified in LMC [14.33.040](#).

B. *Area Considered.* The following physical areas shall be addressed in the critical area report for [habitat conservation areas](#):

1. The project area of the proposed activity;
2. All [habitat conservation areas](#) and recommended buffers within two hundred feet of the project area; and
3. All shoreline areas, flood plains, and other critical areas, and related buffers within two hundred feet of the project area.

C. *Habitat Assessment.* A habitat assessment is an investigation of the project area to evaluate the presence or absence of a potential fish or wildlife [species](#) or habitat that is protected under this ordinance. A critical area report for a [habitat conservation area](#) shall contain an assessment of habitats including the following minimum site and proposal related information:

1. Detailed description of vegetation on and adjacent to the project area;
2. Identification of any [species](#) of local importance, [priority species](#), or endangered, threatened, sensitive or candidate [species](#) that have a [primary association](#) with habitat on or adjacent to the project area, an assessment of potential project impacts to the use of the site by the [species](#);

3. A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for [species](#) or habitats located on or adjacent to the project area;
4. A discussion of measures, including avoidance, minimization and [mitigation](#), proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with “[mitigation](#) sequencing”; and
5. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed [monitoring](#) and maintenance programs.

D. Additional Information May Be Required. When appropriate due to the type of habitat or [species](#) present or the project area conditions, the site plan review committee may also require the habitat management program include:

1. An evaluation by the Department of Fish and Wildlife or qualified expert regarding the [applicant's](#) analysis and effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
2. An evaluation by the local Native American Indian Tribe;
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site; and
4. Any other information or review necessary to meet expectations of the growth management act, to provide adequate best available scientific information to make an informed decision on the identified environmentally sensitive site. (Ord. 1215 §26, 2003).

14.33.116 Performance standards.

A. Alterations shall not degrade the [functions and values](#) of habitat. A [habitat conservation area](#) may be altered only if the proposed alteration of the habitat or the [mitigation](#) proposed does not degrade the quantitative [functions and values](#) of the habitat. All new structures and land alterations shall be prohibited from [habitat conservation areas](#) except in accordance with this title.

B. Non-indigenous [species](#) shall not be introduced. No plant, wildlife, or fish [species](#) not indigenous to the region shall be introduced into a [habitat conservation area](#) unless authorized by a state or federal permit or approval.

C. [Mitigation](#) shall result in contiguous corridors. [Mitigation](#) sites shall be located to achieve continuous wildlife corridors in accordance with a [mitigation](#) plan that is part of an approved critical area report, to minimize the isolating effects of development on habitat areas. [Mitigation](#) of aquatic habitat shall be located within the same aquatic ecosystem as the area disturbed.

D. Approvals of activities may be conditioned. The city shall condition approvals of activities allowed within or adjacent to a [habitat conservation area](#) or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

1. Establishment of buffer zones;
2. Preservation of critically important vegetation;

3. Limitation of access to the habitat area, including fencing to deter unauthorized access;
4. Seasonal restriction of construction activities;
5. Establishment of duration and timetable for periodic review of [mitigation](#) activities;
6. Implementation of management recommendations for the [species](#) of animal or habitat in literature published or recommended by the Department of Fish and Wildlife for [priority species](#) and habitat;
7. All other conditions and management recommendations based upon [best available science](#) that are deemed necessary to meet expectations of the Growth Management Act for protection of sensitive areas;
8. Requirement of a performance bond, to ensure completion and success of proposed [mitigation](#).

E. [Mitigation](#) shall achieve equivalent or greater biological functions. [Mitigation](#) of alterations to [habitat conservation areas](#) shall achieve equivalent or greater biological functions and shall include [mitigation](#) for adverse impacts upstream or downstream of the development proposal site. [Mitigation](#) shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

F. Approvals shall be supported by the [best available science](#). Any approval of alterations or impacts to a [habitat conservation area](#) shall be supported by the [best available science](#).

G. *Buffers.*

1. *Establishment of Buffers.* The city shall require the establishment of buffer areas for activities in, or adjacent to, [habitat conservation areas](#) when needed to protect [habitat conservation areas](#). Buffers shall consist of an undisturbed area of [native vegetation](#), or areas identified for [restoration](#), established to protect the integrity, [functions and values](#) of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the state Department of Fish and Wildlife.

2. *Seasonal Restrictions.* When a [species](#) is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

3. *Habitat Buffer Averaging.* The city may allow the recommended habitat area buffer to be reduced in accordance with the critical area report, the [best available science](#), and the management recommendations issued by the Department of Fish and Wildlife, only if:

- a. It will not reduce stream or habitat functions;
- b. It will not adversely affect salmonid habitat;
- c. It will provide natural resource protection, such as buffer enhancement;
- d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;

- e. The buffer area width is not reduced by more than fifty percent in any location; and
- f. The buffer area width is not less than fifty feet.

H. *Signs and Fencing of Habitat Conservation Areas.*

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

2. *Permanent Signs.* As a condition of any permit or authorization the city may require that the [applicant](#) install permanent signs along the boundary of a [habitat conservation area](#) or buffer.

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

3. *Fencing.*

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

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

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

I. *Subdivisions.* The subdivision and short subdivision of land in [fish and wildlife habitat conservation areas](#) and associated buffers is subject to the following:

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

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

3. Access roads and utilities serving the proposed may be permitted within the [habitat conservation area](#) and associated buffers only if the city determines that no other feasible alternative exists and when consistent with this title. (Ord. 1505 §24, 2017; Ord. 1215 §27, 2003).

14.33.117 Performance standards for specific habitats.

A. Endangered, Threatened, and Sensitive Species.

1. No development shall be allowed within a [habitat conservation area](#) or buffer with which state or federally endangered, threatened, or sensitive [species](#) have a [primary association](#).
2. Whenever activities are proposed adjacent to a [habitat conservation area](#) with which state or federally endangered, threatened, or sensitive [species](#) have a [primary association](#), such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified habitat biologist and approved by the city. Approval for alteration of land adjacent to the [habitat conservation area](#) or its buffer shall not occur prior to consultation with the Department of Fish and Wildlife and the appropriate federal agency.
 - a. Development activities near bald eagle habitat shall be carried out consistent with the National Bald Eagle Management Guidelines.
 - b. Activities that may potentially impact bald eagle habitat shall complete the USFWS's self-certification process to determine if a permit from USFWS is required. If the self-certification process determines that a permit is needed, then a permit will be required. Mitigating actions identified in the self-certification process will also be required to be completed to protect bald eagles and their habitat. The [applicant](#) will be required to demonstrate that either they don't need a USFWS permit via self-certification or if a USFWS permit is required, that the permit has been obtained.

B. Anadromous Fish.

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

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

D. *Riparian Habitat Areas*. Unless otherwise allowed in this title, all structures and activities shall be located outside of the [riparian habitat](#) area.

1. *Establishment of Riparian Habitat Areas*. [Riparian habitat](#) areas shall be established for habitats that include aquatic systems.

2. *Riparian Habitat Area Widths*. Recommended [riparian habitat](#) area widths are shown in the table below. A [riparian habitat](#) area shall have the width recommended, unless a greater width is required pursuant to subsection [\(D\)\(3\)](#) of this section, or a lesser width is allowed pursuant to subsection [\(D\)\(4\)](#) of this section. Widths shall be measured outward, on the horizontal plane, from the ordinary ~~high~~ [waterhigh-water](#) mark or from the top of the bank if the ordinary ~~high-waterhigh-water~~ mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of in stream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

Table of Riparian Habitat Area Widths

Type S streams 250 feet

Type F streams 200 feet

Type Np streams 150 feet

Type Ns streams 150 feet

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

4. *Increased Riparian Habitat Area Widths*. The recommended [riparian habitat](#) area widths shall be increased as follows:

- a. When the Lacey site plan review committee determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
- b. When the frequently flooded area exceeds the recommended [riparian habitat](#) area width, the [riparian habitat](#) area shall extend to the outer edge of the frequently flooded area;
- c. When the channel migration zone exceeds the recommended [riparian habitat](#) area width, the [riparian habitat](#) area shall extend to the outer edge of the channel migration zone;

d. When the habitat area is in an area of high blowdown potential, the [riparian habitat](#) area shall be expanded an additional fifty feet on the windward side; and

e. When the habitat area is within an erosion or landslide hazard area, or buffer, the [riparian habitat](#) area shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.

5. *Riparian habitat area width averaging.* The city may allow the recommended [riparian habitat](#) area width to be reduced in accordance with a critical area report only if all of the following requirements are satisfied:

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

b. The width reduction will not degrade the habitat, including habitat for [anadromous fish](#);

c. The proposal will provide additional habitat protection;

d. The total area contained in the [riparian habitat](#) area of each stream on the development proposal site is not decreased;

e. The recommended [riparian habitat](#) area width is not reduced by more than fifty percent in any one location;

f. The recommended [riparian habitat](#) area width is not reduced to less than seventy-five feet;

g. The width reduction will not be located within another critical area or associated buffer;

h. The reduced [riparian habitat](#) area width is supported by [best available science](#);

i. All undeveloped lands within total area will be left undeveloped in perpetuity by covenant, deed restriction, easement or other legally binding mechanism;

j. The buffer averaging plan shall be conducted in consultation with a qualified biologist and the plan shall be submitted to the Washington Department of Fish and Wildlife for comment; and

k. The Site Plan Review Committee shall use the recommendations of the qualified experts in making its decision on a plan that uses buffer width averaging.

6. *Riparian Habitat Mitigation.* [Mitigation](#) of adverse impacts to [riparian habitat](#) areas shall result in equivalent [functions and values](#), on a per function basis, and be located in the same sub-drainage basin as the habitat impacted.

7. *Alternative Mitigation for Riparian Habitat Areas.* The requirements set forth in this section may be modified at the city's discretion if the [applicant](#) demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative [mitigation](#) measures.

E. *Riparian Habitat Areas, Ponds, Lakes, Waters of the State, and Marine Habitat.* The following specific activities may be permitted within a [riparian habitat](#) area, pond, lake, water of the state, marine habitat or associated buffer when the activity complies with the provisions set forth in the Lacey shoreline management program and subject to the following standards:

1. *Clearing and Grading.* When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:

- a. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year, provided the city may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
- b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
- c. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
- d. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or re-establishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
- e. Erosion and sediment control that meets or exceeds the standards set forth in the Lacey Development Guidelines and Public Works Standards shall be provided.

2. *Shoreline Erosion Control Measures.* New replacement, or substantially improved, shoreline erosion control measures may be permitted in accordance with an approved area report that demonstrates the following:

- a. Natural shoreline processes will be maintained. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the project area.
- b. The shoreline erosion control measures will not degrade fish or wildlife [habitat conservation areas](#) or associated wetlands.
- c. Adequate [mitigation](#) measures ensure that there is no net loss of the functions or values of intertidal habitat or [riparian habitat](#) as a result of the proposed shoreline erosion control measures.
- d. The proposed shoreline erosion control measures do not result in alteration of intertidal migration corridors.

3. Stream-bank stabilization to protect new structures from future stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.

4. *Launching Ramps--Public or Private.* Launching ramps may be permitted in accordance with an approved critical area report that has demonstrated the following:

- a. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the site;
- b. The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands;
- c. Adequate [mitigation](#) measures ensure that there is no net loss of the functions or values of intertidal habitat or [riparian habitat](#) as a result of the ramp; and
- d. No alteration of intertidal migration will occur as a result of the ramp.

5. *Docks*. Repair and maintenance of an existing dock or pier may be permitted in accordance with an approved critical area report subject to the following:

- a. There is no increase in the use of materials creating shade for predator [species](#) or eelgrass;
- b. There is no expansion in over-water coverage;
- c. There is no new spanning of waters between three and thirteen feet deep;
- d. There is no increase in the size and number of pilings; and
- e. There is no use of toxic materials, such as creosote, that come in contact with the water.

6. *Roads, Trails, Bridges, and Rights-of-Way*. Construction of trails, roadways, and minor road bridging, less than or equal to thirty feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:

- a. There is no other feasible alternative route with less impact on the environment;
- b. The crossing minimizes interruption of downstream movement of wood and gravel;
- c. [Mitigation](#) for impacts is provided pursuant to a [mitigation](#) plan of an approved critical area report;
- d. Road bridges are designed according to the Department of Fish and Wildlife Fish Passage Design at Road Culverts, 2003, as amended, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2010 as amended; and
- e. Trails and associated viewing platforms shall not be made of continuous impervious materials.

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

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

8. *Public Flood Protection Measures*. New public flood protection measures and expansion of existing ones may be permitted, subject to the city's review and approval of a critical area report, and the approval of a federal biological assessment, by the federal agency responsible for reviewing actions related to a federally listed [species](#).

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

10. *Stormwater Conveyance Facilities.* Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:

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

11. *On-Site Sewage Systems and Wells.*

a. New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system.

b. Repairs to failing on-site systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact:

- (1) Connection to an available public sanitary sewer system;
- (2) Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the Thurston County Health Department; or
- (3) Repair to the existing on-site septic system. (Ord. 1505 §25, 2017; Ord. 1215 §28, 2003).

14.33.120 Site plan review approval and extensions.

A. Activities proposed within a [habitat conservation area](#) or its buffer shall be reviewed and approved in accordance with the full administrative review process enumerated in Section 1C.040 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards and Chapter [16.84](#) LMC.

B. An extension of an original approval may be granted upon written request submitted to the ~~city of Lacey~~ [City of Lacey](#) by the original approval holder or the successor in title at thirty days prior to the expiration date. (Ord. 1192 §60, 2002; Ord. 935 §9 (part), 1992).

14.33.130 Repealed

Repealed by [Ord. 1192](#).

14.33.140 Repealed

Repealed by [Ord. 1192](#).

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~~ [City of Lacey](#) shall submit the application to the Washington State Department of Fish and 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 days. Extensions may be granted by the ~~city of Lacey~~ [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. (Ord. 1192 §63, 2002; Ord. 935 §9 (part), 1992).

14.33.160 Criteria for habitat conservation area approvals.

A. An approval shall only be granted if the approval, as conditioned, is consistent with the provisions of this chapter. Additionally, approvals shall only be granted if:

1. A proposed action avoids adverse impacts to [fish and wildlife habitat conservation areas](#), protecting identified [priority habitats](#) and [priority species](#) pursuant to recommendations from the Washington State Department of Fish and Wildlife and the required [priority habitat](#) and [priority species](#) management plan.

2. Denial of an approval would cause an [extraordinary hardship](#) on the [applicant](#).

B. Approvals shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal.

C. Except as otherwise specified, [habitat conservation areas](#) and buffer zones as required in a [priority habitat](#) or [priority species](#) management plan shall be retained in their natural condition. (Ord. 1215 §29, 2003; Ord. 1192 §64, 2002; Ord. 935 §9 (part), 1992).

14.33.170 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 pervious trails, [vegetated LID facilities](#), 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](#). (Ord. 1496 §25, 2016; Ord. 1192 §65, 2002; Ord. 935 §9 (part), 1992).

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. (Ord. 935 §9 (part), 1992).

14.33.200 Special conditions.

A. *Sensitive Area Tracts.* As a condition of any approval issued pursuant to this chapter, the [applicant](#) shall be required to create a separate sensitive area tract or tracts containing the areas determined to be [habitat conservation areas](#) for [priority habitats](#) or [priority species](#) in field investigations performed pursuant to LMC [14.33.070](#) and [14.33.115](#). 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~~ [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~~ [City of Lacey](#):

1. The [applicant](#) shall convey an irrevocable offer to dedicate to the ~~city of Lacey~~ [City of Lacey](#) or other public or nonprofit entity specified by the ~~city of Lacey~~ [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~~ [City of Lacey](#), and any other agency with jurisdiction over such activity.

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

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

NOTE: The association shall be responsible for maintenance and protection of the tracts. No alteration shall occur and all vegetation should remain undisturbed unless the express written authorization of the ~~city of Lacey~~ [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 signs made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one every fifty feet or one per lot if the lot is less than fifty feet wide, and must be maintained by the property owner in perpetuity. Signs shall be worded as follows:

“Protection of this natural area is in your care. Alteration or disturbance is prohibited by law. Please call the ~~city of Lacey~~ [City of Lacey](#) for more information.”

Sign locations and size specifications shall be approved by the ~~city of Lacey~~ [City of Lacey](#). The ~~city of Lacey~~ [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~~ [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~~ [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. (Ord. 1505 §26, 2017; Ord. 1192 §66, 2002; Ord. 935 §9 (part), 1992).

14.33.210 Financial security.

A. The ~~city of Lacey~~ [City of Lacey](#) shall require the [applicant](#) of a development proposal to provide [financial security](#) acceptable to the ~~city of Lacey~~ [City of Lacey](#) in an amount of one hundred fifty percent of the estimated cost of improvements sufficient to fulfill the requirements of this chapter and to secure compliance with conditions and limitations set forth in the approval. The amount and the conditions of the [financial security](#) shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such [financial security](#), the ~~city of Lacey~~ [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~~ [City of Lacey](#) shall release the [financial security](#) upon determining that:

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

Until such written release of the [financial security](#) by the city such security cannot be released to the [applicant](#).

B. The ~~city of Lacey~~ 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~~ City of Lacey in an amount of twenty percent of the cost of improvements sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The ~~city of Lacey~~ 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. (Ord. 935 §9 (part), 1992).

14.33.220 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. 1192 §67, 2002; Ord. 935 §9 (part), 1992).

14.33.230 Suspension, revocation.

In addition to other penalties provided for elsewhere, the ~~city of Lacey~~ 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. 1192 §68, 2002; Ord. 935 §9 (part), 1992).

14.33.240 Notice of final decision.

The ~~city of Lacey~~ City of Lacey shall provide notice of its final decision pursuant to the requirements of Section 1C.070 of the ~~City of Lacey~~ City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §69, 2002; Ord. 935 §9 (part), 1992).

14.33.250 Appeals.

Any decision of the ~~city of Lacey~~ City of Lacey in the administration of this chapter may be appealed in accordance with Chapter 1D of the ~~City of Lacey~~ City of Lacey Development Guidelines and Public Works Standards. (Ord. 1192 §70, 2002; Ord. 935 §9 (part), 1992).

14.33.260 Enforcement.

A. The ~~city of Lacey~~ 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~~ 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~~ [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~~ [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~~ [City of Lacey](#) may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

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

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

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

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

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

3. Any person who undertakes any activity within a [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~~ [City of Lacey](#). The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

6. *Application for Remission or Mitigation.* Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the ~~city of Lacey~~ [City of Lacey](#) for remission or [mitigation](#) of such penalty. Upon receipt of the application, the ~~city of Lacey~~ [City of Lacey](#) by action of the city hearings examiner under the provision of Chapter [2.30](#) LMC may remit or mitigate the penalty only upon a

demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC [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. (Ord. 935 §9 (part), 1992).

14.33.270 Non-conforming activities.

A nonexempt 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 non-conformity without a permit issued pursuant to the provisions of this chapter;

B. If a non-conforming activity is discontinued for twelve 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. (Ord. 935 §9 (part), 1992).

14.33.280 Repealed

Repealed by [Ord. 1192](#).

14.33.290 Amendments.

These regulations and the ~~city of Lacey~~ [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 [priority habitats](#), [species](#) location, management techniques or wildlife become available. (Ord. 968 §16, 1993; Ord. 935 §9 (part), 1992).

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. (Ord. 935 §9 (part), 1992).

14.33.310 Assessment relief.

The Thurston County assessor's office shall consider [priority habitats](#) or [priority species](#) regulations in determining the fair market value of land. Any owner of an undeveloped area designated as [habitat conservation area](#) who has dedicated an easement or entered into a perpetual conservation restriction with the ~~city of Lacey~~ [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. (Ord. 1505 §27, 2017; Ord. 935 §9 (part), 1992).

Chapter 14.34 FLOOD HAZARD PREVENTION

<https://lacey.municipal.codes/LMC/14.34>

Sections:

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- [14.34.030 Basis for establishing the areas of special flood hazard](#)
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- [14.34.135 AE zones with base flood elevations but no floodways](#)
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- [14.34.150 Wetlands management](#)
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14.34.005 Purpose and intent.

It is the intent of this chapter to:

- A. Adopt policy and regulation restricting [development](#) and recurring [flood damages](#) within designated [flood](#) hazard areas where such [development](#) would put life and property at risk because of [flood](#) hazard;
- B. Identify those areas at risk for [flood](#) hazard by reference to appropriate maps and studies that represent the best scientific information available to the ~~city of Lacey~~ [City of Lacey](#);
- C. Adopt policy and regulation for Lacey's [flood](#) hazard areas that is coordinated and consistent with Lacey's sensitive area ordinances. These ordinances protect designated environmentally sensitive area resources that generally overlap with [flood](#) hazard areas;
- D. Adopt policy and regulation restricting [development](#) within designated [flood](#) hazard areas that would adversely impact the function and value of critical/sensitive area resources by reducing [flood](#) water retention capacity of wetlands or impacting critical habitat, including anadromous fish;
- E. Coordinate designation and use of land under requirements of the state Growth Management Act (GMA), recognizing adequate developable land resources have been identified and zoned to accommodate forecasted growth outside of designated [flood](#) hazard areas;
- F. Coordinate regulation and management of [flood](#) hazard areas and other sensitive/critical areas according to the concepts under GMA, the Comprehensive Plan, and the National [Flood](#) Insurance Program;
- G. Promote the natural function and values of [flood](#) hazard areas and other critical area resources that are not compatible with urbanization and need special consideration and protection;
- H. Recognize there is no compelling public need to justify the adverse impacts to the public's interest that would result from [development](#) within [flood](#) hazard areas. (Ord. 1505 §28, 2017; Ord. 1375 §17, 2011).

14.34.010 Definitions.

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

- A. *"Alteration of watercourse"* means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.
- B. *"Appeal"* means a request for a review of the building official's interpretation of any provisions of this chapter or a request for a variance.
- C. *"Area of shallow flooding"* means a designated zone AO, AH, AR/AO or AR/AH (or VO) on a community's [flood insurance rate map \(FIRM\)](#) with a one percent or greater annual chance of [flooding](#) to an average depth of one to three feet where a clearly defined channel does not exist, where the path of [flooding](#) is unpredictable, and where velocity flow may be evident. Such [flooding](#) is characterized by ponding or sheet flow. Also referred to as the sheet flow area.
- D. *"Area of special flood hazard"* means the land in the floodplain within a community subject to a one percent or greater chance of [flooding](#) in any given year. It is shown on the [flood insurance rate](#)

[map \(FIRM\)](#) as zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE). “Special [flood hazard area](#)” is synonymous in meaning with the phrase “area of special flood hazard.”

E. “*Base flood*” and “*Frequently flooded areas*” are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high ground water forms ponds on the ground surface. ~~means the flood having a one percent chance of being equaled or exceeded in any given year.~~ Also referred to as the “one-hundred-year [flood](#).” ~~Designated~~ ~~Often designated~~ on [flood insurance rate maps](#) by the letters A or V.

F. “*Basement*” means any area of the building having its floor sub-grade (below ground level) on all sides.

G. “*Best available information*” means in absence of official [flood insurance rate map](#) data, communities can use data from federal, state, or other sources provided this data has either been generated using technically defensible methods or is based on reasonable historical analysis and experience.

H. “*Development*” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other [structures](#), mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the [area of special flood hazard](#) or removal of substantial amounts of vegetation, or alteration of the natural site characteristics.

I. “*Elevation certificate*” means the official form (FEMA Form 086-0-33) used to track [development](#), provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by community officials.

J. “*Flood*” or “*flooding*” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subsections [\(J\)\(1\)](#) and [\(2\)](#) of this section and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

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

L. “*Flood elevation study*” means an examination, evaluation and determination of [flood](#) hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination

of mudslide (i.e., mudflow) and/or [flood](#)-related erosion hazards. Also known as a [flood insurance study](#) (FIS).

M. *Flood Hazard Area*. See "[Area of special flood hazard](#)."

N. "*Flood insurance rate map (FIRM)*" means the official map on which the Federal Insurance and Mitigation Administration has delineated both the areas of special [flood](#) hazards and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a digital flood insurance rate map (DFIRM).

O. "*Flood insurance study*" means the official report provided by the Federal Insurance and Mitigation Administration that includes [flood](#) profiles and the water surface elevation of the [base flood](#).

P. "*Floodplain administrator*" means the community official designated by title to administer and enforce the floodplain management regulations.

Q. "*Floodproofing*" means any combination of structural and nonstructural additions, changes, or adjustments to [structures](#) which reduce or eliminate risk of [flood damage](#) to real estate or improved real property, water and sanitary facilities, [structures](#), and their contents. Floodproofed [structures](#) are those that have the structural integrity and design to be impervious to floodwater below the [base flood](#) elevation (BFE).

R. "*Floodway*" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the [base flood](#) without cumulatively increasing the water surface elevation more than one foot. Also referred to as "regulatory floodway."

S. "*Functionally dependent use*" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

T. "*Highest adjacent grade*" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a [structure](#).

U. "*Historic structure*" means any [structure](#) that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or

b. Directly by the Secretary of the Interior in states without approved programs.

V. “*Lowest floor*” means the lowest floor of the lowest enclosed area (including [basement](#)). An unfinished or [flood](#) resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a [basement](#) area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the [structure](#) in violation of the applicable nonelevation design requirements of this chapter (i.e., provided there are adequate [flood](#) ventilation openings).

W. “*Mean sea level*” means, for the purposes of the National [Flood](#) Insurance Program, the vertical datum to which [base flood](#) elevations shown on a community’s [flood insurance rate map](#) are referenced.

X. “*New construction*” means, for the purposes of determining insurance rates, [structures](#) for which the “*start of construction*” commenced on or after the effective date of an initial [flood insurance rate map](#) or after December 31, 1974, whichever is later, and includes any subsequent improvements to such [structures](#). For floodplain management purposes, “new construction” means [structures](#) for which the “*start of construction*” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such [structures](#).

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

Z. “*Recreational vehicle*” means a vehicle:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

AA. “*Replacement residential structure*” means a residential [structure](#) built as a substitute for a previously existing residential [structure](#) of equivalent use and size.

BB. “*Start of construction*” includes [substantial improvement](#), and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a [structure](#) on a site beyond the state of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a [basement](#), footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main [structure](#). For a [substantial improvement](#), the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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

DD. “*Substantial damage*” means damage of any origin sustained by a [structure](#) whereby the cost of restoring the [structure](#) to its before damaged condition would equal or exceed fifty percent of the market value of the [structure](#) before the damage occurred.

EE. “*Substantial improvement*” means any repair, reconstruction, rehabilitation, addition, or other improvement of a [structure](#), the cost of which equals or exceeds fifty percent of the market value of the [structure](#) either:

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

The term does not, however, include either:

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

FF. “*Variance*” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter. (Ord. 1654 §1, 2023; Ord. 1505 §29, 2017; Ord. 1398 §1, 2012; Ord. 1375 §18, 2011; Ord. 1265 §1, 2006; Ord. 861 §2 (part), 1989).

GG. “Watercourse,” “river” or “stream” means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

14.34.020 Lands to which this chapter applies.

This chapter shall apply to all areas of special [flood](#) hazards within the jurisdiction of the ~~city of Lacey~~ [City of Lacey](#). Areas of special [flood](#) hazards include zones A, AE and VE as designated on referenced [flood insurance rate maps](#). (Ord. 1398 §2, 2012; Ord. 861 §2 (part), 1989).

14.34.030 Basis for establishing the areas of special flood hazard.

The areas of special [flood](#) hazard identified by the Federal Insurance and Mitigation Administration in a scientific and engineering report entitled “The [Flood Insurance Study](#) for Thurston County, Washington and Incorporated Areas” dated October 16, 2012, and any revisions thereto, with accompanying [flood](#)

[insurance rate maps \(FIRM\)](#) dated October 16, 2012, and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter. The [flood insurance study](#) and the [FIRM](#) are on file at the Lacey City Hall, 420 College Street S.E. The [best available information](#) for [flood](#) hazard area identification as outlined in LMC [14.34.100](#) shall be the basis for regulation until the new [FIRM](#) is issued that incorporates data utilized under LMC [14.34.100](#). (Ord. 1505 §30, 2017; Ord. 1398 §3, 2012; Ord. 1265 §2, 2006; Ord. 861 §2 (part), 1989).

14.34.040 Compliance required and penalties for non-compliance.

- A. No [structure](#) or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations.
- B. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than ninety days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case.
- C. Additionally, violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a civil violation. Any person who violates this chapter or fails to comply with any of its requirements shall be subject to a civil penalty in accordance with Chapter [14.40](#) LMC.
- D. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 1505 §31, 2017; Ord. 861 §2 (part), 1989).

14.34.050 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easement, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 861 §2 (part), 1989).

14.34.060 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 861 §2 (part), 1989).

14.34.070 Warning and disclaimer of liability.

The degree of [flood](#) protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger [floods](#) can and will occur on rare occasions. [Flood](#) heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special [flood](#) hazards or uses permitted within such areas will be free from [flooding](#) or [flood damages](#). This chapter shall not create liability on the part of the ~~city of Lacey~~

[City of Lacey](#), any officer or employee thereof, or the Federal Insurance and Mitigation Administration, for any [flood damages](#) that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 1505 §32, 2017; Ord. 861 §2 (part), 1989).

14.34.080 Establishment of development permit.

A [development](#) permit shall be obtained before construction or [development](#) begins within any [area of special flood hazard](#) established in LMC [14.34.030](#). The permit shall be for all [structures](#) permitted as an exemption under LMC [14.34.082](#) and for all other [development](#) including fill and other activities, also as set forth in the “definitions.” Application for a [development](#) permit shall be made on forms furnished by the building official and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed [structures](#), fill, storage of materials, or drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to [mean sea level](#) of the [lowest floor](#) (including [basement](#)) of all [structures](#) recorded on a current [elevation certificate](#) (FEMA Form 81-31) with Section B completed by the local official;
- B. Elevation in relation to [mean sea level](#) to which any [structure](#) has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential [structure](#) meet the floodproofing criteria in LMC [14.34.130\(B\)](#); and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed [development](#);
- E. Where a [structure](#) is proposed in a V, V1-30, or VE zone, a V-zone design certificate;
- F. Where [development](#) is proposed in a [floodway](#), an engineering analysis indicating no rise of the [base flood](#) elevation; and
- G. Any other such information that may be reasonably required by the [floodplain administrator](#) in order to review the application. (Ord. 1654 §2, 2023; Ord. 1398 §4, 2012; Ord. 1375 §19, 2011; Ord. 861 §2 (part), 1989).

14.34.082 Prohibition on development within areas of special flood hazard.

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

- A. Trails and recreational improvements for public access to water bodies consistent with the City Comprehensive Plan for Outdoor Recreation and the City Shoreline Master Program, if applicable.
- B. Public works projects involving the provision or transmission of a utility where no alternative routing options are reasonable.

C. Public works projects consistent with the City Transportation Plan where no alternative routing options are reasonable.

D. Maintenance activities and improvements to pre-existing [structures](#) that do not increase the footprint of the [structure](#) and comply with the requirements contained in LMC [14.34.010\(U\)](#).

E. Public activities and improvements approved by the ~~city of Lacey~~ [City of Lacey](#) determined to be in the public's best interest. (Ord. 1505 §33, 2017; Ord. 1398 §5, 2012; Ord. 1375 §20, 2011).

14.34.084 General requirements applicable to exemptions permitted in LMC 14.34.082.

All exemptions to the siting prohibitions listed in LMC [14.34.082](#) shall meet the following requirements:

A. All applicable requirements of this chapter are satisfied.

B. It does not increase the risk of [flood](#) hazard or displace [flood](#) waters to adjacent sites.

C. The improvement has no impact to critical habitat or any impacts are fully mitigated as determined by the Washington State Department of Fish and Wildlife.

D. Any impact to riparian habitat areas is fully mitigated and all critical area buffers and standards of Chapters [14.28](#) (Wetlands Protection), [14.32](#) (Tree and Vegetation Protection and Preservation) and [14.33](#) LMC (Habitat Conservation Areas Protection) are satisfied. This includes a two-hundred-foot buffer along Woodland Creek which exceeds the distance of Woodland Creek's channel migration zone (CMZ).

E. Stormwater and drainage features shall incorporate LID techniques in accordance with the current [City of Lacey City of Lacey](#) Stormwater Design Manual.

F. Creation of new impervious surfaces shall not exceed ten percent of the surface area of the portion of the lot in the floodplain unless mitigation is provided.

G. Any loss of floodplain storage shall be avoided, rectified or compensated for. Any compensation off site must be in a priority floodplain restoration area identified in the associated ESU Recovery Plan for listed species.

H. Uses that are not permitted in the [protected area](#) because they can adversely affect water quality, habitat and other natural values and functions include:

1. Septic tanks and drainfields;
2. Dumping of any materials;
3. Hazardous or sanitary waste landfills;
4. Receiving areas for toxic or hazardous waste;
5. Other contaminants.

I. Uses shall comply with the city's tree and vegetation protection and preservation ordinance (Chapter [14.32](#) LMC) which prohibits the removal of vegetation within critical areas or associated buffers. Minimal unavoidable disturbances may be permitted if fully mitigated.

J. [Development](#) may not adversely impact water quality, water quantity, [flood](#) volume, [flood](#) velocities, spawning substrate, and/or floodplain refugia for listed salmonids. Any project with impacts to these elements of the environment that are not fully mitigated will be prohibited.

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

L. New road crossing over streams in the floodplain or buffers associated with wetlands within designated [flood](#) hazard areas is prohibited. (Ord. 1505 §34, 2017; Ord. 1496 §26, 2016; Ord. 1398 §6, 2012; Ord. 1375 §21, 2011).

14.34.086 Administrative requirements.

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

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

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

C. The permit will be tracked to consider cumulative impacts to [flood](#) storage capacity and fish habitat and mitigation shall be required for all identified impacts. If the proposed project is in an [area of special flood hazard](#) and will increase the [base flood](#) elevation, a conditional letter of map revision shall be submitted on an MT-2 form by the applicant. After project completion, if the [base flood](#) elevation increases or decreases, a letter of map revisions (LOMR) shall be submitted on an MT-2 form by the applicant. (Ord. 1505 §35, 2017; Ord. 1398 §7, 2012; Ord. 1375 §22, 2011).

14.34.090 Designation of the building official.

The building official is appointed to administer and implement this chapter by granting or by denying [development](#) permit applications in accordance with its provisions. The [floodplain administrator](#) may delegate authority to implement these provisions. (Ord. 1654 §3, 2023; Ord. 861 §2 (part), 1989).

14.34.100 Duties and responsibilities of the building official.

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

A. Permit Review.

1. Review all [development](#) permits to determine that the permit requirements of this chapter have been satisfied;
2. Review all [development](#) permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;
3. Review all [development](#) permits to determine if the proposed [development](#) is located in the [area of special flood hazard](#) or [floodway](#). If located in the [area of special flood hazard](#) or [floodway](#), assure that

permits are denied or meet exemption requirements according to the provisions of this chapter. If located in a [floodway](#), assure that the encroachment provisions of LMC [14.34.140](#) are met;

4. The site is reasonably safe from [flooding](#);

5. Notify FEMA when annexations occur in the special [flood hazard area](#).

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

C. *Information to Be Obtained and Maintained.*

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

2. For all new or substantially improved floodproofed nonresidential [structures](#) where [base flood](#) elevation data is provided through the [FIRM](#), [flood insurance study](#), or as required in subsection [B](#) of this section:

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

b. Maintain the floodproofing certification required in LMC [14.34.130\(B\)](#).

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

4. Certification required by LMC [14.34.140\(A\)](#) ([floodway](#) encroachments).

5. Records of all variance actions, including justification for their issuance.

6. Improvement and damage calculations.

7. Documentation of the elevation of the bottom of the lowest horizontal structural member in V or VE zones.

D. *Alteration of Watercourses.*

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

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

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

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

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

F. *Review of Building Permits.* Where elevation data is not available, either through the FIS, [FIRM](#), or from another authoritative source (as required by LMC [14.34.100\(B\)](#)), applications for floodplain [development](#) shall be reviewed to assure that proposed construction will be reasonably safe from [flooding](#). The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past [flooding](#), etc., where available.

(Failure to elevate habitable buildings at least two feet above the [highest adjacent grade](#) in these zones may result in higher insurance rates.)

G. *Changes to Special Flood Hazard Area.* If a project will alter the [base flood](#) elevation or boundaries of the special [flood hazard area](#), then the project proponent shall provide the community with engineering documentation and analysis regarding the proposed change. If the change to the [base flood](#) elevation or boundaries of the special [flood hazard area](#) would normally require a letter of map change, then the project approval shall be conditioned accordingly. (Ord. 1654 §4, 2023; Ord. 1505 §36, 2017; Ord. 1398 §8, 2012; Ord. 1375 §23, 2011; Ord. 1265 §3, 2006; Ord. 1197 §3, 2002; Ord. 861 §2 (part), 1989).

14.34.110 Variance procedures.

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

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

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

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

D. [Variances](#) shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the [variance](#) would result in exceptional hardship to the applicant;

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

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

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

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

H. The provisions of this chapter which are for the protection of the safety, health and welfare of the general public are demonstrated to not be applicable to the subject property and therefore should not be applied. (Ord. 1505 §37, 2017; Ord. 1398 §8, 2012; Ord. 1375 §24, 2011; Ord. 861 §2 (part), 1989).

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

In all areas of special [flood](#) hazards, the following standards are required:

A. *Anchoring.*

1. All [new construction](#) permitted under LMC [14.34.082](#) and [substantial improvements](#), including those related to manufactured homes, shall be anchored to prevent flotation, collapse or lateral movement of the [structure](#) resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.

2. All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize [flood damage](#). Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

B. *Construction Materials and Methods.*

1. All [new construction](#) and [substantial improvements](#) shall be constructed with materials and utility equipment resistant to [flood damage](#);

2. All [new construction](#) and [substantial improvements](#) shall be constructed using methods and practices that minimize [flood damage](#);

3. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of [flooding](#).

C. *Utilities.*

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

D. Subdivision Proposals.

1. Subdivision of areas of special [flood](#) hazard for the purpose of [developing](#) residential [structures](#) is prohibited. Where special [flood hazard areas](#) are part of an ownership with an area outside of the special [flood hazard area](#) that can be subdivided, [flood hazard areas](#) shall be designated and deeded as open space. Open space areas within a [flood hazard area](#) shall be deeded to either the subdivision lot owners association, the ~~city of Lacey~~ [City of Lacey](#), or other public entity for protection and preservation, at the sole discretion and determination of the ~~city of Lacey~~ [City of Lacey](#).
2. All subdivision proposals shall be consistent with the need to minimize [flood damage](#).
3. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed outside of the [area of special flood hazard](#).
4. All subdivision proposals shall have adequate drainage provided to reduce exposure to [flood damage](#).
5. Where [base flood](#) elevation data has not been provided or is not available from another authorized source, it shall be generated for subdivision proposals and other proposed [developments](#) which contain at least fifty lots or five acres (whichever is less).

E. Storage of Materials and Equipment.

1. The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from [flooding](#) is prohibited in special [flood hazard areas](#).
2. Storage of other material or equipment may be allowed if not subject to damage by [floods](#) and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after [flood](#) warning. (Ord. 1654 §5, 2023; Ord. 1505 §38, 2017; Ord. 1398 §9, 2012; Ord. 1375 §25, 2011; Ord. 1265 §4, 2006; Ord. 861 §2 (part), 1989).

14.34.130 Specific standards for pre-existing use exemptions.

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

A. Residential Construction.

1. [Substantial improvement](#) of any pre-existing residential [structure](#) shall have the [lowest floor](#), including [basement](#), elevated one foot or more above the [base flood](#) elevation (BFE) and shall not be

permitted in the [floodway](#) (see LMC [14.34.140\(B\)](#)). Mechanical equipment and utilities shall be waterproof or elevated at least one foot above the BFE.

- a. The [substantial improvement](#) will not increase the footprint of the [structure](#).
2. Fully enclosed areas below the [lowest floor](#) that are subject to [flooding](#) are prohibited, or shall be designed to automatically equalize hydrostatic [flood](#) forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to [flooding](#) shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.
 - d. A garage attached to a residential [structure](#), constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

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

4. [New construction](#) and [substantial improvement](#) of any residential [structure](#) in an unnumbered A zone for which a BFE is not available and cannot be reasonably obtained shall be reasonably safe from [flooding](#), but in all cases the [lowest floor](#) shall be at least two feet above the [highest adjacent grade](#).

5. [New construction](#) and [substantial improvement](#) of any residential [structure](#) in a V, V1-30, or VE zone shall meet the requirements in LMC [14.34.135](#).

B. *Nonresidential Construction.* [Substantial improvement](#) of any pre-existing commercial, industrial or other nonresidential [structure](#) and new [structures](#) permitted as an exemption identified in LMC [14.34.082](#) and [14.34.084](#), shall meet the requirements of subsection [\(B\)\(1\)](#) or [\(B\)\(2\)](#) of this section.

1. [Substantial improvement](#) of any pre-existing commercial, industrial or other nonresidential [structure](#) and new [structures](#) permitted as an exemption identified in LMC [14.34.082](#) and [14.34.084](#) shall meet the requirements:

a. In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained:

[Substantial improvement](#) of any commercial, industrial, or other nonresidential [structure](#) shall have the [lowest floor](#), including [basement](#), elevated one foot or more above the BFE, or elevated as required by ASCE 24, whichever is greater. Mechanical equipment and utilities shall be waterproofed or elevated least one foot above the BFE, or as required by ASCE 24, whichever is greater.

- b. If located in an unnumbered A zone for which a BFE is not available and cannot be reasonably obtained, the [structure](#) shall be reasonably safe from [flooding](#), but in all cases the [lowest floor](#) shall be at least two feet above the [highest adjacent grade](#).
- c. If located in a V, V1-30, or VE zone, the [structure](#) shall meet the requirements in LMC [14.34.135](#).
- d. Fully enclosed areas below the [lowest floor](#) that are subject to [flooding](#) are prohibited, or shall meet the requirements of LMC [14.34.130\(A\)\(2\)](#).

2. If the requirements of subsection [\(B\)\(1\)](#) of this section are not met, then [substantial improvement](#) of any pre-existing commercial, industrial or other nonresidential [structure](#) shall meet all of the following requirements:

- a. Be dry floodproofed so that below one foot above the [base flood](#) level the [structure](#) is watertight with walls substantially impermeable to the passage of water or dry floodproofed to the elevation required by ASCE 24, whichever is greater;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their [development](#) and/or review of the structural design, specifications and plans;
- d. Nonresidential [structures](#) that are elevated but not floodproofed must meet the same standards for space below the [lowest floor](#) as described in subsection [\(A\)\(2\)](#) of this section;
- e. The footprint of a pre-existing [structure](#) shall not be increased (LMC [14.34.082](#));
- f. Applicants floodproofing nonresidential buildings shall be notified that [flood](#) insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to one foot above the [base flood](#) level will be rated at the [base flood](#) level).

Applicants who are [floodproofing](#) nonresidential buildings shall be notified that [flood](#) insurance premiums will be based on rates that are one foot below the [floodproofed](#) level (e.g., a building [floodproofed](#) to the [base flood](#) level will be rated as one foot below). [Floodproofing](#) the building an additional foot will reduce insurance premiums.

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

C. *Manufactured Homes.*

- 1. All manufactured homes are prohibited in the [area of special flood hazard](#).

D. *Recreational Vehicles.*

- 1. Be on the site for fewer than one hundred eighty days; or

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

3. Meet the requirements of subsection [C](#) of this section.

E. *Enclosed Area Below the Lowest Floor.* If buildings or manufactured homes are constructed or substantially improved with fully enclosed areas below the [lowest floor](#), the areas shall be used solely for parking of vehicles, building access, or storage.

F. *Detached Accessory Structures (Detached Garages and Small Storage Structures).*

1. Detached accessory [structures](#) used solely for parking of vehicles or limited storage may be constructed such that the floor is below the BFE, provided the [structure](#) is designed and constructed in accordance with the following requirements:

a. In special [flood hazard areas](#) other than coastal high hazard areas (Zones A, AE, AH, AO, and A1-30), the [structure](#) is not larger than a one-story two-car garage;

b. In coastal high hazard areas (Zones V, VE, V1 30, and VO), the [structure](#) is not larger than one hundred square feet in area;

c. The portions of the [structure](#) located below the BFE must be built using [flood](#) resistant materials;

d. The [structure](#) must be adequately anchored to prevent flotation, collapse, and lateral movement;

e. Any machinery or equipment servicing the [structure](#) must be elevated or floodproofed to or above the BFE;

f. The [structure](#) must comply with [floodway](#) encroachment provisions in LMC [14.34.140\(A\)](#);

g. The [structure](#) must be designed to allow for the automatic entry and exit of [flood](#) waters in accordance with LMC [14.34.130\(A\)\(2\)](#);

h. The [structure](#) shall have low damage potential;

i. If the [structure](#) is converted to another use, it must be brought into full compliance with the standards governing such use; and

j. The [structure](#) shall not be used for human habitation. (Ord. 1654 §6, 2023; Ord. 1505 §39, 2017; Ord. 1398 §10, 2012; Ord. 1375 §26, 2011; Ord. 1265 §5, 2006; Ord. 861 §2 (part), 1989).

14.34.135 AE zones with base flood elevations but no floodways.

In areas with [base flood](#) elevations (but a regulatory [floodway](#) has not been designated), no [new construction](#), [substantial improvements](#), or other [development](#) (including fill) shall be permitted within zone AE on the community's [FIRM](#), except as permitted by LMC [14.34.082](#) (exemptions). Prior to issuing a permit, it must be demonstrated that the cumulative effect of the proposed [development](#), when combined with all other existing and anticipated [development](#), will not increase the water surface elevation of the [base flood](#) more than one foot at any point within the community. (Ord. 1505 §40, 2017; Ord. 1398 §11, 2012; Ord. 1375 §27, 2011; Ord. 1265 §6, 2006).

14.34.140 Floodways.

Located within areas of special [flood](#) hazard established in LMC [14.34.030](#) are areas designated as [floodways](#). Since the [floodway](#) is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Encroachments, including fill, [new construction](#), [substantial improvements](#), and other [development](#), are prohibited; except as permitted by LMC [14.34.082](#) (Exemptions). Prior to permitting, the proposed encroachment must be certified by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in [flood](#) levels during the occurrence of the [base flood](#) discharge.

B. Construction, reconstruction, or [substantial improvement](#) of residential [structures](#) is prohibited within designated [floodways](#).

C. If subsection [A](#) of this section is satisfied, all [new construction](#) and [substantial improvements](#) shall comply with LMC [14.34.120](#) and [14.34.130](#).

D. If subsection [A](#) of this section is satisfied or construction is allowed pursuant to subsection [B](#) of this section, all [new construction](#) and [substantial improvements](#) shall comply with all applicable [flood](#) hazard reduction provisions of LMC [14.34.120](#), General standards for [flood](#) hazard protection. (Ord. 1654 §7, 2023; Ord. 1398 §12, 2012; Ord. 1375 §28, 2011; Ord. 1265 §7, 2006; Ord. 861 §2 (part), 1989).

14.34.145 Coastal high hazard--Zone VE.

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

1. All [new construction](#) and [substantial improvements](#) shall be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the [lowest floor](#) (excluding the pilings or columns) is elevated one foot or more above the [base flood](#) level.

2. The pile or column foundation and [structure](#) attached thereto are anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).

3. A registered professional engineer or architect shall [develop](#) or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections [\(A\)\(1\)](#) and [\(2\)](#) of this section.

4. Obtain the elevation (in relation to [mean sea level](#)) of the bottom of the lowest structural member of the [lowest floor](#) (excluding pilings and columns) of all new and substantially improved [structures](#) and whether or not such [structures](#) contain a [basement](#). The building official shall maintain a record of all such information.

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

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

1. Breakaway wall collapse shall result from water load less than that which would occur during the [base flood](#).
2. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).
3. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

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

E. Prohibit manmade alteration of sand dunes which would increase potential [flood damage](#).

F. Manufactured homes are prohibited.

G. [Recreational vehicles](#) shall be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions. (Ord. 1505 §41, 2017; Ord. 1398 §13, 2012).

14.34.150 Wetlands management.

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

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

(Chapter [14.32](#) LMC) and applicable environmental plans and regulations. (Ord. 1505 §42, 2017; Ord. 1375 §29, 2011; Ord. 861 §2 (part), 1989).

14.34.160 Severability.

If any section, clause, sentence or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this chapter. (Ord. 1398 §14, 2012).

Chapter 14.36 WELLHEAD PROTECTION AND CRITICAL AQUIFER RECHARGE AREAS

<https://lacey.municipal.codes/LMC/14.36>

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14.36.020 Purpose and intent.

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

- A. To protect the quality and to manage the quantity of ground water for all uses in the present and in the future.
- B. To prevent ground water contamination by protecting the entire resource as effectively as possible, but within the limits of what is acceptable and affordable to the community.
- C. To prevent contamination of drinking water supplies.
- D. To assure that preventive actions are taken to protect water quality from further degradation and, in cooperation with the Department of Ecology, promote corrective actions in areas where degradation has occurred so that the net effect is a gradual improvement of the ground and surface water quality.
- E. To provide legislation regulating land uses within [critical aquifer recharge areas](#) generally and more precise standards and regulations for designated [wellhead protection areas](#). (Ord. 1505 §44 (part), 2017).

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

- A. "AKART" means all known, available, and reasonable methods of prevention, control, and treatment and is one component of [pollution prevention plan](#) development and implementation. AKART refers to technology-based treatments of pollutant sources that are implemented along with [BMPs](#) to treat, prevent and control the release of contaminants to surface water and groundwater. See also the State Water Pollution Control Act, RCW [90.48.010](#) and [90.48.520](#).
- B. "Applicant" means a person who files an [application](#) for approval under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a

lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

C. “*Application*” as defined in Section 1.030(A) of the ~~city of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards.

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

E. “*Best management practices (BMPs)*” means schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by the Department of Ecology that, when used singularly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State. See WAC [173-200-020](#).

F. “*Category I critical aquifer recharge areas*” means those areas with extreme [aquifer](#) sensitivity due to the presence of soils that provide very rapid recharge with little natural water quality treatment. Category I areas contain coarse soil textures and soil materials, and are derived from glacial outwash materials. The predominant soil series in Category I CARAs are listed in LMC [14.36.070\(B\)](#).

G. “*Category II critical aquifer recharge areas*” are those areas with high [aquifer](#) sensitivity due to soils which provide slightly lower recharge than Category I, but provide little protection and natural water quality treatment. Category II soils are derived from materials of glacial deposit. The predominant soil series in Category II CARAs are listed in LMC [14.36.070\(B\)](#).

H. “*Category III critical aquifer recharge areas*” are those areas with [aquifers](#) present but have moderate [aquifer](#) sensitivity due to surface soil material that encourages run-off and slows water entry into the ground. The predominant soil series in Category III CARAs are listed in LMC [14.36.070\(B\)](#).

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

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

K. “*Hazardous materials*” means substances that may create a public nuisance or constitute a hazard to humans, animals, fish or fowl, or any solid, dangerous, or extremely hazardous waste, as defined by Chapter [173-303](#) or [173-304](#) WAC. Harmful materials also include substances that, when released into the environment, may cause non-compliance with the following chapters of the WAC: [173-200](#), [173-201](#), [173-204](#), [173-340](#), and/or [246-290](#).

L. “*Health expert*” means a person employed or contracted by the ~~city of Lacey~~ [City of Lacey](#) and licensed by the state as a registered sanitarian and with the necessary expertise and experience to provide information required by this chapter relating to health issues and concerns.

M. “*Health officer*” means the Thurston County health officer as defined in Chapter [70.05](#) RCW or his or her authorized representative.

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

O. “*MPCs*” means reasonable methods of prevention and control. Examples of MPCs include but are not limited to [pollution prevention plan](#) development and implementation, routine maintenance, secondary containment, and measures to eliminate contaminant pathways to the source water.

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

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

R. “*Stormwater BMP/facility*” means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. Stormwater BMPs/facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil-water separators, bioretention, permeable pavement, and biofiltration swales. Stormwater BMPs/facilities are described in the Stormwater Design Manual. “Stormwater BMP/facility” includes both public and privately owned facilities.

S. “*Underground injection control well (UIC well)*” means a structure built to discharge fluids from the ground surface into the subsurface; a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or an improved sinkhole, which is a natural crevice that has been modified; or a subsurface fluid distribution system that includes an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. Examples of UIC wells or subsurface infiltration systems include drywells, drain fields, infiltration trenches with perforated pipe, storm chamber systems with the intent to infiltrate, French drains, bioretention systems intended to distribute water to the subsurface by means of perforated pipe installed below the treatment soil, and other similar devices that discharge to the ground.

T. “*Wellhead protection area (WHPA)*” ~~means protective areas associated with public drinking water sources established by water systems and approved or assigned by the State Department of Health and or as adopted in the City of Lacey Water System Comprehensive Plan. means the surface and subsurface area surrounding a well or well field, through which contaminants are reasonably likely to move toward and reach such water well or well field within six months, one, five, and ten years. WHPAs for Lacey’s water supply wells are adopted in Lacey’s Water System Comprehensive Plan which is approved by the Washington State Department of Health. (Ord. 1638 §7, 2023; Ord. 1505 §44 (part), 2017).~~

14.36.040 Applicability.

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

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

C. The ~~city of Lacey~~ [City of Lacey](#) is authorized to adopt written administrative procedures for the purposes of carrying out the provisions of this chapter.

D. The ~~city of Lacey~~ [City of Lacey](#) shall not grant any approval or permission to conduct a nonexempt activity in an area classified as a [wellhead protection area](#) or Category I or II [critical aquifer recharge area](#) until the requirements of this chapter have been fulfilled including but not limited to action on the following: limited administrative review, full administrative review, quasi-judicial review, legislative review pursuant to Chapter 1.010C of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards, or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 1505 §44 (part), 2017).

14.36.050 Exempt activities.

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

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

B. Boundary line adjustments;

C. Franchise right-of-way construction permit;

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

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

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

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

H. Location of boundary markers;

- I. Site investigative work necessary for land use [application](#) submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be immediately restored;
- J. Nondevelopment educational activities and scientific research;
- K. Normal and routine maintenance or repair of existing utility structures or right-of-way, except situations involving the [application](#) of chemical substances;
- L. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way, except situations involving the [application](#) of chemical substances; and
- M. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way, except situations involving the [application](#) of chemical substances (Ord. 1505 §44 (part), 2017).

14.36.060 Maps and inventory.

Maps of soils in the Lacey area are located on the Web Soil Survey (Natural Resource Conservation District). The soil survey maps, as amended, are the basis for the [CARA](#) categories referenced in this chapter. The standards of this chapter shall apply to all lots or parcels which include Category I or II [critical aquifer recharge areas](#), within the jurisdiction of the ~~city of Lacey~~ [City of Lacey](#). Maps relating to ~~city of Lacey~~ [City of Lacey wellhead protection areas](#) and [critical aquifer recharge areas](#) can be found in the ~~City of Lacey~~ [City of Lacey](#) Water System Plan, as amended. In the event that any of the [critical aquifer recharge areas](#) or [wellhead protection areas](#) shown on the maps conflict with the criteria set forth in this chapter, the criteria in this chapter shall control. (Ord. 1638 §8, 2023; Ord. 1505 §44 (part), 2017).

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

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

B. [Critical aquifer recharge areas](#) are determined by the soil series and types present, as listed below:

Critical Aquifer Recharge Area Soil Series

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
Pilchuck	84
Pits, gravel	85
Puyallup	89
Spanaway	110, 111, 112, 113, 114
Sultan	115
Tenino	117, 118, 119
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
CATEGORY III SOIL SERIES	
Series Name	SCS Map Symbol #
Bellingham	14
Dupont	29

Everson	36
Galvin	37
Godfrey	41
Hoogdal	43, 44
Kapowsin	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

C. The exact presence and location of soils constituting a [critical aquifer recharge area](#) shall be determined by a field investigation applying specific criteria described by the [health officer](#) or [health expert](#). A professional soil scientist or licensed hydrogeologist expert shall perform soils analysis necessary to make determinations. Hiring the services of a soil scientist or licensed hydrogeologist expert shall be the responsibility of the [applicant](#). The [applicant](#) is required under LMC [14.36.100](#) to show the location of the [aquifer](#) sensitive area on a scaled drawing as a part of the [application](#).

D. Disputed Areas.

1. In cases of disputed soil series, or series boundary, and resulting category, the ~~city of Lacey~~ [City of Lacey](#) in consultation with the [health officer](#), and the Natural Resources Conservation Service, shall determine the category.
2. In the event the changes are contested by the [applicant](#), the ~~city of Lacey~~ [City of Lacey](#) shall, at the [applicant](#)'s expense, obtain its own expert services to render a final determination.

3. In areas that have been disturbed or the surface soil removed as in gravel pits, the ~~city of Lacey City of Lacey~~ in consultation with the [health officer](#) and the Natural Resources Conservation Service shall determine the most appropriate category with geological and hydrological information. (Ord. 1505 §44 (part), 2017).

14.36.080 Review standards--General review requirements.

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

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

C. The city may approve, approve with conditions or deny any development proposal in order to comply with the requirements and carry out the goals, purposes and objectives of this chapter. (Ord. 1505 §44 (part), 2017).

14.36.090 Consolidated application process.

When more than one [application](#) for a proposed development is required, the [applicant](#) may elect to have all [applications](#) submitted for review at one time in conformance with Section 1B.030 of the ~~City of Lacey City of Lacey~~ Development Guidelines and Public Works Standards; [applications](#) for proposed development and planned actions subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed concurrently and in accordance with state and local laws, regulations and ordinances. (Ord. 1638 §9, 2023; Ord. 1505 §44 (part), 2017).

14.36.100 Information requirements.

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

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

1. The exact boundary and description of [wellhead protection areas](#), including the source well and [sanitary control area](#), on site and on adjacent properties within specified setbacks if applicable;
2. Locations of Category I and II soils on the site;
3. Groundwater contours indicating the direction of shallow groundwater flow, shown in relation to the wellhead and its [wellhead protection area](#) if applicable, and existing and proposed [stormwater BMPs](#)/facilities;
4. Any existing drinking water well(s) and/or septic systems on site, both active and abandoned;
5. All potential sources of soil or groundwater contamination on the site; and

6. Locations of proposed test pits and/or soil borings, temporary construction dewatering wells or other resource protection wells anticipated for gathering project data.

B. A description of the proposed use of the site, and descriptions of the types and quantities of [hazardous materials](#) and other pollutants that would be used or stored on the site including fuels and fuels associated with mechanical equipment and retail products.

C. A description of the engineering design and planned operation and maintenance of the projects that will mitigate impacts to groundwater quality and quantity at the development site. The description shall also identify specific limitations of the site, such as soils and geology, for mitigating impacts to site development. See requirements in LMC [14.36.140](#). (Ord. 1638 §10, 2023; Ord. 1505 §44 (part), 2017).

14.36.110 Critical aquifer recharge areas--Uses and activities in critical aquifer recharge areas that are subject to limitations in wellhead protection zones.

A. To protect the public health and safety, prevent [aquifer](#) contamination, and preserve the groundwater resource for continual beneficial use, uses and activities shall be most limited in those areas which have the highest degree of risk.

B. *Stormwater Runoff.* Stormwater impacts shall be mitigated through the [application](#) of the most current version of the ~~city of Lacey~~ [City of Lacey](#) Stormwater Design Manual. To minimize the potential for groundwater contamination, enhanced treatment and/or phosphorous treatment may be required prior to infiltration or discharge.

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

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

E. *Hazardous Materials.* Projects within sites that utilize, store, or dispose of hazardous substances may be required to prepare and implement a spill, prevention, control, and countermeasures plan (SPCC plan) that is specific to the hazardous substances on the site, or [hazardous materials](#) management plan as described in LMC [14.36.160](#).

F. *Landscaping and Irrigation.* Requirements for landscaping and associated irrigation are addressed in Chapter [16.80](#) LMC. All land use projects located within a [wellhead protection area](#) will be required to develop and implement an integrated pest management (IPM) plan that addresses plant selection, irrigation, and maintenance practices for minimizing the need for pesticides and fertilizers, and for preventing the leaching of soluble fertilizers and other contaminants into groundwater. IPM plans are

expected to include the elements described in Thurston County's Integrated Pest Management Plan Guidance, and IPM plans as required by Thurston County for any projects located within a ~~city of Lacey~~ [City of Lacey wellhead protection area](#) shall also be submitted to the ~~city of Lacey~~ [City of Lacey](#).

G. *On-Site Septic Systems*. On-site septic systems for new or expanding uses within the city are addressed in service policies in the ~~city of Lacey~~ [City of Lacey](#) Wastewater Comprehensive Plan. The following provisions do not apply to septic tank effluent pumping (STEP) systems that are part of the city sewer system.

1. New individual or community onsite septic systems are not allowed within the city.
2. Individual on-site septic systems for expanding uses are discouraged and will only be considered on a case-by-case basis, generally as exceptional cases when connection to city sewer is not feasible. The city may require annual testing of septic systems as a condition of approval.

H. *Abandoned Wells*. Wells that cease to be used as a water source or as a resource protection well, are unmaintained, or are in such disrepair as to be unusable shall be decommissioned consistent with Chapter [173-160](#) WAC to prevent groundwater contamination and remove any public safety hazards. (Ord. 1638 §11, 2023; Ord. 1505 §44 (part), 2017).

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

- A. The ~~city of Lacey~~ [City of Lacey](#) may coordinate with the [health officer](#) in the enforcement of these regulations.
- B. Where designated [critical aquifer recharge areas](#) and [wellhead protection areas](#) encroach into the ~~city of Lacey~~ [City of Lacey](#) from neighboring jurisdictions, the provisions of this chapter shall apply. (Ord. 1505 §44 (part), 2017).

14.36.130 Repealed

Repealed by [Ord. 1638](#).

14.36.140 Hydrogeological reports.

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

1. There is insufficient hydrogeological information to perform an adequate review to assure [aquifer](#) protection; or
2. The project is likely to possess, store, use, transport, or dispose of [hazardous materials](#).

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

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

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

E. The hydrogeological report shall contain the information required under LMC [14.36.100](#), and the following:

1. Information sources;
2. Site geology and hydrostratigraphy, supported by project-specific borings and data from other nearby wells;
3. Available data on wells and springs located within one-quarter mile of the site;
4. Location and depth of perched water tables;
5. Groundwater elevations, flow direction, and gradient;
6. Recharge potential of facility site, including [aquifer](#) permeability and transmissivity;
7. Background water quality;
8. Identification of all [hazardous materials](#) to be used or stored on the site;
9. Analysis of the increase or change in nitrate concentrations predicted to occur in groundwater beneath the site as a result of the project;
10. A description of site conditions prior to project development, including vegetation and other conditions relating to existing and historic groundwater recharge at the site;
11. An analysis of site conditions as they are likely to exist during and after construction of the proposed project, and their cumulative impacts on groundwater quantity and quality;
12. Discussion of proposed mitigation measures to minimize impacts to groundwater quality and quantity, including training, maintenance and monitoring plans, and proposed mechanisms and financial measures that will ensure long-term implementation of mitigation measures; and
13. Any other information as required by the city.

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

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

H. The ~~city of Lacey~~ [City of Lacey](#) may waive the hydrogeological report requirements if the nature of the project and its impacts are generally known, or the impacts of the project have been mitigated by source control [BMPs](#). (Ord. 1638 §13, 2023; Ord. 1505 §44 (part), 2017).

14.36.150 Hydrogeological reports--Reimbursement for costs.

The developer shall pay for or reimburse the city for the cost incurred in the conduct of such special reports or tests and for the costs incurred by the city to engage technical consultants for review and

interpretation of data and findings submitted by or on behalf of the developer. (Ord. 1505 §44 (part), 2017).

14.36.160 Hazardous materials spill plans.

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

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

C. [Hazardous materials](#) management and spill prevention plans shall include, at a minimum, the following:

1. A brief description of business activities and a list and map of the locations, amounts, and types of [hazardous materials](#), hazardous waste and petroleum products, stored on site;
2. A pollution prevention evaluation that reviews whether the risk from hazardous substances could be reduced through modifying production processes, utilizing nontoxic or less toxic substances, implementing conservation techniques, or reusing materials rather than putting them in the waste stream;
3. A description of inspection procedures for [hazardous material](#) storage areas and containers and the minimum inspection intervals. An inspection logbook shall be maintained for periodic review by the city or county;
4. Provision of an appropriate spill kit with adequate spill supplies and protective clothing;
5. Detailed spill cleanup and emergency response procedures identifying how the [applicant](#) will satisfy the requirements of the Dangerous Waste Regulations, Chapter [173-303](#) WAC, in the event that [hazardous material](#) is released into the ground, ground water, or surface water;
6. Procedures to report spills immediately to the Department of Ecology and the Environmental Health Division of the Thurston County Public Health and Social Services Department, in that order;
7. A list of emergency phone numbers (e.g., the local fire district and ambulance);
8. Procedures to ensure that all employees with access to locations where [hazardous materials](#) are used or stored receive adequate spill training. A training logbook shall be maintained for periodic review by the city or county;
9. A map showing the location of all floor drains and any [hazardous material](#) and petroleum product transfer areas; and

10. Additional information determined by the approval authority to be necessary to demonstrate that the use or activity will not have an adverse impact on ground water quality.

D. Any existing use which uses, stores, handles or disposes of [hazardous materials](#) above these minimum cumulative quantities will meet requirements described in subsection [\(A\)](#) of this section:

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

2. Cleaning substances for janitorial use or retail sale in the same size, packaging and concentrations as a product packaged for use by the general public. Chlorinated solvents and nonchlorinated solvents which are derived from petroleum or coal tar will not be considered a cleaning substance under this subsection, but rather a chemical substance identified in subsection [\(D\)\(1\)](#) of this section. Minimum cumulative quantity: eight hundred pounds (or the equivalent one hundred gallons), not to exceed fifty-five gallons for any single package.

3. Businesses which use, store, handle or dispose of chemicals listed in WAC as “P” chemicals. Minimum cumulative quantity: two and two-tenths pounds. (Ord. 1638 §14, 2023; Ord. 1505 §44 (part), 2017).

14.36.170 Wellhead protection area standards of mitigation.

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

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

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

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

4. The proposal must ensure compliance with the ~~city of Lacey~~ [City of Lacey](#) stormwater maintenance requirements, as described in Section 5.100 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards, and in LMC [14.27.060](#).

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

a. The project has been evaluated by a hydrogeological report as described in LMC [14.36.140](#); and

b. Based upon the hydrogeological report and the best available science the proposed alternative mitigation measures will be adequate to protect the drinking water source. (Ord. 1638 §15, 2023; Ord. 1505 §44 (part), 2017).

14.36.180 Wellhead protection area standards for new uses.

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

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

1. Land spreading disposal facilities (as defined by Chapters 13-304 and 173-308 WAC--disposed above agronomic rates);
2. Direct groundwater recharge or surface percolation using reclaimed water (as defined under RCW [90.46.010](#));
3. *Animal operations with over two hundred animal units.* For purposes of this section, one animal unit is the equivalent number of livestock and/or poultry as defined by the U.S. Department of Agriculture Natural Resource Conservation Service Animal Waste Field Handbook;
4. Petroleum products refinement, reprocessing, and storage (except underground storage of heating oil or agricultural fueling in quantities less than one thousand one hundred gallons for consumptive use on the parcel where stored), and liquid petroleum products pipelines;
5. Retail gas stations and non-retail fueling stations, and mobile on-site fueling of commercial or residential vehicles;
6. Automobile wrecking and salvage yards;
7. Dry cleaning and garment care facilities, excluding drop-off only facilities, that utilize solvents (including but not limited to perchloroethylene (PERC), trichloroethylene (TCE), toluene, methyl ethyl ketone (MEK), glycol ethers, liquid silicone, liquid carbon dioxide, or brominated solvents) as part of their service;
8. Deep underground injection control (UIC) wells that extend below an upper confining layer and discharge stormwater into the underlying vadose zone;
9. Asphalt and asphalt recycling plants, and cement concrete plants; and
10. Machine shops, metal finishing/fabricating, metal plating and electroplating.

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

1. Landfills (municipal sanitary solid waste and hazardous waste), demolition (inert), and wood waste;
2. Chemical/hazardous waste manufacturing, reprocessing, transfer, storage and disposal facilities;
3. Wood and wood products preserving; and
4. Retail gas stations and non-retail fueling stations without attendant (i.e., operated with no attendant on site to respond to fuel spills related to the dispensing of gasoline or equipment failure).

C. The following uses may be restricted on a case-by-case basis in the designated five-year time of travel zone:

1. Deep underground injection control (UIC) wells that extend below an upper confining layer and discharge stormwater into the underlying vadose for a production well that is rated as having a higher susceptibility to contamination, by the water system or by the Washington State Department of Health. (Ord. 1638 §16, 2023; Ord. 1505 §44 (part), 2017).

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

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

A. Expansion of all uses prohibited in LMC [14.36.180\(A\)](#) shall be prohibited within the designated one-year time of travel zone.

B. Expansion of all uses prohibited in LMC [14.36.180\(B\)](#) shall be prohibited within the designated one-, five- and ten-year time of travel zones.

C. For any expansion of an existing use proposed within the designated one-, five- and ten-year time of travel zones, the [applicant](#) shall meet the minimum standards of mitigation described in LMC [14.36.170](#). The [health officer](#) at the [health officer](#)’s discretion and with reasonable expectation of risk to ground water, may require [pollution prevention plan](#) development and implementation of [MPCs](#) on any use located within the one-, five- or ten-year time of travel zones. The [health officer](#) will review the documentation to determine whether the expansion shall be approved, denied or approved with conditions to ensure adequate protection of the source water supply. (Ord. 1505 §44 (part), 2017).

14.36.200 Special management areas--Wellhead protection area standards for existing uses.

The following shall apply to existing uses located within the designated [wellhead protection areas](#) defined in LMC [14.36.030](#):

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

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

C. For any existing agricultural use located within the designated one-, five- and ten-year time of travel zones, the owner, upon request of the [health officer](#), at the [health officer](#)’s discretion, for good cause and with reasonable expectation of risk to ground water and with consultation with the Thurston Conservation District, shall develop a farm conservation plan in conformance with the U.S. Natural Resources Conservation Service Field Office Technical Guide and obtain approval of the Thurston Conservation District board of supervisors. (Ord. 1638 §17, 2023; Ord. 1505 §44 (part), 2017).

14.36.210 Other laws and regulations.

No approval granted pursuant to this chapter shall remove an [applicant](#)'s obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 1505 §44 (part), 2017).

14.36.220 Suspension, revocation.

In addition to other penalties provided for elsewhere, the ~~city of Lacey~~ [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. 1505 §44 (part), 2017).

14.36.230 Appeals.

Any decision of the ~~city of Lacey~~ [City of Lacey](#) in the administration of this chapter may be appealed in accordance with Chapter 1D of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1505 §44 (part), 2017).

14.36.240 Enforcement.

A. The ~~city of Lacey~~ [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~~ [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~~ [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 [critical aquifer recharge area](#) or [wellhead protection area](#) which are inconsistent with this chapter or an applicable habitat or species protection program.

2. The ~~city of Lacey~~ [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~~ [City of Lacey](#) may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

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

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

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

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

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

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

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

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

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

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in Section 1D.030 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards.

8. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any [application](#), record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to an approval. (Ord. 1505 §44 (part), 2017).

14.36.250 Non-conforming activities.

A. All nonexempt activities that were approved prior to the passage of this chapter shall be subject to the provisions of LMC [14.36.200](#).

B. No activity specified in subsection A of this section shall be expanded, changed, enlarged or altered in any way unless it complies with all of the provisions of LMC [14.36.190](#).

C. When in conflict, provisions of this section shall supersede the normal nonconforming use provisions of Chapter [16.93](#) LMC. Activities or adjuncts thereof that are nuisances shall not be entitled to continue. (Ord. 1505 §44 (part), 2017).

14.36.270 Amendments.

These regulations and wellhead protection maps referenced in LMC [14.36.060](#) may from time to time be amended in accordance with the procedures and requirements in the general statutes, the ~~City of Lacey~~ [City of Lacey](#) Comprehensive Plan, adopted development regulations, and as new information concerning becomes available. (Ord. 1505 §44 (part), 2017).

14.36.280 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the [application](#) thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 1505 §44 (part), 2017).

Chapter 14.37 GEOLOGICALLY SENSITIVE AREAS PROTECTION

<https://lacey.municipal.codes/LMC/14.37>

Sections:

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14.37.020 Purpose/intent.

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

- A. Developing specific requirements for analysis and performance standards related to identification and protection from erosion hazard and [landslide](#) hazard;
- B. Protecting the public against losses from publicly funded mitigation of avoidable impacts;
- C. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of [geologically sensitive areas](#);
- D. Providing ~~city of Lacey~~ [City of Lacey](#) officials with information to evaluate, approve, condition, or deny public or private development proposals;
- E. Implementing the policies of the Growth Management Act, the State Environmental Policy Act, Chapter [43.21C](#) RCW, the city Comprehensive Plan, the city Zoning Code (LMC Title [16](#)), the city Environmental Policy Ordinance (Chapter [14.24](#) LMC), the city Tree Protection and Preservation Ordinance (Chapter [14.32](#) LMC), and all related environmental and community plans and programs. (Ord. 1505 §45, 2017; Ord. 935 §11 (part), 1992).

14.37.030 Definitions.

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

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

areas include: erosion, landslide, seismic, mine, and volcanic hazards. Geologically sensitive areas do not include [artificially created hazard areas](#).

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

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

L. “Landslide hazard areas” ~~means an area potentially subject to landslides because at risk of mass movement due to a~~ of the combination of geologic, topographic, and hydrologic factors. ~~These areas are typically susceptible to landslides because of a combination of factors, including bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.~~ The following areas are considered to be subject to [landslide](#) hazard:

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

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

N. “Ravine sidewall” means a steep [slope](#) which abuts and rises from the valley floor of a stream and which was created by the wearing action of the stream. Ravine sidewalls contain [slopes](#) predominantly in excess of forty percent, although portions may be less than forty percent. The toe of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is typically a distinct line where the [slope](#) abruptly levels out. Where there is no distinct break in [slope](#), the top is where the [slope](#) diminishes to less than fifteen percent. Minor natural or manmade breaks in the [slope](#) of ravine sidewalls shall not be considered as the top. Benches with [slopes](#) less than fifteen percent and containing developed or developable areas shall be considered as the top.

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

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

vertical distance ÷ horizontal distance x 100 = % slope.

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

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

Q. *"Soil Survey of Thurston County Washington"* is a soil survey published by the U.S. Department of Agriculture Natural Resource 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. (Ord. 1505 §46, 2017; Ord. 1208 §58, 2003; Ord. 935 §11 (part), 1992).

R. "Volcanic hazard areas" shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

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 fulfill 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. (Ord. 935 §11 (part), 1992).

14.37.050 Applicability.

A. When any provision of any other chapter of the ~~city of Lacey~~ [City of Lacey](#) conflicts with this chapter, the most restrictive will prevail.

B. The ~~city of Lacey~~ [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~~ [City of Lacey](#) shall not grant any approval or permission to conduct a nonexempt activity in a [geologically sensitive area](#) until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land [clearing](#) permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, tree and vegetation protection and preservation approval, utility and other use permit; or any subsequently adopted permit or required approval not expressly exempted by this chapter. (Ord. 1505 §47, 2017; Ord. 935 §11 (part), 1992).

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~~ [City of Lacey](#). The approximate location and extent of [geologically sensitive areas](#) in the ~~city of Lacey~~ [City of Lacey](#) is shown on the city's Arc Geographic Information System (GIS) maps. The city zoning map also shows such areas as environmentally sensitive pursuant to Chapter [16.54](#) LMC. The city Arc GIS maps and zoning map are to be used as a guide to the general location and extent of [geologically sensitive areas](#). [Geologically sensitive areas](#) not shown on the maps are presumed to exist in the ~~city of Lacey~~ [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. (Ord. 1505 §48, 2017; Ord. 935 §11 (part), 1992).

14.37.070 Determination of geologically sensitive area.

A. 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 LMC [14.37.110](#) to show the location of the [geologically sensitive area](#) on a scaled drawing as a part of the application.

B. The ~~city of Lacey~~ [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~~ [City of Lacey](#) shall, at the [applicant](#)'s expense, obtain its own expert services to render a final determination. (Ord. 935 §11 (part), 1992).

14.37.080 Exempt activities.

The following activities shall be exempt from the review requirements of this chapter and Chapter 1C of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards provided such

activities are undertaken using best management practices in a manner that does not adversely impact the [geologically sensitive area](#):

- A. Nonpublic outdoor recreation activities such as bird watching or hiking, when undertaken by a property owner on his or her property for his or her personal noncommercial purposes;
- B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the [geologically sensitive area](#) by changing existing topography, water conditions or other natural parameters important to the geological sensitivity;
- C. Boundary markers;
- D. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be restored immediately after investigative work has been completed;
- E. Educational activities and scientific research;
- F. Normal and routine maintenance or repair of existing utility structures or right-of-way;
- G. Installation, replacement, alteration or construction and operation of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less in improved city road right-of-way; and
- H. Installation, replacement, alteration or construction and operation of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances in improved city road right-of-way. (Ord. 1505 §49, 2017; Ord. 1192 §81, 2002; Ord. 935 §11 (part), 1992).

14.37.090 Geologically sensitive areas-- Presubmission consultation.

Any person intending to undertake nonexempt activities in a [geologically sensitive area](#) is required to meet with the ~~city of Lacey~~ [City of Lacey](#) at a presubmission conference during the earliest possible stages of project planning in order to discuss impact avoidance and minimization in accordance with the process outlined in Section 1B.020 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §82, 2002; Ord. 935 §11 (part), 1992).

14.37.100 Geologically sensitive area applications.

No nonexempt use shall occur or be permitted to occur within a [geologically sensitive area](#) without full administrative review or quasi-judicial review of the application pursuant to Chapter 1C of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards, whichever is applicable. (Ord. 1505 §50, 2017; Ord. 1192 §83, 2002; Ord. 935 §11 (part), 1992).

14.37.110 Geologically sensitive areas --Information requirements.

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

B. Unless the ~~city of Lacey~~ [City of Lacey](#) waives one or more of the following information requirements, applications for activities undertaken in a [geologically sensitive area](#) must provide the following information:

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the entire parcel of land owned by the [applicant](#) and the exact boundary and description of the geologically sensitive features of the site;
2. A description of the vegetative cover of the site and adjacent area including dominant species;
3. A site development plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1" = 400' showing the location, width, depth and length of all existing and proposed structures, roads, sewage treatment, and installations at the site;
4. The exact sites and specifications for all proposed activities including the amounts and methods;
5. Elevations of the site and adjacent lands within the [geologically sensitive area](#) at contour intervals of no greater than five feet;
6. Top view and typical cross section views of the geologically sensitive features at the site to scale, and specific means to mitigate any potential adverse environmental impacts of the [applicant](#)'s proposal relative to the geologically sensitive features of the site;
7. A soils engineering report including data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading, including the stability of [slopes](#). Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.
8. An engineering geology report including an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading. Recommendations included in the report and approved by the building official shall be incorporated in the grading plans or specifications.
9. A full drainage study identifying special precautions necessary to avoid erosion hazard at the site. (Ord. 1505 §51, 2017; Ord. 1192 §84, 2002; Ord. 935 §11 (part), 1992).

14.37.120 Geologically sensitive areas-- Approval and extensions.

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

B. One extension of an original approval may be granted upon written request to the ~~city of Lacey~~ [City of Lacey](#) by the original approval holder or the successor in title at least thirty days prior to the expiration for a six-month time period. Prior to the granting of an extension, the ~~city of Lacey~~ [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. (Ord. 1505 §52, 2017; Ord. 1192 §85, 2002; Ord. 935 §11 (part), 1992).

14.37.130 Geologically sensitive areas-- Filing fees.

At the time of an application, the [applicant](#) shall pay a filing fee as determined by the ~~city of Lacey~~ [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~~ [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~~ [City of Lacey](#), the ~~city of Lacey~~ [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. (Ord. 1192 §80, 2002; Ord. 935 §11 (part), 1992).

14.37.140 Consolidated application process.

When more than one application for a proposed development is required, the [applicant](#) may elect to have all applications submitted for review at one time in conformance with Section 1B.030 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §87, 2002; Ord. 935 §11 (part), 1992).

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~~ [City of Lacey](#) shall submit the application to the U.S. Department of Agriculture Natural Resource Conservation Service and other state and local agencies having jurisdiction over or an interest in such applications for review and comment. When such applications are submitted, said agencies should submit comments or should request an extension of the review period within fourteen days. Extensions may be granted by the ~~city of Lacey~~ [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. (Ord. 1505 §53, 2017; Ord. 1192 §88, 2002; Ord. 935 §11 (part), 1992).

14.37.160 Standards for geologically sensitive area approvals--Generally.

- A. An approval shall only be granted if the approval, as conditioned, is consistent with the provisions of this chapter.
- 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, [buffer](#) zones as required in a [geologically sensitive area](#) shall be retained in their natural condition. (Ord. 935 §11 (part), 1992).

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

Nonexempt activities shall not be allowed in a [buffer](#) zone recommended in a [geologically sensitive area](#) development plan except for activities having minimal adverse impacts on the geological sensitivity as determined in the development plan. These may include low intensity, passive recreational activities such as pervious trails. (Ord. 1505 §54, 2017; Ord. 935 §11 (part), 1992).

14.37.180 Standards for geologically sensitive areas--Specific.

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

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

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

C. *Ravine Sidewalls and Bluffs.*

1. *Buffers.* A fifty-foot undisturbed [buffer](#) of [native vegetation](#) shall be established from the top, toe, and sides of all [ravine sidewalls](#) and [bluffs](#).
2. *Buffer Reduction.* The [buffer](#) may be reduced when expert verification and environmental information demonstrate to the satisfaction of the site plan review committee or hearings examiner, whichever is applicable, that the proposed construction method will:
 - a. Not adversely impact the stability of [ravine sidewalls](#) and [bluffs](#); and
 - b. Not increase erosion and mass movement potential of [ravine sidewalls](#) and [bluffs](#); and
 - c. Use construction techniques which minimize disruption of the existing topography and vegetation; and
 - d. Include measures to overcome any geological, soils, and hydrological constraints of the site.The [buffer](#) may be reduced by no more than fifty percent.
3. *Additional Buffers.* The site plan review committee may require increased [buffers](#) if environmental studies indicate such increases are necessary to mitigate [landslide](#), seismic and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare.

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

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

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

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

1. *Amount of Disturbance Allowed.* The following chart sets forth the maximum [slope](#) disturbance allowed on a development site:

[Slope](#) Amount of [Slope](#) Which Can be Disturbed Factor

0-15%	100%	1.00
15-25%	60%	.60
25-40%	45%	.45
40%+	0%	.00

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

(Square footage of site having 0-15% [slopes](#)) x 1.00 + (Square footage of site having 15-25% [slopes](#)) x .60 + (Square footage of site having 25-40% [slopes](#)) x .45 = Total Amount of Allowable Site Disturbance.

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

2. *Development Location.*

a. Structures and improvements shall be clustered to retain as much open space as possible and the natural topographic character of the [slope](#); and

b. Structures and improvements shall conform to the natural contour of the [slope](#), foundations must be tiered to generally conform to the existing topography of the site; and

c. Structures and improvements shall be located to preserve the most sensitive portion of the site and its natural land forms and vegetation.

3. *Development Design.*

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

4. Construction Techniques.

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

5. Excavation and Grading.

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

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

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

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

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

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

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

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

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

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

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

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

F. *Seismic Hazard Areas.* The ~~city of Lacey~~ [City of Lacey](#) acknowledges it is in a seismic hazard zone and shall pursue more specific identification of those areas in the city at the greatest risk. Once said areas are identified, specific criteria designed to protect the public safety shall be developed. (Ord. 1505 §55, 2017; Ord. 1496 §27, 2016; Ord. 1208 §59, 2003; Ord. 935 §11 (part), 1992).

14.37.190 Special conditions.

A. 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~~ [City of Lacey](#) prior to the commencement of approved activities. Such field markings shall be maintained throughout the duration of the approval.

B. The ~~city of Lacey~~ [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. (Ord. 1192 §89, 2002; Ord. 935 §11 (part), 1992).

14.37.200 Financial security.

A. The ~~city of Lacey~~ [City of Lacey](#) shall require the [applicant](#) of a development proposal to provide [financial security](#) acceptable to the ~~city of Lacey~~ [City of Lacey](#) in an amount of one hundred fifty percent of the estimated cost of improvements sufficient to fulfill the requirements of this chapter and to secure compliance with conditions and limitations set forth in the approval. The amount and the conditions of the [financial security](#) shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such [financial security](#), the ~~city of Lacey~~ [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~~ [City of Lacey](#) shall release the [financial security](#) upon determining that:

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

Until such written release of the [financial security](#) by the city, such security cannot be released to the [applicant](#).

B. The ~~city of Lacey~~ [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~~ [City of Lacey](#) in an amount of twenty percent of the cost of improvements sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The ~~city of Lacey~~ [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. (Ord. 1505 §56, 2017; Ord. 935 §11 (part), 1992).

14.37.210 Other laws and regulations.

No approval granted pursuant to this chapter shall remove an [applicant](#)'s obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 1192 §90, 2002; Ord. 935 §11 (part), 1992).

14.37.220 Suspension, revocation.

In addition to other penalties provided for elsewhere, the ~~city of Lacey~~ [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. 1192 §91, 2002; Ord. 935 §11 (part), 1992).

14.37.230 Notice of final decision.

The ~~city of Lacey~~ [City of Lacey](#) shall provide notice of its actions pursuant to the requirements of Section 1C.070 of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §92, 2002; Ord. 935 §11 (part), 1992).

14.37.240 Appeals.

Any decision of the ~~city of Lacey~~ [City of Lacey](#) in the administration of this chapter may be appealed in accordance with Chapter 1D of the ~~City of Lacey~~ [City of Lacey](#) Development Guidelines and Public Works Standards. (Ord. 1192 §93, 2002; Ord. 935 §11 (part), 1992).

14.37.250 Enforcement.

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

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

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

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

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

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

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

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

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

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

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

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for in LMC [14.37.240](#).

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. (Ord. 1505 §57, 2017; Ord. 935 §11 (part), 1992).

14.37.260 Non-conforming activities.

A nonexempt activity that was approved prior to the passage of the ordinance codified in 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 non-conformity without a permit issued pursuant to the provisions of this chapter;

B. If a non-conforming activity is discontinued for twelve 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. (Ord. 935 §11 (part), 1992).

14.37.270 Repealed

Repealed by [Ord. 1192](#).

14.37.280 Amendments.

These regulations and the ~~city of Lacey~~ [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. 935 §11 (part), 1992).

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. (Ord. 935 §11 (part), 1992).

14.37.300 Assessment relief.

The Thurston County assessor's office shall consider [geologically sensitive area](#) regulations in determining the fair market value of land. Any owner of an undeveloped area designated as geologically sensitive shall have that portion of land assessed consistent with applicable restrictions. Such landowner shall also be exempted from special assessments on the controlled area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 1505 §58, 2017; Ord. 935 §11 (part), 1992).

August 20, 2024

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420 College Street SE
Lacey, WA 98503

RE: CRITICAL AREAS ORDINANCE and/or COMPREHENSIVE PLAN PERIODIC UPDATE

Dear Vanessa Dolbee,

On behalf of the Puget Sound Partnership's (PSP) Ecosystem Coordination Board (ECB), we submit this letter with respect to your jurisdiction's current periodic update process, and associated updates to development regulations. The Puget Sound Partnership's Ecosystem Coordination Board supports the Leadership Council in carrying out its duties, including the development and implementation of the [Action Agenda](#). The ECB is made up of 33 members, representing local, state, federal, and tribal governments, environmental and business interests. This broad representation supports the ECB to provide cross-caucus reporting and dialogue on priority issues, such as how to ensure the protection and restoration of habitat for ecologically sustainable watersheds for the future of all species through local periodic updates. This letter provides background on the priorities described in the Action Agenda and the resources available to support Comprehensive Plans and Critical Areas Ordinances to align with those priorities. While this letter does not respond to materials produced as part of your comprehensive plan update, it does offer many specific recommendations and resources that we believe will support the protection and recovery of the Puget Sound.

The recovery of Puget Sound is vital to human wellbeing in the region, to sustain threatened salmon, orcas, and numerous other species, and to preserve Puget Sound's ecosystem functions and values for current and future generations. But the Puget Sound ecosystem is under increasing threats from the development of ecologically important habitats, forests, farmlands, and other working lands, especially outside of urban growth areas. The [smart growth strategy](#) in the [2022-2026 Action Agenda](#) identifies a key opportunity to "improve the implementation of the Growth Management Act within local jurisdictions land use planning and decisions, and across jurisdictions to include the protection of natural areas and working lands."

New planning requirements, updated science, and learning from the past ~8 years of Growth Management Act (GMA) implementation make this round of Comprehensive Plan updates a critical juncture and inspiring opportunity in our region's collective work to recover Puget Sound. As you know, the Comprehensive Plan sets the stage for development activities and decisions which all have an impact on how well we achieve our goals to protect and restore Puget Sound. To support recovery of the Puget Sound, we recommend

that jurisdictions in the Puget Sound region make use of the many science-based resources available to support development of Comprehensive Plan and Critical Area Ordinance (CAO) amendments that protect natural areas and working lands.

Our collective understanding of the complex relationships between land cover, development, and ecosystem health improves over time, and this is why cities and counties must include current, best available science and information in their local land use planning amendments during the periodic update. Fortunately, our state Departments of Fish and Wildlife, Ecology, Natural Resources, and Commerce have been busy updating and distributing science-based guidance to support local governments in this process. Cities and counties should leverage these resources below, and other science-based resources, to effectively amend their Comprehensive Plans and Critical Areas Ordinances:

- [Local Integrating Organizations \(LIOs\) and LIO Ecosystem Recovery Plans](#)
- [Local Salmon Recovery Watershed Chapters](#)
- [Department of Fish and Wildlife's current Priority Habitats and Species information](#)
 - [Riparian Management Zone Checklist for Critical Areas Ordinances](#)
- [Ecology's Wetland Guidance for Critical Areas Ordinance \(CAO\) Updates](#)
- [Ecology's Climate Resilience and Shoreline Management webpage](#)
- Commerce's Critical Areas [Handbook](#) and [Checklist](#)

To ensure smart growth in the Puget Sound region, the ECB recommends that jurisdictions consider and take action on the following:

- 1) **At key points in the Comprehensive Plan update process, review and apply the [Sound Choices Implementation Checklist](#).** The checklist was developed by the Puget Sound recovery community and is intended to help local jurisdictions make updates to their comprehensive plans that align with Puget Sound recovery strategies and actions.
- 2) **Ensure your local planning department takes advantage of funding for additional staff resources to incorporate salmon and Puget Sound recovery into local planning by applying for the [Salmon Recovery through Local Planning Grant Program](#).** Depending on funding availability, Washington State Department of Commerce will hold a fall 2024 round of funding. For more information contact angela.sanfilippo@commerce.wa.gov.
- 3) **Understand how your local land use decisions will support region-wide efforts to achieve positive trends in [Regional Land Use Indicators](#).** The Puget Sound Partnership assesses the status and trends of threats through a set of regional land use indicators.
- 4) **Reach out to and involve local experts in Puget Sound recovery** including Local Integrating Organization members, Salmon Recovery Lead Entities, as well as your [local representative](#) on the [Ecosystem Coordination Board](#). For additional support in facilitating connections with these local experts please reach out to Laura.Rivas@psp.wa.gov.

As you help shape the future of the City of Lacey at this pivotal moment in time, the ECB requests that you take advantage of the valuable tools and resources included in this letter to ensure we are doing all we can to support our local communities and Puget Sound recovery. Thank you for considering our recommendations, tools, and resources.

Sincerely,



Julie Watson, Chair

Cc:

Bill Dewey, co-Vice Chair Ecosystem Coordination Board

Ellen Southard, co-Vice Chair Ecosystem Coordination Board

Robyn Densen, Pierce County Council and South Puget Sound Action Area representative

Tom Kantz, South Puget Sound Action Area alternate representative

Elizabeth McManus, Alliance for a Healthy South Sound LIO Coordinator

9/30/24

CITY OF LACEY PLANNING COMMISSION WORK SCHEDULE

**Planning Commission Meeting
October 9, 2024**

Packets due: October 4, 2024

1. **Work Session:** SB 5290 Permit Processing Intro Briefing
2. **Work Session:** CAO Draft Review
3. **Work Session:** Comp Plan Outreach Update/Survey

**Planning Commission Meeting
October 23, 2024**

Packets due: October 18, 2024

1. **Work Session:** Public Works Standards
2. **Work Session:** Commute Trip Reduction Plan

**Planning Commission Meeting
November 13, 2024**

Packets due: November 8, 2024

1. **Public Hearing:** SB 5290 Permit Processing
2. **Public Hearing:** Critical Areas Ordinance
3. **Work Session:** Public Works Standards
4. **Work Session:** Comp Plan Outreach/Survey Results

**Planning Commission Meeting
November 27, 2024**

Meeting Canceled

Pending Items: PWS: 12/11; 1/22
Comp Plan Vision, Themes and Goals: 12/11
Meeting to be canceled: 12/25