

ATTACHMENT – A: Thurston County Environment Ordinance (Title 17)

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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) is incorporated by reference as though fully set forth herein. Complete copies of the Thurston HCP 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 development in unincorporated Thurston County considered a Covered Activity that impacts Covered Species. The Project Applicant remains responsible to ensure compliance with the ESA, whether or not covered by the Thurston HCP.
- B. This Chapter implements federal mandates under the Endangered Species Act, it is not a zoning or land use control ordinance to determine vested development rights under Washington law and shall apply to pending and future applications as of the Effective Date as provided for in Section 17.40.020(C)
- C. The following are excluded from the provisions and requirements of this Chapter:
 1. Unexpired construction and land use permit or approval, which were reviewed following the procedures outlined in the 2018 US Fish and Wildlife Service ‘Guidance for Assessing Potential Take of Mazama Pocket Gophers in Thurston and Pierce Counties Projects’, meeting the following criteria:
 - a. The review was completed and concluded with negative screening results, and
 - b. The negative screening results continue to be valid per the 2018 USFWS Guidance, or

- c. The construction or land use permit for which the review was performed is not modified.
- 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.
- E. Development projects with vested rights as established by Washington law where such rights are vested prior to adopting this ordinance.
- F. Demolition permits.
- G. Fully Forested Parcels as defined in Section 17.40.040.
- H. Project that 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 – Covered Area and Activities

- A. Proposed Covered Activities located in unincorporated Thurston County that contain Thurston HCP Covered Species as defined and provided for in Section 17.40.040 are subject to this Chapter. HCP species locations are typically identified in Figure 2.3, the mapped extent of prairie species, and Figure 2.6 Oregon spotted frog habitat screen in Chapter 2 of the Thurston HCP.
- B. Covered activities are identified 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.

17.40.040 – 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 of the HCP.
- 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, Taylors 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 United States Fish and Wildlife Service to Thurston County on DATE, authorizing the incidental take of covered species pursuant to the Thurston HCP and the federal Endangered Species Act (permit number #), 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. “Species occupancy” a parcel is considered occupied by a Covered Species if the Department has information 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).

X. “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))

Y. “Thurston HCP” means the Thurston County Habitat Conservation Plan approved by the Board of County Commissioners on DATE and may be revised from time to time.

17.40.050 – Responsibility for Administration.

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

17.40.055 – 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. The Department shall review the applications for completeness and verify that the appropriate application administration fee has been collected.
- B. 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. Faulty or incomplete analysis or analytical procedures, or

4. Other reasonable basis that supports 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 minimum, the Thurston HCP application submittal shall include the following:
 1. A complete application form as determined by the Department.
 2. Applicable permit fee.
 3. A written description of the proposed development including a description of compliance or planned compliance with avoidance and minimization measures to the maximum extent practicable, in accordance with Appendix C – Best Management Practices of the Thurston HCP and a GIS compatible Shapefile, Geodatabase file, or County approved equivalent of the project area.
 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.), geographic extent of the proposed project extent, and of on-going maintenance activities to be performed.
 5. For properties that contain Oregon spotted frog (OSF) habitat as determined by Thurston County, a report documenting the methods and results of Oregon spotted frog survey using the protocol set forth in Appendix F of the Thurston HCP.
 6. When requesting an expanded review to complete a site-specific soils survey rather than relying on mapped USDA soil series data for Olympia, Tenino, or Yelm Pocket Gopher. Submit a report completed by a County-approved, certified professional soil scientist as defined in Appendix K: Site Evaluation Protocol.
 7. Coverage and Fee worksheet to provide quantification of anticipated impacts for each of the species covered by the Thurston HCP, consistent with Section 7.5 and Appendix H- Credit-Debit Method of the Thurston HCP.
 8. Proposed mitigation including one or more of the following:
 - a. Estimation of the mitigation fee due on a form determined by the Department.
 - b. Documentation of the proposed land dedication consistent with Section 7.6.2 of the Thurston HCP.
 - 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.
 9. Other information as directed by the Department Director or designee in accordance with the Thurston HCP.

10. 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.

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

B. Application for permit or approval shall be subject to the review procedures and requirements of this Section for each of the Covered Species.

C. Review process for Olympia, Tenino, and Yelm Pocket Gopher

1. The area of impact for the covered prairie species will be determined using aerial maps and the mapped Covered Species extents using the information in Thurston County GIS system.

2. The permit Applicant can 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. 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.

4. The Department will 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.

D. For Taylor's Checkerspot Butterfly (TCB) or Oregon Vesper Sparrow (OVS)

1. The area of impact for the covered prairie species will be determined using aerial maps and the mapped Covered Species extents using the information in Thurston County GIS.
2. The Applicant must demonstrate avoidance and minimization of impacts from their proposed project to the greatest extent practicable following the Best Management Practices as set forth in Appendix C. Where avoidance or minimization of impacts is not practicable under Appendix C, the Applicant must provide an explanation.
3. The Department will 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.
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.

E. For Oregon spotted frog (OSF)

1. County will identify projects which projects lie within the OSF Habitat Screen using aerial maps and the OSF screen layer in 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. Project where that cannot be excluded from OSF habitat through in-office review shall have a site visit conducted by Department staff to verify whether the property supports suitable OSF habitat using the field screening protocol as described in Appendix F of the Thurston HCP. Screening is to be conducted between January 1st – April 15th. *Where applicable, OSF habitat determination will occur concurrently with an assessment for wetlands.*
4. If Oregon Spotted Frog site screening verifies suitable OSF habitat on the property, the applicant shall have the wetlands (OSF habitat) delineated using the methodology described in Thurston Code Chapter 24.30, Wetlands as amended, and surveyed.
5. The location of the landward extend 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.
6. Wetland rating documentation will be completed using the Washington State Wetland Rating System for Western Washington to determine the appropriate buffer width pursuant to Chapter 24.30, as amended.

7. The delineation of the wetland (OSF habitat) and its buffers must be documented on the site plan required in 17.40.060(A)(4).
8. A critical area report shall be submitted which contains information required in Thurston County Code (TCC) Chapter 24.35, as amended impacts shall follow the mitigation sequencing described in TCC Chapter 24.01, as amended. The report must also demonstrate impact has been minimized to the fullest extent practicable following the Best Management Practices as set forth in Appendix C. Where avoidance or minimization of impacts is not practicable under Appendix C, the Applicant must provide an explanation.
9. Where impacts to the covered species are unavoidable, the Department will apply the Ecology Western Washington Wetland Compensatory Mitigation Credit-Debit System to the area of proposed impact and determine the mitigation offset required. Should the OSF habitat extend the landward of a CAO qualified wetland, the mitigation shall be no less than a 1:1 ratio.

F. Developments 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 HCP) and must meet requirements of 17.40.100(A) of this chapter.

G. 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 and the County shall require, at its sole discretion, one or more of the following:

- a. A dedication of land in lieu of some or all the Mitigation Fee that would otherwise be imposed, or
2. Separate Take Authorization as described in 17.40.100(C), or
3. The applicant to obtain mitigation from an approved independent Conservation or Mitigation Bank.

H. Impacts to covered species may be authorized and a Certificate of Inclusion will be extended upon the completion of the following conditions:

1. Upon satisfaction of the requirements of this Chapter determined by the discretion of the Department.

The conditions of approval for the project require the project applicant to comply with all terms and conditions of the Thurston HCP and Incidental Take Permit.

Such terms and conditions include but are not limited to the following at the discretion of the department:

- a) Mitigation has been completed pursuant to Section 17.40.090 or 17.40.100 of this Chapter;

Compliance with all relevant surveys, avoidance, minimization, and conservation measures determined by the Department; and

The Department determines that the extension of take authorization is consistent with the Thurston HCP and Incidental Take Permit.

17.40.075 – 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 20.60 Thurston County Code.
- B. In addition to the requirements of this Chapter, the applicant 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.
- C. HCP reviews may be combined with the underlying permit and the underlying development permit shall control the approval authority and review process.

17.40.080 - Guidelines.

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

17.40.090 – HCP Mitigation Fees

Thurston County HCP mitigation fees are hereby authorized to fund the Land Conservation Strategy identified in the Thurston HCP Chapter 5.

- A. The Department shall determine the mitigation fee by:
 - 1. Determining the extent of the impacts to the covered species created by the development.
 - 2. To determine the functional value use Appendix H - Credit-Debit Methodology of the HCP for the Olympia, Tenino, or Yelm Pocket Gopher, TCB and OVS or using the Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington for the Oregon spotted frog.
 - 3. 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 estimated mitigation fee in Fee Resolution XXX.
 - 4. Except otherwise provided in Section 17.40.100, 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.

5. 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.
6. Timing of the mitigation fee payment not otherwise specified by the Chapter shall be governed by the Thurston HCP. Section 8.4.1 of the HCP provided additional guidance on the timing of mitigation fee payments and is incorporated herein by reference.

B. Administration Fee.

Applicants requiring HCP review shall be charged a one-time fee for each respective HCP application request to cover the costs associated with the review of each application. Payment of the fee shall be required at the time of the application submittal.

17.40.100 – Land and Other Options in Lieu of Fee

A. Dedications.

1. An applicant may dedicate land in lieu of payment for all or a portion of the mitigation fee applicable to the predetermined area under development if preservation of the proposed land is consistent with the Thurston HCP Mitigation via Land Dedication criteria set forth in HCP Section 7.6.2.
 - a. Land will qualify as land in lieu of payment if it is: (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. Landowners proposing dedication of land in lieu of payment of mitigation fees must submit a petition for a consistency determination to the Department. The Department shall be responsible for determining the completeness of the petition. The petitioner must provide:
 - c. 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.
 - c. Mitigation site must meet the minimum size requirement for the 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 mitigation area proposed is smaller then must be adjacent to an already-conserved land with like habitat and similar land management.
 - d. Baseline inventory of site conditions at the time of acquisition must document that the site is of sufficient habitat quality and function, and occupancy/proximity of the Covered Species to provide the mitigation required.

- e. In all cases, the mitigation site must be under a permanent Conservation Easement 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.
 - i. 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.
 - ii. 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.
- f. The petition shall be processed in accordance with the following terms:
 - 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 an adequate petition, the Department shall, within forty-five days, issue a written determination with respect to the acceptability and consistency.
 - 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. The in-lieu land and payment of the mitigation fees are not transferable to the other project. Failure to develop the project shall not result in a refund of either the in-lieu land or related fees that were previously paid.

B. 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 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 fees are required for the purposes of complying with the Thurston HCP, in which case the mitigation fees described herein shall not be required of the project.

C. Use of Independent Conservation or Mitigation Bank

Certificate of Inclusion Applicants may elect to purchase mitigation credits from an independent conservation or mitigation bank that sells credits for the Covered Species (and Service Area, for Mazama Pocket Gopher subspecies) to be impacted. Mitigation banks and the credits they release 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.

17.40.110 – Habitat Conservation Implementation Team

An HCP Implementation Team will be assembled within 12 months of the effectiveness of this Chapter and convened regularly by staff in the Department of Community Planning and Economic Development to provide science and technical guidance to help implement the Thurston HCP Conservation Program and the terms of the Incidental Take Permit. The HCP Implementation Team will be composed of County staff and three to five members who are biologists, ecologists, or hydrogeologists who collectively have experience with conservation agricultural practices and the Covered Species and their habitat types. Representatives from the wildlife agencies may participate as informational liaisons. The HCP Implementation Team will undertake duties as described in Thurston HCP Section 7.2.3

The HCP Implementation Team’s role in the Thurston HCP is advisory only. The team will make recommendations to the Board through staff. The Board will retain authority to approve all work related to HCP Implementation.

17.40.120 – 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.

17.40.130 – Enforcement.

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

17.40.140 – Effective date.

This Ordinance shall take effect upon the occurrence of all the following: Thurston County’s adoption of the mitigation fees; and the issuance of the take permits by the U.S. Fish and Wildlife Service.

17.40.150 – 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 hereof.

ATTACHMENT – B: Thurston County Critical Area Ordinance (Title 24)

Deleted Text: ~~Strikethrough~~ / Changes: Underlined / Unaffected Omitted Text: (...)

I. Thurston County Code Chapter 24.01 TCC (General Provisions governing the Critical Area ordinance) Section 24.01.025 TCC (Applicability of critical area regulations) shall be amended to read as follows:

The provisions of this title for regulating critical areas shall apply to all land, all water areas, and all structures, and all use irrespective of lot lines in the unincorporated territory of Thurston County, Washington, except for agricultural activities (new and existing) and activities and species covered under the Thurston HCP. Agricultural activities meeting the requirements of TCC Section 17.15.110 shall be regulated by Chapter 17.15 TCC. Activities and species covered under the Thurston HCP are subject to the requirements found in Incidental Take Permit issued by and between the United States Fish and Wildlife Service and Thurston County. Where conflicts occur between the provisions of this title, the Habitat Conservation Plan, and the Incidental Take Permit shall prevail.

II. 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.

III. Thurston County Code Chapter 24.01 TCC (General Provisions governing the Critical Area ordinance) Section 24.01.040 TCC (Critical area maps) shall be amended to read as follows:

D. For properties containing Covered Species and associated habitat under the Thurston HCP refer to Chapter 2 of the Thurston HCP.

...

IV. 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 [DATE], the United States Fish and Wildlife Service 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. While the critical areas ordinance includes federally listed species, the Habitat Conservation Plan and associated documents will take precedence over the CAO in regulating the six (6) Habitat Conservation Plan Covered Species for Covered Activities to ensure compliance with the Endangered Species Act as long as the issued Incidental Take Permit is active.

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

...

“Covered Activity” means the activities that are included in the Thurston County Habitat Conservation Plan and covered for incidental take by the Incidental Take Permit.

“Covered Species” means that are included in the Thurston County Habitat Conservation Plan and covered for incidental take by the Incidental Take Permit.

...

"Department" means the "resource stewardship department" "Community Planning and Economic Development Department" unless otherwise specified in this title.

...

“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 approved by the United States Fish and Wildlife Service on [DATE] and adopted by the Board of County Commissioners on [DATE], and may be revised from time to time.

VI. Thurston County Code Chapter 24.25 TCC (Fish and wildlife habitat conservation areas) Section 24.25.010(Applicability) shall be amended to read as follows:

All property within unincorporated Thurston County containing fish and wildlife habitat conservation areas as defined and provided for in Chapter 24.03 TCC and/or associated buffers and additional areas identified by this chapter are subject to this title. Fish and wildlife habitat conservation areas are typically identified either by known point locations

of specific species or by habitat areas or both. The presence of a fish and wildlife habitat conservation area and/or buffer on a parcel triggers the requirements of this chapter, regardless of whether or not the habitat conservation area has been mapped. Unless the species are included within the Thurston HCP. Then the provision of the Thurston HCP will prevail over this Chapter in regulating the six (6) Habitat Conservation Plan Covered Species for those activities covered under the Thurston HCP.

VII. 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 listed below but do not include species covered under the Thurston County Habitat Conservation Plan as described in the Thurston HCP.

VIII. 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.

IX. Thurston County Code Chapter 24.25 (Fish and wildlife habitat conservation areas) Appendix 24.25-1 (Table 24.25-1 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</p>	<p>Mazama pocket gopher, Taylor's checkerspot butterfly butterfly, Mardon skipper, streaked horned lark <u>Many species associated with prairie habitat are protected</u></p>
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	<p>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><u>under the Thurston HCP.</u></p>
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