



Thurston County
Planning Department

March 2, 2011

Critical Areas Ordinance Fact Sheet

QUESTIONS AND ANSWERS FOR PRAIRIE AND OREGON WHITE OAK HABITAT

Overview

In October 2010, the Thurston County Planning Department held community open house events to share news about the critical areas ordinance, and to hear residents' suggestions and concerns. Many people voiced concerns regarding the protection of the county's prairie/oak habitat and the species that these environments support. In January 2011, the Board of County Commissioners held a public hearing on the renewal of interim prairie regulations that were originally established in 2009. The purpose of this document is to provide discussion and answers to the most frequently asked questions about these habitats and regulations surrounding them.

The combined effect of all the regulations may prevent economic use of the land, create an uncertain financial future for landowners, and limit the health of rural communities. Property owners should be compensated.

Thurston County recognizes that land-use regulations can create a burden for property owners. The county is working to improve its existing incentive programs and create new ones. To date, Thurston County offers an [Open Space Tax Program](#), where qualified land owners can realize substantial property tax savings by setting aside sensitive portions of their land and keeping them undeveloped. The county also offers a [Transfer of Development Rights](#) program. Other programs are also available from the federal government, such as those offered by the U.S. Department of Agriculture's Natural Resources Conservation Service.

Thurston County has also applied for a Habitat Conservation Plan (HCP) grant for South Sound prairie habitat. If approved, Thurston County will use this grant to identify the most valuable habitat to prioritize for protection. The ultimate goal is to incorporate species-conservation into local land-use planning so that a developer — private or public — who wants to develop land with endangered species habitat may be allowed to go through Thurston County for a permit rather than Fish and Wildlife. HCPs offer a simplified and quicker way for individuals to comply with development permitting requirements from the US Fish and Wildlife Service, which, in turns, streamlines the project-approval process and facilitates economic development.

The county is also working with other entities, such as local tribes and the Department of Defense, on the creation of a mitigation bank that would help to fund the purchase of valuable prairie habitat while allowing development to continue.

Regulations to protect critical areas should allow for human needs and uses of the land.

The Planning Department is considering ways to build flexibility into the critical areas ordinance. For example, the department is considering provisions that would:

- Grant 5,000 square feet of buildable area: If the available lot size outside a buffer/set-aside is less than 5,000 square feet, the county could allow the development to extend into the set-aside to make the total building site add up to 5,000 square feet – roughly the size of a city lot. (This provision might not apply in areas where residents’ physical safety could be jeopardized.) The county could authorize use of additional buffer space to accommodate an onsite sewage system if no alternative were available.
- For single-family home applications on smaller parcels, expand the timeframe for gopher surveys and, in certain cases, make habitat management plans less necessary (see page 5 for more information).
- Allow Thurston County to adopt other strategies as they become available – such as mitigation banking.

The Planning Commission and Board of County Commissioners will each have a public hearing, so property owners will continue to have opportunities to weigh in on these issues.

Property owners who believe they are left with no reasonable use of their properties may also apply for a “Reasonable Use Exception.” Most jurisdictions offer this type of option, which requires public notification and a public hearing. The proposals described above seek to build flexibility into the permitting process so that this option is less necessary.

As the county considers ways to add flexibility for property owners, it must also consider Best Available Science. This is a requirement under the state Growth Management Act.

Why are prairie species being protected? Are they really rare and threatened? Why propose new regulations now?

The Oregon white oak (*Quercus garryana*, also known as the garry oak or scrub oak) and prairie ecosystems of South Puget Sound are vanishing rapidly due to development pressure. Using prairie soils as an indicator, U.S. Fish & Wildlife estimates that in 1850, more than 300,000 acres in Thurston, Pierce, Lewis, and Mason counties likely supported prairies or other grassland environments. Today, less than 30,000 acres, or under 10%, of historic prairies remain, with about 3% remaining as high quality prairies. In Thurston County, some of this prairie land is publicly owned, but most of the habitat land that supports prairie-dependent species is in private hands.

Prairies and Oregon white oak habitat support a wide variety of plants and animals that are not found in other environments. Without active management, the amount of acreage will continue to decline to the detriment of a myriad of species. These species include the Western gray squirrel, neotropical birds, golden paintbrush, a variety of rare and threatened butterfly species, the Mazama pocket gopher, and the Streaked horned lark. The goal is to protect the prairie and oak habitat these species need in order to survive. The Oregon white oak is also Washington’s only

native oak species and is a declining species. Many of our oak stands are hundreds of years old as they typically grow only about 1 inch in diameter over 10 years.

Under the Growth Management Act, Thurston County is legally required to protect critical habitats and species. The Washington Department of Fish & Wildlife and the U.S. Fish and Wildlife Service has identified several prairie-dependent species that warrant protection.

Species	State Status as of 1/20/11	Federal Status as of 1/20/11
Mazama pocket gopher	Threatened	Candidate ((Update: In March 2011, the United States Fish and Wildlife Service advised Thurston County that it is initiating an assessment to determine whether the Mazama pocket gopher, Streaked horned-lark, and Taylor checkerspot butterfly should be listed under the ESA. An assessment is also starting for the Mardon skipper butterfly.)
Streaked horned lark	Endangered	Candidate, but see note above
Taylors checkerspot butterfly	Endangered	Candidate, but see note above
Western gray squirrel	Threatened	
Golden paintbrush	Endangered	Threatened
Oregon white oak	Priority Habitat	

There is no way of knowing when the federal government will act to list species, but there are benefits to protecting candidate species before they end up on the Federal Endangered Species Act list. Once a species is listed under the Federal Endangered Species Act, the federal government takes a consultant role in the review of every land use application in areas where these species may be present. This drastically slows down the permitting process. (Thurston County is attempting to get ahead of this issue by applying for a grant to create a Habitat Management Plan, as described in question #2.) Protecting these species at the county level may help to prevent a federal listing and all the additional rules that come with it.

The pocket gopher seems to be abundant both in Thurston County and elsewhere. Do they really need to be protected?

The Mazama pocket gopher subspecies that are specific to this area are candidates for listing under the Federal Endangered Species Act, and are already listed as state threatened species. There may be other subspecies of pocket gophers in other states that are not currently subject to listing. Recent discussions with U.S. Fish and Wildlife continue to underscore the need for protection of South Sound prairies and the species that rely on them. Fish and Wildlife has also indicated that listing of several prairie species under the Federal Endangered Species Act is highly likely.

As we craft the Critical Areas Ordinance, we're working closely with residents and state and federal agencies to clarify how we can protect prairie species without causing an undue burden on property owners. For example, Planning Department staff members are considering a provision that would expand the number of months in the year that gophers can be surveyed – this would give property owners a greater window of time in which to submit their building applications.

The goal is not to save each and every gopher or each mound, but rather, to protect the valuable habitat that supports them and other prairie dependent species.

The Board of County Commissioners should focus on implementing state law and should be less concerned with potential action from the federal government.

The state Growth Management Act is, indeed, the driving force behind the Thurston County's policies on the Critical Areas Ordinance. State law dictates how cities and counties develop their critical areas ordinances, and what they must consider. Section 365-190-130 WAC states that cities and counties must consider for protection areas where endangered, threatened and sensitive species have a primary association. Washington State maintains its own endangered species list, and the Washington Department of Fish and Wildlife provides recommendations for its designated priority habitats and species. Thurston County does not list species as endangered or threatened, but both the current and proposed Critical Areas Ordinances include the recommendations of state and federal wildlife agencies.

The U.S. Fish and Wildlife Service provided recommendations to Thurston County during the development of the county's existing interim prairie protections, and continues to do so during the overall CAO update process. The intent of this collaboration is to develop successful protection for habitats and species of concern that still allows development of property. When local regulatory programs are not sufficient to provide protection for candidate species, the federal government may list species under the Federal Endangered Species Act.

There is plenty of government-owned open space in Thurston County that can be used as pocket gopher habitat. Saving gophers on private property will not make a significant difference.

It's estimated that less than 1% of remaining Puget Sound prairie and Oregon white oak woodland habitats (*Quercus garryana*, also known as the garry oak or scrub oak) are protected in parks and reserves. This means most habitat land that supports prairie-dependent species is in the hands of private property owners. The Mazama pocket gopher prefers certain types of soils and vegetation, and it is unknown whether the land held in public preserves will fully support these animals. Previous attempts to translocate (relocate) gophers have resulted in a very high rate of mortality. Translocation studies are still ongoing.

Buffers for pocket gophers are large and place significant restrictions on buildable area.

Thurston County's current prairie regulations do not set specific buffers around gopher mounds or the habitats of any other prairie species, including Oregon white oaks (*Quercus garryana*, also known as the garry oak or scrub oak) -- this is not proposed to change in the updated critical areas ordinance. Instead, property owners who wish to develop land that contains an important habitat may be required to provide a habitat management plan during the land-use review/permitting process. This plan is then used to determine buffers on a case-by-case basis in consultation with the Washington Department of Fish and Wildlife and others with expertise. The same requirement is made for those who wish to develop land within 600 feet from the point location of an important species, even if the point-location is not on the applicant's own property.

After discussions with the Washington Department of Fish and Wildlife and the U.S Fish and Wildlife Service, the Planning Department is considering a provision to exclude gopher mounds from this 600-foot requirement and instead focus on the soils typically associated with pocket gopher habitat. This would protect a resident who does not own gopher-habitat land from having to provide a habitat management plan simply because the land is within 600 feet of a gopher mound on a neighboring property.

(Please note: Habitat management plans may still be required during the permit review process for land that contains gopher habitat.)

*Note: A habitat management plan identifies the location of the important habitat area, including soils and vegetation. It identifies any incursions or impacts into the habitat by the development, and ways to mitigate any impacts to the habitat. The primary goal of any plan is to avoid impacts or alterations to important habitat.

The land use application process feels too lengthy and is frustrating to applicants.

We understand that the county application process often seems long and confusing, based on review times, required studies/reports and coordination between departments. County staff members strive to provide the most efficient service possible, but permitting staff are also limited by budgetary and time constraints. Currently, the Planning Department is holding internal meetings to review the application process and how permits are handled. The goal of these discussions is to find ways to streamline the process while continuing to provide excellent service and protection of critical areas. The application process is already set up to allow different parts of the process to proceed simultaneously. For example, reviews by the Health and Public Works departments, and the Land-Use and Environmental Review program, all take place concurrently. As mentioned above, county staff members are working internally and with wildlife agencies to provide relief to applicants for projects in prairie environments while still providing protection for prairie habitats and the species that depend on them.

Habitat Management Plans are expensive and could prevent owners of smaller parcels from realizing the economic value of their land.

A Habitat Management Plan is not always required for a development proposal. As the first step in the permit-review process, a staff member will visit a site to determine whether further study is required. If a suitable location exists outside of the critical area and its buffer, an additional study might not be necessary. Sometimes a staff member will find it difficult to determine whether an area meets the criteria for a “critical area” and will need the additional information a report can provide. The intent is not to overly burden small landowners with fees or make it too difficult to develop property. Thurston County is checking whether any state or federal programs are available to relieve property owners from paying the full cost of habitat management plans.

A property owner can also arrange for a staff person to visit a site before going through the time and effort of actually developing a plan. This “Critical Areas Administrative Review,” subject to fees, can help a property owner develop a better site plan without revisions and can ultimately save time and money.

Does the presence of a mound indicate that Mazama pocket gophers are onsite?

Several species of animals create mounds in prairie areas. Mounds may indicate the presence of Mazama pocket gophers or other species, such as moles. Even if mounds are determined to be made by pocket gophers, it does not mean that the site is actively being used by these animals. A single gopher is capable of making multiple mounds, so the number of mounds on a site is not necessarily correlated with the number of gophers. Generally speaking, mounded areas may indicate that an area is suitable as gopher habitat.

Mazama pocket gophers appear to coexist with people. If they continue to reside on a parcel after a structure is built, why are buffers needed?

Many properties around the country feature mounds created by animals; however, not all of the mounds are created by pocket gophers. Some are created by moles or other rodents. Moreover, although gophers may be found existing with human beings, this is not an optimal condition for survival of the species. According to the Washington Department of Fish and Wildlife 2005 Status Report for the Mazama Pocket Gopher, Streaked Horned Lark, and Taylor's Checkerspot:

“Loss of habitat, particularly to development, apparently led to the extinction of the Tacoma pocket gopher, *T. m. tacomensis*. Pocket gophers apparently survived on vacant lands within the matrix of suburbs south of Tacoma for some years, but eventually went extinct probably due to the changed habitat condition, trapping by homeowners, and persecution by domestic cats and dogs. The last records of this subspecies were of individuals killed by domestic cats.”

Buffers/set-asides are associated with new development and typically do not apply to existing structures. It is possible that Mazama pocket gophers and human land uses and infrastructure may continue to coexist, however new development and intensification of current uses and practices are likely to impact gopher habitat, as noted above. The county acknowledges that creating small, isolated set-asides may not be the best long-term strategy for the preservation of prairie species and habitat and is actively working on methods to identify the most valuable habitat for protection.

Are any species of squirrels in Washington State protected under state or federal law?

The western gray squirrel is found in Washington, Oregon, and California. Historically, western gray squirrels in Washington were widely distributed in transitional forests of Oregon white oak (*Quercus garryana*, also known as the garry oak or scrub oak), ponderosa pine and Douglas fir, but now occur in separate populations in the Puget Trough, Klickitat, and Okanogan regions. The species is listed as threatened by the Washington Department of Fish and Wildlife, and as a species of concern by the U.S. Fish and Wildlife Service. Major threats to the western gray squirrel include habitat loss and degradation, road-kill mortality, and disease.

The western gray squirrel is often confused with the introduced eastern gray squirrel. Adult eastern gray squirrels are approximately 20% smaller than western gray squirrels, and the fur along their backs and tails has a reddish-brown tint. The ears and tail are relatively short compared with western gray squirrel. Eastern gray squirrels are commonly distributed throughout the Pacific Northwest, and are not currently a species of concern.

Some landowners are concerned about what constitutes Best Available Science.

In 1995, the state Legislature amended the Growth Management Act to require cities and counties to apply Best Available Science when developing critical areas regulations. The goal of the amendment (RCW 36.70A.172) is to require decision makers to make informed choices by reviewing scientific information that has not been filtered through screens of competing interests.

Thurston County is required to review and, if necessary, update its critical areas ordinance every seven years. During each update, staff members review the most current Best Available Science to ensure that policies and regulations in the critical areas ordinance are still adequate and applicable to local conditions in the county. Members of the public may also submit information they wish to be evaluated as Best Available Science.

The determination as to what actually constitutes “Best Available Science” is made at the local level after much research, consultation with experts, and a public process to solicit information. Each update includes a public review and hearing process for both the ordinance and the science considered, which allows concerned parties to comment and provide relevant scientific information to help inform the draft. The Planning Commission and Board of County Commissioners review the Best Available Science materials when updating the critical areas ordinance. The Planning Commission makes a recommendation to the Board of County Commissioners. After public comment periods and public hearings are complete, the Board of County Commissioners then ultimately decides what is used as Best Available Science in the county. A draft list of sources is posted on the “Critical Areas Update” link of www.ThurstonPlanning.org. Legislative information regarding Best Available Science [can be found here](#).

The Planning Department is using scientific information that is already deemed Best Available Science by the state and federal governments, Growth Management Hearings boards, courts, and other western Washington counties, as well as scientific experts who meet the qualifications listed in the state’s criteria for Best Available Science (WAC 365-195-905).

Thurston County is one of the last remaining counties to update its critical areas ordinance. While this is unfortunate, it does mean that much of the scientific information the county is using has already passed muster with other jurisdictions and Growth Management Hearings Boards.

Under the Growth Management Act, Best Available Science is not the only factor governments must consider when updating their critical areas ordinances. However, courts have ruled that scientific evidence should play a major role in critical areas policies and regulations. Local governments that choose regulatory approaches that are not supported by Best Available Science must demonstrate how they considered the science, and why local circumstances compelled them to use a different approach. Local governments must also document their sources.

Does the Critical Areas Ordinance and the use of Best Available Science need to meet the balancing requirements of the Growth Management Act?

Yes. Under the Growth Management Act (GMA), Best Available Science is not the only factor governments must consider when updating their critical areas ordinances. The county must also consider the goals found in the GMA. But unlike the goals, the GMA is very explicit in requiring the consideration of Best Available Science to protect critical areas, and Growth Management Hearings Boards have weighed in heavily on this requirement in their legal findings.

In *Honesty in Environmental Analysis and Legislation (HEAL), et al., vs. Central Puget Sound Growth Management Hearings Board*, 96 Wn. App. 522, 533, 979 P.2d 864 (1999), the Court of Appeals found the following:

“While the balancing of the many factors and goals could mean the scientific evidence does not play a major role in the final policy in some GMA contexts, it is hard to imagine in the context of critical areas. The policies at issue here deal with critical areas, which are deemed "critical" because they may be more susceptible to damage from development. The nature and extent of this susceptibility is a uniquely scientific inquiry. It is one in which the best available science is essential to an accurate decision about what policies and regulations are necessary to mitigate and will in fact mitigate the environmental effects of new development.”

While the county will use the goals for the purpose of guiding the development of its Comprehensive Plan and development regulations, it will also need to make sure that the critical areas ordinance honors goals that are found in other county-wide planning documents, including other sections of the comprehensive plan. These county-wide policies call for environmentally sound development policies and regulations that recognize our interdependence on natural systems. To meet these policies, the county must consider Best Available Science.

Thurston County needs to educate the public on the critical areas ordinance.

Thurston County has reached out to the public throughout this process, and will continue to do so. Groups include:

- Olympia Master Builders
- Thurston Association of Realtors
- Thurston Agriculture Committee
- Thurston Conservation District
- LOTT
- Department of Ecology
- Black Hills Audubon Society

- Deschutes TMDL Advisory Group
- Nisqually Shellfish Protection District
- Thurston Storm and Surface Water Advisory Board
- United States Fish and Wildlife
- Washington Department of Fish and Wildlife
- Natural Resource and Conservation Service
- Thurston County Assessor's Office

County representatives will continue to meet with interested groups throughout the rest of the update process. Most recent discussions have focused on concerns raised by rural residents, including gopher protections, insurance, mortgage financing, and property valuations.

In October 2010, the Planning Department held open houses in Grand Mound, Rainier, Lacey and Olympia. Thurston County shared news about efforts to update its critical areas ordinance and heard residents' suggestions and concerns. Before the open house events, fliers were posted in approximately 30 public locations in the rural county, and on at least two community electronic reader boards. A legal ad was taken out in the Nisqually Valley News to advertise the open houses.

Information on the critical areas ordinance update, including prairie protections, was featured on TCTV's "Thurston County Connection" in September and October. Several newspapers have published articles about the issue.

Thurston County also created a "[virtual open house](#)" online and is sending out regular updates through a webmail service that now has over 500 subscribers.

Critical areas are valuable and need more protection. It is past time for the critical areas ordinance to be updated.

Thurston County is, indeed, behind in updating its critical areas ordinance. At the same time, the county wants to ensure that it does not rush through the process without giving ample time and consideration to residents' views. Updating a critical areas ordinance is always a challenging task. It involves trying to protect the environment that sustains our lives and livelihoods as a community, while at the same time honoring goals and everyday realities of private property owners. Our ecosystems do not stop and start at property lines, yet those lines represent the pride, aspirations and investments of the individuals who live within them. Updating a critical areas ordinance also involves meeting dozens of state and federal laws aimed at protecting the environment and the habitats and species it supports.