

Unique Commenters -> 13

Unique ID	Date	Commenter Name	Contact Email	Type of Comment	Summary	County Response	Response Method	Response Date	Topic
1A	1-Apr-22	Esther Kronenberg	wekrone@gmail.com	Support	Supports the landscape approach to conserving habitat for species survival in the Thurston County HCP. Based on experiences of people she knows who have gophers and had to develop an individual HCP, she feels that the countywide HCP should ensure that people who take care of their property are rewarded, not penalized, and that the areas set aside for conservation make a meaningful contribution to species survival.	Will include on record and provide to Planning Commission	OnLineForm	4/4/2022	Conservation
1B	2-Apr-22	Esther Kronenberg	wekrone@gmail.com	Support	She is also concerned about loss of good farmland, and feels that conservation easements should be encouraged and agriculture be given high priority under the countywide HCP.	Will include on record and provide to Planning Commission	OnLineForm	4/4/2022	Agriculture/Farm
2	4-Apr-22	Gerry Barclay	ketchie1@gmail.com		Believes that gophers are present in McAllister Grove Community Park in Lacey and that the County should consider this area as an HCP preserve.	Will include on record and provide to Planning Commission	Email	4/4/2022	Other
3	3/31/2022	Josh Stottlemeyer	toodeep_one@yahoo.com		<p>While I am all for responsible development, development cannot be limited to only those with extensive means. As I understand these rules, gopher mitigation will cost the average individual home construction disturbing .25 acres, between \$2750 and \$19,800 and that is with no gopher presence identified. \$20k in additional costs to build a home (of any size) on a parcel where there were no gophers found, but at on time they were found nearby on a parcel 656 ft away, is too high. As someone who tried to build a house in Thurston County I would rather have the 6 month study done than spend \$20,000. Ultimately the costs to build in the county were too high and we backed out. This is yet another hurdle. The option for a study should not go away, and the mitigation fees need to be capped on individual residential construction at something much more reasonable. There should be a significantly lower fee for no onsite presence of gophers regardless of soil type or if they may be near by. Building permit fees in Thurston county are already among the highest, if not the highest in Washington which already excludes a significant number of people from being able to afford to build here. What these rules are doing is making it so only larger business and high income individuals can afford to build a house or business facility in Thurston County and it's not right. Lewis County is having a residential building boom, because it's much more reasonable to build there. Many of those people would like to live in Thurston County, but they can't afford it. The other thing these exorbitant costs do is encourage people to build unpermitted structures and kill gophers when they find them on their property. It's already happening and this will just make it worse. Do the gophers and spotted frogs need protection, sure, but this cost seems too high without proof that they are on the property. You are just making living in Thurston County more expensive than it has already become. A great alternative option is to charge large developers, giant warehouses, things like that a much higher fee so the citizens of the county can pay a lower fee.</p> <p>Thank you for your service as a Planning Commissioner.</p> <p>Kind Regards, Josh Stottlemeyer</p>	Will include on record and provide to Planning Commission	OnLineForm	4/4/2022	Fee
4	1-Apr-22	Loretta Sappanen	Laurel.Lodge@Comcast.net	Support	<p>As the plan is implemented, I encourage these actions</p> <p>1) Prioritize non-farmable land for reserve acreage: As reserves are created, give priority to seeking and accepting sales offers for land that is least likely to be farmed in the future. For example, avoid reserves in the YPG N area where most of the land is currently in agriculture and is of high quality that will be farmable in the future. The area deserves a conservation easement option and the creation by the county of a mitigation program for loss of agricultural land.</p> <p>2) If farmland is converted to a reserve and farming the land is excluded from the land, the County should mitigate for that farmland loss. The Thurston County Agricultural Advisory Committee is proposing a mitigation strategy that could be adopted for the HCP as well as other conversions of land out of ag production.</p> <p>3) Add affordability and affirmative farming language to the County's Conservation Easements: I propose language that can better assure that land stays in farming by continuing to be affordable to future farmers.</p>	Will include on record and provide to Planning Commission	Email	4/4/2022	Agriculture/Farm
5	4-Apr-22	Ben Altermann	2benalterman@gmail.com	Information Requested	If the wait for gopher inspections is due to personnel availability, then developers could be allowed to pay for expedited assessment, which would not violate the spirit of the law.	Will include on record and provide to Planning Commission	Email	4/4/2022	Schedule
6	5-Apr-22	David P. Phillips	dpphillips@hotmail.com	Against	This is just a boondoggle. Huge waste homeowners money and all it does is force them to kneel before the Great and All Knowing County. It's time to put this plan out to the landfill. Maybe the gophers will move there.	Will include on record and provide to Planning Commission	Email	4/5/2022	Other

Unique ID	Date	Commenter Name	Contact Email	Type of Comment	Summary	County Response	Response Method	Response Date	Topic
7	6-Apr-22	Craig Partridge	Craigpartridge24@msn.com	Policy Question	To: County Commission. I strongly support the proposed HCP and urged the County Commission to adopt it when finalized. However, I do have a concern. I provided comments on the draft EIS in a November 4th 2021 letter. In summary, I believe the county might create and issue invalid mitigation credits, if those credits are simply based on take-avoidance at the new conservation reserves. This is because take-avoidance at those high-quality sites is already provided in the baseline condition by the USFWS' ongoing regulatory authority Under ESA. Simple take-avoidance by the county adds no protection and shouldn't generate a credit. Valid credits will require county conservation actions that clearly go beyond the take avoidance already provided by ESA. The HCP does describe several of such additional conservation actions, but also suggests credit for simple take-avoidance. Details on my concern can be found in my November 4th letter. Thank you for your attention.	Will include on record and provide to Planning Commission	Email	4/6/2022	Conservation
8	6-Apr-22	James Tollas	jetbinner@gmail.com	Information Requested	Questions fairness and equity of the majority of the HCP mitigation fee being paid by those developing now. When previous developments/impacts also contributed to the situation. Questions about MPG population	Will include on record and provide to Planning Commission	Email	4/6/2022	Fee
9	6-Apr-22	Olympia Master Builders	jason@omb.org	Policy Question	Provided clarifications that would like to be addressed	Will include on record and provide to Planning Commission	Email	4/6/2022	
10	6-Apr-22	Burgess and Associates		Policy Question	Provided clarifications that would like to be address/added to the text language of the proposed amendments.	Will include on record and provide to Planning Commission	Email	4/6/2022	Other
11	6-Apr-22	George Rother	georgerother@hotmail.com	Support	I have resided in Thurston County for close to 50 years. The environment and the balance between development and natural areas has been key to making this area my home. I have been keenly aware of the many disputes that have arisen as a result of development on rural land in the county. I believe that the proposed HCP is a necessary step towards protecting threatened and endangered species and allowing landowners to develop their property without undue regulation and litigation. I fully support the county's efforts to create an HCP for our region.	Will include on record and provide to Planning Commission	Email	4/6/2022	Other
12	6-Apr-22	Sherry Buckner	bucknersherry@hotmail.com	Support	<p>I have been a resident of Thurston County for nearly 5 decades. Currently I live just outside southwest Tumwaters' urban growth area. I strongly support the Thurston County Habitat Conservation Plan. I feel that it creates a more effective approach to both conservation land and various kinds of urban growth.</p> <p>I am grateful for the implementation of USFWS and their role in overseeing and increasing the effectiveness of endangered species habitats. My perspective has been that the previous approach to conservation for endangered species and new development is now outdated. The previous approach allowed for processes that encumbered the permitting process, created land uses / processes that were not successful. These land use processes did not adequately protect or meet the goals of saving endangered species and their habitat.</p> <p>The Habitat Conservation Plan seems more intelligent, more streamlined and more effective for all parties involved.</p>	Will include on record and provide to Planning Commission	Email	4/6/2022	Conservation
13	6-Apr-22	Black Hills Audubon Society	elizrodick@gmail.com	Support	Question regarding how the public can track permit applications Commented enforcement should be through the provision of Title 26 TCC and indicated other authority the Director may have to remedy an enforcement action. Provided information regarding state enforcement and penalty provision regarding threatened and endangered species.	Will include on record and provide to Planning Commission	Email	4/6/2022	Other
14	6-Apr-22	Barbara Fandrich	Barbara.Fandrich@bifandrich@hotmail.com	Support	AA statement of support for the HCP	Will include on record and provide to Planning Commission	Email	4/6/2022	

From: [Esther Kronenberg](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Saturday, April 2, 2022 4:20:10 PM

Name: Esther Kronenberg

Email: wekrone@gmail.com

Comment: I support the landscape approach to conserving habitat for species survival in the Thurston County HCP.

In doing research on the HCP in 2017, I met a Rochester resident who was forced to go through the federal government to obtain permission for his son to build a house on 5 acres of his property. They had to submit their own HCP which was expensive and time consuming. Worse, it did not accomplish the goal of conservation of habitat, as it made the owner set aside 1 acre for habitat. However, gophers don't just live in 1 acre, and so the conservation was meaningless. What was particularly unfair was that this homeowner had kept meticulous care of his property, preserving all the native vegetation and so attracted gophers, while his neighbor's neglected property was overrun by invasive vegetation that made the land unattractive to gophers. This person was penalized for being a responsible caretaker of his land.

The HCP should insure that people who take care of their property are rewarded, not penalized, and that the areas set aside for conservation make a meaningful contribution to species survival.

I also encourage that the HCP take full account of the importance of our agricultural land. It should not sacrifice good farmland for reserve acreage, but give priority to land that is least likely to be farmed in the future. The area around Yelm highway that is being subdivided into 4 acre lots is a prime example of farmland being lost.

If farmland is lost, the County should mitigate for that loss. Agricultural use should be a high priority for conservation in the County, and conservation easements for agricultural land should be highly encouraged and should include affordability and affirmative farming language in them to insure that the land is used for agricultural purposes.

To insure affordability into the future despite any rise in real estate values, conservation easements should limit future sales prices.

They should also limit the amount of new infrastructure allowed on land under farm conservation easements to those that are directly related to farming.

Thank you for this opportunity to comment.

Time: April 2, 2022 at 11:20 pm

IP Address: 75.172.10.15

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Gerry](#)
To: [Christina Chaput](#)
Subject: Re: Mazama mole protection
Date: Monday, April 4, 2022 8:16:03 AM

OOP's - Mazama gophers *not* moles. Moles on the brain as I have been trying in multiple, humane ways to persuade them to vacate my lawn and gardens.

Sorry for the mistake.

Gerry Barclay

On Mon, Apr 4, 2022 at 7:21 AM Gerry <ketchie1@gmail.com> wrote:

Hello,

I'd like to give some input on the Mazama mole protection plan. You may be aware of the following but just in case

A year or two ago, a zoologist did an informal survey of McAllister Grove Community Park in Lacey and found evidence of the moles living there. There is also a large population of frogs residing in the wetland (which btw is unprotected). I don't know what species they are but something to check into.

The park is also home to small groves of Garry Oaks (aka Oregon White Oaks) - *Quercus garryana* - which I believe is still a protected species.

There was a proposal at one time to turn the park into a preserve. Given all that should be protected - Mazama moles (maybe), wetlands, Garry oaks - it seems a "natural" and perhaps something the county could consider.

Regardless, in the likelihood that Mazama moles reside in the park, I urge the county to check it out and include it in their protection plan if indeed the moles are in residence.

Thank you for your time.

Gerry Barclay
Faculty emeritus - biology
Highline College

From: [Sandler & Seppanen](#)
To: [hcpinfo](#)
Subject: Comments on Thurston County Habitat Conservation Plan,
Date: Friday, April 1, 2022 11:48:10 AM

Comments on Thurston County Habitat Conservation Plan, Loretta Seppanen, 04/01/2022

I support the landscape approach to conserving habitat for species survival in the Thurston County Habitat Conservation Plan. I especially appreciate including the balance the goals of habitat protection and farmland preservation by including farmland easements.

As the plan is implemented, I encourage these actions

1. **Prioritize non-farmable land for reserve acreage:** As reserves are created, give priority to seeking and accepting sales offers for land that is least likely to be farmed in the future. For example, avoid reserves in the YPG N area where most of the land is currently in agriculture and is of high quality that will be farmable in the future. The area deserves a conservation easement option and the creation by the county of a mitigation program for loss of agricultural land.
2. **If farmland is converted to a reserve and farming the land is excluded from the land, the County should mitigate for that farmland loss.** The Thurston County Agricultural Advisory Committee is proposing a mitigation strategy that could be adopted for the HCP as well as other conversions of land out of ag production.
3. **Add affordability and affirmative farming language to the County's Conservation Easements:** I propose language that can better assure that land stays in farming by continuing to be affordable to future farmers. Here are examples of affordability and affirmative language for conservation easements on farmland:

Affirmative requirement to farm the land:

Livelihood from Farming. Grantor shall actively participate in providing day-to-day management of commercial farming activities on the Protected Property. Grantor shall maintain its State of Washington Open Space designation as farm and agricultural land pursuant to RCW 84.34, as amended, and shall fulfill current gross income eligibility as farm and agricultural land under the State of Washington Open Space Tax Act.

Commercial Agricultural Activities. Grantor shall ensure the Protected Property is used for commercial agricultural activities. "Commercial Agricultural Activities" means any permitted agricultural activity that results in a substantial portion of crops, livestock, or livestock products cultivated, grown, raised, and/or produced on the Protected Property being sold, traded, or otherwise exchanged and/or consumed as food by livestock that is used for either direct or indirect food consumption as part of a commercial agricultural enterprise. If Grantor is unable to continue Commercial Agricultural Activities on the Protected Property for any reason, Grantor shall obtain the prior, written consent of Grantee. During the time that Grantor has ceased Commercial Agricultural Activities with the permission of Grantee, Grantor shall nevertheless keep the Protected Property available for Commercial Agricultural Activities by a Qualified Person, as defined below, identified by Grantor or Grantee on terms and conditions agreed to by Grantor, Grantee, and the Qualified Person. If Grantor is unable to resume Commercial Agricultural Activities within one (1) year of Grantor's cessation of Commercial Agricultural Activities on the Protected Property, Grantee shall have the right, but not the obligation, to enter the property to restore, prepare, maintain, and/or lease the Protected Property for agricultural production. Grantor shall use best efforts to identify a Qualified Person to lease some or all the Protected Property for a period not more than five years. For

purposes of this Easement, a "Qualified Person" means a person or group of persons who have demonstrated to Grantee's express satisfaction that they understand and accept the terms of this Easement and are willing and able to use the Protected Property in full compliance with all the restrictions and requirements established in this Easement.

Maintain Water Rights if Any:

Duty to Cooperate. In furtherance of the Purpose of this Easement, Grantor shall cooperate with Grantee to help assure the maintenance of its water rights.

Limiting future sales price to maintain future affordability for agricultural purposes:

Purchase Price on Sale. If Grantor sells the Protected Property, the purchase price shall not exceed the aggregate of (1) the agricultural restricted value of the land, plus (2) the value of the RDU, which shall not exceed Percent (200%) of the then-median value of the residences in Thurston County, plus (3) the value of all other Improvements, including all other buildings.

Limiting new infrastructure on the land:

Additional Agricultural Improvements. Grantor shall not make any Additional Improvements except for the following:

Temporary improvements, such as portable greenhouses and other portable improvements or improvements that can be easily removed;

Improvements that are reasonably necessary for Agricultural Activities (excluding Accessory Uses) in compliance with the limitation on Impervious Surfaces set forth in Section;

Expansion or enlargement of temporary agricultural Improvements; "

Installation of a well or drain field outside but only to the extent necessary to make any RDU, ADU or AEDU habitable; and

Fences to mark the Protected Property's boundaries and/or define agricultural areas.

From: Ben Altermann

To: hcpinfo

Date: Monday, April 4, 2022 at 3:07 pm

Name: Ben Altermann

Email: 2benalterman@gmail.com

Comment: If the wait for gopher inspections is due to personnel availability, then developers could be allowed to pay for expedited assessment, which would not violate the spirit of the law.

If, however, the wait for gopher inspections is due to a need to time assessments according to the gopher's biological rhythms, then developers should wait for a proper assessment to be made, which is what the law intends.

Time: April 4, 2022 at 10:07 pm

IP Address: 73.83.239.237

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: David P. Phillips

To: hcpinfo

Date: Tuesday, April 5, 2022 at 4:15 pm

Name: David P Phillips

Email: dpphillips@hotmail.com

Comment: This is just a boondoggle. Huge waste homeowners money and all it does is force them to kneel before the Great and All Knowing County.

It's time to put this plan out to the landfill. Maybe the gophers will move there.

Time: April 5, 2022 at 10:19 pm

IP Address: 50.251.254.30

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: Craig E. Partridge

To: hcpinfo

Date: Wednesday, April 6, 2022 at 8:32 am

Name: Craig E. Partridge

Email: Craigpartridge24@msn.com

Comment: To: County Commission. I strongly support the proposed HCP and urged the County Commission to adopt it when finalized. However, I do have a concern. I provided comments on the draft EIS in a November 4th 2021 letter. In summary, I believe the county might create and issue invalid mitigation credits, if those credits are simply based on take-avoidance at the new conservation reserves. This is because take-avoidance at those high-quality sites is already provided in the baseline condition by the USFWS' ongoing regulatory authority Under ESA. Simple take-avoidance by the county adds no protection and shouldn't generate a credit. Valid credits will require county conservation actions that clearly go beyond the take avoidance already provided by ESA. The HCP does describe several of such a additional conservation actions, but also suggests credit for simple take-avoidance. Details on my concern can be found in my November 4th letter. Thank you for your attention.

Time: April 6, 2022 at 3:31 pm

IP Address: 174.246.83.238

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [James E Tolaas](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Wednesday, April 6, 2022 12:35:34 PM

Name: James E Tolaas

Email: jetbiner@gmail.com

Comment: As context for my comments and questions -- I am originally from the state of Minnesota. My education includes bachelor degrees in Biological Sciences and Civil Engineering and I continue to be licensed as a professional engineer. I spent over 4 decades working for Ramsey County in several job capacities included 9 years as Environmental Services Engineer, ultimately transitioning to design, construction and program management. I retired as County Engineer and Director of Public works in 2018. I purchased my current Yelm residence in 2019. Environmental awareness, sensitivity, and regulation exploded during my career, becoming integral to project development and delivery of public services. Ramsey was often a leader in that evolution, consistently working to educate, build partnerships, and facilitate innovative solutions to meet emerging regulatory frameworks. And while regulations were always critical to our work, inclusion with cooperative facilitation to help people do the right thing was by far the greater tool for getting things done.

With that said, it is difficult for me as a newcomer to fully evaluate the body of work that has been developed over the past decade -- literally hundreds of pages. There has clearly been an enormous amount of technical work to provide sound information for decision making. Further the gopher species is really the only one I can claim significant awareness about as it was flagged as potential permit factor for any future outbuilding when purchasing my home. Subsequent anecdotal accounts from neighbors coupled with reviewing County documents and various sources on-line, it appears the initial declaration of "threatened" status by US Fish and Wild Life and local political support set off a firestorm of criticism from individuals, developers, and contractors. Based on that level of understanding I would agree that the HCP and proposed County Ordinance goes along way toward streamlining the permit issue and creating a credible process for consistent impact evaluation. No approach is perfect and I assume appropriate modifications can and will be implemented as the ordinance is administered. However, I do raise the following concerns/questions for consideration.

1) As a general comment on process, more specifically how HCP is paid for -- I strongly question the "fairness and equity" of assigning the largest share (88%) of costs to administer HCP implementation to property owners now constructing improvements on land considered potential habitat for identified species. I would argue the severity of the current threat to identified species, and underlying impetus, to create the HCP is the result of past land development impacts/practices. While I understand there is no practical way to retrace/evaluate previous development impacts on a parcel basis, it is possible to develop a countywide cost allocation and administer its collection through real estate taxes, not unlike funding for schools, parks, and assessments. If saving threatened species is an important county-wide issue or value, its only reasonable to apportion at least some of estimated HCP costs to previous habitat damage. I also maintain the state and federal governments also have a financial responsibility in helping mitigate, at the very least, a portion of HCP costs related to previous environmental damages underlying the problem we now face.

A simple illustration of cost equity is as follows. The home across the street from mine has an

attached two car garage, three car detached garage, a large covered kennel area, and a barn/utility shed -- pretty typical of many homes in my area. My home has an attached two car garage and no other structures. The other house across the street is a modest manufactured home with a small detached two car garage. All three homes were built around the same time and sit on 5 acre lots. If I, or the owners of the manufactured home, sought to build an accessory shed or home addition in the future, any mitigation fee as may be defined under the HCP/ordinance would assign a cost to the owners. The property with the existing additional structures has impacted more area but will never incur mitigation fees under the new ordinance. More broadly, there are many examples of large homesteads with multiple buildings and related improvements that may have damaged significant habitat, but under the HCP will never incur mitigation fees. For wealthier families the fees on new improvements may be a minor issue but there are many families in Thurston County who are financially challenged, where a \$500 or \$1000 mitigation fee may be a hardship, and \$4,000 unmanageable. My point is past impacts are no different than new impacts in terms of effect on threatened habitat.

2) With respect to gopher populations in Thurston County, it appears the actual numbers of gophers and where they are located is unreliable due to differing field methodologies and seasonal "boom/bust" population swings that commonly occur. The consensus appears to be in the range of 5000 animals. Am I correct or is better information available? Also is there any documentation that evaluates the success of permit efforts over the past several years? Have gopher populations been positively affected by habitat regulation efforts?

3) Online sources suggest that the largest population of Mazama gophers is in Oregon, and also northern California. An estimate of 100,000 animals is identified for Oregon, distributed over a vastly larger area than sites identified in Washington. I would suggest it is reasonable to consider populations outside Thurston County in framing how critical the current "threatened" listing is on a broader scale, and whether more cost-effective mitigation habitat or other initiatives could be created outside of Thurston County. This follows a similar idea that has had some application in dealing with loss of wetlands in urban areas, where the quality of mitigation/replacement within the urban environment is costly and marginally effective for wildlife habitat. In some cases, a neighboring rural county may be able to recover large tracts of former wetland at modest cost by removing drain tile systems in agricultural fields. This approach can be controversial but from an environmental standpoint political boundaries were not part of the natural system.

Time: April 6, 2022 at 7:35 pm

IP Address: 216.227.115.52

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

April 6, 2022

Thurston County Planning Commission
C/O Christina Chaput
2000 Lakeridge Dr SW #152
Olympia WA 98502

Dear Thurston County Planning Commissioners:

We at Olympia Master Builders, as an active and engaged partner, appreciate the work that has been put in on issues relating to the Mazama pocket gopher listing and are in full support of the County's Habitat Conservation Plan (HCP). OMB also appreciates the opportunity to comment on the HCP Implementation Ordinance. One question that arose while reviewing this plan was why the County chose to make this a stand-alone ordinance instead of adding HCP language to the Critical Areas Ordinance.

During review we noted a few items that would help with clarification for the end user:

17.40.020

- Include the scope of activity within the code definition of Covered Activity.
- Define the responsibility of the property owner.
- Provide more consistency with definitions and terms.

17.40.40

- Section W.-Clarify which record, "on record," is referring to in this section.

17.40.065

- Section 4-The development plan for the application needs to correspond with the definition activities for the development envelope.
- Section 9-How are the mitigations fees going to be calculated?

17.40.070

- Section G.-Will there be a process in place for an applicant to access what credits are available prior to applying? Does the County plan to keep and update the information for public access?

We also feel that it is extremely important to include building and development stakeholders as part of the Habitat Conservation Implementation Team. As with any new plan there will be kinks and issues that need to be worked through and having the advice of people working in the industry will be beyond valuable as we move forward.

Thank you for this opportunity to comment. If you wish to correspond with us further, please reach out at angela@omb.org or 360-754-0912

Thank you,



Angela White
Executive Officer
Olympia Master Builders

- Olympia Master Builders -
BUILDING STRONG COMMUNITIES,
ONE HOME AT A TIME.

www.omb.org

April 6, 2022

TRANSMITTED VIA EMAIL**christina.chaput@co.thurston.wa.us**

Thurston County Planning Commission
c/o Christina Chaput
Community Planning Manager
Thurston County Community Planning and Economic Development Department
2000 Lakeridge Drive SW
Olympia, Washington 98502

**Re: Comments on Thurston County's Habitat Conservation Plan ("HCP")
Implementing Ordinances
Planning Commission Public Hearing – April 6, 2022**

Dear Thurston County Planning Commissioners:

This firm represents the Thurston County Chamber of Commerce ("Chamber") with respect to certain land use matters.

The Chamber has been actively engaged since 2011 on issues related to the listing of the Mazama pocket gopher under the Endangered Species Act ("ESA") in Thurston County. The gopher listing and resulting development restrictions have had a significant adverse impact on individual property owners and constrained development necessary to support and provide jobs and housing across Thurston County for nearly a decade. To that end, the Chamber fully supports approval of the County's Habitat Conservation Plan ("HCP"), which will provide much needed relief and certainty going forwards.

The County has faced many challenges resulting from the gopher listing, not the least of which is harmonizing the legal and regulatory requirements of the ESA (and the HCP) with the County's obligations under the state Growth Management Act ("GMA") (RCW 36.70A). Indeed, the proposed HCP implementing ordinances are without direct precedent in other GMA-planning jurisdictions, and the County staff is to be commended for their hard work to date.

The Chamber offers the following comments on the draft HCP Implementation Ordinance in an effort to clarify areas which may otherwise result in unintended dispute.

General Comments – New Ch. 17.40 (Habitat Conservation Plan Implementation Ordinance)

17.40.015 – Purpose. Recommend capitalizing "Take" in para. 2 to pull in the definition from the section below.

17.40.020 Applicability

The definition of “Covered Activity” refers to the HCP without further explanation. Since the applicability provision states this chapter applies to “all development considered a Covered Activity ...” the scope of those activities should be included within the code definition of Covered Activity, and not simply cross-referenced to a separate document. Otherwise, a user of the code cannot easily determine whether or if the chapter and its requirements apply.

Recommend the following clarifying changes to this section to define the responsibility of the property owner, carve out exempt or excluded activities, provide consistency with other definitions and terms, and eliminate the discussion of “vesting,” which is not a defined term.

17.40.020 (a) General – Applicability to Pending Applications

Unless otherwise provided for, this Chapter shall apply to all development considered a Covered Activity that impacts Covered Species. ~~For activities not covered it remains the~~ The Project Applicant remains responsible ~~responsibility of the property owner to ensure all land-use activities are following the~~ compliance with the ESA, whether or not such activities are covered by the Thurston HCP. Because this Chapter implements federal mandates under the Endangered Species Act, it is not a zoning or land use control ordinance for purposes of determining vested development rights under Washington law and shall apply to pending and future applications as of the Effective Date except as provided for in section 17.40.020(b).

17.40.020(b) Exclusions

The following are excluded from the provisions and requirements of this Chapter:

- A. ~~Projects~~ Unexpired construction and land use permits which ~~have been~~ were reviewed under the Thurston County Critical Area Ordinance (Title 24) following the procedures set forth in the 2018 USFWS Guidance for Assessing Potential Take of Mazama Pocket Gophers in Thurston and Pierce Counties ~~meeting Projects that meet~~ the following criteria:
 - 1. The review was completed d and concluded with negative screening results, and
 - 2. The screening negative results ~~are were reviewed and determined to be~~ valid per the 2018 USFWS Guidance, ~~or and~~
- ~~B. The construction or land use permit for which the review was performed is not modified. negative determination remains valid pursuant to any applicable County permit or authorization that is not modified and addresses the development or land use activity in question.~~
- ~~C. B.~~ Applications for mining activity. [Comment: are these truly “exempt” or is mining simply not covered under the HCP, meaning the CAO applies and an individual take permit may be needed?]
- ~~D. C.~~ Building on existing permitted/authorized footprint.
- ~~E. D.~~ Development for which the United States Fish and Wildlife Service has approved other mitigation procedures through the issuance of an individual 10(a)(1)(B) incidental take permit constituting full mitigation or through Section 7 consultation.
- ~~F. E.~~ Demolition permits.

G.F. Fully Forested Parcels as defined in Section 17.40.040.

G. Projects and activities that meet within the scope of the Mazama pocket gopher special 4(d) rule as provided in Federal Register Volume 79, No 68 page 19790 – 19794, as amended.

Finally, recommend clarifying if activities which are otherwise exempt from permitting, such as those exempt from building or grading codes, are also exempt from HCP permitting requirements under this chapter. Will those default to Title 24 regulation only? How will the regulated critical areas be defined for the property owner for those otherwise permit-exempt activities?

17.40.40 – Definitions

Recommend the following revisions:

General – multi-word defined terms should use capitalization throughout, i.e. “Development Permit”

K. “Development Envelope” means the geographic limits or the outer extent of the area or site to be altered or impacted by Development, including, but not limited to ~~the following without limitations;~~ buildings, ~~access~~ roads/driveways, wells, septic systems, and ~~other development~~ similar improvements.

L. “Development Permit” means any ~~discretionary~~ permit or authorization that approves a ground-disturbing activity related to for a ~~C~~covered Aactivity, including but not limited to ~~approval of a full structural building permit as well as a partial permit, such as a foundation-only permit, building permits, grading permits, r~~Right-of-way [development?] permit, subdivisions or plats, Plat, large lot subdivision, conditional use, special use permits, variances, binding site plans, ~~or development agreement,~~ or any other ~~discretionary~~ permit or approval which, authorizing a ground-disturbing activity in furtherance of a ~~C~~covered Aactivity. The term “Development Permit” does not include non-project planning actions of general applicability. Excluding actions of comprehensive plan application such as general such as comprehensive plan, plan amendments, zoning and rezoning, annexation, sub-area specific plans, and other similar area or regional land use planning actions not associated with a specific project.

O. “Fully Forested” means ~~those areas~~parcels with 100 percent tree canopy cover with shrub and fern understory.

W. “Species occupancy” a parcel is considered occupied by a Covered Species if the Department has information on record that indicates a Covered Species was observed through a species survey. The species survey may have been conducted by Department staff, a state or federal wildlife agency, or other qualified environmental professionals that resulted in a positive finding of a Covered Species. Positive findings include, without limitation, gopher mounds and audible calls by birds. Parcels that are subdivided after a species survey was completed are considered occupied if the species survey resulted in positive findings for the larger parcel (i.e. parent parcel).

Comment: what “record” is referred to by the highlighted provision? Is it County permit files, the WDFW PHS database, or other? The user ought to be able to locate the record being relied

on for this determination. Also, does this mean that parcel is deemed “permanently” occupied for purposes of the HCP implementation and mitigation fee calculations if it was once previously occupied, but is not now, or has not been for a period of years and is no longer suitable habitat due to surrounding development or other factors?

17.40.060 Application

This section is confusing as drafted. It appears that there needs to be a threshold review process to determine if the chapter applies at all (similar to current critical area screening), and then an applicant for a Covered Activity associated with a Development Permit (as defined in this Chapter) would provide an additional HCP application for review meeting the requirements of the HCP chapter instead of submitting what is required for a Critical Area Review Permit or other critical area review as part of a SEPA process. The way this section is currently written it appears to make the HCP application part of the Development Permit when it is intended to be a separate application subject to its own review and approval.

17.40.065 – Thurston HCP Application Submittal

Is the required GIS compatible file in section (3) readily accessible to the average property owner? This requirement will likely be a barrier for most small projects and Applicants. How, and will, the County provide the file and service to Applicants?

The “development plan” for the permit application (section (4)) should correspond with the “Development Envelope” definition activities. Also, the requirement calls for a site plan, but then asks for narrative information in part. This requirement should be better defined.

The requirement in section (7) should be for a narrative description describing compliance with avoidance and minimization and list the criteria for which compliance is required rather than referencing another document for the user to find them.

In Section (9), how is the estimated mitigation fee to be calculated? Is that going to be accessible to the Applicant on a worksheet or calculator that is to be used? It is unclear how the Applicant is supposed to be able to do this before the review steps in the next section (17.40.070) are done that assess the functional acres that are impacted. There is a later section 17.40.090 which talks about mitigation fees, but that section is not cross-referenced with this one.

17.40.070 - HCP Application Review Procedures

Section G. This section addresses what happens if there are “insufficient mitigation credits available” under the County HCP program and allows the County to impose alternate mitigation requirements in its “sole discretion.” How will an Applicant know if there are sufficient credits or not in the County system prior to submittal? Will that information be published and updated on the County’s website for transparency? In addition, it seems that this section should cross reference Section 17.40.100 which addresses other options than payment of the mitigation fee.

17.40.075 – Thurston HCP Approval Authority and Review Coordination

Section 17.40.075(B) is unclear. There should be a cross-reference here to Administrative Procedures (Ch. 20.60) which govern permit types and processing. The HCP permit should be

assigned a permit type and incorporated into this chapter as well, but it does not appear any amendments to Ch. 20.60 are proposed as part of the implementation package.

Section H. Does the certificate of inclusion run with the land when issued? Will it be recorded or otherwise reflected on title to the property or shown on the face of final plats for compliance as is done with other types of critical areas?

17.40.075 – Thurston HCP Approval Authority and Review Coordination

Section A references approving an HCP permit under this Chapter with conditions. It is unclear what conditions could be imposed on this type of permit, which ought to be issued as a matter of right provided that the requirements are met. In addition, this section states that decisions for other critical areas will be issued separately pursuant to TCC 24.05, which has its own appeal provisions. There can be only one open-record hearing for each project or application under RCW 36.70B.060, and so section 17.40.120 should specify that appeals of all critical area and HCP determinations will be consolidated for hearing and not heard separately.

For projects subject to SEPA, does the County intend to identify required HCP mitigation fees as part of its SEPA documents, as it would other types of mitigation fees? It seems that it should, given the basis of its legal authority, in which case the determination of the fee would also be subject to SEPA appeal provisions in separate code chapters.

17.40.090 – HCP Mitigation Fees

This section states that “HCP mitigation fees are hereby adopted” – but the text goes on to refer to the Fee Resolution as specifying the fees. The first sentence should probably be changed to be “authorized” rather than adopted. In addition, since the HCP implementing ordinance is being adopted as a stand-alone chapter, we strongly recommend that the ordinance plainly state the legal authority that the County is relying upon to impose HCP mitigation fees (or other in lieu requirements) on land use applications to avoid future potential dispute, as reported case law provides that (1) the burden of enforcement of the ESA lies with federal agencies, not local governments, and (2) the burden of compliance with the ESA lies with the landowner, and not with the County.¹ It appears as though the mitigation fees are voluntary payments as that term is used in RCW 82.02.020. If so, that should be specified, and fees or other in lieu conditions required under the HCP implementing ordinance should be imposed using the County’s substantive SEPA authority for projects subject to SEPA review where possible.

Will the Board of County Commissioners review and adopt a different mitigation fee each year as part of the Fee Resolution? This section refers to the Department identifying the fee, and not the Board. If it is part of the Fee Resolution, then it would be approved by the Board.

17.40.110 – Habitat Conservation Implementation Team

Can the membership of this group be expanded to include stakeholders from the development/building community, or a similar advisory group created to include non-technical advisors to work through implementation issues as they arise?

¹ *Florida Panthers v. Collier County*, 2016 WL 1394328, *18 (M.D. Fla. 2016); *Loggerhead Turtle v. Cnty. Council of Volusia Cnty.*, 92 F.Supp.2d 1296, 1308 (M.D. Fla. 2000)

17.40.120 – Appeals

See preceding comments re consolidation of appeals and requirements of RCW 36.70B.060.

Finally, the public hearing package also includes limited amendments to TCC 24. It is unclear based upon our preliminary review whether the proposed amendments to TCC 24 have addressed all areas of overlap between the existing CAO and the new HCP implementing ordinance so that the end user can easily determine which provisions apply. This issue could likely be addressed in the short term through publication of “FAQs” or other guidelines as part of the HCP implementation process.

Thank you for the opportunity to comment on the proposed HCP implementing ordinances.

Very truly yours,



Heather L. Burgess

HLB/dlg

cc: (via email only)

David Schaffert, Thurston County Chamber of Commerce

(dschaffert@thurstonchamber.com)

Doug Mah, (doug@dougmahassociates.com)

Jason D. Gano, Olympia Master Builders (jason@omb.org)

Angela White, Olympia Master Builders (angela@omb.org)

Travis H. Burns, Thurston County Senior Deputy Prosecuting Attorney

(travis.burns@co.thurston.wa.us)

From: [Sherry Buckner](#)
To: [Christina Chaput](#)
Subject: Public Comment on Thurston Habitat Conservation Plan
Date: Wednesday, April 6, 2022 2:12:37 PM

Greetings,

I have been a resident of Thurston County for nearly 5 decades. Currently I live just outside southwest Tumwaters' urban growth area. I strongly support the Thurston County Habitat Conservation Plan. I feel that it creates a more effective approach to both conservation land and various kinds of urban growth.

I am grateful for the implementation of USFWS and their role in overseeing and increasing the effectiveness of endangered species habitats. My perspective has been that the previous approach to conservation for endangered species and new development is now **outdated**. The previous approach allowed for processes that encumbered the permitting process, created land uses / processes that were not successful.

These land use processes did not adequately protect or meet the goals of saving endangered species and their habitat.

The Habitat Conservation Plan seems more intelligent, more streamlined and more effective for all parties involved.

I find no reason to remain a resident in this county if we are not able to include the well-being and survival of species living in our midst. I strongly support the Thurston Habitat Conservation Plan.

Sherry Buckner

360-786-5707



A Washington State Chapter of the National Audubon Society
P.O. Box 2524, Olympia, WA 98507
(360) 352-7299 www.blackhills-audubon.org

Black Hills Audubon Society is a volunteer, non-profit organization of more than 1,300 members in Thurston, Mason, and Lewis Counties whose goals are to promote environmental education and protect our ecosystems for future generations.

April 4, 2022

Memo To: Christina Chaput, Senior Planner, Thurston County Community Planning and Economic Development Dept.

From: Elizabeth Rodrick, Vice President, Black Hills Audubon Society (BHAS), PO Box 2524, Olympia, WA 98507

Subject: Comments on the HCP Implementation Ordinance

BHAS has provided comments previously on various drafts of the Prairie Habitat Conservation Plan and the Draft Environmental Impact Statement. It is not clear in your Open House presentation, but I assume that at the April 6, 2022 hearing you are only taking comments on the Implementation Ordinance.

Following are our comments on the HCP Implementation Ordinance only.

TCC 17.40.120. Appeals of administrative decisions must be made within 14 calendar days. How will the public be informed of administrative decisions, e.g. approval of an HCP application? There needs to be a way for the public to track these applications in order to review them and submit an appeal within the quick 2 week deadline.

TCC 17.40.130 – Enforcement. Violations of this title shall be enforced through the provisions of Title 26 TCC. In reviewing Title 26, it appears that all violations of the Thurston County Code are a misdemeanor. Also, the director of Community Planning and Economic Development has the authority to issue a civil infraction with a monetary penalty. The penalties for these violations are set by state law. However, the county is committed to achieving voluntary compliance to remedy violations. They may issue a stop work order, revoke a permit, require restoration, etc.

The maximum penalty for a misdemeanor is 90 days in jail and/or a \$1000 fine. The maximum penalty for a Class 2 civil infraction appears to be \$125/day up to 30 days which amounts to \$3750 (not sure about this).

We stipulate that if a violation involves the taking of an endangered species, the penalty must be consistent with state law RCW 77.15.120 which is a gross misdemeanor (listed below). The maximum penalty for a gross misdemeanor is 364 days in jail and/or a \$5000 fine.

RCW 77.15.120

Endangered fish or wildlife—Unlawful taking—Penalty.

- (1) A person is guilty of unlawful taking of endangered fish or wildlife in the second degree if:
- (a) The person hunts for, fishes for, possesses, maliciously harasses, or kills fish or wildlife, or possesses or intentionally destroys the nests or eggs of fish or wildlife;
 - (b) The fish or wildlife is designated by the commission as endangered; and
 - (c) The taking of the fish or wildlife or the destruction of the nests or eggs has not been authorized by rule of the commission, a permit issued by the department, or a permit issued pursuant to the federal endangered species act.
- (2) A person is guilty of unlawful taking of endangered fish or wildlife in the first degree if the person has been:
- (a) Convicted under subsection (1) of this section or convicted of any crime under this title involving the taking, possessing, or malicious harassment of endangered fish or wildlife; and
 - (b) Within five years of the date of the prior conviction the person commits the act described by subsection (1) of this section.
- (3)(a) Unlawful taking of endangered fish or wildlife in the second degree is a gross misdemeanor.
- (b) Unlawful taking of endangered fish or wildlife in the first degree is a class C felony. The department shall revoke any licenses or tags used in connection with the crime and order the person's privileges to hunt, fish, trap, or obtain licenses under this title to be suspended for two years.
- [[2014 c 48 § 5](#); [2000 c 107 § 236](#); [1998 c 190 § 13](#).]

Unfortunately, all the penalties listed above are small amounts for a developer to pay and may not actually deter violations.

TCC 17. Attachment C: BHAS offers this proposed revision (in *italics*) to Attachment C because the frog also requires protection of its water source. I also added *reserve/preserve* because some of the reserves may have been acquired without the mineral rights.

Thurston County Code Chapter 17.20 TCC (Mineral Extraction and Asphalt Production) Section 17.20.140 TCC (Rehabilitation and conservation requirements) shall be amended to read as follows: ...

C. Mineral extraction is prohibited in areas where a Conservation Easement *or Reserve/Preserve* has been established for the protection of wildlife and habitat values for the Olympia pocket gopher (*Thomomys mazama pugetensis*), Tenino pocket gopher (*Thomomys mazama tumuli*), Yelm pocket gopher (*Thomomys mazama yelmensis*), Taylors checkerspot butterfly (*Euphydryas editha taylori*), Oregon vesper sparrow (*Poocetes gramineus affinis*), or (*and*) Oregon spotted frog (*Rana pretiosa*) as part of the Thurston County Habitat Conservation Plan.

Mineral extraction is also prohibited in the wetland/riparian areas, buffers and aquifers that supply water to the Oregon spotted frog Reserves/Preserves and Conservation Easements. The water sources sustain the hydrologic conditions which the frog needs to survive. The statement in italics may need to be refined by spotted frog biologists.

From: [Josh Stottlemeyer](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Thursday, March 31, 2022 6:32:08 PM

Name: Josh Stottlemeyer

Email: toodeep_one@yahoo.com

Comment: While I am all for responsible development, development cannot be limited to only those with extensive means. As I understand these rules, gopher mitigation will cost the average individual home construction disturbing .25 acres, between \$2750 and \$19,800 and that is with no gopher presence identified. \$20k in additional costs to build a home (of any size) on a parcel where there were no gophers found, but at one time they were found nearby on a parcel 656 ft away, is too high. As someone who tried to build a house in Thurston County I would rather have the 6 month study done than spend \$20,000. Ultimately the costs to build in the county were too high and we backed out. This is yet another hurdle. The option for a study should not go away, and the mitigation fees need to be capped on individual residential construction at something much more reasonable. There should be a significantly lower fee for no onsite presence of gophers regardless of soil type or if they may be near by. Building permit fees in Thurston county are already among the highest, if not the highest in Washington which already excludes a significant number of people from being able to afford to build here. What these rules are doing is making it so only larger business and high income individuals can afford to build a house or business facility in Thurston County and it's not right. Lewis County is having a residential building boom, because it's much much more reasonable to build there. Many of those people would like to live in Thurston County, but they can't afford it. The other thing these exorbitant costs do is encourage people to build unpermitted structures and kill gophers when they find them on their property. It's already happening and this will just make it worse. Do the gophers and spotted frogs need protection, sure, but this cost seems too high without proof that they are on the property. You are just making living in Thurston County more expensive than it has already become. A great alternative option is to charge large developers, giant warehouses, things like that a much higher fee so the citizens of the county can pay a lower fee.

Thank you for your service as a Planning Commissioner.

Kind Regards,

Josh Stottlemeyer

Time: April 1, 2022 at 1:32 am

IP Address: 73.221.217.240

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [George Rother](#)
To: [Christina Chaput](#)
Subject: Thurston County HCP
Date: Wednesday, April 6, 2022 12:55:27 PM

I have resided in Thurston County for close to 50 years. The environment and the balance between development and natural areas has been key to making this area my home. I have been keenly aware of the many disputes that have arisen as a result of development on rural land in the county. I believe that the proposed HCP is a necessary step towards protecting threatened and endangered species and allowing landowners to develop their property without undue regulation and litigation. I fully support the county's efforts to create an HCP for our region.

Sent from my iPad

From: [Barbara Fandrich](#)
To: [Christina Chaput](#)
Subject: County Habitat Conservation Plan
Date: Wednesday, April 6, 2022 3:40:49 PM

We support the Thurston County Habitat Conservation Plan.

Sincerely,
Delwin D & Barbara J Fandrich
6939 Foothill Ct. SW, Olympia, WA 98512
360-515-0119

Unique Commenters -> 15
Last updated -> 10/4/2022

Unique ID	Date	Commenter Name	Contact Email	Type of Comment	Summary	County Response	Response Method	Response Date	Topic
0	5-Sep-22	Seppanen, Loetta	Laurel.Lodge@Comcast.Net	Policy Question	Pages 18-33 and 2-17 repeat. Is this correct, what is the difference? Also, page 14 typo list goes from c to e without c or d	Please clarify where reading repeat information. Unable to find referenced pages. Typo noted and will correct for final draft.	Email	9/13/2022	Other
1	24-Aug-22	Sears, Tricia	Tricia.Sears@dnr.wa.gov	Support	Your proposed language regarding mineral extraction and asphalt production as it relates to habitat conservation easements seems appropriate.	Received	Email	8/26/2022	Mineral Lands
2	11-Sep-22	Hooper, Kyle	kyle.andrew.hooper@gmail.com	Against	Speices should not be regulated.	Received	Email	9/13/2022	Economic Development
3	11-Sep-22	Jensen, Robert	rvmijensen@hotmail.com	Change Requested	Proposed code be amended to reference SMA	Received - The County's SMP will reference the HCP ordinance. Developments must meet the requirements of all codes.	Email	9/13/2022	Other
4	12-Sep-22	Dawson, Mary	mary.dawson@comcast.net	Against	Would like to see "parking lots, and empty properties repurposed"	Received	Email	9/13/2022	Environment (habitat, water, prairie)
5	12-Sep-22	Drew, Steven	steven.drew@co.thurston.wa.us	Change Requested	Questions about recording conservation easement requirements and recording "where credits are purchased and applied to a parcel".	Clarified that the proposed code or HCP require documentation that includes credit purchase and where applied to be recorded as well as conservation easements.	Email	9/13/2022	Other
6	15-Sep-22	Johnston, Brian	mosahlah@yahoo.com	Against	Unsupportive of the subspecies protection acts that restrict landowners.	Received	Email	9/19/2022	Economic Development
7	28-Sep-22	Black Hill Audubon Society	Elizrodrick@gmail.com	Change Requested	The HCP ordinance should stipulate that mitigation must take place in Thurston County. We do not want landowners to purchase credits from mitigation banks that have land outside of Thurston County. Please make this change. BHAS would also like to nominate persons for the HCP Implementation Team. Please let me know when this is appropriate.	Received	Email	10/1/2022	Conservation
8	29-Sep-22	Davis, Gregory	gregpatti_94@msn.com	Support	I do believe the hcp midagation fees are a little steep. But I do agree that the County needs a form to buy land for midigation plan.	Received	Email	10/1/2022	Fee
9	1-Oct-22	Graham, Gabrielle	gabygraham@comcast.net	Support	Has concerns regarding the Commercial Aviation Coordinating Commission's potential siting of an airport in Thurston County and the impacts of such an airport on the species covered by the HCP.	Received	Email	10/2/2022	Other
10	2-Oct-22	Friedrich, Leo	friedrichwayne@yahoo.com	Support	The commenter supports the proposed amendments to the Development Code for the HCP. Stating that attempting to obtain a permit from USFWS directly was time-consuming, costly, and difficult as USFWS provided little guidance.	Received	Email	10/2/2022	Permit process
11	3-Oct-22	Pettit, Jon	joh@johpettit.us	Against	Unsupportive of the mitigation fees. Has indicated that in their opinion, the mitigation fees do not meet State RCW 82.02.020 and stated that the public hearing should therefore be canceled.	Received	Email	10/3/2022	Fee
12	3-Oct-22	PhilipBurgessLaw	dgonzalez@phillipsburgesslaw.com	Change Requested	Comments consist of asking for clarity regarding the following: 1) how applicants will know if mitigation credits are available, 2) requirements of proof of purchase from an independent mitigation bank, and 3) those projects with a federal permit need a review.	Received	Email	10/3/2022	Permit process
13	3-Oct-22	Economic Development Center	mcade@thurstonedc.com	Change Requested	Submitted a letter requesting a reconsideration of the mitigation fee for the Olympia pocket gopher service area. Indicating that the fee could have an impact on development in the area.	Received	Email	10/4/2022	Economic Development
14	3-Oct-22	Freidrich, John	jwfriedrich@comcast.net	Support	I have been working on our HCP since 2016 with the USFW and Thurston County, I have struggled over the years with the frustrations of no leadership, no process in place and the many different needs between the USFW and Thurston County. These two agencies do not work together or communicate efficiently. I hope that they finally approve Thurston Counties HCP.	Received	Email	10/4/2022	Permit process
15A	4-Oct-22	Thurston County Chamber	Doug@dougmahassociates.com	Support	support for the County Commission to approve the Habitat Conservation Plan Implementing Ordinance		Email	10/4/2022	Permit process
15B	4-Oct-22	Thurston County Chamber	Doug@dougmahassociates.com	Change Requested	changes be made that take into account comments submitted by Heather Burgess and that the mitigation fees be re-examined for unintended negative financial and land use impacts.	Received	Email	10/4/2022	Fee
15C	4-Oct-22	Thurston County Chamber - Doug Mah	Doug@dougmahassociates.com	Information Requested	Clarification regarding if Oregon spotted frog fees would be added to other mitigation fees for other speices?	Yes. If there is an impact on both Oregon spotted frog and other covered speices both mitigation fees are required	Email	10/4/2022	Other
16A	4-Oct-22	Thurston County Chamber - Schaffert	DSchaffert@thurstonchamber.com	Support	The Thurston Chamber supports the rapid conclusion to the implementation of the Habitat Conservation plan and applauds the Commissioners and County staff that worked diligently with the interested parties to arrive at this point. We strongly encourage the County Commission to approve the Habitat Conservation Plan Implementing Ordinance that include changes based on comments submitted by the Chamber's legal counsel and offers congratulations to all on reaching this important decision point	Received	Email	10/4/2022	Permit process

[illegible]

From: [Sandler & Seppanen](#)
To: [Christina Chaput](#)
Subject: HCP codes and code enforcement
Date: Monday, September 5, 2022 8:49:51 PM

Chris,

As I read the **Proposed changes in codes and ordinances:** [HCP-CodeChanges-MitigationFee-20221004-Board-PublicHearing-Draft.pdf \(thurstoncountywa.gov\)](#), pages 18-33 repeat page 2-17. Is that correct or is there a difference I am missing? Was there a section of code that was intended for those pages that is not included?

A minor missing item – page 14 the list goes from b to e with no c or d items in between. Should e really be c and all the rest also changed or are items c and d missing? That missing is repeated on page 30.

Loretta

From: [Sears, Tricia \(DNR\)](#)
To: [Christina Chaput](#)
Cc: [Sallee, Keri \(COM\)](#); [Sears, Tricia \(DNR\)](#)
Subject: Thurston County CAO, comments from WGS
Date: Wednesday, August 24, 2022 12:02:00 PM

Hello Christina,

In keeping with the interagency correspondence principles, I am providing you with draft comments on Thurston County's proposed update of its critical areas ordinance (Commerce ID# 2022-S-3741A).

I looked at the entire proposal, but did not do a detailed review of types of critical areas or mineral resource areas outside our purview.

Your proposed language regarding mineral extraction and asphalt production as it relates to habitat conservation easements seems appropriate.

Thank you for considering our comments. If you have any questions or need additional information, please contact me. For your convenience, if there are no concerns or follow-up discussion, you may consider these comments to be final as of the 60-day comment deadline of 10/18/22.

Cheerio,
Tricia

Tricia R. Sears (she/her/hers)

Geologic Planning Liaison

Washington Geological Survey (WGS)

Washington Department of Natural Resources (DNR)

Cell: 360-628-2867 | Email: tricia.sears@dnr.wa.gov

From: [Kyle A. Hooper](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Sunday, September 11, 2022 10:42:57 AM

Name: Kyle A. Hooper

Email: kyle.andrew.hooper@gmail.com

Comment: The gopher, like it or not, is not native to this area. Therefore, it is NOT a protected species simply because it was INTRODUCED to this area and has thrived.

This logic would then and could then be applied to many other things the government would love to enforce more regulation, control, and taxes over such as the removal of all the Hetera helix English Ivy destroying the forests around Olympia.

I say either gas them all out or trap them and move them back to their native lands. Period.

Otherwise extermination is required to an invasive species not willing to balance with its ecosystem regardless to its status of endangerment towards extinction. And by balance in this case, I am referring to the complete control and leeway THEY are given and ever boundary-growing lands being seized by the government and by government applied regulations telling me what I can and can not do with my land I fought for as a 100% disabled US Army Airborne Combat Medic OIF 2 601st ASMC 91W1P.

You people pass more regulations for these little bastards, and I say its one step closer to a totalitarian state of madness.

STOP TAKING OUR LAND! STOP TELLING ME WHAT I CAN AND CAN NOT DO ON MY LAND!

Time: September 11, 2022 at 5:42 pm

IP Address: 73.239.126.247

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Robert Jensen](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Sunday, September 11, 2022 10:13:16 PM

Name: Robert Jensen

Email: rvmijensen@hotmail.com

Comment: Proposed section 17.40.050 should be amended in section A, to include the requirement of consistency with the Shoreline Management Act, RCW 90.58. Section B should be amended to state the provisions of this title shall apply, except where such provisions conflict with the Shoreline Management Act.

Time: September 12, 2022 at 5:13 am

IP Address: 73.83.209.206

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Mary dawson](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Monday, September 12, 2022 8:13:18 AM

Name: Mary dawson

Email: mary.dawson@comcast.net

Comment: Ugh...over development already. Roads are parking lots and empty properties and run down lots should be repurposed before we rip up perfectly good forest a (habitat) for trophy properties.

Time: September 12, 2022 at 3:13 pm

IP Address: 67.183.131.166

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Steven Drew County Assessor](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Monday, September 12, 2022 2:54:32 PM

Name: Steven Drew County Assessor

Email: steven.drew@co.thurston.wa.us

Comment: In review I do not see where it is required to record conservation easements so they follow the property record and show up on title reports.
I also do not see a recording requirement where credits are purchased and applied to a parcel. At a minimum the cost and the effect on the parcel should be recorded.
Though perhaps better addressed by CPED procedure and policy, real time transmittal of changes in parcel status resulting from the determination that mitigation is needed or that a scope of impact has been mitigated will be needed in the Assessor's offices.

Time: September 12, 2022 at 9:54 pm

IP Address: 76.135.42.237

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Brian Johnston](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Thursday, September 15, 2022 2:57:07 PM

Name: Brian Johnston

Email: mosahlah@yahoo.com

Comment: I'd rather replace every political office than support one more day of ridiculous subspecies protection acts that restrict landowners. How would you like if if we elected politicians who restrict urban Seattle landowners due to protection of a subspecies of bedbug? That's how stupid I see gopher protection. I'm coming for you crazy people. Get ready to find new jobs.

Time: September 15, 2022 at 9:57 pm
IP Address: 50.218.27.130
Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Elizabeth Rodrick](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Wednesday, September 28, 2022 12:08:25 PM

Name: Elizabeth Rodrick

Email: elizrodrick@gmail.com

Comment: I am commenting on behalf of 1300 members of Black Hills Audubon Society. The HCP ordinance should stipulate that mitigation must take place in Thurston County. We do not want landowners to purchase credits from mitigation banks that have land outside of Thurston County. Please make this change.
BHAS would also like to nominate persons for the HCP Implementation Team. Please let me know when this is appropriate.
Thank you,
Elizabeth Rodrick
BHAS Conservation Committee

Time: September 28, 2022 at 7:08 pm
IP Address: 71.231.44.14
Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Gregory Davis](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Thursday, September 29, 2022 11:48:59 AM

Name: Gregory Davis

Email: gregpatti_94@msn.com

Comment: I do believe the hcp midagation fees are a little steep. But I do agree that the County needs a form to buy land for midigation plan.

Time: September 29, 2022 at 6:48 pm

IP Address: 174.215.115.248

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Gabrielle Graham](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Saturday, October 1, 2022 11:34:04 PM

Name: Gabrielle Graham

Email: gabygraham@comcast.net

Comment: I wanted to inform you that a six mile radius area just south of Yelm Highway, from East Olympia to Lake St. Clair and from Patteson Lake down past Offet Lake is being considered for a commercial airport. It is projected to be 3100 acres and have 2 runways with one at least 11,000 feet long. It's right in the McAllister Geographical Sensitive Area, and right in the middle of Mazama pocket gopher habitat. It will also probably effect the Oregon vesper sparrow habitat south of the JBLM area. The Commercial Aviation Coordinating Commission is supposed to give their recommendation to the state legislature on Oct 17th and the legislature is set to vote by June of next year. This airport won't be small like the Olympia Regional one. The plan is for it to be a major airport that is meant to take the strain from SeaTac. If it is built, I fear that the ecological impact to the local environment would be disastrous. All the hard work that was put into making the Thurston County Habitat Conservation Plan would be for nothing. Thank you so much for your time.
Gaby Graham

Time: October 2, 2022 at 6:33 am
IP Address: 73.19.94.84
Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

October 3, 2022

TRANSMITTED VIA ELECTRONIC MAIL

christina.chaput@co.thurston.wa.us

Thurston County Board of County Commissioners
c/o Christina Chaput
Community Planning Manager
Thurston County Community Planning and Economic Development Department
2000 Lakeridge Drive SW
Olympia, Washington 98502

**Re: Comments on Thurston County's Habitat Conservation Plan ("HCP")
Implementing Ordinances
Board of County Commissioners Public Hearing – October 4, 2022**

Dear Commissioners:

This firm represents the Thurston County Chamber of Commerce ("Chamber") with respect to certain land use matters.

The Chamber has been actively engaged since 2011 on issues related to the listing of the Mazama pocket gopher under the Endangered Species Act ("ESA") in Thurston County. The gopher listing and resulting development restrictions have had a significant adverse impact on individual property owners and constrained development necessary to support and provide jobs and housing across Thurston County for nearly a decade. To that end, the Chamber fully supports approval of the County's Habitat Conservation Plan ("HCP"), which will provide much needed relief and certainty going forwards.

Our office provided comments on behalf of the Chamber on the draft of the HCP Implementation Ordinance for the April 6, 2022 Planning Commission public hearing. The public hearing draft for the Board of County Commissioners has been revised in such a way as to address the majority of our original comments and concerns. However, we believe the following provisions would benefit from revision for increased clarity:

Section 17.40.080(E)

How will Applicants know prior to applying whether there are insufficient credits available to allow fee-in-lieu mitigation triggering one of the alternatives? It seems that information should be readily available to the public and accessible prior to filing for the permit to avoid unnecessary delay and cost. Not every activity covered by the HCP requires or should require a pre-sub to find that information out.

Section 17.40.085(C)

Section 17.40.085 sets out alternatives to the fee-in-lieu mitigation, which can be used at the Applicant's option or if the fee-in-lieu is unavailable or insufficient. Section (C) sets out an alternative as follows:

C. Separate Take Authorization. On a case-by-case basis, an Applicant that possesses separate and final approval from the United States Fish and Wildlife Service (USFWS) for incidental take of all federally listed species that may be adversely affected by the development and the County determines that the mitigation and conservation requirements under the separate approval are equivalent to or exceed what would be required under this ordinance, then the County may determine that no further mitigation is required for the entirety or portion of impacts covered by USFWS incidental take permit.

This alternative appears to only apply if an Applicant holds an individual ITP from USFWS. However, those projects should already be exempt from the ordinance, as provided for in Section 17.40.020(E)(2), which exempts the following activities from the ordinance:

Development for which the United States Fish and Wildlife Service has approved other mitigation procedures through the issuance of an individual 10(a)(1)(B) incidental take permit constituting full mitigation or through Section 7 consultation.

If the Applicant already holds an individual ITP for Covered Species on the project site, the County should not be requiring additional mitigation of any kind under the HCP. Section 17.04.085(C) should be removed, clarified, or revised prior to adoption.

Section 17.40.085(D)

D. Use of Independent Conservation or Mitigation Bank. Applicants may elect to purchase mitigation credits from an independent conservation or mitigation bank that sells credits for a potentially impacted Covered Species. Mitigation banks and the credits released for sale must be fully approved by USFWS. For such credits to be used as part of the process to obtain a Certificate of Inclusion under the Thurston County HCP, adequate documentation of credit equivalency and consistency with the HCP (inclusive of Performance Standards and criteria for Conservation Lands acquisition) must be provided by the Applicant and approved by the County, and any additional fees required to be paid to the County.

What constitutes "adequate documentation of credit equivalency and consistency with the HCP"? Is that a report prepared by a private consultant or is it generated by USFWS? It seems like this report should be able to be prepared by a private consultant; if so, that should be specified together with the contents of the applicable report. Also, what additional fees may be required for the use of this option?

Thank you for the opportunity to comment.

Very truly yours,



Heather L. Burgess

HLB/dlg

cc: **(via email only)**

David Schaffert, Thurston County Chamber of Commerce

dschaffert@thurstonchamber.com

Doug Mah, (doug@dougmahassociates.com)

Angela White, Olympia Master Builders (angela@omb.org)

Travis H. Burns, Thurston County Senior Deputy Prosecuting Attorney

travis.burns@co.thurston.wa.us)

From: [Leo Friedrich Sr](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Sunday, October 2, 2022 7:48:22 PM

Name: Leo Friedrich Sr

Email: friedrichwayne@yahoo.com

Comment: I and my wife Mary Friedrich are asking the Board of County Commissioners to approve and adapt the proposed amendment to Thurston County Code 17.New Chapter 17.40 HABITAT CONSERVATION PLAN IMPLEMENTATION (HCP).

We are trying to build on our 5 acre lot, 14618 130th In Se Yelm Wa .As of this date we are still unable to build our home because Thursday County has no approved HCP.

We were given the opportunity to work directly with the U.S fish and wildlife to create our own HCP. About \$10,000.00 and six years later we are no better than when we started. They (U.S fish and wildlife) Had no guidelines on what or how to build. an HCP we were told to go no line and copy a HCP and we could use that as a guide. Just a few thing they told me I had to do.1. Complete a Critical Area Study. 2 Complete a Wetland Study. 3Archeology. Study. 4 Set up a line of Credit for \$3,500.00 not sure for what.

We have been informed by Thurston County that all the permits fees that we have paid to date are no longer valid,though no fault of our own.

All we want is to place a manufacture home on the property so we have a home to die. I will turn 80 next year.

Time: October 3, 2022 at 2:48 am

IP Address: 174.231.142.106

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Ramiro Chavez](#)
To: [Joshua Cummings](#); [Christina Chaput](#); [Travis Burns](#)
Subject: FW: HCP fees are illegal per RCW 82.02.020
Date: Monday, October 3, 2022 8:18:57 AM
Attachments: [Authority of city to grant options to landowners when imposing development conditions pursuant to RCW 82.02.020 - Washington State.pdf](#)
[RCW 82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions .pdf](#)

FYI and let's talk. Thanks.

Ramiro Chavez, PE, PgMP
County Manager
Thurston County
(360) 754-2960
chavezr@co.thurston.wa.us

From: jon@jonpettit.us <jon@jonpettit.us>
Sent: Monday, October 3, 2022 8:16 AM
To: Carolina Mejia-Barahona <carolina.mejia@co.thurston.wa.us>; Tye Menser <tye.menser@co.thurston.wa.us>; Gary Edwards <gary.edwards@co.thurston.wa.us>; Ramiro Chavez <ramiro.chavez@co.thurston.wa.us>; Robin Campbell <robin.campbell@co.thurston.wa.us>; Jon Tunheim <jon.tunheim@co.thurston.wa.us>; Glen Morgan <glen@wethegoverned.com>
Subject: HCP fees are illegal per RCW 82.02.020

Commissioners, County Managers, and Prosecutor Tunheim,

This is a brief letter regarding the Proposed HCP. Per State Law RCW 82.02.020, any tax, fee, or charge for development of property must be to "**mitigate a direct impact that has been identified as a consequence of a proposed development**". The HCP does not establish a correlation between any single parcel of property and a consequence of a proposed development.

I have attached both a legal opinion with case law done by the State of Washington Attorney General (AGO 2003 No. 10 - Nov 19 2003), and a copy of RCW 82.02.020, with highlighted areas for emphasis.

I have already been contacted by multiple individuals who are prepared to contribute to filing legal action to nullify any ordinance that requires extorted fees for development of property. The HCP amounts to an effort to control land use through imposing of "fees for use", regardless of any actual findings of threaten or endangered species being found of a specific proposed development site.

Additional Note: As noticed in the AGO under #4, the courts have invalidated fees collected that would fund general off-site improvements.

The County should cancel the hearing based on knowledge that the proposed HCP will violate law. When taking action(s) with knowledge that violation of law is clearly in question, a pause needs to be taken. I will be at the hearing on Tuesday and understand it may have many in

attendance.

Government should not be adversarial to the citizens it serves. It should not require litigation to have reasonable interactions with those who have been elected to represent them. Perhaps this is a good example of why elections should be held periodically... to remove those who no longer represent the citizens, but merely seek to rule over them.

Regards,

Jon Pettit



Washington State (/)
Office of the Attorney General
Attorney General Bob Ferguson

(/)

Home (/) | AGO Opinion (/ago-opinions) | **Authority of city to grant options to landowners when imposing development conditions pursuant to RCW 82.02.020**

Authority of city to grant options to landowners when imposing development conditions pursuant to RCW 82.02.020



(<https://www.atg.wa.gov>)

AGO 2003 No. 10 - Nov 19 2003

Attorney General Christine Gregoire

CITIES AND TOWNS – Authority of city to grant options to landowners when imposing development conditions pursuant to RCW 82.02.020

Under RCW 82.02.020, a city may lawfully (1) require an owner seeking a building permit to install sidewalks assuming the city can meet the standards set forth in the statute for imposing such a condition; and (2) offer owners the option of deferring the installation of sidewalks for a reasonable time; and (3) at the end of the deferral period, offer owners several options, including the option of paying the city a specified portion of the cost of installing sidewalks, the money to be used for right-of-way improvements in the city.

November 19, 2003

The Honorable Bill Finkbeiner
State Senator, 45th District
P. O. Box 40445
Olympia, WA 98504-0445

Cite As:

AGO 2003 No. 10

Dear Senator Finkbeiner:

By letter previously acknowledged, you have asked for our opinion on a question we have paraphrased as follows:

Where a city has entered into an agreement with a homeowner in the context of issuing a development permit that defers the homeowner's obligation to install sidewalks until the city requests their installation, does RCW 82.02.020 allow the city to require that the homeowner either install the improvements, extend the agreement for an additional term, or pay the city a "fee-in-lieu of installing the improvements" equal to 75% of the installation cost, which fee would be used to fund right-of-way improvements throughout the city?

BRIEF ANSWER

Assuming a city can demonstrate that obligations under a development agreement with a homeowner "mitigate a direct impact that has been identified as a consequence of a proposed development" and that payment under such an agreement "is reasonably necessary as a direct result of the proposed development", RCW 82.02.020 does not prohibit the city from presenting a homeowner with viable options to satisfying his or her obligations under the initial agreement, including the choice of renewing the agreement for an additional term.

ANALYSIS

Your question concerns the validity of street improvement agreements between homeowners and a city[1] creating an obligation on the part of a homeowner to make such improvements in the context of obtaining approval of permits from the city to construct or substantially remodel a home. From your letter and its attachments, we understand that such agreements originally provided homeowners with the option of either immediately installing the improvements at their own cost or paying the city to make the improvements upon request of the city

within fifteen years of signing the agreement. Several of the development agreements are reaching the end of the fifteen-year deferral period. The city council recently voted to present the following three options to homeowners who are party to agreements approaching the end of deferral:

- (1) Install the required improvements;
- (2) Sign a new 15-year agreement; or
- (3) Pay a “fee-in-lieu” equal to 75% of the cost of installing the improvements, which would be used to fund right-of-way improvements throughout the city.

You have asked whether a city requirement that homeowners party to street improvement agreements choose one of these three options at the end of the deferral period is valid under RCW 82.02.020.

RCW 82.02.020 provides in relevant part:

[N]o county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment . . . to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. . . . Any such voluntary agreement is subject to the following provisions:

- (1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;
- (2) The payment shall be expended in all cases within five years of collection; and
- (3) Any payment not so expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of the refund; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

1. The City’s Improvement Agreements Are Governed By RCW 82.02.020, As The Agreements Involve A “Tax, Fee, Or Charge” As Contemplated By The Statute

As a threshold matter, we must first determine whether the agreements in question involve a “tax, fee, or charge” within the meaning of RCW 82.02.020. Several Washington cases have held that conditions similar to those discussed in your request were within the statute. For example, RCW 82.02.020 was found applicable where a condition required frontage improvements for drainage along an adjacent boulevard. *United Dev. Corp. v. City of Mill Creek*, 106 Wn. App. 681, 698-99, 26 P.3d 943 (2001). Similarly, payment of \$3,000 per lot or provision of offsite traffic improvements was a tax, fee, or charge under the statute. *Castle Homes & Dev., Inc. v. City of Brier*, 76 Wn. App. 95, 882 P.2d 1172 (1994). Likewise, RCW 82.02.020 was applicable where an ordinance required developers to construct onsite recreational facilities or pay a fee in lieu thereof. *View Ridge Park Assocs. v. City of Mountlake Terrace*, 67 Wn. App. 588, 839 P.2d 343 (1992). Based on the similarity between the street improvement condition you reference in your query and these three examples, we conclude that RCW 82.02.020 is applicable to the case at hand.

2. Whether The City’s Agreements Require Payments That Are Reasonably Necessary As A Direct Result Of Proposed Development Is A Question Of Fact That Cannot Be Addressed By This Opinion

Questions seeking to resolve issues of fact are outside the appropriate scope of an Attorney General Opinion. Consequently, the issue of whether the agreements in question require payments that are reasonably necessary as a direct result of proposed development is a question of fact that cannot be addressed herein. Should the legality of these agreements be challenged, the City would have the burden to prove this point. See *Isla Verde Int’l Holdings v. City of Camas*, 146 Wn.2d 740, 755-56, 49 P.3d 867 (2002) (“[U]nder RCW 82.02.020 the burden of establishing that a condition is reasonably necessary as a direct result of the proposed development is on the City.”). While we cannot resolve factual issues, we can discuss the general legal framework that the courts could apply.

The Washington Supreme Court recently invalidated, under RCW 82.02.020, a development condition imposed by the City of Camas. *Isla Verde*, 146 Wn.2d at 765 (2002). Camas placed a condition on approval of a preliminary plat for a subdivision requiring that 30 percent of land to be developed be set aside as open space. The Court rejected the city’s argument that it had satisfied its burden to prove the condition was “reasonably necessary as a direct result of the proposed development or plat” by making a conclusory legislative determination that set-asides were needed to mitigate for development. *Isla Verde*, 146 Wn.2d at 761. The court emphasized that conditions may not be imposed automatically but must be tied to a specific, identified impact of a development on a community. *Id.*; see also *Henderson Homes, Inc. v. City of*

Bothell, 124 Wn.2d 240, 877 P.2d 176 (1994) (payment of a pre-set \$400 per lot as a park mitigation fee found invalid). The Court found nothing in the record showing any relationship between the 30 percent open space requirement and impacts of the proposed development. *Isla Verde* at 762. Neither did the record explain why 30 percent was chosen as the amount of open space needed. *Id.* at 763.

In *Isla Verde*, the Court contrasted Camas's impermissible development condition with a King County ordinance assessing park development fees as a condition of plat approval in lieu of dedication of land. *Id.* at 760-61. In *Trimen Dev. Co. v. King Cy.*, 124 Wn.2d 261 (1994), the Court approved the King County park fee system based on evidence in the record that such fees were directly tied to the development in question. The County had conducted a comprehensive assessment of park needs in a report prepared prior to the developer's application for subdivision approval. The report indicated a deficit of park acres in the area of the proposed developments and projected a greater deficit as a result of population expansion. The dedication of open space in the *Trimen* case would have resulted in an amount of park land roughly proportional to that which the report showed would be needed for the developments' estimated population. In turn, the "fee in lieu of dedication" was calculated based on zoning, projected population, and the assessed value of the land that would have been dedicated or reserved. The court concluded that because the fees in question were based on a comprehensive report of park needs, as well as the assessed value of the land that would have been set aside or dedicated, the park fees were "reasonably necessary as a direct result of the proposed development". *Isla Verde*, 146 Wn.2d at 761.

3. Whether Payments Under The City's Street Improvement Agreements Are Expended To Fund A Capital Improvement To Mitigate An Identified, Direct Impact Of Proposed Development Is A Question Of Fact That Cannot Be Answered By This Opinion

As explained above, questions of fact are outside the appropriate scope of an Attorney General Opinion. The issue of whether payments under the street improvement agreements comply with RCW 82.02.020's requirement that such payments fund capital improvements to mitigate an identified, direct impact of the development in question is primarily factual. It therefore cannot be answered herein. However, as we did above, we can provide examples of fees upheld as well as invalidated under the statute in question.

In *Trimen*, the Court upheld a park development fee, noting with approval that the King County ordinance required that the collected fee "be appropriated only for acquisition and development of open space, park sites and recreational facilities *within the park service area wherein the proposed subdivision is located*" in order to benefit the particular subdivision. *Trimen*, 124 Wn.2d at 272 (citing KCC 19.38.070; emphasis added). The Court contrasted the King County fee with the one it invalidated in *Henderson Homes*. *Trimen*, 124 Wn.2d at 273. In that case, *Bothell* violated RCW 82.02.020 because it was spending developers' impact fees for general park use, rather than mitigating site-specific impacts. *Id.* Similarly, two cases invalidated mitigation fees paid pursuant to voluntary agreements for correction of off-site roadway deficiencies that were not the direct consequences of development impacts. *Cobb v. Snohomish Cy.*, 64 Wn. App. 451, 829 P.2d 169 (1991); *Castle Homes and Dev., Inc. v City of Brier*, 76 Wn. App. 95, 882 P.2d 1172 (1994).

4. The City's Street Improvement Agreements, Including Those That Would Extend The Term For An Additional Fifteen Years, Are "Voluntary" Under RCW 82.02.020

The purposes for which the city can "require" payment under a "voluntary" development agreement are limited by RCW 82.02.020. The statute provides that any payments the city requires for purposes of mitigating a direct impact as a consequence of development is subject to the limitation that the funds "may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact". RCW 82.02.020(1). Similarly, the city is prohibited from "requir[ing] any payment as part of such a voluntary agreement which the . . . city . . . cannot establish is reasonably necessary as a direct result of the proposed development or plat." RCW 82.02.020.

The Supreme Court has set a fairly low bar for agreements to be considered "voluntary" under RCW 82.02.020. In *Trimen*, the court explained that "in order to be voluntary, 'an agreement must at least present the parties with a viable choice.'" *Trimen*, 124 Wn.2d at 272 (quoting *Cobb v. Snohomish Cy.*, 64 Wn. App. 451 at 464) (concurrence/dissent). In the context of development fee agreements, a viable choice means that the developer has the option of either paying the fees in question (assuming they comply with RCW 82.02.020) or losing permit approval. *Id.* at 271. Under this standard, we presume that the city gave homeowners a "viable choice" in the original agreements, which therefore are "voluntary" under RCW 82.02.020. [2]

The choices recently provided by the city to those with existing agreements reaching 15-year maturity appear to be "viable" as well. The agreements at issue provide property owners with three options. Two of those options (installing the improvements or signing an extension agreement under which they could be obligated to pay those costs later) simply extend the term of the "now or later" choice proffered in the original agreements. The third option, paying a "fee-in-lieu" that is equal to 75% of the costs of improvements, would generate funds to be used for making improvements throughout the city. This fee appears similar to others invalidated by courts under RCW 82.02.020 in that it would fund general, off-site improvements. See *Henderson Homes*, 124 Wn.2d 240; *Cobb*, 64 Wn. App. 451; *Castle Homes*, 76 Wash. App. 95. Regardless of whether the city could offer this option in isolation, we conclude that in this context, it is not "requiring" a homeowner to make such a payment, as she has other choices available under the agreement that presumably would meet the statutory requirement. We therefore conclude that these agreements are "voluntary" under RCW 82.02.020.

As you correctly surmise, RCW 82.02.020 requires that a payment collected under a voluntary agreement be expended in all cases within five years of collection. This requirement does not, however, limit the terms of voluntary agreements to five years. Nothing in the statute addresses for how long an agreement could defer payment. What is clear is that once payment has been made, the collecting entity must expend the funds within five years.

In summary, RCW 82.02.020 allows a city to enter into a development agreement with a homeowner that is longer than five years in duration and presents options as to how obligations are to be discharged. Whether payments and improvements made under such agreements satisfy RCW 82.02.020's requirements regarding the nexus between such obligations and the impact of development is a question of fact not answered by this opinion, however.

We trust the foregoing will be of use to you.

Sincerely,

AMY MACKENZIE

Assistant Attorney General

:pmd

[1] Your request makes reference to ordinances and policies of the City of Kirkland. Our advice is intended as general assistance to legislators in interpreting current statutes and should not be construed as a comment on any particular city's ordinances or policies.

[2] Again, this Opinion does not reach any conclusion regarding whether the improvements in question were "reasonably necessary as a direct result of the proposed development or plat," which would necessarily be a threshold question to be addressed when demonstrating compliance of an agreement with RCW 82.02.020.

News

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Office Information

[About Bob Ferguson \(/about-bob-ferguson\)](#)

State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

- (1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;
- (2) The payment shall be expended in all cases within five years of collection; and
- (3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6), 43.21C.428, and beginning July 1, 2014, RCW 35.91.020.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefited thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Thurston
Economic
Development
Council



EDC Board of Directors

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Phillips Burgess Law, PLLC

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Evan Parker
Kidder Mathews

Annette Pitts
Experience Olympia & Beyond

Dr. Timothy Stokes
South Puget Sound
Community College

Tony Taylor
Tony Taylor Inspires

Chris Woods
Boys & Girls Club
of Thurston County

Shina Wysocki
Chelsea Farms

Nancy LaPointe
Ex Officio Member
CB&I Board President
Navigate Financial

October 3, 2022

Thurston County Commissioners

Attn: County Commission Chair, Carolina Mejia (carolina.mejia@co.thurston.wa.us)

2000 Lakeridge Drive SW

Olympia, WA 98502-1045

CC: County Commissioner Menser (tye.menser@co.thurston.wa.us)

CC: County Commissioner Edwards (gary.edwards@co.thurston.wa.us)

CC: Ramiro Chavez, Thurston County Manager (ramiro.chavez@co.thurston.wa.us)

CC: Josh Cummings, CPED Director, Thurston County

(Joshua.cummings@co.thurston.wa.us)

CC: Jennica Machado, Economic Development Manager, Thurston County

(Jennica.machado@co.thurston.wa.us)

Delivered via email to above individuals

RE: Mitigation Fees Necessary to Implement the Habitat Conservation Plan (HCP)

Dear Commissioner Mejia,

Thank you for the opportunity to provide comment on the above referenced item. We preface comments on this item with the acknowledgement of the lengthy efforts taken by the County leadership and staff, and the community at large to address this very significant impactful land use process.

My comments this afternoon are in relation to the proposed mitigation fees for the Olympia pocket gopher. While I realize that this process has been on going for quite some time, I feel that I would be remiss in my duties if I didn't provide to you comment and a perspective of the proposed fee structure will impact economic development and future business attraction efforts. Simply put the proposed cost of individual mitigation credits – up to \$51,111/credit for the OPG - is a very significant proposal and as a result could be akin to imposing a development moratorium.

Each development proposal is unique – with individual characteristics based upon funding mechanisms, intended user accommodations, ingress and egress engineering, infrastructure requirements, construction methodologies, engineering particulars, etc. Each of these must work in concert and complementary with each other to create a long-term successfully positive development. Our staff works with a myriad of developers, proponents, and land owners – while the above noted particulars are unique, they all share one thing in common – that the process be predictable, and be affordable. Without these two important elements, interest does move forward, but elsewhere and bypasses this community. The proposed fee structure creates a process that is not affordable.

As I know that you will, please consider gravely the reality of the proposed fee structure, and in particular the highest \$51,111/credit cost. If that is the structure that you feel is in the best interests of our region, community and economy, I would ask that you also then

consider how that fee can be attainable. I would encourage you to consider other components and or actions that would work in partnership with the proponents that will be bearing that fee. This is a fee that most likelihood would not be pushed on to the end consumer – and if it is, then it would be financed by the developer and that would exponentially inflate that amount to the end user thus making the project not-feasible by any market standard. In your upcoming budget deliberations, I would ask that you consider how you could work with the development community to make the proposed fee attainable in a manner that allows and encourages the good proactive development that you wish for.

Thank you for your consideration,



Michael Cade
Executive Director

From: [John Friedrich](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Monday, October 3, 2022 6:27:20 PM

Name: John Friedrich

Email: jwfriedrich@comcast.net

Comment: I have been working on our HCP since 2016 with the USFW and Thurston County, I have struggled over the years with the frustrations of no leadership, no process in place and the many different needs between the USFW and Thurston County. These two agencies do not work together or communicate efficiently. I hope that they finally approve Thurston Counties HCP.

Time: October 4, 2022 at 1:27 am

IP Address: 73.221.5.12

Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Doug Mah](#)
To: [Christina Chaput](#)
Cc: [David Schaffert](#); [Joshua Cummings](#)
Subject: Thurston Chamber Comments: HCP Implementing Ordinances and fees Public Hearing - 10/04/22
Date: Tuesday, October 4, 2022 9:22:46 AM
Attachments: [Thurston Chamber - County HCP and service fee 10042022.pdf](#)
[2022.10.03 Letter to BOCC re HCP Ordinance.pdf](#)

Hi Christina –

Attached are comments from the Thurston Chamber of Commerce regarding the HCP implementing Ordinance and fee resolution for the Board of County Commissioners' public hearing scheduled for this afternoon.

The Chamber letter expresses: 1) support for the County Commission to approve the Habitat Conservation Plan Implementing Ordinance; 2) that changes be made that take into account comments submitted by Heather Burgess (attached) and; 3) that the mitigation fees be re-examined for unintended negative financial and land use impacts.

In addition, it is also unclear if the Oregon spotted frog habitat as a separate service area would be added to the OPG fee. If this is the case, the combined fee per unit for properties in the OPG and the Oregon Spotted Frog would be significant. A combined pocket gopher and Oregon spotted frog habitat fee should be reconsidered and assessed against goals to achieve affordable housing, economic development, and family investments in the use of their properties.

Please let me know if you have any questions or concerns. Thank you.

- Doug



October 4, 2022

Thurston County Commissioners
2000 Lakeridge Drive SW
Olympia, WA 98502-1045 Building One, Room 269

Thurston County Commissioners Mejia, Edwards, and Menser:

Thank you for the opportunity to address public hearing item #A-8 Habitat Conservation Plan Implementing Ordinance and Fee Resolution.

The Thurston Chamber strongly encourages the County Commission to approve the Habitat Conservation Plan Implementing Ordinance with changes that take into account comments submitted by Heather Burgess (attached) and recommends that the mitigation fees be re-examined for unintended negative financial and land use impacts.

The Thurston Chamber supports the rapid conclusion to the implementation of the Habitat Conservation plan and applauds the Commissioners and County staff that worked diligently with the interested parties to arrive at this point. We strongly encourage the County Commission to approve the Habitat Conservation Plan Implementing Ordinance that include changes based on comments submitted by the Chamber's legal counsel and offers congratulations to all on reaching this important decision point.

In addition, the Thurston Chamber recommends that that the mitigation fees for each species/service area be re-examined for unintended negative financial and land use impacts. The Chamber is particularly concerned about the proposed \$51,111 fee per credit in the Olympia Pocket Gopher (OPG) area. We recognize that the fees in each specific area are based on habitat quality, proximity to the covered species, and the current market conditions in that area. However, we believe that this approach and methodology needs to be weighted and tested against Thurston County and regional goals to achieve affordable housing, economic development, and family investments in the use of their properties.

In addition, it is also unclear if the Oregon spotted frog habitat as a separate service area would be added to the OPG fee. If this is the case, the combined fee per unit for properties in the OPG and the Oregon Spotted Frog would be a significant \$66,314 per unit (\$51,111 + \$15,203). A combined pocket gopher and Oregon spotted frog habitat fee should be reconsidered and assessed against goals to achieve affordable housing, economic development, and family investments in the use of their properties.

Again, thank you for the opportunity to provide comments on the Habitat Conservation Plan Implementing Ordinance and Fee Resolution. Please free to contact us by calling (360) 357-3362 or emailing DSchaffert@thurstonchamber.com if you have questions regarding our comments.

Sincerely,

Doug Mah
Director, Public Policy Division

Cc: David Schaffert, President and CEO
Attachment

October 3, 2022

TRANSMITTED VIA ELECTRONIC MAIL

christina.chaput@co.thurston.wa.us

Thurston County Board of County Commissioners
c/o Christina Chaput
Community Planning Manager
Thurston County Community Planning and Economic Development Department
2000 Lakeridge Drive SW
Olympia, Washington 98502

**Re: Comments on Thurston County's Habitat Conservation Plan ("HCP")
Implementing Ordinances
Board of County Commissioners Public Hearing – October 4, 2022**

Dear Commissioners:

This firm represents the Thurston County Chamber of Commerce ("Chamber") with respect to certain land use matters.

The Chamber has been actively engaged since 2011 on issues related to the listing of the Mazama pocket gopher under the Endangered Species Act ("ESA") in Thurston County. The gopher listing and resulting development restrictions have had a significant adverse impact on individual property owners and constrained development necessary to support and provide jobs and housing across Thurston County for nearly a decade. To that end, the Chamber fully supports approval of the County's Habitat Conservation Plan ("HCP"), which will provide much needed relief and certainty going forwards.

Our office provided comments on behalf of the Chamber on the draft of the HCP Implementation Ordinance for the April 6, 2022 Planning Commission public hearing. The public hearing draft for the Board of County Commissioners has been revised in such a way as to address the majority of our original comments and concerns. However, we believe the following provisions would benefit from revision for increased clarity:

Section 17.40.080(E)

How will Applicants know prior to applying whether there are insufficient credits available to allow fee-in-lieu mitigation triggering one of the alternatives? It seems that information should be readily available to the public and accessible prior to filing for the permit to avoid unnecessary delay and cost. Not every activity covered by the HCP requires or should require a pre-sub to find that information out.

Section 17.40.085(C)

Section 17.40.085 sets out alternatives to the fee-in-lieu mitigation, which can be used at the Applicant's option or if the fee-in-lieu is unavailable or insufficient. Section (C) sets out an alternative as follows:

C. Separate Take Authorization. On a case-by-case basis, an Applicant that possesses separate and final approval from the United States Fish and Wildlife Service (USFWS) for incidental take of all federally listed species that may be adversely affected by the development and the County determines that the mitigation and conservation requirements under the separate approval are equivalent to or exceed what would be required under this ordinance, then the County may determine that no further mitigation is required for the entirety or portion of impacts covered by USFWS incidental take permit.

This alternative appears to only apply if an Applicant holds an individual ITP from USFWS. However, those projects should already be exempt from the ordinance, as provided for in Section 17.40.020(E)(2), which exempts the following activities from the ordinance:

Development for which the United States Fish and Wildlife Service has approved other mitigation procedures through the issuance of an individual 10(a)(1)(B) incidental take permit constituting full mitigation or through Section 7 consultation.

If the Applicant already holds an individual ITP for Covered Species on the project site, the County should not be requiring additional mitigation of any kind under the HCP. Section 17.04.085(C) should be removed, clarified, or revised prior to adoption.

Section 17.40.085(D)

D. Use of Independent Conservation or Mitigation Bank. Applicants may elect to purchase mitigation credits from an independent conservation or mitigation bank that sells credits for a potentially impacted Covered Species. Mitigation banks and the credits released for sale must be fully approved by USFWS. For such credits to be used as part of the process to obtain a Certificate of Inclusion under the Thurston County HCP, adequate documentation of credit equivalency and consistency with the HCP (inclusive of Performance Standards and criteria for Conservation Lands acquisition) must be provided by the Applicant and approved by the County, and any additional fees required to be paid to the County.

What constitutes "adequate documentation of credit equivalency and consistency with the HCP"? Is that a report prepared by a private consultant or is it generated by USFWS? It seems like this report should be able to be prepared by a private consultant; if so, that should be specified together with the contents of the applicable report. Also, what additional fees may be required for the use of this option?

Thank you for the opportunity to comment.

Very truly yours,



Heather L. Burgess

HLB/dlg

cc: **(via email only)**

David Schaffert, Thurston County Chamber of Commerce

dschaffert@thurstonchamber.com

Doug Mah, (doug@dougmahassociates.com)

Angela White, Olympia Master Builders (angela@omb.org)

Travis H. Burns, Thurston County Senior Deputy Prosecuting Attorney

travis.burns@co.thurston.wa.us)

From: [Doug Mah - on behalf of the Thurston Chamber](#)
To: [hcpinfo](#)
Subject: Incoming HCP Comment
Date: Tuesday, October 4, 2022 9:26:03 AM

Name: Doug Mah - on behalf of the Thurston Chamber

Email: doug@dougmahassociates.com

Comment: The Thurston Chamber supports the rapid conclusion to the implementation of the Habitat Conservation plan and applauds the Commissioners and County staff that worked diligently with the interested parties to arrive at this point. We strongly encourage the County Commission to approve the Habitat Conservation Plan Implementing Ordinance that include changes based on comments submitted by the Chamber's legal counsel and offers congratulations to all on reaching this important decision point.

In addition, the Thurston Chamber recommends that that the mitigation fees for each species/service area be re-examined for unintended negative financial and land use impacts. We recognize that the fees in each specific area are based on habitat quality, proximity to the covered species, and the current market conditions in that area. However, we believe that this approach and methodology needs to be weighted and tested against Thurston County and regional goals to achieve affordable housing, economic development, and family investments in the use of their properties.

Thank you for the opportunity to provide comments on the Habitat Conservation Plan Implementing Ordinance and Fee Resolution. Please free to contact us by calling (360) 357-3362 or emailing DSchaffert@thurstonchamber.com if you have questions regarding our comments.

Time: October 4, 2022 at 4:25 pm
IP Address: 76.135.12.204
Contact Form URL: <https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

Sent by an unverified visitor to your site.

From: [Jessie Simmons](#)
To: [hcpinfo](#)
Cc: [Angela White](#); hburgess@phillipsburgesslaw.com; DSchaffert@thurstonchamber.com; Doug@dougmahassociates.com
Subject: OMB Comment on Proposed Changes
Date: Tuesday, October 4, 2022 12:08:53 PM
Attachments: [Letter on HCP Implementation.pdf](#)

Hello,

I have attached the full official comment from Olympia Master Builders for the proposed changes and fee structure being presented at the October 4, 2022, public hearing. Thank you for allowing space to comment.

Best Regards,
Jessie W Simmons
Government Affairs Director
Olympia Master Builders
C: (360) 525-4142
O: (360) 754-0912 ext. 102

October 4, 2022

Thurston County Board of County Commissioners
c/o Christina Chaput
Community Planning Manager Thurston County Community Planning and Economic
Development Department 2000 Lakeridge Drive SW Olympia, Washington 98502

Re: Comments on Thurston County's Habitat Conservation Plan ("HCP")
Implementing Ordinances
Board of County Commissioners Public Hearing – October 4, 2022

Dear Commissioners:

Olympia Master Builders (OMB) is a membership driven organization that represents over five hundred members across five counties. We range from general contractors to remodelers and many others tied to the building industry. As such, our membership is and has been actively engaged in the implementation of the Thurston County Habitat Conservation Plan (HCP). In fact, this organization and its members have been engaged in issues related to the multiple species that the HCP covers for what amounts to more than a decade. As such, we are aware of the proposed changes and fee structure being proposed the latest steps toward full implementation of the HCP. While we commend the county for the great progress and the arduous work put into the proposed plan, our membership does have some specific concerns.

Notably, our membership has expressed concern with the projected fee amounts per mitigation credit and the wide range of variation in said mitigation fees dependent upon geographic location within the county. For example, in a recently released draft prepared for the October 4th public hearing titled "Mitigation Fees Necessary to Implement the Habitat Conservation Plan (HCP) proposed fees range from \$51,111/credit in Olympia Pocket Gopher (OPG) habitat to \$12,910/credit in Tenino Pocket Gopher (TPG) habitat. In Appendix H: Credit-Debit Methodology, the process to identify potential habitat describes a cell of observation as being 25m x 25m, or 0.1544 of an acre. Based on this model, one could clearly see how the costs per acre could become exorbitant not just for builders, but for our neighbors who want to own homes and those seeking to improve their property. Our other concerns are:

- Chapter 8: Costs and Funding describes the overall process on how the cost per acre was reached, but it does not account for fluctuations in the market and changes in the cost of land, fees, or wages beyond a 3.5% cap. Is there relief planned for when costs to the county decrease?

- Concerning Section 17.40.080(E), how will applicants know prior to applying whether there are sufficient credits available?
- Will projects be placed on hold if credits become limited or unavailable? Has the county prepared for the inevitable pent up demand this process has caused?
- How will the county determine order of precedent for those who have been waiting and for potential future projects? Is there a cue?

The other significant element of the plan that is of concern is within Section 17.40.085(C), concerning alternatives to fee-in-lieu mitigation. This section describes the following alternative:

C. Separate Take Authorization. On a case-by-case basis, an Applicant that possesses separate and final approval from the United States Fish and Wildlife Service (USFWS) for incidental take of all federally listed species that may be adversely affected by the development and the County determines that the mitigation and conservation requirements under the separate approval are equivalent to or exceed what would be required under this ordinance, then the County may determine that no further mitigation is required for the entirety or portion of impacts covered by USFWS incidental take permit.

It is our understanding that a project applicant in possession of an ITP from USFWS should already be exempt from the ordinance and the county should not be requiring additional mitigation. We appreciate the efforts in trying to streamline this process and it is our recommendation that this section be removed or revised before implementation.

Finally, we would like some clarity on Section 17.40.085(D), which states:

D. Use of Independent Conservation or Mitigation Bank. Applicants may elect to purchase mitigation credits from an independent conservation or mitigation bank that sells credits for a potentially impacted Covered Species. Mitigation banks and the credits released for sale must be fully approved by USFWS. For such credits to be used as part of the process to obtain a Certificate of Inclusion under the Thurston County HCP, adequate documentation of credit equivalency and consistency with the HCP (inclusive of Performance Standards and criteria for Conservation Lands acquisition) must be provided by the Applicant and approved by the County, and any additional fees required to be paid to the County.

This section presumes that there is an alternative acceptable method of purchasing mitigation credits that may include hiring a private consultant or utilizing established reporting from USFWS. If a report generated by a private consultant or USFWS is acceptable, that should be clarified within the language of this section. Also, for clarity, we would like to have answers to the following questions:

- What is considered “adequate documentation of credit equivalency?”
- If this process is acceptable, what are “any additional fees required to be paid by the County?”

To conclude, OMB appreciates the time and effort given by staff to the overall implementation

proposal of the Thurston County Habitat Conservation Plan. We understand that it has been a long and complicated process. We also realize that the proposals are currently in draft form and not ready for full implementation. As such, it is essential to work through any potential errors or complications and we hope that you will consider our recommendations. The stated goal of OMB is to provide affordable housing for all economic segments of society. A mission of such importance is highly volatile and impacted significantly by any potential changes. Thereby, changes in costs and regulatory practices are of utmost concern to us. The 85% of Washingtonians who cannot currently afford to own a home are among the top priorities of this organization, and ordinances like the Thurston County HCP often present unintended barriers for families just trying to live in a safe and secure environment. We look forward to collaborating with you on this issue further.

Thank you for your time and consideration. If you have any further questions please contact our Government Affairs Director, Jessie Simmons, at (360)525-4142 or (360)754-0912.

Sincerely,



Angela White
Executive Officer
Olympia Master Builders