

Thurston County
Community Planning and Economic Development Department
Community Planning Division

BOARD OF COUNTY COMMISSIONER
PUBLIC HEARING DRAFT

October 4, 2022

A-8 Habitat Conservation Plan (HCP)

Chapters: Title 17, Chapter 17.20 and 17.40 (New) (attachment – A)
Title 24, Chapters 24.01, 24.03, 24.05,
24.25, 24.35, and 24.40 (attachment – B)
Title 26, Chapter 26.05 (attachment – C)

Deleted Text: ~~Strikethrough~~ Proposed Changes: Underlined
Staff Comments: *Italics* Unaffected Omitted Text: ...

The proposed amendments contained herein are included in the 2022-2023 Official Development Code Docket (Item A-8). This docket item is a board-initiated amendment to adopt the Thurston County Habitat Conservation Plan (HCP) and provide the regulatory framework for its implementation.

ATTACHMENT A: Thurston County Environment Ordinance (Title 17)

The proposed amendments change Chapter 17.20 (Mineral Extraction and Asphalt Production) to prohibit mineral extraction permits in areas where a conservation easement has been established for the purposes of the HCP. They also amend Title 17 to add a new Chapter 17.40 which adopts the Thurston County Habitat Conservation Plan (HCP) and provides the regulatory framework for its implementation.

I. 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 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 (*Pooecetes gramineus affinis*), or Oregon spotted frog (*Rana pretiosa*) as part of the Thurston County Habitat Conservation Plan.

II. Thurston County Code Title 17 TCC (Environment) is hereby amended to add a new Chapter 17.40 TCC to read as follows:

Chapters:

Chapter 17.40 – HABITAT CONSERVATION PLAN IMPLEMENTATION

Sections:

17.40.005 – Short Title

This Chapter shall be known as the “Habitat Conservation Plan,” and may be cited as such.

17.40.010 – Incorporation by Reference

The Thurston County Habitat Conservation Program (HCP) and Incidental Take Permit (ITP) are incorporated by reference as though fully set forth herein. Complete copies of the Thurston HCP, Incidental Take Permit, and related documents are available at the offices of the

Community Planning and Economic Development Department (as of the adoption of the ordinance codified in this chapter, 2000 Lakeridge Dr. SW, Olympia, WA, 98502) and Thurston County's website online.

17.40.015 – Purposes

The purpose of this Chapter is to provide the regulatory framework to implement the Thurston County Habitat Conservation Plan (Thurston HCP) according to the Incidental Take Permit approved by US Fish and Wildlife Service. The U.S. Endangered Species Act (ESA) and its implementing regulations in Title 50 of the Code of Federal Regulations (CFR) Section 17 prohibit the Take of any fish or wildlife species that are federally listed as threatened or endangered without prior approval pursuant to either Section 7 or Section 10 of the ESA.

The Thurston HCP enables the County to locally manage habitat protection when authorizing lawful projects that may impact the federally protected species. It describes how several species listed or considered for listing under the ESA will be protected; and how potential impacts to these species would be mitigated without the imposition of additional mitigation requirements outside of the Habitat Conservation Plan process in compliance with Section 10 of the ESA.

The Thurston HCP provides an efficient process for conserving species and protecting natural resources by creating larger scale, more ecologically viable, and more efficiently manageable mitigation sites. While also creating a predictable local framework for providing permits and authorizations for otherwise lawful covered activities that may impact federally protected species.

17.40.020 Applicability

- A. Unless otherwise provided for, this Chapter shall apply to all activities and development in unincorporated Thurston County considered a Covered Activity that impacts Covered Species as such terms are defined in this Chapter. The requirements herein apply regardless of whether the underlying activity or development necessitates permission or authorization from Thurston County.
- B. Application and review under this Chapter is required for all activities and development where the project application overlaps any land parcel with known habitat, potential habitat, or known occupancy of a Covered Species. Known habitat, potential habitat, or known occupancy is determined by the terms and requirements of the Thurston HCP and ITP. The extent of such habitat or occupancy is delineated through use of data presented by scientific mapping and reports, such as USDA soil maps, or information or data collected from onsite observations. Department shall maintain current maps of known habitat or occupancy of Covered Species and make such maps available to the public.

- C. Landowners and project proponents remain responsible to ensure compliance with the ESA, Title 17 of Thurston County Code (TCC), and Title 24 TCC for all activities and development that are not covered by the Thurston HCP and this Chapter.
- D. This Chapter implements federal mandates under the Endangered Species Act and is not a zoning or land use control ordinance subject to vested development rights under Washington law. This Chapter shall apply to all pending and future applications as of the Effective Date as provided for in TCC 17.40.020(C).
- E. The following are excluded from the provisions and requirements of this Chapter:
 - 1. Construction and land use permits or approvals, which were reviewed for Mazama pocket gopher presence meeting the following criteria:
 - a. The review to determine the presence of Mazama pocket gopher was completed according to county protocol and concluded with negative screening results, and
 - b. The underlying permit remains valid pursuant to the applicable development code, and
 - c. The construction or land use permit for which the review was performed is not modified.
 - 2. 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.
 - 4. Fully Forested Parcels as defined in TCC 17.40.030.
 - 5. Projects and activities that are entirely 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.

17.40.030 – Definitions

The definitions outlined in this section shall govern the application and interpretation of this chapter. Words and phrases not defined in this section shall be interpreted to give this chapter its most reasonable application

- A. “Certificate of Inclusion” is a document issued by the Department as part of a development permit or authorization to document coverage under the county’s Incidental Take Permit.

- B. “Conservation Easement” a Conservation Easement is a voluntary, legal agreement that permanently limits uses of a property or defined portion of a property to protect its Conservation Values.
- C. “Conservation Bank” Conservation banks are permanently protected lands that contain natural resource values. These lands are conserved and permanently managed for species that are endangered, threatened, candidates for listing, or are otherwise species-at-risk. Conservation banks function to offset adverse impacts to these species that occurred elsewhere, sometimes referred to as off-site mitigation. In exchange for permanently protecting the land and managing it for these species, the U.S. Fish and Wildlife Service (FWS) approves a specified number of habitat or species credits that bank owners may sell.
- D. “Conservation Value” are defined for individual conservation properties and typically include unique or high-quality natural habitat or species, prime farmland or soils, or historically significant areas.
- E. “Covered activity” means activities that are included in the Thurston HCP and covered for incidental take by the Incidental Take Permit as described in Chapter 3 and detailed in Chapter 4 of the Thurston HCP. They consist of ten categories of activities related to construction or infrastructure maintenance. The ten categories include residential development, added accessory structures, septic repair or extension, and home heating old tank removal; commercial and industrial development; transportation capital projects, transportation maintenance, and County right-of-way work; landfill and solid waste management; water resources management; and County Parks, trails, and land management. Mineral extraction activities are not Covered Activities and are therefore subject to Thurston County Critical Area Ordinance Chapter 24 and may require an individual Incidental Take Permit.
- F. “Covered species” means species that are described in Chapter 2 of the Thurston HCP and covered for incidental take by the Incidental Take Permit. These species include Olympia pocket gopher, Oregon spotted frog, Oregon vesper sparrow, Taylor’s checkerspot butterfly, Tenino pocket gopher, and Yelm pocket gopher.
- G. “Credits” Quantified, verified, and tradable units of environmental benefit from conservation or restoration action. Credits equate to one functional acre for a given Covered Species.
- H. “Critical habitat (federally designated)” - Specific areas within the geographic area occupied by the species on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protection.
- I. “Department” means the Community Planning and Economic Development Department unless otherwise specified in this title.
- J. “Development” means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling,

grading, clearing, paving, excavation or drilling operations, storage of equipment or materials, or any other activity which results in the removal of vegetation or in the alteration of natural site characteristics.

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 buildings, access roads/driveways, wells, septic systems, and similar improvements.

L. “Development Permit” means any permit or authorization that approves a ground-disturbing activity related to a Covered Activity, including building permit, grading permit, right-of-way permit, subdivision or plat, special use permit, variance, binding site plan, development agreement, or other similar permit or approval which authorizes a ground-disturbing activity in furtherance of a Covered Activity. The term “Development Permit” does not include non-project planning actions of general applicability such as the comprehensive plan, plan amendments, zoning and rezoning, annexation, sub-areas plans, and other similar area or regional land use planning actions not associated with a specific project.

M. “Director” means the Director of Community Planning and Economic Development Department.

N. “Federal permits” means the Incidental Take Permit issued by the United States Fish and Wildlife Service to Thurston County on July 1, 2022, authorizing the incidental take of covered species pursuant to the Thurston HCP and the federal Endangered Species Act (permit number #ESPER0043489), as those documents as may be amended from time to time.

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

P. “Habitat Conservation Plan (HCP)” HCPs are planning documents required as part of an application for an Incidental Take Permit. They describe the anticipated effects of the proposed taking; how those impacts will be minimized or mitigated; and how the HCP is to be funded. HCPs can apply to both listed and non-listed species, including those that are candidates or have been proposed for listing.

Q. “Incidental Take Permit” means a Permit issued under section 10(a)(1)(B) of the ESA to a non-federal party undertaking an otherwise lawful project that might result in the “take” of a threatened or endangered species. An application for an Incidental Take Permit is subject to certain requirements, including the preparation of a habitat conservation plan.

S. “Permit area” means the geographic area where the incidental take permit applies. It includes the unincorporated areas of Thurston County where covered activities and resulting take will occur.

T. “Project applicant(s)” or “applicants” means a person or entity applying for a development permit for a project authorizing a ground-disturbing activity for a covered activity.

U. “Mitigation Bank” – see Conservation Bank

V. “Mitigation fee” means fees established by the Department to be paid by development permittees (including capital and infrastructure projects) to fund the implementation activities including, but not limited to, the cost of land acquisition, land endowment, habitat management land improvement, and administration of the HCP program.

W. “Take” has the same meaning provided by the federal Endangered Species Act of 1973 as amended (16 U.S.C. § 1531 et seq.) (“FESA”) and its implementing regulations regarding activities subject to that Act. Specifically, take is defined in FESA to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. § 1532 (18))

X. “Thurston HCP” or “HCP” means the Thurston County Habitat Conservation Plan dated February 22, 2022 and may be revised from time to time.

17.40.040 – Responsibility for Administration

The Department Director or designee shall administer the provisions of this Chapter for the County.

17.40.045 – Guidelines

The Director may create guidelines to assist with the implementation and administration of all aspects of this Chapter.

17.40.050 – Interpretation

A. The inclusion of the words "must" and "shall" in a regulation indicates the requirement is mandatory. The director shall review and resolve any questions involving the proper interpretation or application of the provisions of this title that may be requested by any property owner, tenant, government officer, department, or other person affected. The director's decision shall be in keeping with the intent of this title, The Thurston HCP, Incidental Take Permit, the Thurston County Comprehensive Plan, the Growth Management Act, and other applicable federal, state, and county regulations.

B. Where conflicts occur between the provisions of this title or between this Chapter and other regulations, the provisions of the Thurston HCP and Incidental Take Permit shall govern. When conflicts occur between meeting minimum land use densities and the provisions of this title, the provisions of this Title shall apply. The county may waive minimum density requirements to protect critical areas, as determined by the director.

17.40.060 – Application

- A. When a permit is submitted, the Department shall confirm projects lie within the mapped extent for the Covered Species using aerial imagery and mapped Covered Species extent from Thurston County GIS system.
- B. The Department shall review the applications for completeness and verify that the appropriate application administration fee has been collected.
- C. The Department may reject all or part of an application and supporting information, including any required special report, based upon:
 - 1. Factual errors or omissions;
 - 2. Inconsistencies between the submitted materials and observable data, and/or accepted scientific or technical criteria;
 - 3. Inconsistencies or conflict with any requirements under the Thurston HCP or Incidental Take Permit,
 - 3. Faulty or incomplete analysis or analytical procedures, or
 - 4. Other reasonable bases that support the rejection of an application due to incompleteness or insufficient information to enable complete and proper review by the Department.

17.40.065 – Thurston HCP Application Submittal Standards

- A. The Director shall establish criteria for Thurston HCP application submittal requirements. At a minimum, the Thurston HCP application submittal shall include all the following:
 - 1. A complete application form as determined by the Department.
 - 2. Full payment of the applicable permit fee to cover the costs associated with the review of each application, and as adopted in the County’s fee schedule.
 - 3. A written description of the proposed development including a description of compliance or planned compliance with avoidance and minimization measures as required under Section 17.04.075 for each impacted species.
 - 4. A development plan – detailed site plan drawn to scale depicting all proposed development (e.g., lot, roads, driveways, structures, lawn and landscaping area(s), etc.) within the development envelope, development envelope dimensions, and geographic extent of the proposed project area and of on-going maintenance activities to be performed.
 - 5. A GIS-compatible Shapefile, Geodatabase file, or County approved equivalent that depicts the geographic extent of the development envelope may be required.

6. For properties that contain Oregon spotted frog (OSF) habitat, a report consistent with TCC 17.40.075.
7. When requesting an expanded review to complete a site-specific soil survey rather than relying on mapped USDA soil series data for Olympia, Tenino, or Yelm Pocket Gopher, submit a report containing the information required under TCC 17.40.075. If the Department determines that such report demonstrates no impact to Covered Species or other species protected by TCC Title 24, the Applicant shall be excused from needing to complete subsections 8 through 10 below.
8. A completed Coverage and Fee worksheet to provide quantification of anticipated impacts for each Covered Species, consistent with Section 7.5 and Appendix H-Credit-Debit Method of the Thurston HCP. The Coverage and Fee worksheet and instructions will be provided in a form made by the department.
9. A completed Coverage and Fee worksheet must also demonstrate how proposed mitigation will address all quantified impacts, including one or a combination of the following:
 - a. Estimation of the mitigation fee consistent with TCC 17.40.075.
 - b. Documentation of the proposed land dedication consistent with TCC 17.40.085.
 - c. Proposed Conservation Bank information including documentation from the Conservation Bank indicating it is a USFWS approved Bank and the estimated credits needed to offset the proposed impacts are available.
 - d. Separate Take Authorization consistent with TCC 17.40.085(C).
10. Other information as directed by the Department Director or designee in accordance with the Thurston HCP or Incidental Take Permit.
11. Prior to applying, prospective applicants are encouraged to participate in a pre-submission conference. Depending on the nature of the action, pre-submission conferences may be required by the Thurston County Code. Applications for pre-submission conferences shall be submitted to the department on forms provided by the department.

17.40.070 – HCP Application Review Procedures – General Requirements.

- A. No construction, clearing, grading, or other ground-disturbing activity shall occur prior to written approval by the review authority.

17.40.075 – HCP Application Review Procedures – Species-Specific Requirements

A. The following is required for coverage from potential impacts to Olympia, Tenino, and Yelm Pocket Gopher:

1. The area of impact will be determined by overlapping the proposed development envelope area with the mapped extent of the Covered Species using the information in the Thurston County GIS system.
2. The Applicant may choose to complete a site-specific soils survey rather than relying on USDA soil series data for Olympia, Tenino, or Yelm Pocket Gopher as mapped and depicted in the Thurston County GIS.
 - a. The survey shall be conducted by a certified professional soil scientist as defined in HCP Appendix K and,
 - b. The soil scientist shall use the methods approved by the County (see Appendix K: Site Evaluation Protocol) and for parcels 1 acre or less the entire parcel shall be surveyed. For parcels greater than an acre only 1 acre around the proposed development needs to be surveyed.
 - c. The Department will review the survey results and adjust any mitigation or minimization requirements based on increased or decreased habitat area.
3. The Applicant must demonstrate avoidance and minimization of impacts from their proposed development to the greatest extent practicable following the Best Management Practices described in Appendix C of the Thurston HCP. Where avoidance or minimization of impacts is not practicable under Appendix C, the applicant must provide an explanation describing why they cannot meet avoidance or minimization Best Management Practices. Practicability does not account for any cost or hardship in removing unauthorized development.
4. The Department will review Applicant's completed Coverage and Fee Worksheet and identify the area (in acres) and value unavoidably impacted by the Covered Activity and will assign a functional acre quantity (debit) using the procedure for calculating debits included in HCP Section 7.5 and Appendix H: Credit-Debit Methodology of the HCP. In the event, the Applicant elects an alternative mitigation method under TCC 17.40.085 the Department shall evaluate whether coverage is adequate under Section 17.40.085 of this Chapter.

B. The following is required for coverage from potential impacts to Taylor's Checkerspot Butterfly (TCB) or Oregon Vesper Sparrow (OVS):

1. The area of impact will be determined by overlapping the proposed development envelope with the mapped Covered Species extent using the information in Thurston County GIS.
2. The Applicant must demonstrate avoidance and minimization of impacts from their proposed development to the greatest extent practicable following the Best

- Management Practices described in Appendix C of the Thurston HCP. Where avoidance or minimization of impacts is not practicable under Appendix C, the applicant must provide an explanation describing why they cannot meet avoidance or minimization Best Management Practices. Practicability does not account for any cost or hardship in removing unauthorized development.
3. The Department will review Applicant's completed Coverage and Fee Worksheet and identify the area (in acres) and value unavoidably impacted by the Covered Activity and will assign a functional acre quantity (debit) using the procedure for calculating debits included in HCP Section 7.5 and Appendix H: Credit-Debit Methodology of the HCP. In the event, the Applicant elects an alternative mitigation method under TCC 17.40.085 the Department shall evaluate whether coverage is adequate under Section 17.40.085 of this Chapter.
 4. A separate mitigation fee for the TCB or OVS will be required only when a mitigation fee for the Olympia, Tenino, or Yelm Pocket Gopher is not also required.
- C. The following is required for coverage from potential impacts on Oregon spotted frog (OSF):
1. The Department will review the Applicant's completed Coverage and Fee Worksheet and identify whether the project parcel(s) lies within the OSF Habitat Screen using Thurston County GIS.
 2. Using application materials, photos, and GIS system, the Department will determine whether the project requires an onsite OSF screening by following the procedures set forth in Appendix F of the Thurston HCP.
 3. Projects that cannot be excluded through an in-office review will require a site visit conducted by Department staff to verify whether the property supports suitable OSF habitat using the OSF habitat verification process as described in Appendix F of the Thurston HCP. The verification process is to be conducted between January 1st – April 15th. *Where applicable, OSF habitat determination will occur concurrently with an assessment for wetlands.*
 4. If the Property contains OSF habitat as identified by County mapping, or as verified in the field under subsection (3) above, all wetlands must be delineated using the methodology described in Chapter 24.30 TCC, Wetlands. Other OSF habitats shall be delineated appropriately pursuant to Chapter 24.20.
 5. A critical area report completed by a qualified professional as described in 24.35 shall be completed as described in Chapter 24.35.370 TCC and submitted for review. In addition to the requirements of Chapter 24.35.370 the critical area report shall include the following:
 - a. The location of the landward extent of the wetland shall be depicted on a boundary survey completed by a professional surveyor and submitted for

review. The flagged location shall be mathematically tied to established control points describing the bounds by bearing and distance and include acreage.

b. The Applicant must demonstrate avoidance and minimization of impacts from their proposed development to the greatest extent practicable following the Best Management Practices described in Appendix C of the Thurston HCP. Where avoidance or minimization of impacts is not practicable under Appendix C, the applicant must provide an explanation describing why they cannot meet avoidance or minimization Best Management Practices. Practicability does not account for any cost or hardship in removing unauthorized development.

c. Where impacts to the wetland or buffer are unavoidable, the Applicant shall submit the Scoring Form for the Credit and Debit Method using the Department of Ecology Calculating Credit and Debits for Compensatory Mitigation in Wetlands of Western Washington for the Department's review.

6. Mitigation for all wetlands and their buffer under this chapter is required regardless of the size. The Department will review the Scoring Form for the Credit and Debit Method and using Ecology's "Debit" worksheet and identify the area (in acres) and value unavoidably impacted by the Covered Activity and will assign a functional acre quantity (debit) using the procedure for calculating debits included in Ecology Calculating Credit and Debits for Compensatory Mitigation in Wetlands of Western Washington. Where Ecology Western Washington Wetland Compensatory Mitigation Credit-Debit System system is not applicable, but OSF habitat exists, the applicant shall propose mitigation at no less than a 1:1 ratio. In the event, the Applicant elects an alternative mitigation method under TCC 17.40.085 the Department shall evaluate whether coverage is adequate under Section 17.40.085 of this Chapter.

D. Projects with impacts occurring within federally designated critical habitat for a covered species must be mitigated via land dedication within the same designated critical habitat unit as the impact (pursuant to section 4.6 of the Thurston HCP) and must meet requirements of TCC 17.40.085

E. If there are insufficient mitigation credits available to enable the County to meet its obligation to stay ahead of impacts as set forth in Thurston HCP Section 5.3.2, the fee-in-lieu option is unavailable, and the Applicant shall be required to fully mitigate impacts through an alternative under TCC 17.40.085.

17.40.080 – HCP Mitigation Fees – In Lieu of Land Dedications

Thurston County HCP mitigation fees are hereby authorized to fund the Land Conservation Strategy identified in the Thurston HCP Chapter 5. The Department shall review the application and determine the mitigation fee as follows:

- A. The functional value shall be calculated as provided in TCC 17.40.075 above and as specified therein for each impacted species by the Project.
- B. The Mitigation Fee for each covered species shall be calculated by the Department by multiplying the proposed area of impact by the functional value (debit) of the habitat impacted to obtain the functional acres of impact; then multiply the functional acres (debit) by the current mitigation fee found in the Thurston County HCP Mitigation Fee schedule, as adopted by resolution and in place at the time of complete application submittal.
- C. Except otherwise provided in TCC 17.40.085, upon or before the issuance of the permit or authorization, the project applicant shall pay the Mitigation fee in total pursuant to the requirements of 8.4.1 of the HCP.
- D. The Mitigation Fee amount applicable to the Development shall be the Mitigation Fee amount in effect at the time permit or authorization approval is issued.
- E. Timing of the mitigation fee payment not otherwise specified by this Chapter shall be governed by the Thurston HCP, Section 8.4.1.
- F. Failure to develop the project for which the Mitigation Fee was paid shall not result in a refund.

17.40.085 – Land and Other Options

- A. When mitigation by Fee in Lieu is either unavailable, insufficient, or less preferential to the Applicant, the Applicant must select one, or a combination, of either mitigation method (B), (C), or (D) below and demonstrate full coverage of impacts by meeting the requirements as specified in this Section.
- B. Dedications.
 - 1. An Applicant may dedicate land to mitigate all or a portion of impacts, identified under TCC 17.40.075 if the proposal complies with the Thurston HCP Mitigation via Land Dedication criteria as set forth in HCP Section 7.6.2.
 - a. Land will qualify as potential mitigation under this Chapter if it: (1) contributes to the Biological Goals and Conservation Objectives of the HCP Conservation Program, (2) benefits the Covered Species to be mitigated, and (3) meets the Conservation Land selection criteria in Section 5.4 of the Thurston HCP.

- b. Applicants proposing a dedication of land for mitigation must submit a petition for a consistency determination to the Department. The Department shall be responsible for determining the completeness of the petition and ensuring compliance with the Thurston HCP. The petition must include the following:
- i. An aerial, location map, and description of the land proposed for dedication. The description must identify if the land will be a New Preserve, Working Lands, or Enhancement of Existing Preserves as defined in Thurston HCP. ii. Demonstration that the mitigation site meets the minimum size requirements as specified for each species in Section 5.4. In general, sites must be a minimum of 50 ac (20 ha), for TCB or MPG, a minimum of 20 acres for OVS, and a minimum of 5 ac for OSF. If the mitigation area proposed is smaller then it must be adjacent to an already-conserved land with like habitat and similar land management acceptable to the Department.
 - ii. A baseline inventory of site conditions at the time of acquisition that documents the site is of sufficient habitat quality and function, and occupancy/proximity of the Covered Species to provide the mitigation required.
 - iii. A Site Management Plan using the template provided in Appendix I of the Thurston HCP that includes without limitation performance standards, the schedule for expected achievement of Performance Standards, mitigation, and long-term maintenance, in addition to monitoring and reporting requirements.
 - iv. A completed debit assessment of the Development Envelopment and credit assessment for the proposed mitigation using the procedure for calculating credits and debits included in HCP Section 7.5 and Appendix H: Credit-Debit Methodology of the HCP. For Oregon spotted frog mitigation Ecology's Calculating Credit and Debits for Compensatory Mitigation in Wetlands of Western Washington shall be used instead of Section 7.5 and Appendix H. In all cases, the credits generated by the proposed mitigation must fully offset the proposed debits.
- e. In all cases, the mitigation site must be under a permanent Conservation Easement following the model Conservation Easement template in Appendix L of the Thurston HCP and held by the County or approved nonprofit conservation organization with third-party enforcement right bestowed to County. The Easement must include protection of the Covered Species and Conservation Values. The process to establish the easement must include due diligence, such as a Phase 1 Environmental Site Assessment, appraisal, and title search to be provided to the Department for review.

- f. The mitigation site must be supported by a non-wasting stewardship endowment to fund habitat management/enhancement, monitoring, maintenance, and adaptive management of the property in perpetuity (including contingencies). Non-wasting endowments are further described in Thurston HCP Section 8.3.
- g. The petition shall be processed and reviewed by the Department as follows:
 - i. If upon review of the petition, the Department finds the information provided to be inadequate for determining consistency, the Department shall, within forty-five days (45) of receipt of the petition, provide the landowner with a written statement of additional information required. The forty-five (45) day period can be extended if both parties agree. Upon receipt of a complete and acceptable petition, the Department shall, within forty-five days, issue a written determination of acceptance.
 - ii. The Department is under no obligation to accept land that does not, based on its sole discretion, provide benefits to one or more covered species and does not benefit the Thurston HCP Conservation Program.
 - iii. Once a land dedication is granted to the County it shall be made in perpetuity and may not be rescinded or transferred for other projects. Additionally, land dedications may not be obligated to meet other state, federal or local mitigation requirements. Failure to develop the project shall not result in a refund of related fees that were previously paid.

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.

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.

17.40.090 - Thurston HCP Approval Authority and Review Coordination.

- A. The Department may approve, approve with conditions, or deny an application submitted under this Chapter after evaluating the application through the provisions of this Chapter following the Type I application procedures in Chapter 24.05 TCC.
- B. In addition to the requirements of this Chapter, the project being reviewed may also require additional approvals, pursuant to Title 24 TCC, to address potential impacts on other critical areas identified by the County code. The department shall issue a decision for each application involving a critical area, associated buffer, or riparian area in accordance with the applicable review process in TCC 24.05.020 and the sections of this Title applicable to each decision. Such additional determinations shall be consolidated with decisions under this Chapter as provided under TCC 24.05.030.

17.40.100 – Issuance of Certificate of Inclusion

Impacts to covered species shall be authorized and a Certificate of Inclusion will be issued upon demonstration that all requirements under this Chapter are deemed satisfied at the discretion of the Department. The conditions of such approval for the project require the Applicant to comply with all terms and conditions required by the Thurston HCP and Incidental Take Permit. Other terms and conditions to ensure compliance with this Chapter and other provisions of the Thurston County Code may be added at the discretion of the department. Prior to the issuance of a Certificate of Inclusion, the Applicant must pay the full amount of any fee-in-lieu mitigation as calculated under TCC 17.40.080.

17.40.105 – Recordation-Certificate of Inclusion-Notice

The owner of a lot that is subject to a certificate of inclusion under this Chapter shall record the certificate and a map on the title with the Thurston County Auditor in the same manner as prescribed under TCC 24.05.100.

17.40.110 – Appeals

- A. Appeals of administrative decisions may be taken to the hearing examiner by any person aggrieved or by any officer, department, board, or commission of the county affected by any order, requirement, permit, decision, or determination made by an administrative official in the administration or enforcement of this title. Appeals shall be filed in writing with the department within fourteen calendar days of the date of the notice of the decision

being appealed on a form provided by the department. Appeals shall be considered in the manner prescribed by Chapter 2.06 TCC.

B. Appeals of hearing examiner decisions may be brought to the board of county commissioners by any aggrieved party. Appeals shall be filed in writing with the department within fourteen calendar days of the date of the notice of the decision being appealed on a form provided by the department. Appeals shall be considered in the manner prescribed by Chapter 2.06 TCC.

C. Any final decision by the board of county commissioners is appealable in the manner proscribed by state law.

17.40.120 – Enforcement.

Violations of this title shall be enforced through the provisions of Title 26 TCC.

17.40.130 – Effective date.

This Ordinance shall take effect on January 1, 2023.

17.40.140 – Severability.

If any section, subsection, sentence, clause, phrase or other portion of this Ordinance or its application to any person is, for any reason, declared invalid, illegal, or unconstitutional in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions herein.

ATTACHMENT A: Thurston County Environment Ordinance (Title 17)

The proposed amendments change Chapter 17.20 (Mineral Extraction and Asphalt Production) to prohibit mineral extraction permits in areas where a conservation easement has been established for the purposes of the HCP. They also amend Title 17 to add a new Chapter 17.40 which adopts the Thurston County Habitat Conservation Plan (HCP) and provides the regulatory framework for its implementation.

III. 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 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 (*Pooecetes gramineus affinis*), or Oregon spotted frog (*Rana pretiosa*) as part of the Thurston County Habitat Conservation Plan.

IV. Thurston County Code Title 17 TCC (Environment) is hereby amended to add a new Chapter 17.40 TCC to read as follows:

Chapters:

Chapter 17.40 – HABITAT CONSERVATION PLAN IMPLEMENTATION

Sections:

17.40.005 – Short Title

This Chapter shall be known as the “Habitat Conservation Plan,” and may be cited as such.

17.40.010 – Incorporation by Reference

The Thurston County Habitat Conservation Program (HCP) and Incidental Take Permit (ITP) are incorporated by reference as though fully set forth herein. Complete copies of the Thurston

HCP, Incidental Take Permit, and related documents are available at the offices of the Community Planning and Economic Development Department (as of the adoption of the ordinance codified in this chapter, 2000 Lakeridge Dr. SW, Olympia, WA, 98502) and Thurston County's website online.

17.40.015 – Purposes

The purpose of this Chapter is to provide the regulatory framework to implement the Thurston County Habitat Conservation Plan (Thurston HCP) according to the Incidental Take Permit approved by US Fish and Wildlife Service. The U.S. Endangered Species Act (ESA) and its implementing regulations in Title 50 of the Code of Federal Regulations (CFR) Section 17 prohibit the Take of any fish or wildlife species that are federally listed as threatened or endangered without prior approval pursuant to either Section 7 or Section 10 of the ESA.

The Thurston HCP enables the County to locally manage habitat protection when authorizing lawful projects that may impact the federally protected species. It describes how several species listed or considered for listing under the ESA will be protected; and how potential impacts to these species would be mitigated without the imposition of additional mitigation requirements outside of the Habitat Conservation Plan process in compliance with Section 10 of the ESA.

The Thurston HCP provides an efficient process for conserving species and protecting natural resources by creating larger scale, more ecologically viable, and more efficiently manageable mitigation sites. While also creating a predictable local framework for providing permits and authorizations for otherwise lawful covered activities that may impact federally protected species.

17.40.020 Applicability

F. Unless otherwise provided for, this Chapter shall apply to all activities and development in unincorporated Thurston County considered a Covered Activity that impacts Covered Species as such terms are defined in this Chapter. The requirements herein apply regardless of whether the underlying activity or development necessitates permission or authorization from Thurston County.

G. Application and review under this Chapter is required for all activities and development where the project application overlaps any land parcel with known habitat, potential habitat, or known occupancy of a Covered Species. Known habitat, potential habitat, or known occupancy is determined by the terms and requirements of the Thurston HCP and ITP. The extent of such habitat or occupancy is delineated through use of data presented by scientific mapping and reports, such as USDA soil maps, or information or data collected from onsite observations. Department shall maintain current maps of known habitat or occupancy of Covered Species and make such maps available to the public.

- H. Landowners and project proponents remain responsible to ensure compliance with the ESA, Title 17 of Thurston County Code (TCC), and Title 24 TCC for all activities and development that are not covered by the Thurston HCP and this Chapter.
- I. This Chapter implements federal mandates under the Endangered Species Act and is not a zoning or land use control ordinance subject to vested development rights under Washington law. This Chapter shall apply to all pending and future applications as of the Effective Date as provided for in TCC 17.40.020(C).
- J. The following are excluded from the provisions and requirements of this Chapter:
 - 1. Construction and land use permits or approvals, which were reviewed for Mazama pocket gopher presence meeting the following criteria:
 - a. The review to determine the presence of Mazama pocket gopher was completed according to county protocol and concluded with negative screening results, and
 - b. The underlying permit remains valid pursuant to the applicable development code, and
 - c. The construction or land use permit for which the review was performed is not modified.
 - 2. 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.
 - 4. Fully Forested Parcels as defined in TCC 17.40.030.
 - 5. Projects and activities that are entirely 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.

17.40.030 – Definitions

The definitions outlined in this section shall govern the application and interpretation of this chapter. Words and phrases not defined in this section shall be interpreted to give this chapter its most reasonable application

- A. “Certificate of Inclusion” is a document issued by the Department as part of a development permit or authorization to document coverage under the county’s Incidental Take Permit.

- B. “Conservation Easement” a Conservation Easement is a voluntary, legal agreement that permanently limits uses of a property or defined portion of a property to protect its Conservation Values.
- C. “Conservation Bank” Conservation banks are permanently protected lands that contain natural resource values. These lands are conserved and permanently managed for species that are endangered, threatened, candidates for listing, or are otherwise species-at-risk. Conservation banks function to offset adverse impacts to these species that occurred elsewhere, sometimes referred to as off-site mitigation. In exchange for permanently protecting the land and managing it for these species, the U.S. Fish and Wildlife Service (FWS) approves a specified number of habitat or species credits that bank owners may sell.
- D. “Conservation Value” are defined for individual conservation properties and typically include unique or high-quality natural habitat or species, prime farmland or soils, or historically significant areas.
- E. “Covered activity” means activities that are included in the Thurston HCP and covered for incidental take by the Incidental Take Permit as described in Chapter 3 and detailed in Chapter 4 of the Thurston HCP. They consist of ten categories of activities related to construction or infrastructure maintenance. The ten categories include residential development, added accessory structures, septic repair or extension, and home heating old tank removal; commercial and industrial development; transportation capital projects, transportation maintenance, and County right-of-way work; landfill and solid waste management; water resources management; and County Parks, trails, and land management. Mineral extraction activities are not Covered Activities and are therefore subject to Thurston County Critical Area Ordinance Chapter 24 and may require an individual Incidental Take Permit.
- F. “Covered species” means species that are described in Chapter 2 of the Thurston HCP and covered for incidental take by the Incidental Take Permit. These species include Olympia pocket gopher, Oregon spotted frog, Oregon vesper sparrow, Taylor’s checkerspot butterfly, Tenino pocket gopher, and Yelm pocket gopher.
- G. “Credits” Quantified, verified, and tradable units of environmental benefit from conservation or restoration action. Credits equate to one functional acre for a given Covered Species.
- H. “Critical habitat (federally designated)” - Specific areas within the geographic area occupied by the species on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protection.
- I. “Department” means the Community Planning and Economic Development Department unless otherwise specified in this title.
- J. “Development” means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling,

grading, clearing, paving, excavation or drilling operations, storage of equipment or materials, or any other activity which results in the removal of vegetation or in the alteration of natural site characteristics.

- 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 buildings, access roads/driveways, wells, septic systems, and similar improvements.
- L. “Development Permit” means any permit or authorization that approves a ground-disturbing activity related to a Covered Activity, including building permit, grading permit, right-of-way permit, subdivision or plat, special use permit, variance, binding site plan, development agreement, or other similar permit or approval which authorizes a ground-disturbing activity in furtherance of a Covered Activity. The term “Development Permit” does not include non-project planning actions of general applicability such as the comprehensive plan, plan amendments, zoning and rezoning, annexation, sub-areas plans, and other similar area or regional land use planning actions not associated with a specific project.
- M. “Director” means the Director of Community Planning and Economic Development Department.
- N. “Federal permits” means the Incidental Take Permit issued by the United States Fish and Wildlife Service to Thurston County on July 1, 2022, authorizing the incidental take of covered species pursuant to the Thurston HCP and the federal Endangered Species Act (permit number #ESPER0043489), as those documents as may be amended from time to time.
- O. “Fully Forested” means those parcels with 100 percent tree canopy cover with shrub and fern understory.
- P. “Habitat Conservation Plan (HCP)” HCPs are planning documents required as part of an application for an Incidental Take Permit. They describe the anticipated effects of the proposed taking; how those impacts will be minimized or mitigated; and how the HCP is to be funded. HCPs can apply to both listed and non-listed species, including those that are candidates or have been proposed for listing.
- Q. “Incidental Take Permit” means a Permit issued under section 10(a)(1)(B) of the ESA to a non-federal party undertaking an otherwise lawful project that might result in the “take” of a threatened or endangered species. An application for an Incidental Take Permit is subject to certain requirements, including the preparation of a habitat conservation plan.
- S. “Permit area” means the geographic area where the incidental take permit applies. It includes the unincorporated areas of Thurston County where covered activities and resulting take will occur.
- T. “Project applicant(s)” or “applicants” means a person or entity applying for a development permit for a project authorizing a ground-disturbing activity for a covered activity.
- U. “Mitigation Bank” – see Conservation Bank

V. “Mitigation fee” means fees established by the Department to be paid by development permittees (including capital and infrastructure projects) to fund the implementation activities including, but not limited to, the cost of land acquisition, land endowment, habitat management land improvement, and administration of the HCP program.

W. “Take” has the same meaning provided by the federal Endangered Species Act of 1973 as amended (16 U.S.C. § 1531 et seq.) (“FESA”) and its implementing regulations regarding activities subject to that Act. Specifically, take is defined in FESA to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. § 1532 (18))

X. “Thurston HCP” or “HCP” means the Thurston County Habitat Conservation Plan dated February 22, 2022 and may be revised from time to time.

17.40.040 – Responsibility for Administration

The Department Director or designee shall administer the provisions of this Chapter for the County.

17.40.045 – Guidelines

The Director may create guidelines to assist with the implementation and administration of all aspects of this Chapter.

17.40.050 – Interpretation

B. The inclusion of the words "must" and "shall" in a regulation indicates the requirement is mandatory. The director shall review and resolve any questions involving the proper interpretation or application of the provisions of this title that may be requested by any property owner, tenant, government officer, department, or other person affected. The director's decision shall be in keeping with the intent of this title, The Thurston HCP, Incidental Take Permit, the Thurston County Comprehensive Plan, the Growth Management Act, and other applicable federal, state, and county regulations.

B. Where conflicts occur between the provisions of this title or between this Chapter and other regulations, the provisions of the Thurston HCP and Incidental Take Permit shall govern. When conflicts occur between meeting minimum land use densities and the provisions of this title, the provisions of this Title shall apply. The county may waive minimum density requirements to protect critical areas, as determined by the director.

17.40.060 – Application

- A. When a permit is submitted, the Department shall confirm projects lie within the mapped extent for the Covered Species using aerial imagery and mapped Covered Species extent from Thurston County GIS system.
- B. The Department shall review the applications for completeness and verify that the appropriate application administration fee has been collected.
- D. The Department may reject all or part of an application and supporting information, including any required special report, based upon:
 - 2. Factual errors or omissions;
 - 2. Inconsistencies between the submitted materials and observable data, and/or accepted scientific or technical criteria;
 - 3. Inconsistencies or conflict with any requirements under the Thurston HCP or Incidental Take Permit,
 - 3. Faulty or incomplete analysis or analytical procedures, or
 - 4. Other reasonable bases that support the rejection of an application due to incompleteness or insufficient information to enable complete and proper review by the Department.

17.40.065 – Thurston HCP Application Submittal Standards

- C. The Director shall establish criteria for Thurston HCP application submittal requirements. At a minimum, the Thurston HCP application submittal shall include all the following:
 - 3. A complete application form as determined by the Department.
 - 2. Full payment of the applicable permit fee to cover the costs associated with the review of each application, and as adopted in the County’s fee schedule.
 - 3. A written description of the proposed development including a description of compliance or planned compliance with avoidance and minimization measures as required under Section 17.04.075 for each impacted species.
 - 4. A development plan – detailed site plan drawn to scale depicting all proposed development (e.g., lot, roads, driveways, structures, lawn and landscaping area(s), etc.) within the development envelope, development envelope dimensions, and geographic extent of the proposed project area and of on-going maintenance activities to be performed.
 - 5. A GIS-compatible Shapefile, Geodatabase file, or County approved equivalent that depicts the geographic extent of the development envelope may be required.

6. For properties that contain Oregon spotted frog (OSF) habitat, a report consistent with TCC 17.40.075.
7. When requesting an expanded review to complete a site-specific soil survey rather than relying on mapped USDA soil series data for Olympia, Tenino, or Yelm Pocket Gopher, submit a report containing the information required under TCC 17.40.075. If the Department determines that such report demonstrates no impact to Covered Species or other species protected by TCC Title 24, the Applicant shall be excused from needing to complete subsections 8 through 10 below.
8. A completed Coverage and Fee worksheet to provide quantification of anticipated impacts for each Covered Species, consistent with Section 7.5 and Appendix H-Credit-Debit Method of the Thurston HCP. The Coverage and Fee worksheet and instructions will be provided in a form made by the department.
9. A completed Coverage and Fee worksheet must also demonstrate how proposed mitigation will address all quantified impacts, including one or a combination of the following:
 - a. Estimation of the mitigation fee consistent with TCC 17.40.075.
 - b. Documentation of the proposed land dedication consistent with TCC 17.40.085.
 - c. Proposed Conservation Bank information including documentation from the Conservation Bank indicating it is a USFWS approved Bank and the estimated credits needed to offset the proposed impacts are available.
 - d. Separate Take Authorization consistent with TCC 17.40.085(C).
10. Other information as directed by the Department Director or designee in accordance with the Thurston HCP or Incidental Take Permit.
11. Prior to applying, prospective applicants are encouraged to participate in a pre-submission conference. Depending on the nature of the action, pre-submission conferences may be required by the Thurston County Code. Applications for pre-submission conferences shall be submitted to the department on forms provided by the department.

17.40.070 – HCP Application Review Procedures – General Requirements.

- D. No construction, clearing, grading, or other ground-disturbing activity shall occur prior to written approval by the review authority.

17.40.075 – HCP Application Review Procedures – Species-Specific Requirements

A. The following is required for coverage from potential impacts to Olympia, Tenino, and Yelm Pocket Gopher:

4. The area of impact will be determined by overlapping the proposed development envelope area with the mapped extent of the Covered Species using the information in the Thurston County GIS system.
5. The Applicant may choose to complete a site-specific soils survey rather than relying on USDA soil series data for Olympia, Tenino, or Yelm Pocket Gopher as mapped and depicted in the Thurston County GIS.
 - a. The survey shall be conducted by a certified professional soil scientist as defined in HCP Appendix K and,
 - b. The soil scientist shall use the methods approved by the County (see Appendix K: Site Evaluation Protocol) and for parcels 1 acre or less the entire parcel shall be surveyed. For parcels greater than an acre only 1 acre around the proposed development needs to be surveyed.
 - c. The Department will review the survey results and adjust any mitigation or minimization requirements based on increased or decreased habitat area.
3. The Applicant must demonstrate avoidance and minimization of impacts from their proposed development to the greatest extent practicable following the Best Management Practices described in Appendix C of the Thurston HCP. Where avoidance or minimization of impacts is not practicable under Appendix C, the applicant must provide an explanation describing why they cannot meet avoidance or minimization Best Management Practices. Practicability does not account for any cost or hardship in removing unauthorized development.
4. The Department will review Applicant's completed Coverage and Fee Worksheet and identify the area (in acres) and value unavoidably impacted by the Covered Activity and will assign a functional acre quantity (debit) using the procedure for calculating debits included in HCP Section 7.5 and Appendix H: Credit-Debit Methodology of the HCP. In the event, the Applicant elects an alternative mitigation method under TCC 17.40.085 the Department shall evaluate whether coverage is adequate under Section 17.40.085 of this Chapter.

B. The following is required for coverage from potential impacts to Taylor's Checkerspot Butterfly (TCB) or Oregon Vesper Sparrow (OVS):

6. The area of impact will be determined by overlapping the proposed development envelope with the mapped Covered Species extent using the information in Thurston County GIS.
2. The Applicant must demonstrate avoidance and minimization of impacts from their proposed development to the greatest extent practicable following the Best

Management Practices described in Appendix C of the Thurston HCP. Where avoidance or minimization of impacts is not practicable under Appendix C, the applicant must provide an explanation describing why they cannot meet avoidance or minimization Best Management Practices. Practicability does not account for any cost or hardship in removing unauthorized development.

3. The Department will review Applicant's completed Coverage and Fee Worksheet and identify the area (in acres) and value unavoidably impacted by the Covered Activity and will assign a functional acre quantity (debit) using the procedure for calculating debits included in HCP Section 7.5 and Appendix H: Credit-Debit Methodology of the HCP. In the event, the Applicant elects an alternative mitigation method under TCC 17.40.085 the Department shall evaluate whether coverage is adequate under Section 17.40.085 of this Chapter.
4. A separate mitigation fee for the TCB or OVS will be required only when a mitigation fee for the Olympia, Tenino, or Yelm Pocket Gopher is not also required.

C. The following is required for coverage from potential impacts on Oregon spotted frog (OSF):

7. The Department will review the Applicant's completed Coverage and Fee Worksheet and identify whether the project parcel(s) lies within the OSF Habitat Screen using Thurston County GIS.
2. Using application materials, photos, and GIS system, the Department will determine whether the project requires an onsite OSF screening by following the procedures set forth in Appendix F of the Thurston HCP.
3. Projects that cannot be excluded through an in-office review will require a site visit conducted by Department staff to verify whether the property supports suitable OSF habitat using the OSF habitat verification process as described in Appendix F of the Thurston HCP. The verification process is to be conducted between January 1st – April 15th. *Where applicable, OSF habitat determination will occur concurrently with an assessment for wetlands.*
4. If the Property contains OSF habitat as identified by County mapping, or as verified in the field under subsection (3) above, all wetlands must be delineated using the methodology described in Chapter 24.30 TCC, Wetlands. Other OSF habitats shall be delineated appropriately pursuant to Chapter 24.20.
5. A critical area report completed by a qualified professional as described in 24.35 shall be completed as described in Chapter 24.35.370 TCC and submitted for review. In addition to the requirements of Chapter 24.35.370 the critical area report shall include the following:
 - a. The location of the landward extent of the wetland shall be depicted on a boundary survey completed by a professional surveyor and submitted for

review. The flagged location shall be mathematically tied to established control points describing the bounds by bearing and distance and include acreage.

b. The Applicant must demonstrate avoidance and minimization of impacts from their proposed development to the greatest extent practicable following the Best Management Practices described in Appendix C of the Thurston HCP. Where avoidance or minimization of impacts is not practicable under Appendix C, the applicant must provide an explanation describing why they cannot meet avoidance or minimization Best Management Practices. Practicability does not account for any cost or hardship in removing unauthorized development.

c. Where impacts to the wetland or buffer are unavoidable, the Applicant shall submit the Scoring Form for the Credit and Debit Method using the Department of Ecology Calculating Credit and Debits for Compensatory Mitigation in Wetlands of Western Washington for the Department's review.

6. Mitigation for all wetlands and their buffer under this chapter is required regardless of the size. The Department will review the Scoring Form for the Credit and Debit Method and using Ecology's "Debit" worksheet and identify the area (in acres) and value unavoidably impacted by the Covered Activity and will assign a functional acre quantity (debit) using the procedure for calculating debits included in Ecology Calculating Credit and Debits for Compensatory Mitigation in Wetlands of Western Washington. Where Ecology Western Washington Wetland Compensatory Mitigation Credit-Debit System system is not applicable, but OSF habitat exists, the applicant shall propose mitigation at no less than a 1:1 ratio. In the event, the Applicant elects an alternative mitigation method under TCC 17.40.085 the Department shall evaluate whether coverage is adequate under Section 17.40.085 of this Chapter.

D. Projects with impacts occurring within federally designated critical habitat for a covered species must be mitigated via land dedication within the same designated critical habitat unit as the impact (pursuant to section 4.6 of the Thurston HCP) and must meet requirements of TCC 17.40.085

E. If there are insufficient mitigation credits available to enable the County to meet its obligation to stay ahead of impacts as set forth in Thurston HCP Section 5.3.2, the fee-in-lieu option is unavailable, and the Applicant shall be required to fully mitigate impacts through an alternative under TCC 17.40.085.

17.40.080 – HCP Mitigation Fees – In Lieu of Land Dedications

Thurston County HCP mitigation fees are hereby authorized to fund the Land Conservation Strategy identified in the Thurston HCP Chapter 5. The Department shall review the application and determine the mitigation fee as follows:

- A. The functional value shall be calculated as provided in TCC 17.40.075 above and as specified therein for each impacted species by the Project.
- B. The Mitigation Fee for each covered species shall be calculated by the Department by multiplying the proposed area of impact by the functional value (debit) of the habitat impacted to obtain the functional acres of impact; then multiply the functional acres (debit) by the current mitigation fee found in the Thurston County HCP Mitigation Fee schedule, as adopted by resolution and in place at the time of complete application submittal.
- C. Except otherwise provided in TCC 17.40.085, upon or before the issuance of the permit or authorization, the project applicant shall pay the Mitigation fee in total pursuant to the requirements of 8.4.1 of the HCP.
- D. The Mitigation Fee amount applicable to the Development shall be the Mitigation Fee amount in effect at the time permit or authorization approval is issued.
- E. Timing of the mitigation fee payment not otherwise specified by this Chapter shall be governed by the Thurston HCP, Section 8.4.1.
- F. Failure to develop the project for which the Mitigation Fee was paid shall not result in a refund.

17.40.085 – Land and Other Options

- E. When mitigation by Fee in Lieu is either unavailable, insufficient, or less preferential to the Applicant, the Applicant must select one, or a combination, of either mitigation method (B), (C), or (D) below and demonstrate full coverage of impacts by meeting the requirements as specified in this Section.
- F. Dedications.
 - 8. An Applicant may dedicate land to mitigate all or a portion of impacts, identified under TCC 17.40.075 if the proposal complies with the Thurston HCP Mitigation via Land Dedication criteria as set forth in HCP Section 7.6.2.
 - a. Land will qualify as potential mitigation under this Chapter if it: (1) contributes to the Biological Goals and Conservation Objectives of the HCP Conservation Program, (2) benefits the Covered Species to be mitigated, and (3) meets the Conservation Land selection criteria in Section 5.4 of the Thurston HCP.

- b. Applicants proposing a dedication of land for mitigation must submit a petition for a consistency determination to the Department. The Department shall be responsible for determining the completeness of the petition and ensuring compliance with the Thurston HCP. The petition must include the following:
- i. An aerial, location map, and description of the land proposed for dedication. The description must identify if the land will be a New Preserve, Working Lands, or Enhancement of Existing Preserves as defined in Thurston HCP. ii. Demonstration that the mitigation site meets the minimum size requirements as specified for each species in Section 5.4. In general, sites must be a minimum of 50 ac (20 ha), for TCB or MPG, a minimum of 20 acres for OVS, and a minimum of 5 ac for OSF. If the mitigation area proposed is smaller then it must be adjacent to an already-conserved land with like habitat and similar land management acceptable to the Department.
 - ii. A baseline inventory of site conditions at the time of acquisition that documents the site is of sufficient habitat quality and function, and occupancy/proximity of the Covered Species to provide the mitigation required.
 - iii. A Site Management Plan using the template provided in Appendix I of the Thurston HCP that includes without limitation performance standards, the schedule for expected achievement of Performance Standards, mitigation, and long-term maintenance, in addition to monitoring and reporting requirements.
 - iv. A completed debit assessment of the Development Envelopment and credit assessment for the proposed mitigation using the procedure for calculating credits and debits included in HCP Section 7.5 and Appendix H: Credit-Debit Methodology of the HCP. For Oregon spotted frog mitigation Ecology's Calculating Credit and Debits for Compensatory Mitigation in Wetlands of Western Washington shall be used instead of Section 7.5 and Appendix H. In all cases, the credits generated by the proposed mitigation must fully offset the proposed debits.
- e. In all cases, the mitigation site must be under a permanent Conservation Easement following the model Conservation Easement template in Appendix L of the Thurston HCP and held by the County or approved nonprofit conservation organization with third-party enforcement right bestowed to County. The Easement must include protection of the Covered Species and Conservation Values. The process to establish the easement must include due diligence, such as a Phase 1 Environmental Site Assessment, appraisal, and title search to be provided to the Department for review.

- f. The mitigation site must be supported by a non-wasting stewardship endowment to fund habitat management/enhancement, monitoring, maintenance, and adaptive management of the property in perpetuity (including contingencies). Non-wasting endowments are further described in Thurston HCP Section 8.3.
- g. The petition shall be processed and reviewed by the Department as follows:
- ii. If upon review of the petition, the Department finds the information provided to be inadequate for determining consistency, the Department shall, within forty-five days (45) of receipt of the petition, provide the landowner with a written statement of additional information required. The forty-five (45) day period can be extended if both parties agree. Upon receipt of a complete and acceptable petition, the Department shall, within forty-five days, issue a written determination of acceptance.
 - ii. The Department is under no obligation to accept land that does not, based on its sole discretion, provide benefits to one or more covered species and does not benefit the Thurston HCP Conservation Program.
 - iii. Once a land dedication is granted to the County it shall be made in perpetuity and may not be rescinded or transferred for other projects. Additionally, land dedications may not be obligated to meet other state, federal or local mitigation requirements. Failure to develop the project shall not result in a refund of related fees that were previously paid.

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.

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.

17.40.090 - Thurston HCP Approval Authority and Review Coordination.

- A. The Department may approve, approve with conditions, or deny an application submitted under this Chapter after evaluating the application through the provisions of this Chapter following the Type I application procedures in Chapter 24.05 TCC.
- B. In addition to the requirements of this Chapter, the project being reviewed may also require additional approvals, pursuant to Title 24 TCC, to address potential impacts on other critical areas identified by the County code. The department shall issue a decision for each application involving a critical area, associated buffer, or riparian area in accordance with the applicable review process in TCC 24.05.020 and the sections of this Title applicable to each decision. Such additional determinations shall be consolidated with decisions under this Chapter as provided under TCC 24.05.030.

17.40.100 – Issuance of Certificate of Inclusion

Impacts to covered species shall be authorized and a Certificate of Inclusion will be issued upon demonstration that all requirements under this Chapter are deemed satisfied at the discretion of the Department. The conditions of such approval for the project require the Applicant to comply with all terms and conditions required by the Thurston HCP and Incidental Take Permit. Other terms and conditions to ensure compliance with this Chapter and other provisions of the Thurston County Code may be added at the discretion of the department. Prior to the issuance of a Certificate of Inclusion, the Applicant must pay the full amount of any fee-in-lieu mitigation as calculated under TCC 17.40.080.

17.40.105 – Recordation-Certificate of Inclusion-Notice

The owner of a lot that is subject to a certificate of inclusion under this Chapter shall record the certificate and a map on the title with the Thurston County Auditor in the same manner as prescribed under TCC 24.05.100.

17.40.110 – Appeals

- G. Appeals of administrative decisions may be taken to the hearing examiner by any person aggrieved or by any officer, department, board, or commission of the county affected by any order, requirement, permit, decision, or determination made by an administrative official in the administration or enforcement of this title. Appeals shall be filed in writing with the department within fourteen calendar days of the date of the notice of the decision

being appealed on a form provided by the department. Appeals shall be considered in the manner prescribed by Chapter 2.06 TCC.

B. Appeals of hearing examiner decisions may be brought to the board of county commissioners by any aggrieved party. Appeals shall be filed in writing with the department within fourteen calendar days of the date of the notice of the decision being appealed on a form provided by the department. Appeals shall be considered in the manner prescribed by Chapter 2.06 TCC.

C. Any final decision by the board of county commissioners is appealable in the manner proscribed by state law.

17.40.120 – Enforcement.

Violations of this title shall be enforced through the provisions of Title 26 TCC.

17.40.130 – Effective date.

This Ordinance shall take effect on January 1, 2023.

17.40.140 – Severability.

If any section, subsection, sentence, clause, phrase or other portion of this Ordinance or its application to any person is, for any reason, declared invalid, illegal, or unconstitutional in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions herein.

ATTACHMENT B: Thurston County Critical Area (Title 24)

The proposed amendments to Title 24 add references to the new Thurston County Habitat Conservation Plan implementing code Chapter 17.40 TCC. It also clarifies the application procedures and approval authority, when Chapter 17.40 applies, and when a Critical Area Report is not required.

- V. **Thurston County Code Chapter 24.01 TCC (General Provisions governing the Critical Area ordinance) Section 24.01.030 TCC (Interpretations) shall be amended to read as follows:**

...

The director shall review and resolve any questions involving the proper interpretation or application of the provisions of this title that may be requested by any property owner, tenant, government officer, department, or other person affected. The director's decision shall be in keeping with the intent of this title, the Thurston County Comprehensive Plan, the Thurston County Habitat Conservation Plan, the Growth Management Act, and other applicable federal, state, and county regulations.

- VI. **Thurston County Code Chapter 24.01 TCC (General provisions governing the critical area ordinance) Section 24.01.060 (Implementation of the Thurston HCP) shall be added for the implementation of the Thurston HCP.**

On July 1, 2022, the United States Fish and Wildlife Service (USFWS) approved the Thurston County Habitat Conservation Plan and issued a 30-year Incidental Take Permit that provides Endangered Species Act authorization for six species associated with prairie and wetland/riparian habitats across the County. The species covered include Olympia, Tenino and Yelm pocket gopher, Taylor's checkerspot butterfly, Oregon spotted frog, and Oregon vesper sparrow. Potential impacts on any of these six species and their habitat shall be governed by Chapter 17.40 TCC. If or when Thurston County's USFWS Incidental Take Permit is no longer valid, such impacts shall be regulated by Title 24 alone.

- VII. **Thurston County Code Chapter 24.03 TCC (Definitions) Section 24.03.010 (Definitions) shall be amended to read as follows:**

...

"Habitat conservation plans" (HCPs) are planning documents required as part of an application for an Incidental Take Permit. They describe the anticipated effects of the proposed taking; how those impacts will be minimized or mitigated; and how the HCP is

to be funded. HCPs can apply to both listed and non-listed species, including those that are candidates or have been proposed for listing.

...

“Thurston HCP” means the Thurston County Habitat Conservation Plan dated February 22, 2022, that covers the Olympia pocket gopher, Oregon spotted frog, Oregon vesper sparrow, Taylor’s checkerspot butterfly, Tenino pocket gopher, and Yelm pocket gopher. and may be revised from time to time.

VIII. Thurston County Code Chapter 24.05 (Administrative Procedures) Section 24.05.030 (Coordination with other application reviews) shall be amended to read as follows:

...

F. Certificates of Inclusion to the Thurston HCP, issued under Chapter 17.40 TCC, shall also be processed and consolidated in a manner consistent with how critical area review reports are addressed in this Section.

IX. Thurston County Code Chapter 24.05 (Administrative Procedures) Table 24.05-1 (Critical Area Review Authority and Review Processes) shall be amended to read as follows:

PERMIT/REVIEW	APPROVAL AUTHORITY				REVIEW PROCESS TYPE (Section <u>24.05.010</u>)			
	Staff/Director	Hearing Examiner (HE)	Planning Commission	County Commissioners	I	II	III	IV
Administrative action	D	A		A	■			
Emergency authorization (Chapter <u>24.90</u>)	D	A		A	■			
Critical area determination	D	A		A	■			

Certificate of Inclusion to the Thurston HCP	D	A		A	■			
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...

X. Thurston County Code Chapter 24.25.005 (Purpose) shall be amended to read as follows:

...

F. Ensure compliance and coordination with applicable federal and state protections.

XI. Thurston County Code Chapter 24.25 TCC (Fish and wildlife habitat conservation areas) Section 24.25.065 (Important habitats and species) shall be amended to read as follows:

Important animal and plant species, their habitats of primary association, and other important habitats protected under this chapter are:

- A. Federally Listed Species and Associated Habitats. Animal and plant species listed under the federal Endangered Species Act (64 FR 14307) as endangered, threatened, or candidates for listing and their habitats of primary association. (Consult the U.S. Fish and Wildlife Service and National Marine Fisheries Service for current listings.) The application and review process required to address potential impacts to species and associated habitat covered by the Thurston HCP shall be governed by Chapter 17.40 TCC.

XII. Thurston County Code Chapter 24.25 TCC (Fish and wildlife habitat conservation areas) Section 24.25.090 (General standards) shall be amended to read as follows:

The following requirements apply, as applicable, to all uses and activities listed in Table 24.25-3.

- A. Regulatory Differences. Differences in regulations because of the overlap of two or more critical areas or, the Shoreline Master Program or the Thurston HCP for the Thurston Region are governed by Chapter 24.01 TCC. All uses and activities subject to this section shall meet the requirements that provide the most protection to the critical areas involved. Uses and activities located in the jurisdiction of the Shoreline Master Program for the Thurston Region and the Permit Area of the Thurston HCP are prohibited if they are inconsistent with either the Shoreline Master Program or the Thurston HCP.

XIII. Thurston County Code Chapter 24.25 (Fish and wildlife habitat conservation areas) Appendix 24.25-1 (Table 24.25-4 Habitat of Local Importance) shall be amended to read as follows:

...

<p>Prairie or Westside Prairie</p>	<p>Important prairie or westside prairie habitat means herbaceous, non-forested (forested means greater than or equal to sixty percent forest canopy cover) plant communities that can either take the form of a dry prairie where soils are well-drained or a wet prairie. Priority dry prairie areas have a minimum size of one acre. In addition, some areas dominated by Scot's (Scotch) Broom (non-native shrub) or other invasive species to prairies shall be considered prairie if the area is restorable and when there are native prairie species in the understory below the shrubs. Such marginal and restorable areas can be less valuable, but may have significant value if they are large in area, or in a landscape that connects two or more prairies. Small areas less than one acre with characteristics meeting the definition of prairie habitat which are functionally connected to another larger prairie habitat within approximately one-half mile are also important prairie habitat areas. Mima mounds shall be preserved to the greatest practicable extent as determined by the review authority. See the definitions for prairie habitat, dry prairie, and wet prairie.</p>	<p>Mazama pocket gopher, Taylor's checkerspot butterfly butterfly, Mardon skipper, streaked horned lark</p> <p><u>Many species associated with prairie habitat are protected under the Thurston HCP and the requirements under Chapter 17.40 TCC.</u></p>
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...

XIV. Thurston County Code Chapter 24.35 (Special Reports) Section 24.35.350 (Wetlands – Special Reports) shall be amended to read as follows:

A wetland critical area report is required as part of the application for projects proposed to be located on sites containing wetlands and/or associated buffers. If the use or activity is proposed to be located within a wetland or buffer, the applicant shall also submit a wetland mitigation plan (see TCC 24.35.380). Properties within Oregon spotted frog screen projects will need to also follow the requirements of Chapter 17.40. The director may waive, or limit the scope of, any special reports with a written finding that the potential for

wetland or buffer impacts are low and that the proposed development would not cause significant adverse impacts, or that there is adequate biological/ecological information available on the area proposed for development to determine the impacts of the proposed development and appropriate mitigating measures. A report evaluating Oregon spotted frog impacts is not waivable.

XV. Thurston County Code Chapter 24.40 (Critical Area Review Permit) Section 24.40.010 (Generally) shall be amended to read as follows:

...

A critical area review permit is not needed to address impacts on species and habitat that are covered by the Thurston HCP and where a Certificate of Inclusion has been issued pursuant to Chapter 17.40 TCC. However, a Certificate of Inclusion for potential impacts on the Oregon Spotted Frog and its habitat does require a critical area review permit as provided under TCC 17.40.075.

ATTACHMENT C: Thurston County Code Enforcement Ordinance (Title 26)

The proposed change adds the new Chapter 17.40 Thurston County Habitat Conservation Plan to allow for and ensure consistency in enforcement procedures.

XVI. Thurston County Code Chapter 26.05 TCC (General Provisions) Section 26.05.010 TCC (Purpose) shall be amended to read as follows:

...

A. This title is adopted for the purposes of governing enforcement remedies for the following codes or as subsequently amended: Roads and Bridges (Title 13 TCC), Buildings and Construction (Title 14 TCC), Thurston County Stormwater Standards (Chapter 15.05 TCC), Sewer Systems (Chapter 15.09 TCC), Water Systems (Chapter 15.10 TCC), Cross-connections (Chapter 15.11 TCC), State Environmental Policy Act (Chapter 17.09 TCC) Agricultural Activities Critical Areas (Chapter 17.15 TCC), Mineral Extraction and Asphalt Production (Chapter 17.20 TCC), Thurston County Forest Lands Conversion Ordinance (Chapter 17.25 TCC), Platting and Subdivisions (Title 18 TCC), Shoreline Master Program for the Thurston Region (Title 19 TCC), Zoning Ordinances (Titles 20, 21, 22, and 23 TCC), Critical Areas Ordinance (Title 24 TCC), Habitat Conservation Plan Implementation Ordinance (Chapter 17.40) and including any permit, permit condition, or other remedy issued pursuant to any of the codes listed above. This Title hereby replaces and supersedes all code provisions referenced therein.