
Chapter 14.28 WETLANDS PROTECTION

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14.28.010 Findings of fact.

The city council of the city of Lacey hereby finds that:

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

B. In their natural state, wetlands provide many valuable social and ecological services, including:

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

C. Development in wetlands results in:

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

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

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

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

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

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

14.28.020 Purpose.

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

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

1. Impeding flood flows, reducing flood storage capacity, or impairing natural flood control functions, thereby resulting in increased flood heights, frequencies, or velocities on other lands;

2. Increasing water pollution through location of domestic waste disposal systems or stormwater systems in wetlands; unauthorized application of pesticides and herbicides; disposal of solid waste at inappropriate sites; creation of unstable fills; or the destruction of wetland soils and vegetation;
 3. Increasing erosion;
 4. Decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
 5. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;
 6. Decreasing habitat for fish and other forms of wildlife;
 7. Adversely altering the recharge or discharge functions of wetlands, thereby impacting ground water or surface water supplies;
 8. Significantly altering wetland hydrology and thereby causing either short- or long-term changes in vegetational composition, soils characteristics, nutrient cycling, or water chemistry;
 9. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
 10. Interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird watching, photography and other passive uses; or
 11. Destroying or damaging aesthetic and property values, including significant public view sheds.
- C. The purposes of this chapter are to protect the public health, safety and welfare by preventing the adverse environmental impacts of development enumerated in LMC [14.28.010](#), and by:
1. Preserving, protecting and restoring wetlands functions and values by regulating development within wetlands and wetland buffers;
 2. Protecting the public against losses from:
 - a. Unnecessary maintenance and replacement of public facilities, including the dredging of ports and navigation channels;
 - b. Publicly funded mitigation of avoidable impacts;
 - c. Cost for public emergency rescue and relief operations; and
 - d. Potential litigation from improper construction practices authorized for wetland areas;
 3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of wetlands;

4. Providing city of Lacey officials with information to evaluate, approve, condition, or deny public or private development proposals;
5. 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 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. “Preservation” - actions taken to ensure the permanent protection of existing high quality wetlands.

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

H. “Department” means the Washington State Department of Ecology.

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

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.

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.

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

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.

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

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

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.

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.

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.

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.

T. “High quality wetlands” are those regulated wetlands which meet the following criteria:

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

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.”

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.”

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.”

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.

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.

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 subdivision ordinance or a lot legally established after adoption of the city of Lacey subdivision regulations by recording of a building site plan, subdivision or short subdivision at the county auditor’s office. The definition of lot shall be that definition used in the Lacey subdivision ordinance (LMC [15.02.020\(Y\)](#)).

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.

BB. “Mitigation” includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation in the following order of preference is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;

6. Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures.

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

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

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

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.

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."

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.

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.

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.

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.

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.

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

NN. “Regulated activities” means any of the following activities which are directly undertaken or originate in a regulated wetland or its buffer:

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
2. The dumping, discharging, or filling with any material;
3. The draining, flooding, or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition, or expansion of any structure;
7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland or any other activity taking place in a wetland or buffer involving the modification of vegetation falling under the jurisdiction of the city’s Tree and Vegetation Protection and Preservation Ordinance;
8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.

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. 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. 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;

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.

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

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

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.

SS. "Serviceable" means presently usable.

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.

UU. "Water-dependent" means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.

VV. "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.

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

XX. “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.

YY. “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).

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

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

BBB. “Wetland mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 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, 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 conflicts with this chapter, that which provides more protection to wetlands and wetland buffers shall apply unless specifically provided otherwise in this chapter.
- B. The city of Lacey is authorized to adopt written administrative procedures for the purpose of carrying out the provisions of this chapter.
- C. The city of Lacey shall not grant any approval or permission to conduct a regulated activity in a wetland or wetland buffer until the requirements of this chapter have been fulfilled including but not limited to action on the following: building permit, commercial or residential; site plan; special or conditional use permit; franchise right-of-way construction permit; grading and land clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; binding site plan, utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter. (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. The approximate location and extent of wetlands in the 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 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, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The city of Lacey shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant may be charged for the costs incurred.

C. Where the 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 shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the city of Lacey shall, at the applicant's expense, obtain expert services to render a final delineation. (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 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 pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the 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 pursuant to the quasi-judicial review procedures contained in Section 1C.050 of the 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](#). (Ord. 1496 §16, 2016; Ord. 1215 §7, 2003; Ord. 935 §7, 1992; Ord. 912 §1 Sec. 5.4, 1991).

14.28.150 Repealed.

Repealed by [Ord. 1192](#). (Ord. 912 §1 Sec. 6.1, 1991).

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 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 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. 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](#). (Ord. 912 §1 Sec. 6.3(b), 1991).

14.28.190 Application information requirements.

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

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

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

B. The city of Lacey may require additional information, including, but not limited to, a wetland report that contains an assessment of wetland functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic, or other values of a wetland; a study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter. The city of Lacey shall maintain and make available to the public all information applicable to any wetland and its buffer. (Ord. 1505 §9, 2017; Ord. 1192 §33, 2002; Ord. 912 §1 Sec. 6.3(c), 1991).

14.28.200 Repealed.

Repealed by [Ord. 1192](#). (Ord. 912 §1 Sec. 6.3(d), 1991).

14.28.210 Repealed.

Repealed by [Ord. 1192](#). (Ord. 912 §1 Sec. 6.3(e), 1991).

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 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 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](#). (Ord. 912 §1 Sec. 6.4(b), 1991).

14.28.250 Repealed.

Repealed by [Ord. 1192](#). (Ord. 912 §1 Sec. 6.4(c), 1991).

14.28.260 Repealed.

Repealed by [Ord. 1192](#). (Ord. 1012 §2, 1995; Ord. 912 §1 Sec. 6.4(d), 1991).

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.

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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.

~~Criteria for determination of the appropriate category of wetland and functions and values established as follows based on the category of wetland and the habitat score as determined by a qualified professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology), shall be as identified in the publication used by the Department of Ecology for wetland protection and impact mitigation; Wetlands in Washington State Volume 2 - Protecting and Managing Wetlands Appendix 8-C. The specific strategy to be applied from this section shall be the “Modified Buffer Widths in Alternative 3 Using a Graduated Scale for the Habitat Functions (Alternative 3A).” This methodology shall be applied except when the community and economic development director, through consultation with the Department of Ecology, determines that another methodology better addresses best available science and/or the specific circumstances of the wetland and wetland protection needs.~~

Commented [AC1]: Table 3-1 #2

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 6 or more points for habitat function, the following conditions must be maintained in order to use the standard buffers, as follows:

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a. If an existing, relatively undisturbed vegetated corridor at least 100 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 C.2 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.

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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 (a) above, exists on the parcel, but is not provided, standard buffer widths must be increased by 33%.

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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

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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.

Points for Habitat from Wetland-Rating Form	3	4	5	6	7	8	9
Alternative 3A High-Intensity	80	100	140	180	220	260	300
Alternative 3A Low-Intensity	60	75	105	135	165	195	225

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 wetlands	150		
I: All others	75	110	225
II: Estuarine wetlands	110		
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 A-1 shall be 25% greater)

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> Direct lights away from wetland
Noise	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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

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<u>Disturbance</u>	<u>Required Measures to Minimize Impacts</u>
<u>Stormwater runoff</u>	<ul style="list-style-type: none"> • <u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u> • <u>Prevent channelized flow from lawns that directly enters the buffer</u> • <u>Use Low Intensity Development techniques (per PSAT publication on LID techniques)</u>
<u>Change in water regime</u>	<ul style="list-style-type: none"> • <u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</u>
<u>Pets and human disturbance</u>	<ul style="list-style-type: none"> • <u>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</u> • <u>Place wetland and its buffer in a separate tract or protect with a conservation easement</u>
<u>Dust</u>	<ul style="list-style-type: none"> • <u>Use best management practices to control dust</u>
<u>Disruption of corridors or connections</u>	<ul style="list-style-type: none"> • <u>Maintain connections to offsite areas that are undisturbed</u> • <u>Restore corridors or connections to offsite habitats by replanting</u>

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(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 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](#). (Ord. 1215 §9, 2003; Ord. 1012 §3, 1995; Ord. 935 §5 (part), 1992).

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](#). (Ord. 912 §1 Sec. 7.1(f), 1991).

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

1. That the proposed project is water-dependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative pursuant to 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 determines that alteration of a wetland and/or wetland buffer is necessary and unavoidable, the city of Lacey shall set forth in writing in the file it maintains regarding a permit application its findings with respect to each of the items listed in this subsection. (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 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 shall require, as a condition of any approval issued pursuant to this chapter, that the sensitive area tract or tracts created pursuant to this section be protected by one of the following methods determined by the city of Lacey:

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

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

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

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

3. *Signage.*

- a. *Temporary Markers.* The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the city of Lacey prior to the commencement of permitted activities. This temporary

marking shall be maintained throughout construction and shall not be removed until permanent signs are in place.

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

c. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one 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 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 prior to the commencement of approved activities. Such field markings shall be maintained throughout the duration of the approval.

2. The city of Lacey may attach such additional conditions to the granting of approvals as deemed necessary to assure the preservation and protection of affected wetlands and to assure compliance with the purposes and requirements of this chapter. (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 shall require the applicant of a development proposal to provide financial security acceptable to the city of Lacey in an amount and with surety and conditions sufficient to fulfill the requirements of 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 may utilize the financial security to fulfill obligations of the approval and take any other steps necessary to gain compliance with approval conditions including instituting an appropriate action in a court of competent jurisdiction. The city of Lacey shall release the financial security upon determining that:

1. All activities, including any required 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 shall require the holder of an approval issued pursuant to this chapter to post financial security acceptable to the city of Lacey in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the approval or by this chapter perform satisfactorily for a minimum of two years after they have been approved or accepted. The city of Lacey shall release the financial security upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or compensatory mitigation have been satisfactorily met for the required period. For compensation projects, the performance standards shall be those contained in the mitigation plan developed and approved during the review process pursuant to LMC [14.28.510](#). The maintenance security applicable to a compensation project shall not be released until the city of Lacey determines that performance standards established for evaluating the effect and success of the project have been met. (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 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 shall provide notice of its actions pursuant to the requirements of Section 1C.070 of the 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.

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 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 finds that the compensation project is associated with an activity or development otherwise permitted and that the restored, created, or enhanced wetland will be as persistent as the wetland it replaces. Additionally, applicants shall:

- A. Demonstrate sufficient scientific expertise, supervisory capability, and financial resources to carry out the project;
- B. Demonstrate the capability for monitoring the site and to make corrections during this period if the project fails to meet projected goals; and
- C. Protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for long-term persistence of the compensation area.
- D. 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 and Type of Wetland	Creation or Re-establishment	Restoration
Category I: Bog, Natural Heritage Site	Not considered possible	Case by case
Category I: Mature Forested	6:1	12:1
Category I: Based on Functions	4:1	8:1
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 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.

2. *Decreased Replacement Ratio.* The 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.

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 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](#). (Ord. 912 §1 Sec. 7.5(f)(4), 1991).

14.28.480 Repealed.

Repealed by [Ord. 1215](#). (Ord. 912 §1 Sec. 7.5(f)(5), 1991).

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 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. The applicant or violator shall receive written approval of the mitigation plan by the city of Lacey prior to commencement of any wetland restoration, creation or enhancement activity. Unless the city of Lacey, in consultation with a qualified professional or technical wetland consultant or scientist, determines, based on the size and nature of the development proposal, the nature of the impacted wetland, and the degree of cumulative impacts on the wetland from other development proposals, that the scope and specific requirements of the mitigation plan may be reduced from what is listed below, the mitigation plan shall contain at least the following components:

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. Monitoring may include, but is not limited to:

1. Establishing vegetation plots to track changes in plant species composition and density over time;
2. Using photo stations to evaluate vegetation community response;
3. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);
4. Measuring base flow rates and stormwater runoff to model and evaluate water quality predictions, if appropriate;
5. Measuring sedimentation rates, if applicable; and
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 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 in the administration of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards. (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 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 may issue a temporary emergency wetlands approval if:

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

2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.
- B. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act and shall:
1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days; and
 2. Require, within this ninety-day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the ninety days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.
- C. Issuance of an emergency permit by the city of Lacey does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities.
- D. The emergency permit may be terminated at any time without process upon a determination by the city of Lacey that the action was not or is no longer necessary to protect human health or the environment. (Ord. 1505 §18, 2017; Ord. 912 §1 Sec. 8.1, 1991).

14.28.560 Enforcement.

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

city of Lacey may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

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. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

6. *Application for Remission or Mitigation.* Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the city of Lacey for remission or mitigation of such penalty. Upon receipt of the application, the city of Lacey by action of the city hearings examiner under the provision of 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](#). (Ord. 912 §§1, 10, 1991).

14.28.590 Amendments.

These regulations and the city of Lacey zoning map may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning wetland location, soils, hydrology, flooding, or wetland plants and wildlife become available. (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 shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a perpetual conservation restriction with the city of Lacey or a nonprofit organization to permanently control some or all regulated activities in the wetland shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the controlled wetland to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 912 §1 Sec. 13, 1991).

The Lacey Municipal Code is current through Ordinance 1567, passed May 14, 2020.

Disclaimer: The city clerk's office has the official version of the Lacey Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.ci.lacey.wa.us](http://www.ci.lacey.wa.us)

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