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**COMMUNITY PLANNING &
ECONOMIC DEVELOPMENT DEPARTMENT**

Joshua Cummings, Director

Creating Solutions for Our Future

MEMORANDUM

TO: Thurston County Planning Commission
FROM: Christina Chaput, Sr. Planner
DATE: March 2, 2022
SUBJECT: Docket Item A-8 Habitat Conservation Plan (HCP)
Implementation Ordinance (Title 17 and 24)

Background

U.S. Fish and Wildlife Service (USFWS) listed several species as threatened or endangered under the Endangered Species Act (ESA). After discussion with USFWS and analyzing the extent of listed species habitat overlap with potential development activities and implementation of capital projects, Thurston County reviewed its options to maintain compliance with the ESA. As a result, the County determined that a programmatic Habitat Conservation Plan (HCP) would provide the conservation and development guidelines to protect the natural resources while improving and streamlining the permit process for threatened and endangered species.

The Plan was developed by a team of scientists and planners with input from independent science reviewers, stakeholders, and the public. The Permit Area for the HCP is approximately 412,000, over which Thurston County has permitting authority. However, only a minor fraction of the Permit Area (approximately 9,221 acres of land located within roughly 75,000-acre of Covered Species habitat) may be impacted by Covered Activities over the life of the 30-year HCP.

The HCP will provide permits for approximately 7,193 acres of development and permit impacts on an additional 1,767 acres of infrastructure projects. The Conservation Land System to be acquired under the HCP will engage about 3,469 acres of land that will be managed for the benefit of six (6) species and the natural communities upon which they and other rare species depend. By proactively addressing the long-term conservation needs, the HCP strengthens local control over land use and provides greater flexibility in meeting other needs such as housing, transportation, and economic growth in the area.

History

With knowledge of pending listings Thurston County applied and obtained funding in 2012 under the HCP Assistance grants under the Cooperative Endangered Species Conservation Fund (Section 6 grants) administered with funds from USFWS. The County was awarded additional Section 6 grants in 2013 and 2017 to complete the HCP development.

The Thurston Board of County Commissioners (Board) designated the Thurston County Community Planning and Economic Development Department to lead the HCP development process. In 2013, staff worked with consultants to develop the Prairie Habitat Assessment Method on which the Thurston County HCP was based.

Additionally, in 2013 staff held several stakeholder meetings to take input from technical advisors, consultants, stakeholders, and the interested public to identify the Covered Activities, Covered Species, and quantification tools of the HCP. Thurston County also worked closely with the Thurston Regional Planning Council (TRPC) and multiple Thurston County departments. This work was to ensure the final product would address the County's forecasted population growth, development, and land use needs within the requested term of the Incidental Take Permit. The County and consultants also received technical assistance and guidance from WDFW.

In 2015, county staff presented the first draft HCP to stakeholders. At this time staff and consultants took input and adjusted the HCP before initiating technical review by USFWS. Between 2015-2021 County staff and consultants with guidance from the Board worked with USFWS to address issues and ensure the document met the ITP issuance requirements of ESA10(a)(2)(B).

Proposed Change

Development of New Ordinance Chapter 17.40

To comply with the requirements of the ESA, Thurston County is finalizing the HCP and must adopt an ordinance to require future development projects to comply with the HCP. The staff has developed regulations adding a new chapter to Title 17 (attachment A). The new chapter (Chapter 17.40) adopts the HCP, establishes a set application process, requires that projects be conditioned consistent with the HCP, and defines applicability. The new chapter also describes the review process, development standards and required mitigation methods provided for in the HCP. This process includes without limitations the following:

- Staff will identify projects within the Covered Species mapped extent using aerial maps and the mapped Covered Species extent layers instead of species surveys. Species surveys may be completed only in the following situations:
 - Applicant may choose to complete a site-specific soils survey rather than relying on mapped USDA soil series data for Olympia, Tenino, or Yelm Pocket Gopher. The soil survey shall be conducted using the Site Evaluation Protocol described in HCP Appendix K, or
 - The application submitted overlaps with the OSF screen layer. A site visit will be conducted by County staff to verify suitable OSF habitat using the field screening protocol as described in Appendix F: Oregon Spotted Frog Habitat Survey Protocol.

- Applicants will work with the County to implement Best Management Practices (defined in HCP Appendix C) to avoid and minimize impacts to the maximum extent practicable.
- To determine mitigation necessary to offset the impact, County staff will utilize a standard method to assign a functional acre value of impact (debit) using the procedure for calculating debits included in Appendix H: Credit-Debit Methodology and described in HCP Section 7.5.

The new ordinance describes several methods of mitigation available which must be secured before the proposed impacts can occur. These options for a permit applicant are, they may pay a Mitigation Fee, dedicate land, or purchase credits from an independent USFWS approved conservation bank. Additionally, the ordinance references the Departments standard mechanisms for appeal of a decision and enforcement.

Project approved under the HCP will receive incidental take coverage through the County's Incidental Take Permit that will allow and applicant to proceed with their Covered Activity.

Amendment to Chapter 24.25

Staff proposes several targeted changes to amend Title 24 CAO (Attachment B) to avoid duplication and confusion when implementing the HCP through the new ordinance. These changes are limited and specific to add clarification. The changes are found in several chapters throughout Title 24, including the following:

- Chapter 24.01 General Provisions - to introduce the HCP, identify the HCP and Incidental Take Permit as the controlling documents for species covered in the HCP for the term of the HCP.
- Chapter 24.03 Definitions - to clarify "Department" and add several definitions related to the HCP.
- Chapter 24.25 Fish and Wildlife Habitat Conservation Areas – to reference species covered by the HCP shall be protected by the regulations set forth in the HCP
- Table 24.25-1 to fix clerical error and add reference to the HCP.

Consistency with Other Plans and Policies

Consistency with County Wide Planning Policies

The County Wide Planning Policies encourage jurisdictions in the county to recognize their dependence on natural systems and maintain a balance between human uses and the natural environment. Of particular relevance to the HCP are the following goals:

- 10.1 Recognize our dependence on natural systems and maintain a balance between human uses and the environment.
- 10.2 Establish a pattern of intensity that is in concert with the ability of land and resources to sustain such use, reduce the effects of the built environment on the natural environment, conserve natural resources, and enable continued resource use.
- 10.3 Protect soil, air, surface water, and groundwater quality.
- 10.6 Protect and restore natural ecosystems, such as, forests, prairies, wetlands, surface and groundwater resources, that provide habitat for aquatic and terrestrial plants and animals.
- 10.8 Provide for parks and open space and maintain significant wildlife habitat and corridors.

Consistency with Comprehensive Plan Policies

The proposed changes maintain consistency with current county comprehensive plan. Relevant policies in the Thurston County Comprehensive Plan include:

(Chapter 8, Goal 1, Objective B, Policy 3, p. 8-29) – “The county should provide for certainty, consistency, and timely processing of land use permits.”

(Chapter 8, Goal 1, Objective B, Policy 13, p. 8-30) – “The county should review all new development regulations to determine their impact on existing businesses.”

(Chapter 9, Goal 5, Policy 1, pg. 9-22) “The county should protect fish and wildlife habitats that are important to the long-term viability of locally important species in Thurston County, which are unique or rare, or which contain state priority species or species listed under the federal Endangered Species Act.”

(Chapter 9, Goal 5, Policy 2, pg. 9-22) “The county should identify and protect (e.g., through easements, fee acquisition, or regulations) land providing essential connections between riparian habitat areas, open spaces, and significant wildlife habitats sustaining state priority, federally listed, or locally important wildlife species...”

(Chapter 9, Goal 5, Policy 4, pg. 9-23) “The county should establish and protect riparian habitat areas to maintain or enhance the functions sustaining aquatic life and terrestrial wildlife, consistent with best available science.”

(Chapter 9, Goal 5, Policy 4, pg. 9-23) “The county should evaluate streams/riparian areas supporting anadromous fish, sensitive native resident fish, or state priority wildlife species to determine their long to sustain such fish and wildlife at buildout term viability t of the drainage basin under current regulations, consistent with best available science. The county should build upon the information and analysis produced through the Watershed Resource Inventory Area projects as necessary to assess current and projected stream and riparian conditions. In performing the assessments, consider factors such as stream gradient, channel

dimensions, valley configurations, historical conditions, current stream conditions, the width, continuity and quality of riparian areas, the presence of any associated wetlands, aquatic and terrestrial habitat utilization and sensitivity, the intensity of adjacent uses, current zoning, cumulative impacts of existing and planned future land and resource use, subwatershed hydrology (e.g., based on soil characteristics, tree cover, land use types and characteristics, impervious surface coverage, and the performance of existing stormwater facilities), and water quality”

(Chapter 9, Goal 5, Policy 7, pg. 9-23) “The county should identify priorities for fish and wildlife habitat protection/acquisition and other remedial actions necessary to maintain or restore the riparian or important upland habitat.”

(Chapter 9, Goal 5, Policy 15, pg 9-24) “The county should prevent development and activities in streams, riparian areas, wetlands, other protected wildlife habitats and any associated buffers that would damage their functions, except to the minimum extent necessary when there is no reasonable alternative for accommodating an essential use (e.g., an essential road or utility crossing).”

(Chapter 9, Goal 7, Objective 2, Policy 1 pg. 9-27) “The county should establish a system for identifying and prioritizing greenspaces for acquisition or other form of protection in order to maximize public benefits. The following types of lands should be considered for acquisition: ... (b) lands containing environmental features with significant educational, scientific, wildlife habitat (especially areas important to the preservation of anadromous fish), natural or historic values...”

(Chapter 9, Goal 9, Objective 1, Policy pg. 9-33) “The county should establish management approaches that reflect our dependence on natural systems and maintain a balance between human uses and the natural environment”

Attachments

- Attachment A – Draft New Chapter 17.40 (redline and clean)
- Attachment B – Draft Amendments to Chapter 24.25

ATTACHMENT A - Redline Version

ATTACHMENT A – A: NEW CHAPTER, Thurston County Environment Ordinance, Habitat Conservation Plan

(Title 17)

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

Chapters:

CHAPTER 17.40 – HABITAT CONSERVATION PLAN

Sections:

17.40.005 - Title.

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

17.40.010 – Incorporation by Reference.

The Thurston County Habitat Conservation Program (HCP) is incorporated by reference as through 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 – Purpose.

The United States Congress enacted the Endangered Species Act (ESA) to protect plants and animals in danger of, or threatened with, extinction. The 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 is federally listed as threatened or endangered without prior approval pursuant to either Section 7 or Section 10 of the ESA.

Section 9 of the ESA prohibits the “take” of threatened and endangered species, including the attempt or action to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” such species (16 U.S.C. § 1532).

Section 10 of the ESA allows non-Federal Applicants, under certain terms and conditions, to incidentally take ESA-listed species that would otherwise be prohibited under Section 9 of the ESA. When a non-Federal landowner or other non-Federal entity wishes to proceed with an activity that is legal in all other respects, but that may result in the incidental taking of a listed species, an Incidental Take Permit, as defined under Section 10 of the ESA, may be requested.

The purpose of this Chapter is to help establish a comprehensive framework to protect and conserve rare, threatened and endangered species in compliance with Section 10 of the ESA, while improving and streamlining the environmental permitting process for impacts of future development on these species; to establish the procedures to implement the Thurston County Habitat Conservation Plan (Thurston HCP), which provides the basis for permits and authorizations necessary to lawfully take Covered Species which have been listed as

threatened or endangered pursuant to the terms of the ~~Endangered Species Act (ESA)~~, and provides a process for issuance of take authorizations for Covered Species, which are not currently listed which may be listed in the future without the imposition of additional mitigation requirements outside of the Habitat Conservation Plan process.

17.40.020 – Applicability.

Unless otherwise provided for, this Chapter shall apply to all development considered a Covered Activity that ~~may~~ impact Covered Species. For activities not covered it remains the responsibility of the property owner to ensure all land use activities are in compliance with the ESA, whether or not such activities are covered by the Thurston HCP. Because this Chapter implements federal mandates under the Endangered Species Act, vesting does not apply to this Chapter. Applications that are otherwise legally vested to other land use ordinances in Thurston County code are nonetheless subject to the requirements herein. This Chapter does not apply to the following:

- A. ~~Projects which have been reviewed following the procedures set forth in the 2018 USFWS Guidance for Assessing Potential Take of Mazama Pocket Gophers in Thurston and Pierce Counties~~ Projects with Mazama pocket gopher review completed prior to the effective date of this Chapter which ~~that~~ meet the following:
 - 1. ~~The review was complete and concluded with negative screening results, and~~
 - 2. ~~The screening negative results are valid per the 2018 USFWS Guidance, or~~
 - 4. ~~The negative determination remains valid pursuant to any applicable County permit or authorization that is not modified and addresses the development or land use activity in question. Followed the procedures and meet the criteria as set forth in the USFWS Guidance for Assessing Potential Take of Mazama Pocket Gophers in Thurston and Pierce Counties, and~~
 - 2. ~~Mazama pocket gopher activity is not observed on the property at any time before or during authorized construction activity, and~~
 - 3. ~~The review building permit has not expired, and the area of impact depicted on the approved site plans is not modified.~~
- B. Applications for mining activity.
- C. Building on existing permitted/authorized footprint.
- D. Development for which the United States Fish and Wildlife Service has approved other mitigation procedures through the issuance of a 10(a)(1)(B) permit constituting full mitigation or through Section 7 consultation.
- E. Demolition permits.
- F. Fully Forested Parcels
- G. Project that meets 4(d) rule

17.40.030 – Covered Area and Activities

Proposed projects which are a covered activity on properties within unincorporated Thurston County, containing HCP covered species as defined and provided for in Section 17.40.040 .

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.

17.40.040 – Definitions

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

- ~~A. “Building permit” includes, in connection with a covered activity only, a full structural building permit as well as a partial permit, such as a foundation-only permit, grading permit, Right of way permit, or any other permit or approval authorizing a ground-disturbing activity in furtherance of a covered activity.~~
- A. “Certificate of Inclusion” is a document issued by the Department as part of a development permit or authorization for purposes of documenting 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 in order 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.
- B-E. “Covered activity” means activities that are included in the Thurston County HCP and covered for incidental take by the Incidental Take Permit as described in Chapter 3 of the HCP.
- C-F. “Covered species” means species that are described in Chapter 2 of the Thurston County 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.
- D-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.

E.I. “Department” means the Community Planning and Economic Development Department unless otherwise specified in this title.

F.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.

G.K. “Development Envelope” means the designated boundaries as depicted on the site plan indicating where building, access roads, septic systems, and other development are located or will be located.~~means the area proposed for development on a lot or parcel.~~

L. “Development permit” includes, in connection with a covered activity only, a full structural building permit as well as a partial permit, such as a foundation-only permit, grading permit, Right-of-way permit, or any other permit or approval authorizing a ground-disturbing activity in furtherance of a covered activity.

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

H.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 may be amended from time to time.

I.O. “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.

P. “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 preparation of habitat conservation plan.

J.Q. “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.

K.R. “Planning permit(s)” means any discretionary permit that authorizes a ground-disturbing activity for a covered activity, including but not limited to approval of a Plat, large lot subdivision map, conditional use, special use permit, variance, binding site plan, or development agreement, or any other discretionary permit or approval, excluding actions of general comprehensive plan application such as general plan amendments, zoning and rezoning, annexation, specific plans, and other area or regional land use actions.

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

T. “Mitigation Bank” – see Conservation Bank

~~M.U.~~ “Mitigation fee” means fees established by the ~~County 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.

~~V.~~ “Species occupancy” a parcel is considered occupied by a Covered Species if the Department has information on record that indicates a Covered Species was observed through a species survey. The species survey may have been conducted by Department staff, a state or federal wildlife agency, or other qualified environmental professional that resulted in positive finding of a Covered Species. Positive finding include, without limitation, gopher mounds and audible calls by birds. Note: 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).

~~N.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))

~~O.X.~~ “Thurston HCP” means the Thurston County Habitat Conservation Plan approved by the Board of County Commissioners on DATE, and as 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.

In the event of a conflict between any term or requirement of this chapter, ~~or within the conservation easement, the take permit, or~~ the Thurston ~~County~~-HCP, the term or requirement of the ~~take permits~~ Thurston HCP and Incidental Take Permit shall govern.

17.40.060 – Application

A. Every application for a development or planning permit, as defined herein, must include information in Section 17.40.060 and include any additional contents and requirements set forth by the Department for implementation of this Chapter.

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. Faulty or incomplete analysis or analytical procedures, or
4. Other reasonable basis that support rejection of an application due to incompleteness or insufficient information to enable complete and proper review by the department.

~~Thurston HCP Application Submittal.~~

~~The Director shall establish criteria for Thurston HCP application submittal requirements. At minimum, the Thurston HCP application submittal shall include the following:~~

~~Complete application form for coverage under the Thurston HCP.~~

~~Applicable permit fee.~~

~~A written description of the proposed development, and a GIS-compatible Shapefile, Geodatabase file, or County approved equivalent of the project area.~~

~~A development plan — detailed site plan drawn to scale depicting all proposed development (lot, roads, driveways, structures, lawn and landscaping area(s), etc.), geographic extent of the proposed project extent, and the extent of on-going maintenance activities to be performed on the site.~~

~~For properties which contain 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.~~

~~When requesting an expanded review for Olympia, Yelm or Tenino pocket gopher a site-specific survey conducted by a County-approved, qualified natural resource professional using methods set forth in Appendix K of the Thurston HCP.~~

~~Evidence of compliance or planned compliance with avoidance and minimization measures, in accordance with Chapter 3 and Appendix C — Best Management Practices of the Thurston HCP.~~

~~Coverage and Mitigation 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.~~

~~Proposed mitigation including one or more of the following:~~

~~Estimation of the mitigation fee due.~~

~~Documentation of the proposed land dedication consistent with Section 7.6.2 of the Thurston HCP.~~

~~Proposed mitigation bank information including documentation that estimated credits needed are available.~~

~~Other information as directed by the Director or designee in accordance with the Thurston HCP.~~

~~Prior to applying for Thurston HCP permit and certificate of inclusion, 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 this title, or by the Thurston County Code. Applications for pre-submission conferences shall be submitted to the department on forms provided by the department.~~

17.40.065 – Thurston HCP Application Submittal

- A. The Director shall establish criteria for Thurston HCP application submittal requirements. At minimum, the Thurston HCP application submittal shall include the following:
1. Complete application form as determined by the Department.
 2. Applicable permit fee.
 3. A written description of the proposed development, 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 (lot, roads, driveways, structures, lawn and landscaping area(s), etc.), geographic extent of the proposed project extent, and the extent of on-going maintenance activities to be performed on the site.
 5. For properties which 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. A description of compliance or planned compliance with avoidance and minimization measures, in accordance with Chapter 3 and Appendix C – Best Management Practices of the Thurston HCP.
 8. Coverage and Mitigation 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.
 9. Proposed mitigation including one or more of the following:
 - a) Estimation of the mitigation fee due.
 - 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.

10. Other information as directed by the Department Director or designee in accordance with the Thurston HCP.

B. Prior to applying for a Thurston HCP Certificate of Inclusion, 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 this title, or by the Thurston County Code. Applications for pre-submission conferences shall be submitted to the department on forms provided by the department.

Application.

~~A. Every application for a planning permit, as defined herein, must be accompanied by a completed Thurston HCP application form that complies with Section 17.40.060 and include any additional contents and requirements set forth by the County for implementation of this Chapter.~~

~~B. A complete HCP supplemental worksheet that meets the requirements set forth in section 17.40.060 must be prepared for projects undertaken by the department for which this Chapter applies.~~

~~C. The department shall review the Thurston HCP applications for completeness and verify that the appropriate application administration fee has been collected.~~

~~D. In addition to the requirements of TCC 17.40.065(A) above, 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 support rejection of an application due to incompleteness or insufficient information to enable complete and proper review 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 within the development envelope.

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

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

- a) The survey ~~needs shall to~~ be conducted by a certified professional soil scientist as defined in HCP Appendix K~~County-approved, 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.
- ~~a) qualified natural resource professional using methods described in Appendix K of the Thurston HCP. The department will review the survey results and adjust any mitigation or minimization requirements based on increased or decreased habitat area within the development envelope.~~

~~2.3.~~ The Applicant must demonstrate avoidance and minimization of impacts from their proposed project development 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 aApplicant must provide an explanation.

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.

~~3. County will identify the habitat area and value unavoidably impacted by the Covered Activity and will assign a functional acre quantity of impact (a debit) using the procedure for calculating debits included in Appendix H and described in Section 7.5 of the Thurston 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 information in Thurston County GIS.

~~1. County will complete actions stated in B(1),(3) and (4).~~

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.

~~3. The permittee will receive a Certificate of Inclusion for the TCB or OVS with the County with payment of the mitigation fee for the Olympia, Tenino, or Yelm pocket gopher.~~

4. A separate mitigation fee for the TCB or OVS will be required only when ~~no a~~ mitigation fee for the Olympia, Tenino or Yelm ~~P~~pocket ~~G~~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 OSF screen layer in Thurston County ~~GeoData~~ ViewerGIS.

2. Using application materials, photos, and GIS system, the County 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. If a p~~Project where that cannot be excluded from OSF habitat through in-office review shall; have a site visit ~~will be~~ conducted by County Department staff to verify ~~w~~ w 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.*

~~3.—~~

~~4. If Oregon Spotted Frog site screening verifies suitable OSF habitat on the property, the applicant shall have the area delineated along with any wetlands (OSF habitat) on site delineated using the methodology described in Thurston Code Chapter 24.30, Wetlands as amended, and surveyed. by a County-approved, qualified natural resource professional.~~

~~d) 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.~~

~~4.—~~

~~5. 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.~~

~~6. The delineation of the wetland (OSF habitat) and their buffers must be documented on the site plan required in 17.40.060(A)(4).~~

~~5.—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 have been minimized to fullest extent practicable following the Best Management Practices as set forth in Appendix C. The delineation of the OSF habitat and any wetland must be documented on the site plan required in 17.40.060(A)(4).~~

~~6.7. 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.

- ~~7.8.~~ Where impacts to the habitat covered species is unavoidable, the Department will apply the Ecology Western Washington Wetland Compensatory Mitigation Credit-Debit System ~~will be applied~~ to the area of proposed impact ~~to~~ and determine mitigation offset required. Should the OSF habitat extend 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 of the Thurston HCP and Section XX of the Implementation Agreement, the County shall require, at its sole discretion, one or more of the following:
1. 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 County Department.
 2. The conditions of approval for the project require the project applicant to comply with all terms and conditions of the Implementing Agreement, the Thurston HCP and Incidental Take Permit.
 3. 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;
 - b) Compliance with all relevant surveys, avoidance, minimization, and conservation measures determined by the County Department; and
 - c) The County Department determines that the extension of take authorization is consistent with the Thurston HCP and Incidental Take Permit, Implementation Agreement
 - c) An HCP Determination Letter
 4. ~~indicating the total mitigation fee to be remitted, or other mitigation requirements as determined in Section 17.40.100 of this Chapter.~~
- ~~I. A certificate of inclusion will be extended consistent with Section 7.3.~~

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. In addition to the requirements of this Chapter, the applicant may also require ~~additional approvals~~, pursuant to Title 24 TCC, in order to address potential impacts to other critical areas identified by 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.
- ~~B. Decisions on and review of HCP permits under Chapter 17.40 TCC associated with other related development applications may occur with the State Environmental Policy Act review and determination required under Chapter 17.09 TCC. However, the decision on the critical area review permit is a separate decision.~~
- ~~C. If no State Environmental Policy Act determination is required, then:~~
- ~~1. The decision shall be issued such that the appeal period shall expire a minimum of fifteen calendar days prior to a public hearing; or~~
 - ~~1. Where no public hearing is required, the decision shall occur prior to or at the same time as the decision on any associated development application.~~
- D.B. HCP ~~permits reviews may be~~must be combined with the underlying permit and the underlying planning 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 adopted to fund the Land Conservation Strategy identified in the Thurston ~~County~~ HCP (Chapter 5).

- A. The ~~County Department~~ shall determine the mitigation fee by:
1. Determining the extent of the impacts to the covered species created by the development ~~_for the covered species~~
 2. To determine the functional value use Appendix H - Credit-Debit Methodology of the HCP for the Olympia, Tenino, or Yelm Pocket GopherMPG, 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 ~~County~~ 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 fee in Fee Resolution XXX.

4. Except otherwise provided in Section 17.40.100, upon or before the issuance of the ~~grading permit~~ permit or or, if no grading permit is issued, then upon or before the issuance of the first building permit for the project, 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 ~~of a grading permit~~ permit or authorization approval is is issued, or if no grading permit is issued, at the time the first building permit is issued for the project. If there are covered activities that do not require construction permits, fees must be paid before the covered activity is performed. Authorization and credit issuance is provided at the time fees are paid if the conditions described in Chapter 7, Section 7.3 are also met. Notwithstanding the foregoing, a project applicant may submit a written request to pay the Development Fee prior to the issuance of a grading permit or first building permit. Such request shall meet all the following:

5.

1. Timing of the mitigation fee payment not otherwise specified by the Chapter shall be governed by the Thurston HCP. In Section 8.4.1 of the HCP provided addition guidance on timing of mitigation fee payments and are incorporated herein by reference.

~~Application packet is deemed complete and the final required fees can be calculated.~~

~~If applicable — a preliminary plat, short plat, large lot subdivision, planned residential or planned rural residential development, development plan has been approved by the county.~~

~~Pay all required HCP fees that apply to the proposed project at the rates in effect for the calendar year in which the project proponent pays them, including any subsequent fee adjustments that occur during the calendar year (or by meeting land or other options in Lieu of Fee requirements in Section 17.40.100(A) of this chapter).~~

~~Agreeing in writing to all other applicable terms and conditions of the Implementing Agreement, and the HCP.~~

B. Administration Fee.

1. ~~Each HCP a~~ 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 ~~HCP~~ application submittal.
- ~~1. Timing of the mitigation fee payment not otherwise specified by the Chapter shall be governed by the HCP. In Section 8.4.1 of the HCP provided addition guidance on timing of mitigation fee payments and are incorporated herein by reference.~~

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 ~~County~~Department. The ~~HCP Administrator~~Department shall be responsible for determining completeness of the petition. The petitioner must provide:
 - i. ~~An aerial, location map and~~-description of the land proposed for dedication. ~~The description must~~ and identify if the land will be a New Preserve, Working Lands, or Enhancement of Existing Preserves as defined in Thurston HCP.
 - ~~ii.~~ 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.
 - iii. 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.
 - ~~ii-iv.~~ 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.
 - ~~iii-v.~~ 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. ~~the schedule and expected achievement of Performance Standards, mitigation and long-term~~

~~maintenance, in addition to monitoring and reporting requirements.~~

~~vi. 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.~~

~~iv. Additional information which may be required includes a preliminary title report, or other similar document acceptable to the county, and a preliminary assessment for hazardous waste contamination.~~

~~v. Correspondence from a habitat management entity (Land trust or similar NGO) regarding their ability and desire to accept title and management responsibilities.~~

c) The petition shall be processed in accordance with the following terms:

i. If, upon review of the petition, the ~~HCP Administrator~~Department finds the information provided to be inadequate for determining consistency, the ~~County 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.

ii. Upon receipt of an adequate petition, the ~~County Department~~ shall, within forty-five days, issue a written determination with respect to the acceptability and consistency.

d) The ~~County Department~~ is under no obligation to accept land that does not, ~~based on its it-it's~~ sole discretion, provide benefits to one or more species of concern covered species and does not benefit the Thurston HCP Conservation Program.

~~e) If, in consultation with the HCP Implementation Team and wildlife agencies as advisors, the County determines that the land proposed for dedication is acceptable and consistent with the Thurston HCP Section 7.6.2 and (1)(a) above in this section, the petitioner shall:~~

~~iii. Finalize Site Management Plan for approval,~~

~~iv. Provide evidence of a non-wasting stewardship endowment to fund management and maintenance of the property in perpetuity.~~

~~v. Enter into a permanent Conservation Easement that includes protection of the Covered Species and habitat to be mitigated as Conservation Values.~~

~~vi. The site manager must enter into a Cooperative Agreement with Thurston County that outlines the commitment to the Site Management Plan.~~

f)e) 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

1. 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

1. 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 be paid to the County.

17.40.110 – Habitat Conservation Implementation Team

An HCP Implementation Team will be assembled within 12 months of 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 HCP 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 also participate as 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; the full execution of the implementing agreement; 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 A – A: NEW CHAPTER, Thurston County Environment Ordinance, Habitat Conservation Plan

(Title 17)

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

Chapters:

CHAPTER 17.40 – HABITAT CONSERVATION PLAN

Sections:

17.40.005 - Title.

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

17.40.010 – Incorporation by Reference.

The Thurston County Habitat Conservation Program (HCP) is incorporated by reference as through 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 – Purpose.

The United States Congress enacted the Endangered Species Act (ESA) to protect plants and animals in danger of, or threatened with, extinction. The 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 is federally listed as threatened or endangered without prior approval pursuant to either Section 7 or Section 10 of the ESA.

Section 9 of the ESA prohibits the “take” of threatened and endangered species, including the attempt or action to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” such species (16 U.S.C. § 1532).

Section 10 of the ESA allows non-Federal Applicants, under certain terms and conditions, to incidentally take ESA-listed species that would otherwise be prohibited under Section 9 of the ESA. When a non-Federal landowner or other non-Federal entity wishes to proceed with an activity that is legal in all other respects, but that may result in the incidental taking of a listed species, an Incidental Take Permit, as defined under Section 10 of the ESA, may be requested.

The purpose of this Chapter is to help establish a comprehensive framework to protect and conserve rare, threatened and endangered species in compliance with Section 10 of the ESA, while improving and streamlining the environmental permitting process for impacts of future development on these species; to establish the procedures to implement the Thurston County Habitat Conservation Plan (Thurston HCP), which provides the basis for permits and authorizations necessary to lawfully take Covered Species which have been listed as

threatened or endangered pursuant to the terms of the ESA, and provides a process for issuance of take authorizations for Covered Species, which are not currently listed which may be listed in the future without the imposition of additional mitigation requirements outside of the Habitat Conservation Plan process.

17.40.020 – Applicability.

Unless otherwise provided for, this Chapter shall apply to all development considered a Covered Activity that impact Covered Species. For activities not covered it remains the responsibility of the property owner to ensure all land use activities are in compliance with the ESA, whether or not such activities are covered by the Thurston HCP. Because this Chapter implements federal mandates under the Endangered Species Act, vesting does not apply to this Chapter. Applications that are otherwise legally vested to other land use ordinances in Thurston County code are nonetheless subject to the requirements herein. This Chapter does not apply to the following:

- A. Projects which have been reviewed following the procedures set forth in the 2018 USFWS Guidance for Assessing Potential Take of Mazama Pocket Gophers in Thurston and Pierce Counties Projects that meet the following:
 - 1. The review was complete and concluded with negative screening results, and
 - 2. The screening negative results are valid per the 2018 USFWS Guidance, or
 - 3. The negative determination remains valid pursuant to any applicable County permit or authorization that is not modified and addresses the development or land use activity in question.
- B. Applications for mining activity.
- C. Building on existing permitted/authorized footprint.
- D. Development for which the United States Fish and Wildlife Service has approved other mitigation procedures through the issuance of a 10(a)(1)(B) permit constituting full mitigation or through Section 7 consultation.
- E. Demolition permits.
- F. Fully Forested Parcels
- G. Project that meet 4(d) rule

17.40.030 – Covered Area and Activities

Proposed projects which are a covered activity on properties within unincorporated Thurston County, containing HCP covered species as defined and provided for in Section 17.40.040 . 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.

17.40.040 – Definitions

The definitions set forth in this section shall govern the application and interpretation of this chapter. Words and phrases not defined in this section shall be interpreted so as 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 for purposes of documenting 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 in order 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 designated boundaries as depicted on the site plan indicating where building, access roads, septic systems, and other development are located or will be located.
- L. "Development permit" includes, in connection with a covered activity only, a full structural building permit as well as a partial permit, such as a foundation-only permit, grading permit, Right-of-way permit, or any other permit or approval authorizing a ground-disturbing activity in furtherance of a covered activity.

- 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 may be amended from time to time.
- O. "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.
- P. "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 preparation of habitat conservation plan.
- Q. "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.
- R. "Planning permit(s)" means any discretionary permit that authorizes a ground-disturbing activity for a covered activity, including but not limited to approval of a Plat, large lot subdivision, conditional use, special use permit, variance, binding site plan, or development agreement, or any other discretionary permit or approval, excluding actions of comprehensive plan application such as general plan amendments, zoning and rezoning, annexation, specific plans, and other area or regional land use actions.
- S. "Project applicant(s)" or "applicants" means a person or entity applying for a planning permit for a project authorizing a ground-disturbing activity for a covered activity.
- T. "Mitigation Bank" – see Conservation Bank
- U. "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.
- V. "Species occupancy" a parcel is considered occupied by a Covered Species if the Department has information on record that indicates a Covered Species was observed through a species survey. The species survey may have been conducted by Department staff, a state or federal wildlife agency, or other qualified environmental professional that resulted in positive finding of a Covered Species. Positive finding include, without limitation, gopher mounds and audible calls by birds. *Note:* 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).
- 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” means the Thurston County Habitat Conservation Plan approved by the Board of County Commissioners on DATE, and as 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.

In the event of a conflict between any term or requirement of this chapter, or the Thurston HCP, the term or requirement of the Thurston HCP and Incidental Take Permit shall govern.

17.40.060 – Application

- A. Every application for a development or planning permit, as defined herein, must include information in Section 17.40.060 and include any additional contents and requirements set forth by the Department for implementation of this Chapter.
- 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. Faulty or incomplete analysis or analytical procedures, or
 - 4. Other reasonable basis that support 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

- A. The Director shall establish criteria for Thurston HCP application submittal requirements. At minimum, the Thurston HCP application submittal shall include the following:
 - 1. Complete application form as determined by the Department.
 - 2. Applicable permit fee.
 - 3. A written description of the proposed development, 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 (lot, roads, driveways, structures, lawn and landscaping area(s),

etc.), geographic extent of the proposed project extent, and the extent of on-going maintenance activities to be performed on the site.

5. For properties which 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. A description of compliance or planned compliance with avoidance and minimization measures, in accordance with Chapter 3 and Appendix C – Best Management Practices of the Thurston HCP.
 8. Coverage and Mitigation 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.
 9. Proposed mitigation including one or more of the following:
 - a) Estimation of the mitigation fee due.
 - 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.
 10. Other information as directed by the Department Director or designee in accordance with the Thurston HCP.
- B. Prior to applying for a Thurston HCP Certificate of Inclusion, 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 this title, or 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 within the development envelope.
- 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 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 as set forth in Appendix C. Where avoidance or minimization of impacts is not practicable under Appendix C, the applicant must provide an explanation.
 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 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 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.
 - a) 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.
 5. 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.
 6. The delineation of the wetland (OSF habitat) and their buffers must be documented on the site plan required in 17.40.060(A)(4).
 7. 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 have been minimized to 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.
 8. Where impacts to the covered species is unavoidable, the Department will apply the Ecology Western Washington Wetland Compensatory Mitigation Credit-Debit System to the area of proposed impact and determine mitigation offset required. Should the OSF habitat extend 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:
1. 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.
 2. 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.
 3. 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;
 - b) Compliance with all relevant surveys, avoidance, minimization, and conservation measures determined by the Department; and
 - c) 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. In addition to the requirements of this Chapter, the applicant may also require additional approvals, pursuant to Title 24 TCC, in order to address potential impacts to other critical areas identified by 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.
- B. HCP reviews may be combined with the underlying permit and the underlying planning 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 adopted 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. In Section 8.4.1 of the HCP provided addition guidance on timing of mitigation fee payments and are incorporated herein by reference.

B. Administration Fee.

1. 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 completeness of the petition. The petitioner must provide:
 - 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. 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.
 - iii. 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.
 - iv. 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.
 - v. 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.
 - vi. 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.
- c) 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.
 - ii. Upon receipt of an adequate petition, the Department shall, within forty-five days, issue a written determination with respect to the acceptability and consistency.
- d) 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.

- e) 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

- 2. 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

- 1. 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 be paid to the County.

17.40.110 – Habitat Conservation Implementation Team

An HCP Implementation Team will be assembled within 12 months of 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 HCP 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 also participate as 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; the full execution of the implementing agreement; 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: Title 24 – Critical Area Ordinance

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 uses irrespective of lot lines in the unincorporated territory of Thurston County, Washington, except for agricultural activities (new and existing). Agricultural activities meeting the requirements of TCC Section 17.15.110 shall be regulated by Chapter 17.15 TCC. 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 6 species associated with prairie and

wetland/riparian habitat 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 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:

...

"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 Board of County Commissioners on **DATE**, and as may be revised from time to time.

VI. 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.

VII. 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.

VIII. 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 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.</u></p>
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