

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

(Title 17)

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Chapters:

CHAPTER 17.40 – HABITAT CONSERVATION PLAN (HCP) IMPLEMENTATION ORDINANCE

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 purpose of this Chapter is to help establish a comprehensive framework to protect and conserve rare, threatened and endangered species, 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, 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 those Covered Species, which are not currently listed, but which may be listed in the future without the imposition of additional mitigation requirements outside of the HCP process.

17.40.020 – Applicability.

This Chapter shall apply to all activity and development that requires a planning permit from Thurston County, as defined herein. 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 with Mazama pocket gopher review completed prior to the effective date of this Chapter which:
 - 1. Followed the procedures and 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 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 as confirmed by the Director
- G. Development which meets the 4(d) rule (Federal Register Volume 79, No. 68 §17.40 Special Rules)

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.

- B. "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. "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.
- D. "Critical habitat" - 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. "Department" means the Community Planning and Economic Development Department unless otherwise specified in this title.
- F. "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. "Development Envelope" means the area proposed for development on a lot or parcel.
- H. "Federal permits" means the 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. "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.
- J. "Implementing agreement" means the DATE Implementing Agreement for the Thurston County Habitat Conservation Plan by and between Thurston County and United States Fish and Wildlife Services.
- K. "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.
- L. "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, subdivision map, special use permit, or development agreement, or any other discretionary permit, excluding actions of general application such as

general plan amendments, zoning and rezoning, annexation, specific plans, and other area or regional land use actions.

- M. "Project applicant(s)" means a person or entity applying for a planning permit for a project authorizing a ground-disturbing activity for a covered activity.
- N. "Mitigation fee" means fees established by the County 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.
- O. "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))
- P. "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, the Thurston HCP, and the implementing agreement, the term or requirement of the take permits shall govern.

17.40.060 – 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 provide by the Department including a completed HCP worksheet.
 - 2. A written description of the proposed development, and a GIS compatible Shapefile, Geodatabase file, or County approved equivalent of the project area.
 - 3. 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.

4. 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.
 5. 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.
 6. 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.
 7. Quantification of anticipated impacts for each of the species covered by the Thurston HCP, consistent with Section 7.5 and Appendix H- Credit-Debit Method of the Thurston HCP.
 8. Proposed mitigation including one or more of the following:
 - a) Estimation of the mitigation fee due.
 - b) Documentation of the proposed land dedication consistent with Section 7.6.2 of the Thurston HCP.
 - c) Proposed mitigation bank information including documentation that estimated credits needed are available.
 9. Other information as directed by the Director or designee in accordance with the Thurston HCP.
- B. 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 – Application.

- A. Every application for a planning permit, as defined herein, must be accompanied by a completed Thurston HCP application 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 application 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.
- E. The Thurston HCP application shall be processed as a Type I application.
- F. Type I Review Procedure—Ministerial Decision. The review procedure for a Type I review process shall follow the procedure specified in TCC 20.60.020(1).

17.40.070 – HCP Application Review Procedures.

- A. No 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 species within the development envelope.
- C. 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 in Thurston County GeoData Viewer.
 - 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. The survey needs to be conducted by a County-approved, 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.

3. 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.
4. 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 (TCB) or Oregon Vesper Sparrow (OVS)

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 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 mitigation fee for the Olympia, Tenino or Yelm pocket gopher is 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 Viewer.
2. Using application materials, photos, and GIS system, the County 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 project cannot be excluded in-office, a site visit will be conducted by County 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 area delineated along with any wetlands on site by a County-approved, qualified natural resource professional.

5. The delineation of the OSF habitat and any wetland must be documented on the site plan required in 17.40.060(A)(4).
 6. 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. Where impacts to the habitat is unavoidable, the Ecology Western Washington Wetland Compensatory Mitigation Credit-Debit System will be applied to the area of proposed impact to 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 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 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. A certificate of inclusion may be issued upon 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 Implementing Agreement, the Thurston HCP.
 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 of this Chapter;
 - b) Compliance with all relevant surveys, avoidance, minimization, and conservation measures determined by the County; and
 - c) The County determines that the extension of take authorization is consistent with the Thurston HCP, Implementation Agreement

17.40.075 – Thurston HCP Approval Authority and Review Process Type.

- 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 need to seek additional approval, 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 by the hearing examiner shall conform to Chapter 2.06 TCC.

Table 17.40.075-1. Thurston HCP Review Authority and Review Process

Permit/Review	Approval Authority			Review Process Type
	Staff/Director	Hearing Examiner	County Commissioners	I
Type I Thurston HCP Permit	D	A	A	■
Code Interpretation	D	A	A	■
Time Extensions	Same approval authority and review process as original decision/approval.			
LEGEND: A = Appeal D = Decision				

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 Fees

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

- C. The County shall determine the mitigation fee by:
 1. Determining the extent of the impacts 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 MPG, TCB and OVS or 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 by multiplying the proposed area of impact by the functional value of the habitat impacted to obtain the functional acres of impact; then multiply the functional acres 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 grading permit or, if no grading permit is issued, then upon or before the issuance of the first building permit for the project, 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 is issues, 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. Take authorization is also granted 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:
 - a) Application packet is deemed complete and the final required fees can be calculated.
 - b) 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.
 - c) 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).
 - d) Agreeing in writing to all other applicable terms and conditions of the Implementing Agreement, and the HCP.

D. Administration Fee.

1. Each HCP applicant 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.

2. 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. The HCP Administrator shall be responsible for determining completeness of the petition. The petitioner must provide:
 - i. A description of the land proposed for dedication and identify if the land will be a New Preserve, Working Lands, or Enhancement of Existing Preserves.
 - ii. 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.
 - iii. A Site Management Plan using the template provided in Appendix I of the Thurston HCP that includes the schedule and expected achievement of Performance Standards, mitigation and long-term maintenance, in addition to monitoring and reporting requirements.
 - 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 finds the information provided to be inadequate for determining consistency, the County 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 shall, within forty-five days, issue a written determination with respect to the acceptability and consistency.
- d) The County is under no obligation to accept land that does not, in its sole discretion, provide benefits to one or more species of concern 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.

B. 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.

C. 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.

D. 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

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.

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