THURSTON COUNTY PLANNING COMMISSION

Minutes
August 24, 2005

1. Call to Order

Chair Kohlenberg called the August 24, 2005 meeting of the Thurston County Planning Commission to order at 6:00 p.m. at the Thurston County Fairgrounds Expo Center.

a. Attendance

Members Present: Chair Liz Kohlenberg, Commissioners Tom Cole, Chris Lane, Liz Lyman, Bob Musser, Craig Ottavelli (6:16 p.m.), Joyce Roper, Rhenda Strub (6:12 p.m.), and George Darkenwald (6:27 p.m.).

Staff Present: John Sonnen, Nancy Pritchett, Michael Welter, Cami Petersen, Mark Swartout, and Recording Secretary Cheri Lindgren, Puget Sound Meeting Services.

2. Public Hearing – Proposed Amendments to the Critical Areas regulations, Chapter 17.15 of the Thurston County Code and related amendments to Titles 20, 21, and 23 of the Thurston County Code

Chair Kohlenberg announced if it is not possible to receive all testimony, the hearing will be continued to August 25, 2005 from 6:00 p.m. to 10:00 p.m.

Planning Commissioners provided self-introductions.

Chair Kohlenberg described the two-year ordinance update process. Following the public hearing, the Planning Commission will rework the draft for consideration by the Board of County Commissioners. The County Commissioners will hold a public hearing. Citizens will have additional opportunities to speak about the proposed draft regulations. The draft amendments are posted on Thurston County’s website. State law requires an update to the Critical Areas Ordinance (CAO) utilizing best available science (BAS).
Chair Kohlenberg welcomed everyone and explained the public hearing protocol. Written comments will be accepted.

Chair Kohlenberg opened the public hearing at 6:05 p.m.

John Sonnen provided an overview of the proposed regulations. Critical areas include aquifer recharge, frequently flooded and geologic hazard areas, wetlands, and important wildlife habitat. State law requires the County to update its comprehensive plan and development regulations every seven years. In 1995, the State Legislature amended the Growth Management Act (GMA) requiring counties to include BAS in developing regulations for critical areas. Special consideration is required for the protection of anadromous fish. BAS requirements set a higher standard than the County has achieved since developing the initial regulations. The goal is to create regulations that science says is likely to be effective in protecting habitat and public safety.

Several counties have attempted to adopt critical area regulations not meeting the standards. When challenged, the regulations have been overturned in court.

Mr. Sonnen said under the proposed regulations, lawfully existing uses and structures will be allowed to continue within critical areas or buffers. However, the County may require that best management practices (BMPs) or other measures shall be employed as necessary to avoid or mitigate land use impacts on critical areas. Most routine activities will not be affected, but the County will have the ability to correct problems.

Structures may be expanded vertically and horizontally 500 feet either on the side or back of the structure as long as it is not closer to the critical area than the existing structure. If the lot has less than 5,000 square feet of buildable area outside of important habitat, wetlands, or associated buffer areas, the development may encroach into the critical area/buffer to the extent needed to provide a building site totaling 5,000 square feet. Existing agricultural uses within critical areas and buffers are allowed to continue, unless the agricultural use ceases for five years. A new requirement will require that application rates of manure and fertilizers be lowered if warranted to prevent further contamination in areas documented as having elevated nitrate levels.

_Planning Commissioner Rhenda Strub arrived at 6:13 p.m._

Conversion of an existing agricultural use to an intensive agricultural use is considered a new use subject to all applicable requirements, including buffers. As proposed, the County could require permanent fencing along the outer boundary of the critical area or buffer if it determines that the adjoining use poses a threat to the critical area or buffer. Existing regulations provide for continued usage of gas-powered backup generators for personal purposes. New regulations will preclude gas-powered generators holding more than 20 gallons of fuel if the site is not already occupied by a residence or business.

Mr. Sonnen defined critical aquifer recharge areas. Almost everyone in Thurston County relies on drinking water from groundwater aquifers. Toxic substances have contaminated aquifers in

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the past and rendered several useless for human consumption. Staff presented a map identifying areas that are vulnerable to contamination.

Planning Commissioner Craig Ottavelli arrived at 6:16 pm

A proposed revision concerns buried fuel tanks. Experts believe underground fuel tanks will eventually leak. As little as one gallon of gasoline can contaminate a million gallons of groundwater. The proposal is to decommission or remove fuel tanks within a critical aquifer recharge area within five years. Alternatively, another proposal is to have them checked annually. If it is found a fuel tank is leaking, it will need to be removed.

Frequently flooded areas include 100-year floodplains. The 100-year flood boundaries have not changed. The amendments address flooding from surface, groundwater and channel migration zones. The intent is to identify where the hazard exists in order to keep structures and people out of harms way. Staff referred to a map highlighting a section of the Chehalis River and the contours on the ground, which reveals the historic channel migration of the river. If an owner wants to develop a piece of property within the historic channel migration, the regulations would require a study based upon the Department of Natural Resources (DNR) methodology identifying where the channel is likely to locate within the next 100 years. This provides property owners with an opportunity to locate a structure away from potential danger.

Geologic hazard areas include landslide and marine bluffs, seismic and volcanic hazard areas.

Wetlands and their associated buffers cleanse water by filtering sediments and absorbing or breaking down excess nutrients and toxic substances. Wetlands and buffers also store and convey floodwater, provide fish and wildlife habitat, and sustain sensitive plant species. One of the most notable revisions to the wetlands regulations is a new rating system. It looks at the rarity of the wetland, the feasibility of replacing it, and the level of functions. The buffers are sized based on what’s necessary to protect water quality and habitat. Currently, the County requires standard buffers of 100 to 300 feet. Mr. Sonnen explained how the new rating system will be applied. In no case would the buffer width be more than 300 feet and the range of the buffer has not increased. Another change deals with small wetlands. Scientific literature reveals small wetlands may perform several important functions. Wetlands under 11,000 square feet in urban growth areas and 22,000 square feet in rural areas are exempted from the current critical area regulations, except along streams where the exemption threshold is 2,500 square feet. The draft amendments would exempt wetlands of 1,000 square feet or less in size.

Notable amendments to important habitat and species concern the width of riparian buffers. Currently, they range from 25 feet for small, intermittent seasonal streams up to 100 feet along major streams such as the Nisqually, Chehalis or Black Rivers. Riparian areas and buffers along wetlands perform several functions. A key one is cleansing water prior to it entering the stream. It takes about 100 feet of vegetation and gentle terrain to filter out sediments and pollutants. It takes about 200 feet to provide the same level of function on steeper slopes. Mature trees within the riparian areas provide shade to keep the water temperatures cool enough to sustain fish. Literature suggests that logs falling into steams create pools and provide shelter for salmon that
barren sections of the streams are unable to do.

Planning Commissioner George Darkenwald arrived at 6:27 p.m.

Riparian areas also provide wildlife habitat. Studies show that 85% of the upland species rely upon riparian corridors. Some species are reported to need between 200 and 328 feet to survive long term. The Planning Commission recommends 100-foot width buffers along smaller streams to protect water quality and up to 250 feet for main streams. This is a significant change.

Under state law, several marine habitats are now considered critical areas that were not in the past. This includes shellfish, kelp beds, and fish spawning areas. The proposed regulations restrict uses that would directly affect the areas. One hundred-foot buffers are proposed all along the marine shorelines. An alternative recommends the buffer be backed by another 100-foot management area. Uses in the management area will be regulated to minimize impacts on water quality and marine habitats. The same type of provisions will apply to lakes and ponds. State law now designates lakes and naturally occurring ponds as critical areas. The recommendation is to provide 100-foot buffers along lakes and ponds to protect water quality. Some exceptions would apply.

Alana Love, P. O. Box 1734, Yelm, voiced objections to many of the proposed changes. Particularly, she said she has had a three-year contested action with Thurston County because of a wetland buffer. When she bought her property there was a 50-foot wetland buffer. Now, the whole street is a wetland buffer. She has five acres of prime property that has been devalued because of the buffer. In 2002, it was valued at $44,000 and was reduced to $12,000 in value. Each year, the taxes go up and the value is useless. Thurston County has made her land useless and she said she is fighting it. She said she has been told she has to pay for a biologist to prove the County wrong. She has met with geodata staff and has a letter from TRPC Senior Planner Steven Morrison that states that In 1990, a Thurston County soil survey indicated that the upland on your parcel is comprised of Bald Hill, very stony sand soil type. This soil type is not considered hydrant under the wetland criteria. In 1997, Thurston Regional Planning Council (TRPC) had an independent valuation by a local wetland consultant who recommended that all forested wetlands not located on hydrant soils be eliminated. It appears that the wetland mapped on the side of the steep hillside should have been removed in our 1997 map revisions. Ms. Love said it is logical to assume that the boundary of the wetland is most likely located at the base of the steep slope, which is barely on her property. She was told that wetlands don’t go uphill. Ms. Love said she is contesting it and is fighting to restore her right to be able to do what she wants with a piece of property she has been paying for the last 20 years to own. Thurston County is, because of an incorrect wetland mapping, costing her money to prove the County wrong. Ms. Love referred to a letter dated May 3, 2004. Ms. Love said she is still dealing with “you people.”

Curtis Willis, 18634 Deerfield Lane SW, Rochester, congratulated the lady who told the truth. He said the Planning Commission doesn’t work for free. If this goes through and the Commission tries to get it passed, he said everybody ought to get out of here. The Planning Commission does not have the right to tell anyone what to do.
Scott Roberts, 2205 9th Avenue SE, Olympia, said the County would lead us to believe that it must revise the CAO. On its home page, it says it must periodically update the comprehensive plan. In the RCWs, it specifically says update means to review and revise “if needed.” There’s been a lot of evidence shown that basically all these are different critical areas, but there’s been nothing brought forward to show new regulations are indeed needed other than BAS. In June of 1999, the HEAL case was decided by the court. The case, “Honesty and Environmental Analysis and Legislation” versus Central Puget Sound Growth Management ruled there must be balance of all the goals of the GMA along with BAS. BAS can not be used solely as the only source. He said he has heard no testimony from the County speaking to how to balance the goals. The RCWs quoted on the county’s home page speak to a whole bunch of issues that need to be included in comprehensive plans. They include the planning goals - 13 goals of growth management. The County is only addressing one of them. In fact, the County’s planning policies restate all of the goals. The County has never in any of the hearings dealing with the CAO mentioned things like affordable housing or buildable lands. He said buildable lands are near and dear to his heart. Growth management says the County must provide sufficient land capacity for development. When he considers the TRPC report on buildable lands he finds it very upsetting because they’re completely overstated. In fact, the County, in the recent Growth Management Hearing Board decision has gone on record with that fact. The County has said that it is overstated because it doesn’t consider critical buffers, slopes, Department of Ecology (DOE) impacts on wells, and watershed areas. Mr. Roberts said it’s irresponsible for the County to move forward on anything to do with critical areas when there is a flux with the idea that its buildable lands inventory is so far out of whack. The County has admitted to that fact. The County is now under order from the Growth Management Hearings Board to revise and take a look at that. He said he would like to submit all of the documents he’s referred to on the record, including the TRPC Buildable Lands Report.

Tom Bainbridge, 18421 Bald Hills Road, Yelm, questioned the cost related to the annual inspection of underground tanks and if the cost will be the responsibility of the property owner. He asked that if there is a permit process what the cost will be. It seems like everything that comes up there’s a cost and the property owner bears it. In launching his tilling operation for farms and gardens, he asked whether a permit will be required and if the charge will be per acre or square footage. He asked if there will be a permit required to raise the number of livestock he wants to raise on his property. He has family members that live on Lawrence Lake as well as other lakes. He asked how it will affect them. He asked how many on the Planning Commission live on areas that will be affected. Mr. Bainbridge said Mr. Sonnen used the term encroachment no less than a dozen times inferring landowners are going to encroach on everything that God has created in Thurston County. There was a time here several years ago that encroaching occurred and a lot of people got real upset and caused a revolution. He said he wants his freedom to revolt. If the ordinance is adopted there will be an all out revolution against Thurston County government for something that makes as much sense as side pockets on a sow. He has read through the majority of the document and there are some things that are livable, but two-thirds makes as much sense as nothing. He said he would appreciate it if the Planning Commission would go back and look at it strongly if it doesn’t want a revolution by the people of Thurston County because it affects everybody. This will go all the way to Christine
Gregoire’s desk.

**Jack Culpepper, 12811 Old Highway 99**, said in 1996, the County approved Outback RV Park. But there was no provision for stormwater discharge. Since then, there’s been development between I-5, and a cut off from the school for school buses as well as a few houses. The Outback RV Park built up a ditch. It didn’t dig a ditch but built up a ditch with a dike on the side of it that is three feet high. The park received approval at some point to install a culvert on Huntington. However, the water travels down the road and ends up on his property. There is no ditch between Huntington and Scatter Creek as well as no right-of-way to walk along Highway 12 to see if there is a ditch without getting run over. He called the highway department to see if it would cut the grass so you could walk down to see. Along the right-of-way on the highway there is a little mound that’s a little bit higher. In the 1996 flood, the water collected and hit the mound on Highway 12, causing flooding across 64 acres - the whole width of the field over to Denmark, which is the corner of his property and across the road. Across the road is the lowest spot. There’s a road going down towards Scatter Creek. The simplest way to fix it is to build a ditch and install drainage like it should have been done initially. He put up a sign to sell it, but the real estate agent said the market price is $20,000 an acre. He was informed that it’s under flood control. He asked whether the County wanted to buy it for $20,000 an acre. He’d said he’d sell it to the County.

**Lewis Black, 17504 Mima Acre Drive SE, Tenino**, commented about high water and how logging has cut down all the trees. Fish are not at Mima Acres below Scatter Creek. There was an $80,000 study and nothing’s happened. He said he and his dad bought the property in 1975. The Army Corps of Engineers dredged the creek and nothing happened. Now, the County wants to take the property away. He said 300 feet isn’t happening.

**Vivian Eason, 8421 183rd Avenue SW, Rochester**, said Scatter Creek runs through her property. She owns 14.5 acres and can use maybe half of it. She has to talk to the County because she doesn’t have access to the other half of her property. Her concern is with the wetland setbacks. It was her understanding the County would change the flood zone. When she obtained her mortgage and received the title search, there wasn’t any mention about being within a flood zone. She said someone is going to get sued if she moves into a flood zone. No one in this room can afford flood insurance. Her concern is that there are changes. People buy the property and are given all rights and statements that it’s safe to buy the property. She has no desire to develop her property. She bought it to have horses and does not appreciate the County coming in. If someone wants to live in California they should leave. The County is trying to force rules and regulations that King County has and you can hardly develop any of your land and then it’s trying to make Washington into the State of California. Ms. Eason said she (Governor) is not her Governor. Ms. Eason said she’s not a democrat. She’s lived here since 1975, is single, and can finally afford to own property. She could not afford flood insurance. Property values are going up and you can’t afford property anymore. Right across the street they’re building one million houses to one acre and the County allows that and that’s what’s polluting our water. She commented about the number of dairy farms that have closed and noted people will need to begin importing milk pretty soon. She said she is “pissed off” and tired of not being able to afford stuff. She works for Thurston County and didn’t know about the hearing.
until two days ago. She asked why she wasn’t notified of the hearing. Most of the landowners are from south County and most of those testifying live in south County. She asked why the Planning Commission didn’t have the hearing in a more convenient location for those in south County. She said she works until 5:00 p.m. Her animals won’t get fed until 11:00 p.m. tonight because she didn’t have time to go home. Her concern is there was no public notice. She said she is unable to provide written comments now because the hearing will end tomorrow night. She indicated the document is so thick and asked how citizens are expected to read it in one day. She said that is her concern and she wants to know why she wasn’t given notice of the hearing.

Margaret Holm Raider, 11521 Holm Road SW, Rochester, said she grew up and now lives on the family property. One of the things that makes her very much in favor of the regulations is she does not want this part of the state to begin to look like the urban and suburban and near urban areas of California. In the bay area, she watched the beautiful brown hills get covered by housing development. With BAS, it is known what it takes to protect groundwater and she wants to do what it takes to protect the groundwater. She said many may think it’s not going to affect them. Her property has wetlands and critical aquifer areas. It has a total stream bank. She lives in an oxbow and probably is in a channel migration area. But no one should develop her pasture area, which is in the 100-year flood zone, because it’s not safe. It’s not right to develop in an area that’s likely to flood. The flood zones are there for a reason. It’s because the water comes through and people who need flood insurance should have it because it means they will have to deal with damage at some point. The draft ordinance is very complex and the comment period should not be closed tomorrow. The Planning Commission should spend more time trying to simplify the draft. She said she has many critical areas and has tried to review the draft language to see how it will impact her property. She said she had to look at four or five different chapters as the draft is very complex. She suggested a much better effort should be made at communicating in terms that the public can understand.

Bob Gross, 17946 Irwin Street, Rochester, said when he moved to Rochester in 1962, the salmon were so thick you couldn’t stand to be down there. But right now, he has approximately 50 feet of gravel at the end of his property toward 183rd, and Sargent Road has about 100 feet. Few fish come up to spawn there. He fishes and knows the salmon cannot spawn in a flood. The creek needs to be cleaned out. It needs to have the quack grass taken out so the creek can flow. If the County doesn’t get the creeks cleaned out pretty quick, it will cause flooding. That’s called Scatter Creek. The banks are all gone.

Naki Stevens, 7630 Earling Street NE, Olympia, said she supports the rules that have been drafted. She understands they’re more protective of streams, water quality, and marine resources than the last version. She appreciates that very much. They moved out to rural Thurston County about a year ago because they wanted to live in rural Thurston County. They like to live a quiet, peaceful lifestyle. They don’t want to live in New York or California and live on Zangle Cove. She wants to do a small remodel of the small house they bought. They were told right away at the permit counter that they lived basically on the edge of a critical area and would not be allowed to build any closer to the cove. Frankly, she said she appreciated that. She didn’t want to come into a new neighborhood and screw things up for everybody else. The County was very clear about the rules and so they built up instead of out. They built and moved in July and
discovered that Zangle Cove in the summer months is filled and choked with algae. In the fall they’ve seen a few lone fish trying to make it through the channel. She wishes DOE or someone would come out and talk to the people who live around there and educate folks about dumping stuff in little Zangle Cove which is part of Puget Sound. It’s just not right for people to frankly, trample on her rights for a clean environment and a clean Puget Sound. She thanked the Planning Commission for their efforts to protect Puget Sound (unable to hear over booing from the crowd).

Pete Holm, 11521 Holm Road SW, Rochester, said his family owns about 90 acres and has a mile of frontage on the Black River. He sympathizes with most of his neighbors. Quite a few of his friends are very suspicious of the ordinance and there’s good reason for that. There are the laws, regulations, interpretation of the regulations, and interpretation of the regulations by permitting agencies that actually enforce them. We do get absurd results. You’ve heard about a couple of them tonight. That’s the sort of thing we just have to keep grinding away at to prevent those absurd results of the things we’re trying to do. He said he wanted to reinforce the fact that we do need to protect our water and our streams, and that the general thrust of the regulations are things he supports, even though it will directly limit some of his own activities.

Meranda Scott, 16445 Pine Tree Lane SW, Tenino, said she would like Thurston County to leave her, her horses, and her property alone. She would like the County to pay the taxes because she’s tired of paying taxes on property she can’t do anything with. The County is constantly telling her she can’t do this and she can’t do that. Ms. Scott said if she’s paying for it she should be able to do what she wants.

Richard LaFountain, 16641 Longmire Road SE, stated he has concerns with the amount of building going on. First of all, he moved to his property to have horses and has concerns that the urban sprawl is encroaching on them fast. He knows this from people living in the southern part of the County. They moved out there for the same reason he did and that was to have some peace and quiet, and live on a farm without worrying about caterpillars and cranes (equipment) coming in behind you the next month after you move in. There’s an amazing amount of trees being cut down by the logging companies. Right after they cut the trees down they want to sell it out for housing development. A lot of people and landowners that live out there are more concerned now about the housing developments. He said he agrees with a lot of the regulations and they’re probably good. But if the Planning Commission wants to protect riparian areas and streams, it won’t occur by allowing more houses to be built. He said he’d rather see more animals than houses.

Stephany Ray, 18430 Britchen Street SE, Yelm, thanked everyone for organizing the meeting and agrees property owners should be well notified of what’s going to happen. In 1776, the people wrote the Declaration of Independence. There were many major grievances other than taxes that were part of the original group. Those grievances are happening again today right here in Thurston County. “The king opposed the rights of the people. He erected a multitude of new offices and sent swarms of officers to harass our people and seek out their substances.” She said it’s from the constitution. Because of all the permits Thurston County is proposing with all the new codes there will have to be new people hired to carry out the newly proposed provisions.
This is no different than what occurred when the constitution was written to protect people’s rights. “He has combined the king with others to subject us to a jurisdiction that’s far into our constitution and unacknowledged by our laws given his assent to their acts of pretended less legislation.” All proposed codes are apparently based upon Federal Emergency Management Agency (FEMA) rules and regulations, which is a foreign jurisdiction to Thurston County and to the State of Washington. When she quotes the RCW, she said that’s Washington’s codes from state constitution sections 42.30.010 and 42.17.251 that states, “The people of this state do not yield their sovereignty to the agencies which serve them. The people in delegating authority do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments that they have created, hence government. The government is to yield to our will. The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices and all other public agencies of this state and subdivisions thereof (counties) exist to aid in the conduct of the people’s business. It is the intent of this chapter that it shall be liberally construed in its exemptions narrowly construed to promote this public policy.” We the guardians of the people’s rights of the State of Washington do not accept the foreign jurisdiction of federal acts which apply only to federal lands which Thurston County now proposes should apply over privately owned land. To propose that a building inspector can come onto private property one day or 10 years after a building is finished and the permit finalized is preposterous and against our inalienable rights to privacy and due process in accordance with the law. Before any property can be taken from us as secured by the fourth and fifth amendments of the Constitution of the United States, which is declared as the law of the land by the Washington State Constitution and if Thurston County continues with its proposals of codes and regulations on private individuals and private property, it can expect to have an injunction applied against its unlawful actions in a court of law. She said she appreciates the Planning Commission’s time. You have taken your private time to listen to us, to represent us, to make your statements to the government. She suggested as far as water rights, water controls, and all of the issues, the County does consider corporations and the true intent behind some of the laws.

Rick Bowman, 11844 Littlerock Road SW, said the constitution in Article 120 states that the purpose of government is to protect individual rights. In 1968, the federal government produced the Environmental Protection Act and our state followed up with SEPA, which is the State Environmental Protection Act. It lists elements that shall consist of the natural and built environment. Elements of the built environment consist of public services and utilities such as water, sewer, schools, fire and police protection, transportation, environmental health such as explosive materials and toxic waste, and land and shoreline use including housing and a description of relationships with land use and shoreline plans and designations including population. The only restrictions you can put on private property would be if it is adjacent to shorelines and it also has to relate to the offering of those services, such as utilities, schools, fire and police protection and so forth. So it’s talking about communities and not private property with single-family development. Furthermore, it continues Chapter 17, Growth Management. That is the plan under which the Planning Commission gains authority. It spells out what the Planning Commission’s responsibilities are and what the Commission is doing is not included within the chapter. Anyone who wants to know the truth about these matters can review the law.
that he possesses. He gave his phone number, 360-956-0134 and said he can educate the public on everything about the law and where the County gains its authority and what that authority is.

Chair Kohlenberg reminded everyone they will have a chance to speak. The document is a draft. Through a series of public meetings, the Planning Commission will rework the draft. The proposed ordinance will then go to the County Commissioners for their review and another public hearing will be held. Written comments are required to be submitted at the end of the hearing tomorrow evening. If the hearing is continued, the deadline will also be continued. The Planning Commission will consider every comment and takes public testimony very seriously.

Dan Wood, representing the Washington Farm Bureau, 1011 10th Avenue SE, Olympia, said the Farm Bureau has been dealing with CAOs across the state. It is very concerned about the private property rights of landowners not only in Thurston County but also across the state. What they have found is that Thurston County has not complied with the Administrative Procedures Act and has not completed a Small Business Economic Impact Statement as required by the Regulatory Fairness Act. The proposal for critical areas fails to meet the balancing test that was alluded to in earlier testimony that is found in the HEAL decision with the Puget Sound hearings board and courts. Skagit and Stevens Counties have set models of bufferless CAOs balancing the 13 goals of the GMA. The proposal in Thurston County fails to meet that balancing act. He also noted that the explanations that the regulations will not affect existing and ongoing agricultural and other land uses are contrary to the wording in the document. He suggested further staff work in order to make the explanation and the document consistent with each other. We need government at all levels to respect property owners and their rights and to show some restraint in their proposals and to bring forth reasonable proposals. The CAO does none of those. Also, in the HEAL decision there is some allusion to the Nolan and Dolan cases, which are famous property rights cases ruled on by the U.S. Supreme Court. There is no nexus in the Thurston County proposal between the onerous regulations and the impacts of use by property owners. He said the County will have takings cases on mass and it will cost the County millions of dollars. He is a former Grays Harbor County Commissioner and even though the Commission’s comments are critical, he does recognize that the Commissioners are volunteers. The Commission is receiving flaming arrows from public testimony in its uncompensated positions and he said he appreciates their service. In addition to the violation of the Procedures Act and the violations of the Regulatory Fairness Act, he would also submit that the public participation requirements of the GMA have not been met. In fact, even tonight with people being turned away and receiving no notice of tomorrow night’s hearing, it would be appropriate for the Planning Commission to adjourn the hearing, publish notice in the state register, do a Small Business Economic Impact Statement and go back to the drawing table and follow to the letter the requirements of the GMA. The Farm Bureau is submitting BAS from Dr. Pisemente that says 80% to 90 % of the benefits from buffers are found in the first 10 meters – that is 33 feet. The Farm Bureau is also submitting 260 e-mails received at its website from people concerned about the impact on their property rights. He said the Washington Farm Bureau will sponsor a property rights initiative in 2006 and will need volunteers.

Gary Joiner, 7810 Auklet Drive SE, Olympia, also a staff member of the Washington Farm Bureau, said his concern is the short timeframe that he and other Thurston County residents had
to review the drafts. He received the packet on July 30 after indicating 18 months ago that he would like to be involved in the participation process of workshops, hearings, and opportunities to see the work of the Planning Commission. This is the first time he’s seen the draft documents and it’s less than a month from the public hearing. He encouraged the Planning Commission to extend the timeframe to receive public comment giving all residents of Thurston County an opportunity to review and digest the materials. It’s very difficult and the Planning Commission should do a better job to get the material in the hands of County residents.

Dan Biles, professional engineer with Hatton, Godat and Pantier, 1840 Barnes Boulevard SW, Tumwater, said he received a copy of the draft the first of August and wasn’t able to read 700 pages and understand it in less than four weeks. He also does this everyday for a living. Hatton, Godat and Pantier represent property owners and developers. He thinks he knows County ordinances pretty well, and yet this is pretty hard to swallow in three weeks. The Planning Commission has been working on the draft for two years and wants the public to digest and comment on it in three weeks. That’s not enough time for review. He concurs with the Farm Bureau in that the Planning Commission needs to postpone and give the public a little more time to review the draft. In addition, the RCW states the County should consult with various interested parties. To his knowledge, there hasn’t been any stakeholders from the public, whether from private individual landowners or from the development and residence community to sit in on the meetings. The groups were mainly from DOE, Fish & Wildlife, DNR, the Planning Commission, and various staff members. There has not been anyone from the public in the workshops. He asked about the subcommittee’s balance and when the public will have a voice on the issues. He asked why the stakeholders present tonight were not at the meetings. There are 500 plus citizens here to comment on the draft and yet they didn’t have an opportunity to sit in on the workshops when the text was developed. He said he knows how the process works and the draft is what will be adopted. He has yet to see one of the jurisdictions change a draft substantially from when it goes to public comment. This is the ordinance we’re going to have to deal with. The County is undertaking a moratorium for development. It doesn’t know what its buildable lands inventory is and yet we’re going to take a swatch of Thurston County and say you can’t build on it. Mr. Biles said we need to step back from the process, let the moratorium work itself out, and then come back and relook at the critical areas. In addition, the GMA has various goals, one of which is to focus urban growth in urban areas and encourage affordable housing. None of this does that. It takes land off the market so that the housing values that are now $250 plus are going to go even higher because there’s no affordable land for people to build on and there are no affordable lands for people to buy. Obviously, the Planning Commission has not considered the economic impacts. All four of the jurisdictions have adopted various versions of BAS. He asked why there are different variations. In short, the ordinance increases the amount of area in the County where private uses of private property are outlawed. Or rather as in the ordinance, they prefer to call them buffer areas. George Orwell coined a term for that called, “control the work, control the thought.” That’s what the County is doing here.

David Thompson, 20625 Michigan Hill Road SW, said he bought a run-down farm in 1974 and bought four adjacent properties. He improved each property he bought, planted trees, controlled the weeds, fought wildfires, protected the creek running through the property, did wildlife enhancement, and stream and tree stand improvements. His investment for retirement is
his land. He doesn’t don’t have stocks, bonds, 401ks, and does not have a retirement or savings account. His land is his savings and retirement account. He had planned on slowing down in a couple of years and enjoying life with his wife. A few years ago, the US Forest Service took $535,000 from him and his wife in the way of land use restrictions. Now, the County wants to do the same thing with its ordinance. If it continues, he will not have anything left to retire with. He asked how much longer he will have to work and whether he will ever get to retire. He asked if he must work until his dies.

Richard Carrig 13315 118th Avenue SE, Rainier, said he would like to commend the Commission. He has sat on panels and groups and realizes the efforts it has put forth to do this. The thing he’d like to point out is that the Planning Commission has gone through all of the designing of the procedures. It has been led by a facilitator, someone who told the Commission that this is what they have to do. And they have done their best to live up to those needs because people told them that this is what the State of Washington dictates what the County must do. He stated Governor Locke was just a little slow when he said the people of Washington don’t know what they want; we elect the politicians to tell them what they’re going to have. He said Tom Foley is one of the dumbest people in the world. When we in the State of Washington passed term limits he said it was unconstitutional. This is supposed to be a government of the people, by the people, and for the people, not for the politicians. The Planning Commission is part of the people. He’s not shooting arrows at the messengers. The Commission has done the best it could. He asked the Planning Commission to adjourn the meeting and send out the draft ordinance, give time for people to respond the way they need to respond and to understand the things the Commission is trying to tell them to do. He asked the Planning Commission to also stand up and tell those dictating to them that they will not do as dictated.

Greg Amandela, 8047 Ellison Loop NW, Olympia, president of the Olympia Master Builders (OMB), said he’s speaking to defend affordable housing policies. It’s been said that the new setbacks for streams was a radical approach to what is currently in force. OMB agrees one hundred percent. The proposed BAS has flaws left and right. There are four different districts using four different types of science. You need to get together and have one science. If Thurston County goes through with the mandate as proposed, he guarantees OMB will do what Oregon did. The County will be paying for people’s property when it starts telling them they can’t build on it. Just like the gentleman that said he lost $535,000 from the federal government. When you take more away from him you should compensate him. That’s the road the County is taking by what it is doing today. When you look at what the gentleman said, millions of dollars could mean billions of dollars. Oregon is in a quagmire right now. It either has to pay for the people’s property or it has to let them build on it. And that’s where we’re headed. The County is putting the horse before the cart. It is as far as the GMA is concerned - out of compliance. He asked how the County can move forward with the CAO when it doesn’t know what kind of buildable lands it has. We can’t do that. We have to have all the pieces of the puzzle before we get the real picture. He said the County should take a look at what it has and make it readable and understandable. What you’re going to wind up with that is the people will hire people - biologists that come out and do wetland delineation. They’re going to bring it in the door and staff is going to run them around in circles forever. We’ve got people two years now just under the current (inaudible) what we have now. Whether the County changes the ordinance or keeps
it where it is right now, it must have someone on staff who is a qualified biologist to review the report, not a staff person with no background or education, other than they’ve been on staff so they can say no and require another biologist to provide another wetland delineation report.

**Sam Devlin, 2424 Gravelly Beach Loop, Olympia,** said he’s a boat builder and boat builders are typically owners of waterfront property. He is struck by an irony; we don’t really own property. We just kind of lease it from the state and County as long as we want to keep paying our taxes. But the thing is that the Planning Commission and the state’s expectation is that the property owners are the final implementers of the regulations you want to put down. The public needs time to read the regulations and to comment, and it doesn’t happen in one day. He said maybe he should have known better but didn’t know about this meeting until a few days ago. He certainly hasn’t had time to read the inch and a half document. He’s interested in clean water as much as anyone else, interested in doing his best to be a good neighbor, a good custodian of the land, and doing his best to live in the state that he loves. But he needs time to go through this and the Planning Commission needs to listen to the public. There needs to be a forum for an exchange of information. The rules do nothing but get worse as time goes on. As the state gets hold of them, as the County gets hold of them, as it tries to implement them, things get worse. The public needs to have a forum with the Planning Commission.

**Tim Devlin, 4136 79th Avenue NW,** said he lives on the waterfront on Totten Inlet, and he takes great insult to some of the proposals in the draft that have to do with his construction business, dog kennels, and setbacks from bluffs. He questioned if his home will be in the new setback of a steep slope or bluff as referenced earlier. He also has issues as a taxpayer of the property and deserves the right to access the waterfront and utilize it for recreational purposes. He sees between the lines the inability to basically fence off his property from the waterfront that he pays taxes on. He bought it to use and enjoy with his family. He does care for the buffers and water. He has gone way beyond the requirements of the County for drainage, septic, and spent a great deal of money and expense to put those far from any areas that could affect the waterfront and water quality. People can be good custodians on their own. Critical area requirements are in place. He’s a builder and builds homes for a living. Many of the homes have been on the water in the last few years that he has built on. He keeps them out of existing buffers and complies (with regulations). He said he gets the run-around by the County Planning Department on a daily basis when it comes to building homes. The staff holds you at bay; they use personal opinions, and interject into things that (they) don’t have a sound basis behind it. They hold their deck of cards with options and will not lay down that card deck and show you ideas or options that could be used to do something. They act like you are supposed to figure it out on your own. They’re not there to help you. They’re there to stop you. Mr. Devlin said he is categorically against any changes and it’s his understanding the rules are up for review. There does not have to be any changes; it can remain the way it is. The current ordinance has plenty of teeth the way it is to keep people in compliance. He deals with it on an ongoing basis. It seems to him this is just another step toward government taking. He asked if the County is ready to write checks because it’s going to happen and it’s getting out of hand.

**Sheila Davidson, 9935 Prather Road SW, Centralia,** said one of her concerns is the provision that talks about the conversion of existing agricultural use or when small farm owners switch...
between agriculture with hay or crops, or whether they have small animals and are considering whether they want to go into nursery, or some other type of work. She said she is concerned about what happens when changes are made. She asked who is going to make the decision whether the change is a major or minor impact. She said she is concerned about the cost of permits or when they’re going to be required or not required. She said she was notified just two days ago that Planning Commission meetings are supposed to be published in the newspaper. It would be very helpful if the notification also was sent to the Centralia newspaper because The Olympian is not delivered in all parts of the south County.

Chair Kohlenberg acknowledged staff will ensure it occurs.

Brian Everson 7315 Young Road NW, Olympia, said he found out about the meeting and was able to try to read the document online a couple of days ago. He said he actually gave up. All of the changes to the definitions are way too thick and there is way too much and way too little time to mess with it. His interpretation of what he was reading is not matching to what he is hearing. He felt that from the maps he’s reading out there, he’s not located in a critical area but it sure looks like that his non-sensitive area has now became a sensitive area in the plan. He has a small farm and all he’s doing is raising stuff for his family. All of a sudden he can’t do that without a permit and must run around and get something for his cows and chickens. The plan is not very clear and needs to be written better.

Amy Tousley, 2724 Hillside Drive SE, Olympia, representing Puget Sound Energy (PSE), stated that like the rest of the people in the audience, they’ve only had the document for three weeks and it’s rather hefty. PSE has submitted 18 pages of comments to the County and she would encourage anyone in the audience to read PSE’s concerns with the CAO and its ability to maintain a safe and reliable electric and natural gas system in a cost effective way. PSE has an obligation to provide gas and electric services to Thurston County citizens and businesses. This includes the ability to maintain and repair facilities in an effective manner that’s the most cost prudent. You are the ratepayers, and it is PSE’s job to make sure it has the most effective safe and reliable system at the lowest rate possible for the ratepayers. This is a cost of business issue for PSE, but it doesn’t want to shirk its duty of being an environmentally sound company. PSE has worked closely with the model ordinance that was developed for the CAO. While PSE believes it is burdensome, PSE officials are curious as to why Thurston County decided to vary so much from the model ordinance. There are several elements that are not contained within the proposed ordinance that gives PSE grave concern. The first concerns no allowance for exemptions. This not only impacts PSE but the County as well, specifically the road department, stormwater, sewer, and water because the County has no exemptions within the ordinance. It doesn’t matter if you’re going to mow a ditch or overlay asphalt. The County will be required to obtain a critical areas permit and a wetlands assessment report. There are several modifications that PSE has suggested for the definitions within the ordinance, such as what are allowable standards, what are permitted standards, (inaudible) repair and replacement, utilities, the buffers that have been talked about. Someone earlier spoke about improved ROW. The improved ROW is not a critical area. Those areas have been impacted for years. There are some other areas PSE wants to address and that’s parity among people working in the community. For example, for emergency activities, the current ordinance says PSE has to receive prior authorization before it
goes out and restores service due to storm related issues. This is very unreasonable. She said PSE will certainly get back to the County when it has gone out and has had to clear trees or do whatever was needed to get the power back on. That is PSE’s obligation to the public and to the County as well. Related to special reports, if PSE is obligated to do a report because of its activities, it will certainly comply. Some of them are costly and may be unnecessary. She encouraged further communication and a hearing in Yelm as well as south and north Thurston County.

Diane D’Aouti, 14436 93rd Avenue, Yelm, said because this could affect her also, she thinks most people here want this wonderful land. All of these people have bought property and she thinks the changes are affecting the homeowners, the people that have owned property. Thompson Creek runs through her property. Yes, in the ’96 flood there was water there. She called and asked specifically for a buffer. It is 150 feet from the creek before any more building can be done, which is no problem. One thousand feet into the City of Yelm, they only have to go 50 feet. And Yelm just approved 100 homes next to Thompson Creek and the law is only 50 feet, but she has 10 acres and has to stay 150 feet away. It doesn’t make sense. Most of the people here tonight are homeowners. We are caretakers of the property. We’re not the ones that are affecting the critical areas. It’s the large buildings and asphalt, and then when you have something like the generators that you can’t operate. She asked if there is going to be a permit required for the gas-powered generator. She said it is smart thinking to have something there that could assist people when power goes out. The people that have the property aren’t the ones that are offending. She said she read or saw somewhere many of the things would be retroactive. Ms. D’Aouti said she has owned her property for 15 years and doesn’t want the County changing the buffer from 150 feet, which is already 100 feet more than 1,000 feet down the road, to 250 feet that will eliminate what she has. The reason why we all bought property and why we’re here tonight and so adamant is that we are the caretakers of property. It’s only impacting the private personal property owner. It’s not affecting anybody else but them.

Keith Laws, 3226 Fairfield Road, Olympia, said he owns 25 acres off Lathrop Road. He bought the property with a buddy and was going to build a wood treatment plant. Instead of sending logs to Japan, they were going to take the logs, trim them down, and make them in metric measurements for drawer ends, window frames, and things like that to ship to Japan. They would have hired 20 people. His buddy died of a heart attack and so he was not able to go ahead with the plan. He has had two people seriously interested in buying the property. When they went to the Thurston County Planning Department, they got such a run around they said (**) with it and went to Oregon where it is easier. He was a member of the Salmon Creek Stakeholders Committee and when he was on the committee he found there were all kinds of studies being done. Through research he found 16 different studies the County has paid for. The County has spent over $2 million and then nothing seems to be done with the studies. The County hired the URS Company from Seattle in conjunction with the Salmon Creek study. URS was paid half a million dollars and what did they find? They found that water runs downhill. That’s true. And on his property he has a dinky little ditch that in 2002 the County built the Hopkins ditch across the land he has and now tells him because there’s a ditch he can’t do anything 100 feet north or 100 feet south. When the urban growth people came in they told him the southern end of his property would be down zoned although he had bought it as light.
industrial/commercial and that’s the way he is taxed. Mr. Laws said he pays over $600 a month in taxes and then the County tells him he can’t do this or he can’t do that. He said he’s really upset about this kind of garbage. In summary, he reminded the Planning Commission of a few things in the Constitution of the United States, specifically Article 5, which states, “nor shall private property be taken for public use without compensation.” The Washington State Constitution Article 1 number 16 says, “no private property shall be taken or damaged for public or private use without just compensation having first been paid.” He asked whether his check is in the mail.

Chris Wright, Radake & Associates, 5711 NE 63rd Street, Seattle, representing LaPienta LLC, said written comments will be provided to the Commission. He said the Planning Commission should be commended for its efforts on the ordinance to protect critical and sensitive areas that are out there and that obviously need protection. What they’re concerned about is that the draft ordinance goes beyond protecting those areas that are obviously in need of protection, water quality, and things affecting human health, safety and welfare to protecting things such as species and habitats of local importance. They are animal species and plant communities that neither the federal or state government have deemed necessary to be protected. They are common plants and animals that occur throughout the Western Hemisphere that would become species of local importance within Thurston County. The species include the Western Meadowlark, a bird species that is found everywhere west of the Mississippi River in all habitat types. It includes the Sparrow Hawk, one of the most widely distributed bird species in the Western Hemisphere. Its habitat ranges from Alaska to South America. That includes the Marsh Hawk, which is a bird species that is found throughout North America from central Canada all the way to Mexico in all habitat types. It includes the Douglas Squirrel, one of the most common squirrel species found in the Western United States. The way the ordinance is currently written is that it provides protection and management for habitats and species of local importance, which are defined in the appendix. Within the appendix is a table of approved uses and restrictions that are within those habitats of local importance or those species of local importance are deemed to be on that property, or within 800 feet of the property. If someone sees a Western Meadowlark fly by, they would have to hire someone like him to come out and do a special study on the property, submit it to the County for its review, and then come up with management plans for how they’re going to build their new house or grade the field without affecting Meadowlarks.

Jon McAninch, 5222 25th Lane NW, Olympia, commented on his objections to the ordinance as currently proposed. People that wish to encumber their property with such ordinances should have the right to do so on a volunteer basis. The state, if in fact it does require that the ordinances are reviewed every seven years, does not mean they require more regulation. It doesn’t say you can’t make it less regulation or less encumbering. There was a note made about the historic river channel studies and basically the map that was shown includes a friend’s piece of property. What he understood staff to say is that since it falls at some point within the historic channel of the Chehalis River it will be affected. He asked the Commission how far back in time the County will consider. Will it be a 1,000 years, a million years, or 10 million years? The top of Capital Peak may have been under the Chehalis River at one time and the proposal will mandate the property owner to pay for the study. He is a general contractor and has been in
Thurston County over 40 years. He also used to do shoreline construction permits. When SEPA was enacted in 1971 he was one of the main people in the state that did Section 10404 permits for persons wanting to protect their property; mainly bulkheads on the waterfront. He has been dealing with the County for quite a while. Staff has informed him that the public do not own the property; instead property owners are just renting it from the rest of the world. So there is no such thing as private property rights.

Peggy Kenney, 4625 45th Avenue SE, #C3 Lacey, said she has a contract to purchase a 5 acre piece of property in Rainier. When she learned about the proposal a couple of days ago, she was absolutely appalled at hearing what was going on and seeing from the website and other pieces of information as to what the County is proposing. This whole thing needs to be stopped completely. There’s no place for what the County is trying to do to the private landowner.

Leslie Lewallen, 5811 116th Avenue NE, Bellevue, representing her parents who own property on Long Lake and representing the Pacific Legal Foundation, said the Pacific Legal Foundation is suing King County over its adopted CAO regulations. She said that her review of the County regulations as they exist now are more onerous than King County’s regulations. The GMA does not require the Planning Commission to revise and update County regulations just flat out. The GMA requires review, update, and revise if needed. There is no evidence that the new regulations are needed. There’s a recent Supreme Court decision that just came out on August 18, 2005 that states you cannot elevate certain planning goals in growth management above the other goals. Therefore, you cannot elevate the goals of the environment above property rights, above economic development, or above affordable housing. You have to balance all of those goals. Moreover, you cannot use the BAS requirement to trump the balancing of all 13 goals. You have to balance them all. There has been no balancing here. The GMA is a proactive tool. It is not a retroactive tool. You cannot go back and restore conditions that no longer exist. That’s against the law.

Renny Storm, Park Apartments, College Street, said last night she submitted comments to the County, which were rebuttals but would like to go on record supporting the two gentlemen who submitted testimony to the Planning Commission and Ms. Lewallen’s comments. She said she would like to remind all people attending and for those who do not know what a “taking” is, to look it up or to become educated on a “taking” because it appears this is what’s happening. There are Supreme Court cases, one being Lucas versus South Carolina Coastal where a gentleman had two lots he purchased and was building on. In 1986 and 1988, South Carolina passed a management act for critical areas much like the County and it rendered his property valueless. He took it all the way to the Supreme Court. The court granted in his favor and reversed South Carolina’s rule. The municipality had to pay him $1.2 million for his property. That’s a lot of money. The County is going to receive class action lawsuits by a lot of people whose land has been taken and it’s going to cost the County. She asked the Planning Commission to step back, review, and see what the cost effectiveness is. In legal terms, reasonableness must be considered. She asked if the proposal is reasonable. This is just a proposal. It’s not set in stone. She asked whether monitoring a person’s property for 10 years is reasonable. And, when it pertains to being “retroactive,” she asked what is reasonable.
Bob Peters, 108 Sunset View Drive, Longview, representing Harold D. Peters Marital Trust, said his observation of the proposal represents creeping communism. We have functioned as a marketplace society for over 200 years. And now, the central government is deciding how property is to be used. That is what destroyed Russia. He described a 40 acre property bisected by a peat bog that constitutes about 10 acres. That bog has a value he estimates at about $1 million for peat. There’s also timber that was cruised out at $240,000. When the Silver Hawk development goes in, the back end of the property will be inaccessible. With the proposed buffers, there will basically be a very narrow strip that runs along 56th Street. Basically, the ordinance will take about $1.6 million from his inheritance. He left with one final comment, “Hitler never killed anyone; it was the butcher and the baker under him.”

Gregory Moe, 4331 John Luhr Road NE, Olympia, President of the Olympia/Thurston County Association of Realtors, said it took three years to propose additions to the CAO. Imagine a piece of land that’s 435 feet long and 100 feet wide. That’s an acre. Now imagine that one side of that piece of land is a stream and there’s another piece of land on the other side of that stream that’s also 435 feet by 100 feet. That’s a total of two acres. The two parcels of wetland buffers are basically unbuildable. We all know that streams are not limited to 435 feet in length. Many stretch for miles in Thurston County. Using that example, he asked how much land is unbuildable. He suggested it is probably hundreds and hundreds of acres. Carrying the proposal another step forward, the proposed revisions to the CAO will increase the buffers from a width of 100 feet to 250 feet, for a total of 500 feet, which will more than double the amount of unbuildable/undevelopable land in Thurston County thereby eroding private property rights. Further, the proposed increase not only impacts streams and wetlands but other critical areas, which include geologic hazard areas, frequently flooded areas, fish and wildlife habitat, and conservation areas. If Thurston County adopts recommendations which significantly increase critical area buffers, particularly wetland and fisheries buffers within the UGA, the immediate impact is to reduce land available for development in the GMA. The ordinance further degrades private property rights. Related to the notice on property titles, the proposed revisions will require a notice be recorded on one’s title if it is determined that there is a critical area or buffer on the property. He asked why. Anyone considering the purchase of land for a home site must structure a feasibility contingency into a purchase contract. This allows the potential purchaser time to consult with Thurston County Planning regarding their planned use of the land. Requiring the notice on title really puts more regulations into an already over-burdensome process. The question is - suppose the deed recorded buffer is the result of a meandering stream. That stream then meanders elsewhere. He asked who will be responsible in determining the deed restrictions are no longer relevant and who will pay for it. Financially, there is the expense of the original determination recording and now the cost of a new determination will need to be recorded. Again, the proposal is overly burdensome both regulatory and financially. Related to the surety, there is a requirement to submit a surety for 125% of the cost of the entire project for five years or more. He asked who can afford to have that amount of a surety locked away for five years. He asked whether the County does not realize that this cost is added on to the cost of the homes that are going to be built and remarked that surely, the County is aware the cost of housing in Thurston County is skyrocketing. Soon the term “affordable housing” will not apply to Thurston County unlike Lewis and Mason Counties. No one can control the population and migration in this wonderful part of Puget Sound in which we live. However, the Planning
Commission can do something to have an impact on the cost of housing. Approving the draft proposal as written will have an impact. Housing prices will increase exponentially. Reassessing the proposed revisions and reducing the amount of the buildable land will at the very least slow the increase in the cost of housing. Thurston County’s government must be held accountable to provide replacement acreage like for like, including both acreage and the ability to achieve given densities by increasing planned intensity within cities and adding land to the standard UGA. Replacing apartment land with single-family neighbors does not achieve the balance of housing opportunities in the original UGA. And, it does not protect the integrity of the pre-existing balance. Further, the loss of significant industrial lands for expansion for new development will make existing land uses nonconforming and will significantly affect values of industrial lands and the marketability of both existing and new properties. The members of the Olympia/Thurston County Association of Realtors would like to make a point of requiring a full accounting of all available land capability both before and after the proposed critical areas designation buffer and use changes. Thurston County will assure the overall economic balance of the community is not lost through the proposed increase in critical area lands and buffers. The magnitude of local undertakings to come under this year’s critical areas review is huge. Realtors recognize Thurston County staff has worked hard on the update of the current draft. Critical areas encompass wetlands and flood hazard areas, aquifer protection, geologic hazard areas including steep slopes, riparian, tsunami and volcanic hazard areas, and fish and wildlife habitat areas, with particular focus on salmon and endangered species listings. The combinations and perpetuations of the local area defy simplistic responses and require detailed local efforts. The Olympia/Thurston County Association of Realtors is important to the process. As a group it has worked hard to bring to local government attention of economic dislocation and disruption that may result from excessive buffers or other limiting regulations. Thurston County government was encouraged to identify and seek viable alternatives to statewide recommendations that may well at least double current rules when simple alternatives are appropriate and reasonably available to a given locality. Therefore, it asks that the Planning Commission not recommend adoption of the draft ordinance in its current form.

David Orwell, 4017 11th Avenue NW, said he had the opportunity to talk with the Planning Commission some time ago about the Green Cove basin. Ultimately, approval will come down to three Commissioners voting yea or nay. He strongly suggested the Planning Commission hold additional meetings for the proposed ordinance throughout the county and not ram rod it through folks here. He asked those in attendance to call the County Commissioners and tell them they object to the process and to have more meetings. Mr. Orwell said he went through a Green Cove basin effort. The County has very restrictive codes with what you can and can’t do. He had to threaten to sue the County to prove to them that some of the properties are not supposed to be in the Green Cove basin. Now, after thousands of dollars, attorney time, and engineering costs, water truly doesn’t run uphill. He said his property is located within the Green Cove basin and his point for raising the issue is to inform everybody that the County’s stormwater department is revising the whole Green Cove basin based on the findings. He said he doesn’t have the time to go back or the budget to revise that even though they said originally that it was based on BAS. He also has a science background as well as an engineering background and indicated BAS is very subjective. Unfortunately, the County is very black and white until you have to bring attorneys and scientists. We are lucky enough to be in a position to afford that. A lot of people
aren’t. He told the public not to give up, fight, and keep on fighting until they get the right answer. There’s some good science out there. But it can’t be so subjective. Finally, especially on the wetland issues, there are so many interpretations of wetlands and it depends on the agenda of the person at the County. He suggested the Planning Commission not interpret what someone is saying regarding what wetlands are or defined as because that’s not necessarily true.

**Larry Blackerby, 119 East Capital Peak Drive, Shelton,** pointed out his property on a display map, which is located at the northeast quadrant of the I-5 Interchange and SR 121. It’s bounded on the south by Tacoma Rail, on the east by I-5, on the west by Reader Road and another private parcel to the north. He owns two parcels. Beaver Creek flows through the property and it is currently zoned Rural Resource Industrial. Over the past six months he’s had four offers to purchase the property. Three offers were withdrawn after their review and questions to the County. As a result of the moratorium and prior to that, there were rumors that the ordinance was being reviewed and was going to be restrictive. The offers approached $1 million and one offer is still in place. If the ordinance is adopted that offer will be withdrawn immediately. He said that it is his retirement money. He retired and purchased the property many years ago. He said he read an article in today’s *Daily Olympian,* and quoted Richard Nichols, “There are lawful and fair ways to deal with controversial issues and to equitably alter and administer land use policies in changing times. The non-elected Western Washington Growth Management Hearings Board July’s decision invalidated Thurston County’s comprehensive plan and zoning regulations adopted more than 10 years ago. When I was a commissioner and scrupulously fashioned to comply with state law offers another case of egregious regulatory overreach. Having politically appointed persons overturn land use policies legally adopted by local elected officials more than a decade ago and which met the law is galling. Rather than resorting to (?) moratorium I guess Thurston County residents who want to build on their own property, the Board of Commissioners first action should have been a court appeal. There is still time to defend innocent landowners and take a stand against (?).” Mr. Blackerby asked the Planning Commission to take Mr. Nichols’ comments as seriously as it does the comments of the professionals who warned them about what the results would be of adopting the ordinance.

**Jim Hanna, 8138 191st Avenue SW, Rochester,** said a main concern is all of us that pay taxes in the County are a part of the County. It isn’t one small insignificant group. We are all County members. Therefore, we should be treated as such. He said one of his major concerns is the aquifer in the Rochester area. It should be protected. He said he realizes the Planning Commission is doing its very best. But we’ve all got to stick together and whatever kind of decision we come up with it has to be to the satisfaction of everyone in the County - all the taxpayers. One of the things he’s noticed is the amount of hoopla being done on the Chehalis River. He doesn’t know how many millions of dollars has been spent with the Corps of Engineers and different organizations trying to solve the flood problem. Did anybody think about dredging the Chehalis? What we’ve got is erosion that’s built up through the years over improper timber management and materials entering the river and building up the bottom to the point it is no longer good for salmon. In many states, it is mandatory that rivers be dredged because there is no other choice. He suggested that if there is a channel to disperse water, then maybe there wouldn’t be flooding. That’s a major concern. He said he does know that in Grays Harbor, every time its shipping becomes prohibited because of a low channel level they go to
work and dredge the channel. The harbor has been doing that for years. If there’s a place for fish to run, they’ll use it. Before the Planning Commission forces an issue on the taxpayers of Thurston County, a map and complete information should be provided. In other words, it’s just not a spur of the moment deal and he said it will help satisfy the people in knowing that they’re getting a square deal.

Chair Kohlenberg said based on legal staff’s opinion, the written comment period will be extended to the end of August. It is probable the hearing will have to be continued to the next evening.

**David Lindeblom, 4403 22nd Avenue SE, Lacey**, said he’d like to know how much property is in the creek, how much area of Thurston County will be left without the strict controls, and what’s being done for urban areas where the damage has been done for over a 100 years. It seems like if you become an urban area then you’re okay to do what you want. But as long as the area is rural, there will be controls. He asked what the County is doing to protect the homosapiens species from the deletion of farmlands and transportation corridors and how food supplies will be grown and transported? He asked by what means is the County recognizing that every human culture has developed around streams and ports from the most ancient times to the present? For example, in the region, Indians rarely entered the upland forest except for trails to the other riparian zones upon which they depended for food, clothing, housing, energy, art and everything else. Yet, in its urge to save a few fish, the Planning Commission is finding human life expendable. He asked who is going to have the fish. He referred to the rising energy costs and whether that fact has been ignored? It’s important to preserve local farmland as farmland. He asked how many employees will be required to administer all the new regulations. And, after the County has degraded the tax base, he asked who is going to pay for it and suggested it will be city folks of course. He asked whether it is the underlying premise of the Planning Commission or at least the people who facilitate the Commission that all land is actually owned by the government and permission must be granted for any activity. Mr. Lindeblom said he has submitted something via an e-mail. His land is in the McAllister Springs geologically sensitive area and he offered the following important observations:

- There is no control over federal lands such as Fort Lewis and its training area so nothing is implied out there and they can do what they want with millions of tons in nitrate blowing up all the time.
- The area was amended to coincide with the Burlington Northern Santa Fe railroad line boundary and it had nothing to do with the science of where the geologically sensitive aquifer really is located.
- There’s no sunset when the goal is achieved. The County has noted the pollution levels in city aquifers went down but the limitations continue.

He said he has a real problem the BAS. It all depends on the assumptions of the scientists and he has different assumptions; a different science. He asked whether his science is considered best. He said he doesn’t think the Commission would recognize it. Another one of the streams appears to goes downhill. However, on the map, it shows it goes uphill and drains into the Deschutes River, which it does not. Rather, it drains into a landlocked Lake St. Clair.

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Janine Ezzell, 1500 79th Avenue SE, Olympia, thanked the Planning Commission for presenting the document and more importantly she thanked her fellow residents for turning out with their response to the body of work. Her response is that the power of the document is terrifying as it is applied to the people and their livelihoods. She’s very relieved to know the Planning Commission will take every comment with the utmost consideration and that its obligation is to come back with a document that takes every aspect of what has been represented tonight and brings it to a body of work that we can all live with.

Jim Dawson, 526 Ensley Lane SE, Tumwater, representing People for Puget Sound, commended the Planning Commission. He said he understands the Commission has spent the last two years reviewing dense documents and has tried to come up with something that really does work. From the thickness of the document, you know there’s a lot of work that went into that. People for Puget Sound has submitted written comments that do reference a lot of BAS documents and the background information has been provided to the Commission. People for Puget Sound is very concerned with the health of Puget Sound. Shellfish beds are being closed and the rights of those businesses are being compromised. One farm loses about $500,000 a year because of pollution of stream sources from development in the areas and that’s the property owner’s rights that are being taken away. As a property owner and someone building an additional dwelling unit in his back yard right now, he said he is very familiar with some of the frustrations with the permitting process. There is a lot of work the County can do to improve that. He said he is very supportive of that. But, it must be recognized that other people’s property rights are being impacted by development and that community property rights and neighbor property rights are also important. These new community protections are meant to be put in place to prevent the kinds of problems that people have pointed out in the past. People attending the hearing have pointed out that existing logging practices and existing developments are the source of most of the pollution. That’s true and we definitely need to clean those sources up and continue to prevent those problems from happening when new development does happen which is going to continue to occur. Once the County does permit something, it is often very difficult to track the problems and taxpayers pay for it. He said protections are removed and then property taxes are raised to pay for all the problems that result. He asked the audience how many of them want to pay for cleaning up contaminated groundwater supplies, flooding, and restoration of streams. It’s taxpayer money that will have to be spent in order to do that. There are a lot of complaints about the County not doing everything well and he acknowledged that. He said he also recognizes it’s a bare bones budget and is fully supportive of hiring better-qualified people. He also hopes the OMB will support the impact fees to help cover those costs. Because right now, taxpayers are paying the majority of the cost of new development in impact fees and that is an issue. There are many improvements that can be made and he said he hopes the people who identify the improvements are willing to also help make them happen.

Marcia McHattie, 13033 Military Road, Rainier, said he received the information about the draft on Friday and today started reading it and it is quite overwhelming. He’s said he’s glad the public has until the end of the month to submit written comments and appreciates that. As he read the material, he thought about his property and became quite frightened that he had to get a permit to go to the bathroom. He said he is a species of local importance and realizes there are a
lot of issues at hand. But the draft is very frightening. His biggest fear is that the Planning Commission doesn’t really have any control and that it’s being handed down to them.

Nadja Galadram, 18201 Suncrest Drive, said for the last 15 years she’s worked with a thousand different clients who are interested in having ecological sane land. She’s a consultant to them and also does soils testing. Her clients have never bounced a check. There’s a wholesome kind of people in Thurston County that her company represents who take very conscience care. They do a lot of ecological research in their decisions and often consult with her. Miles Macilvoy of the Organic Farm Program told her several years ago that according to a federal study, the most people interested in environmental sanity live in the Pacific Northwest and in Maine. However, none of the people that she has talked to in the last couple of weeks believe the ordinance is balanced. She said she is glad the Planning Commission is taking written comment and will encourage her clients to submit written comments to them.

William Hutchinson, Jr., 5127 103rd Avenue SE, said he’s listened to a lot of different points and many of them are very good. He spoke about his experience with the County when he was doing a large lot subdivision some years ago. As has been stated he will have to consult with a wetland biologist. Unfortunately, he said he is not allowed to choose a wetland biologist outside of a list that is provided by Thurston County. They have a list of their own people. They won’t even talk to you if you want to use someone else. The same goes with septic designers. Having the ability to choose even within that group resulted in him have to interview each one of them because inside that group there were wetland biologist who were in favor of taking every square foot they could. There are wetland biologists who believe in a balanced approach, and there were some that actually asked for money to make it work his way. What the Planning Commission is proposing is the use of wetland biologists who are only approved by Thurston County. The scope of this is very narrow. The bottom line is that the proposal takes more and more of our private property. He said out of 72 acres from 102 acres, over 32% of the land is unusable. He said he understands he has wetlands and there are places he wouldn’t want to build on. However, what he doesn’t understand is how his 70 acres could have three different categories of wetlands. The land does not drain into any creek. All of the wetlands are contained on the property. He said he finds it all too confusing. The proposal he said that he has been able to read to this point, will take a lot more and reduce what he has to very little usable property.

Brandon Houskeeper, representing OMB Government Affairs, requested clarification of when written comments will be accepted. Chair Kohlenberg said the Commission will hold another public meeting beyond the continued public hearing of the next evening. Mr. Houskeeper said there’s no reason to cut off written comment at the end of the month. Chair Kohlenberg said if the Commission continues to have another public meeting, the Commission could continue written comment until the end of that meeting. However, it is unknown at this point, when that will be. Mr. Houskeeper said it’s understood there will be another public meeting. Chair Kohlenberg acknowledged there would be another meeting. Mr. Houskeeper said written comment doesn’t end at the end of the month; it ends at the end of the public hearing. Chair Kohlenberg said that in the event a hearing occurs within the next week, written comments will be accepted until August 31, 2005.
Mr. Houskeeper said OMB’s comments are under protest and that they believe the Planning Commission has violated the laws of the GMA in giving proper public notification and supplying a proper public arena for people to come and comment. He stood outside and watched numerous people turned away and many did not hear the announcement that public comment might continue to the next evening. He said nonetheless, he’ll move forward and will seek legal clarification on the issue from his legal staff. OMB’s membership includes 300 plus builder members in addition to over 600 associate members. Combined, OMB represents over 900 small and large business owners in the region, all of which have a vested interest in the draft ordinance. He said he will provide written comments. Contained within the outline of the comments are questions shown in “italics” for easy identification. OMB respectfully requests they be answered in a timely manner before the Commission makes a recommendation to the Board of County Commissioners. OMB’s position is not to allow the CAO to move forward at this time for two reasons. The Planning Commission does not know the impact to buildable lands caused by the proposed CAOs. He said he knows for a fact and has attended meetings with John Sonnen, the principal planner at Thurston County or the Planning Manager, where he has asked TRPC for an analysis about that. To this day, the information has not been provided, which we’ve requested. Furthermore, the Planning Commission does not know the impacts that the recent Growth Management Hearings Board decision will have on the supply of buildable lands.

The Commission has received testimony about the GMA and what else it requires the Commission to consider. The Commission is not just supposed to consider BAS as it appears it has done. The Commission is to consider all the goals of the GMA. In addition, the Commission is supposed to include the goals of the Planning Commission that Thurston County has posted on its website. Furthermore, it is noted on the County’s website that is still needs be completed by the Commission. According to RCW 36.78.130, subsection 1 A, the need for a new ordinance as a result the old ordinance is not working. The Commission has not shown in the current update where the old ordinances are failing. The Planning Commission has to show that they’ve taken into account other factors such as Thurston County planning goals. The 13 goals of the GMA are another reason the Commission should not move forward. He said he has listed in his letter such things as an analysis of fiscal impacts, economic development, employment, affordable housing, transportation, and the other five planning goals of Thurston County. He asked how the CAO draft addresses those goals. The OMB would like an answer to that. The GMA goals say pretty much the same thing. Moving on to BAS, according to the County’s website, the state requires jurisdictions to include BAS in developing regulations to protect the functions and values of critical areas. But the County doesn’t use BAS in the way that it was given. In the HEAL case, BAS is not the sole factor. He asked about where in the discussion are the other impacts considered and what BAS is the best. The Commission has received testimony during the evening from citizens, planners, engineers, and developers, who recognize that other jurisdictions within the County use different BAS to set their respective standards. He asked why the County uses different science. The GMA indicates the County is supposed to be communicating with all local jurisdictions and reach a resolution on the differences. Of the seven subcommittees that make recommendations to the Planning Commission about using BAS, only one had a representative from the building or business
community. However, the Audubon Society appears to serve on several more as well as representatives from DOE, Washington State Department of Fish and Wildlife (WDFW), and DNR. There is another case that says the County is supposed to plan. In a case just released in the last 10 days from the State Supreme Court - the Viking case; the County is supposed to plan for local needs. State agencies, just because of their near proximity in Olympia are not supposed to be come in and mandate what the County should be doing. He asked the Planning Commission to review the concerns. Mr. Houskeeper read a letter from one member from the development community that served on one of the seven subcommittees. He quotes, “This letter is in response to our conversation yesterday addressed to me regarding the CAO/riparian subcommittee. I was the representative for the OMB. This meeting was held monthly of which I attended for approximately a year before terminating my involvement. It was very apparent that this committee, which was comprised of mostly County staff, had a predetermined agenda. It started out as education of the riparian areas and potential impact of studies completed in different areas. The County committee members gave presentations at the meetings. Presentations were typically based on habitat impacts, other County data, and materials relevant to riparian areas. There were only a couple of others who did not work for the County. The committee members who did not work for the County included one from the Audubon Society, one tribal representative, a beekeeper, and I believe myself.” Mr. Houskeeper said written comments are submitted for the record. The builders do pay impact fees. They’re called for SEPA mitigation fees. He advised the Commission to look them up as members do pay for them and they also do their part.

Pat Hamilton, Raymond, representing her family in southwest Thurston County, said she is very concerned about the issues. Process is what sidelined the shoreline guidelines and the Planning Commission should follow that or there will be repercussions later. One thing that is troublesome is the BAS issue, and that’s the one she thoroughly reviewed. She said sometimes there needs to be consideration about the implications of adopting the new CAO in other jurisdictions. She said the Commission will likely want to know why she is addressing that point. Thurston County has in the past and still does today consider itself to be the leader in new land regulation. The Growth Management Hearings Boards often look to the rules established by adopters like Thurston County, to set the floor for new local regulations statewide. And that’s very true. When considering the GMA hearings, there are many rules and regulations that have an impact on people across the state. The Commission is not just impacting Thurston County today. If the County adopts some of these provisions that are pretty egregious, people all over the state will have to deal with it in another arena. She asked whether the Commission has evaluated the real scientific merit of the BAS that has been referenced. Some of the studies appear to be based on actual measurement of the effectiveness of buffers. That is good science. Identification of the size of grassy buffers needed to remove sediments is also good science. However, many of the studies appear to address the wrong question. She said she has reviewed the studies as far back as 1978 and 1986. Many things have changed since the studies were developed and it is unknown what questions the studies were intended to address. It appears now, that the intent is to proceed to an optimal theoretical buffer or worse yet, default to recommending the furthest distance that a particular animal has ever been observed from a stream or wetland as a minimum buffer needed. She said that is pretty clear in some of the information she has read. The Commission has sorted the difference between the real scientific
measurement and the buffer effectiveness from those that rely on opinion and speculation. What is needed is the identification of the minimum buffer that is necessary to prevent species from becoming endangered rather than defaulting to the maximum distance that a species has ever been observed occupying in the past. As a result, it appears there is a promotion to adopt BAS. She suggested it might better be called, “best aspirational science.”

Valentin Fyrst, 15329 McKee Lane, Yelm, said he went on the County’s website searching for answers to some questions he had but couldn’t find them. He acknowledged there may have been much detail he missed. He said he would like to know if there has been an estimate made of the additional staff required to handle the increased workload from the proposal. And, if so, at what level of service will Thurston County landowners experience in terms of delays in processing permit applications and answering questions. Additionally, he asked whether such delays will be acceptable to the applicants. He said he would like to know in terms of dollars what the additional costs of the proposal will be. He indicated he is considering the additional staff costs and whatever else is needed by the Planning Department in order to enforce the ordinance. He asked how the additional cost will be financed and whether it will result in increased property taxes or higher permit costs. The answers to the questions should be published.

Young Sveton, 80146 in Rochester on Scatter Creek, said he bought property in 1967 for a place to raise seven kids and to have some property to help financially in his retirement years. The kids learned responsibilities and duties on the place. The family had some animals and over the years probably had the most expensive milk in Thurston County. However, he said he was not raising cows for production but was raising children. There is a lifestyle the Commission infers to with all the rules that have been proposed. Much has been said about the 100-year floodplain and those lines are determined by FEMA, not the County. But the County has the ability to influence FEMA. For 10 years he said he’s argued with the County and FEMA over the accuracy of the flood line. On the north side of the creek, the 100-year flood line is 160 feet. On the south side it is 165 feet. He suggested that if that information is believable then the Commission should go back to school and ask for its money back. He said this is important because according to the map his house is in the floodplain, his son’s house is in the floodplain, and the flood insurance is approximately $500 to $600 a year. He said he is a licensed civil engineer and went to the bank and argued with them about the floodplain boundary. The bank withdrew the requirement for flood insurance. The map is causing a lot of problems for people, and the County didn’t do much to help. He said when he worked for the state, they referred to property rights and fee title and the various elements of fee title as breadsticks in a basket. What the County has done over the years is to remove several of the breadsticks from the basket without compensation to the property owner. He said he waiting for his check if the County takes more breadsticks. Staff has talked about the state goals and state recommendations. He asked whether the references are the RCWs adopted by the legislature or whether the references pertain to the Washington Administrative Code (WAC) adopted by state agencies. The answer to that will be important. If it’s RCWs, the citizens can go to their legislators. If it’s WACs, citizens go to the government who in turn appoints the three non-elected officials that answer to the Board itself. He asked for an answer. Chair Kohlenberg said it is the RCWs and that staff can provide them and they are also referenced on the website.
Bruce Ritter, 14645 Knowles Road SE, Tenino, said the first he heard about the proposed ordinance was late last week and that he certainly did not have the time to go through and review all of the documentation. However, one person that did logged onto the Thurston County Geodata site to take another look at his property. When he first bought his property for his family to live in a farm-like environment with horses six years ago he had nearly 100% use of one five-acre lot. He bought a second five-acre lot. Because of wetlands it is probably 60% usable. Now, under the proposal, it appears the properties are engulfed with (environmental) boundaries. The properties have gone from 100 to 300 foot buffers without any notification. He indicated he now has a full five-acre parcel he cannot use and pays taxes on, and another five-acre parcel he’s living on that is surrounded by the boundaries and that he obviously will never be able to expand. His intent was to buy the place with an old broken down mobile home and after a few years replace the mobile home with a house. Now, that’s not going to happen. He said he is basically stuck with properties that are almost totally unusable.

Mr. Ritter stepped over to one of the display maps and pointed out the location of his properties. Chair Kohlenberg commented that this is as of current regulations but not the proposed regulations (*unable to hear dialogue as speaker has stepped away from microphone*). Mr. Ritter said the geodata shows everything at 300 feet automatically and doesn’t show what stream type there is or wetland because the wetlands have not been assessed. So what the geodata shows is not relevant to the regulation, which is not a good idea actually. He said if the regulation were to go into effect it very well could be 300 feet and then that land would be totally unusable by anybody. Additionally, there’s the retroactive aspect of it. He asked what that means. Chair Kohlenberg responded that others have referred to the retroactive aspect. However, she said she does not know what it means or where it came from. Mr. Ritter said there must be someplace in the document that says it’s retroactive. Chair Kohlenberg said one element of the proposal might be retroactive but that the majority of the provisions are not retroactive. Existing houses are protected (grandfathered). Commissioner Lyman suggested that if Mr. Ritter has questions about the draft regulations he should contact staff to receive clarification in relation to his specific situation. Chair Kohlenberg said the regulations have not been implemented and current geodata does not reflect any of the proposed changes. She suggested Mr. Ritter should submit further comments in writing.

Allyson Barker, representing Wilder Construction, commented on the expansion in the number of species that receive the same protection as species listed under the federal Endangered Species Act. She said she is concerned it will create enormous costs to property owners and regulatory expense to the County without any consideration of the procedural or scientific requirements of the Endangered Species Act. Expanding the protections should not be undertaken without full environmental review. The unintended consequences are potentially enormous and there will be irreconcilable conflicts. Many people also described how the ordinance will leave them with only a small area of usable land. In response to that, the draft ordinance does not practically allow for site specific or project specific considerations. To illustrate this she provided an example. Under the proposed ordinance an applicant, a jurisdictional agency, and land use authority could all agree that BAS called for the replacement of a low value temporary wetland adjacent to an existing proposed use. Because of the low
quality habitat, state sensitive species, state sensitive plant, or a species of local importance, all parties should agree that it should be mitigated through replacement or enhancement of existing habitats. Under the current draft of the code, BAS can not be employed because of arbitrary restrictions. Mechanisms to override project specific or species specific restrictions exist and no scientific justification is given for opposing ESA standards for other species which have not been deemed to require ESA protection. Additionally, the project approval authority has been given the ability to waive competing GMA requirements to balance the property utilization of resource lands with other critical areas considerations. She asked the Planning Commission take the issues into consideration when reviewing the draft.

Pat Allen, 507 N. Devoe Street, Olympia, said the CAO is actually the largest impact landowners have seen related to critical areas or zoning probably within the last 30 years. When factoring the average buffer increase, many buffers go from 25 to 50 feet, 50 to 100 feet, 100 to 200 feet, or they are doubling and tripling or in some cases quadrupling buffers on existing defined sensitive areas. The area is a square of the distance so it actually quadruples or by a factor of 8 or 16 increases the area that people are required to set aside for the buffer areas. This is too much to ask from property owners at this time. It has too great of an impact to property values and available buildable land. The County should reconsider the proposed buffers and consider more incremental changes in conjunction with incentives to property owners who voluntarily add to the critical area buffers through some type of provision for clustering, density bonuses, development rights, or some other creative methods. The other big loser is the average prospective homebuyer. As most developers know, the inventory of buildable lands is almost nonexistent. The result is that house and land prices are skyrocketing with 15% to 20% increases in the last two years. That’s a 40% increase in two years. The index that measures affordability of home purchasers in the State of Washington is at the lowest point it has ever been. The County should hold off passing the CAO until it can evaluate the impact on buildable lands and require revisions to the comprehensive plan due to the GMA Board’s decision. He said he reviewed the proposed buffers based on BAS and can summarize it in two lines. One is that zero buffers are inadequate and the second is a larger buffer is better. It all really comes down to politics. The County can’t protect all species - the buffers aren’t big enough, even the ones proposed to protect cougars, bears and other species. It really is subjective even though there is science behind it.

Glen R. Davies, 2842 143rd Avenue SE, Tenino, read from Article 1, Section 1 of the Washington State Constitution, “Section 1 Political Power - All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.” Mr. Davies said the constitution does not protect group rights, fish rights, or animal rights, but individual rights. He said he discovered who’s been promulgating all this garbage and knows who it is. In King County, they voted to take away up to 60% of the property owner’s land rights. It was a party line vote. He said he doesn’t vote Democrat at all and Christine Gregoire is not his Governor. The Democrats voted to take away people’s property rights and the Republicans tried to block it. He suggested it is something to think about in Thurston County. The County has three Democratic commissioners. He said that now that he’s found out who’s behind all this garbage, only the Planning Commission can stop this. When you get a flyer from a politician and they’re endorsed by the
Audubon Society, the Black Hills Audubon Society, Nature Conservancy, and other environmental groups, don’t just not vote for them but find out who their opponent is, call them up and offer to work on their campaign. Give them money. It’s the people behind the groups who are pushing the agenda. It’s just that simple. He said he has owned a farm down there, and by the way someone said (inaudible) it’s not entirely correct, his house burned down a week before Christmas. It was built about 100 years ago. According to a little fluke in some environmental laws, he has one year to rebuild. The only problem that he has is a half sister who conned their 73-year old mother into signing a new will. He’s in court and can’t rebuild right now. If the project isn’t underway before the week before Christmas, he won’t be able to rebuild his home. He’s owned that land for 45 years and is truly ticked off that somebody would even consider doing what apparently the Planning Commission is trying to implement right here and now.

Dean Smith, 7711 119th Lane SW, Olympia, said he’d like to defer to Al Wallace and asked if he could speak later on. Chair Kohlenberg replied if Mr. Smith defers now he could speak after everyone else has had an opportunity and/or submit written testimony.

Al Wallace, 601 Union Street, Seattle, land use attorney representing Lakeside Industries, said Lakeside Industries is a natural resource-based industry. It relies on access to gravel for its business, as does Wilder Construction. Lakeside employees 65 people in Thurston County. The jobs are union wage jobs with the Teamsters, which provides family wage jobs. The company has a concern about the impact of the regulations on its long-term access to gravel as a natural resource upon which it relies to conduct its business activities. The company has permits pending for a gravel pit and is looking at the long-term viability of its business and industry. He commented that 80% of Lakeside’s asphalt production is used to build and maintain public infrastructure. The roads some of you drove on tonight were paved with Lakeside asphalt and its gravel that came from local gravel pits in Thurston County. Lakeside builds roads for cities, Thurston County, and the state. The critical aquifer and habitat regulations in particular raise matters of concern to Lakeside. Several speakers have spoken about the need to balance GMA planning goals. GMA planning goals require the region to maintain and enhance natural resource-based industries. Goal 10 is to protect the environment and goal 6 is to protect private property rights. It’s important to understand that the GMA does not give any priority of one goal over the other. He said there have been statements perhaps by some Planning Commissioners that the environment trumps everything and trumps all of the other goals. That view of the law is incorrect and that alone could be a basis of returning the set of regulations. Just last week the Washington State Supreme Court reaffirmed that local government must harmonize the GMA goals and not give priority to one goal over another. The GMA contains 13 expressly non-prioritized goals that guide local governments in development of comprehensive plans and development regulations. A public policy argument fails to the extent that it implicitly requires county government to elevate a singular goal to the detriment of other equally important GMA goals. To do so would violate the legislature’s express statement that the GMA goals are not prioritized. He referred to his letter. The state’s shoreline hearings board court cases confirmed the importance of gravel mining as an appropriate land use and that it is in the best interest of the citizens in the state. He pointed out that with regard to aquifer recharge areas, the state DOE enforces an NPDS permit specific to the sand and gravel mining industry. There are 60 pages
that are updated every five years. In regard to the proposal (inaudible) to prohibit all gravel mining, John Drebrick, senior official at DOE, did testify in a hearing in a sworn statement … (his speaking time expired). Chair Kohlenberg said the Planning Commission is happy to read written comments. Mr. Wallace said he would appreciate being able to bring experts to the hearings and interact in the process.

June Gorsky, 14437 Prairie Parkway, Olympia, said she would be the first person to see a need to protect the environment. She moved to the county for a reason and that is to take advantage of the beautiful countryside of Washington State. Now, she said she looks at the eyesore of huge housing developments that the Commissioners have allowed by an exemption to the five-acre limit. The Planning Commission appears to be subject to politics. The proposal is vague and subject to change whenever you want. Ms. Gorsky said she owns a few horses and it looks like she will have to get a permit to keep them. She said she doesn’t trust the Planning Commission and is not willing to aggregate her property rights to a small group of people. There is still a bill of rights and the constitution in this country even though we’re fighting tooth and nail to continue to preserve it. She referred to the inference of wanting to study the proposal but said everyone knows that by just reading a few pages it is communism pure and simple and she intends to fight it any way she can.

Doug Vliet, 21145 Michigan Hill Road, Rochester, stated Mr. Sonnen said something this evening that struck a chord with him. He mentioned critters that are intolerant to disturbance; Mr. Vliet said there's a new group to deal with. He asked if anyone on the panel has any idea how many landowners the proposal will impact. Chair Kohlenberg said the Commission has some idea. Mr. Vliet asked how many were informed about the ordinance. Chair Kohlenberg said everyone. Mr. Vliet said he didn’t think so. If you look at the subscription numbers to the Daily Olympian you know it’s not 125,000. He asked who will enforce the regulation. Thurston County can’t even take care of the weeds that are growing along the side of the road. He asked the Commission how the County will deal with a document as thick as the proposed ordinance. He questioned how the County deals with the common problem of tansy weed. Thurston County can’t handle that issue. This is going to cost a ton of money if it ever gets through, more money than can be imagined. This might be a jobs program for everybody at The Evergreen State College (TESC). He asked what the taxpayer will receive in benefits. Perhaps it will be preventing one or two houses from sliding down a slope or maybe two or three more salmon traveling up the river. Nobody knows why so many salmon came back last year. There are state agencies up the kazoo and they can’t answer that question. He asked how many farmers will be put out of business because of the ordinance. At a time when energy costs are skyrocketing, local farmers are needed because there are a lot of folks here that like to eat. Of course houses are being constructed on previous farmland, because all the farmers are getting the (*** out of here.

Ken Miller, 11801 Tilley Road S, Olympia, said he grows timber on a tree farm. He said he’s experienced the same issues with forest and fish. He said as a forester he as been living with the regulations that the rest of the community is just starting to experience. Whether or not this is determined to be a legal taking, everyone on the board surely agrees the proposal, even if amended, will be taking private property rights to some extent and impacting the economic use of private land for the general public use. If there is any interest in being fair to the rural folks
most affected by the plan, the plan will include provisions to give affected property owners compensation for their loss. The compensation could be at no cost to the County if it included provisions to give affected landowners additional transferable development rights proportionate to the value of their loss. This would be a huge show of good faith that potentially could keep the landowners financially whole at no cost to the County and even better yet, it complements the GMA by further encouraging growth in the most developed areas - the cities. Additional incentives should include removing all lands within the new critical areas from all tax requirements. In fact to be fair, the owners should get an annual check or tax credit for the public services they’re providing. The ordinance as drafted will encourage faster conversion of farm and rural land to development as marginal land will become even more marginal. Additional laws in the draft ordinance include the most onerous prescriptions are on the rural folks doing the least harm and the most environmental good. It’s simply just not fair. Buffers tend to get wider as the streams get smaller defying all common logic. Reasonable use exemptions should be proportionate to the area of land owned. Not one size fits all. Those who have taken the critical habitat already for housing and/or are harming the critical habitat should carry the burden of the new regulations, not the rest of us. All citizens are not treated equally when the plan envisions simply providing educational information to the more developed portions of the critical areas because it’s just not practical to regulate those folks. The County wants to use the full force of its regulatory powers to enforce compliance on those of us that still have some habitat. The County is going to charge us for providing those regulatory services. This is typical city folks dictating to rural folks what’s required on rural lands while the city folks continue to foul their own nests and the relatively clean water we send their way. The regulatory excesses embodied in the draft proposal are creating a perfect storm that will bring this state an issue like Oregon’s Measure 37 where the County is going to be forced to pay for the restrictions or waive the rules put in place after we purchase our individual parcels. It’s the only fair thing to do especially if the County doesn’t make a bonafide effort to keep landowners financially whole. He said he has also turned in written comments.

David Ward, representing Quality Rock Products, a local mining company, said they have several concerns. He’s attended Planning Commission workshops on the ordinance since January. A lot of people have talked about balancing the goals of the GMA. One problem the County has with respect to that is that it has no idea what the impacts of the CAO will be. As far as he knows, there’s been no mapping done that will show what the stream buffers, wetland buffers, or any of the regulations will do with respect to buildable lands, as well as general impacts on the entire County. He said he has submitted copies of a comment letter which has a variety of attachments and asked the Planning Commission to read it. The County doesn’t need to completely ban development in critical areas. His brief contains a couple of case citations that essentially say development is not absolutely prohibited in the GMA or in critical areas as long as there is no net loss of the structure value functions of the critical areas. Regarding BAS, there is a problem with the gravel mining regulations. Essentially, the regulations in place say you cannot mine within carot(?) I areas. However, you can mine in carot(?)II areas and there’s no mining allowed in floodplains. It’s is not a regulation that the company would oppose. Instream mining is a largely abandoned practice. Mining cannot occur in wetlands, wetland buffers, or any habitat area. Most of BAS relates to instream mining, coal mining, or precious metals mining. And again there’s a detailed review of that. The County is falling short when it comes
to regulating sand and gravel mining in the way it is. Another thing is that it’s unclear in certain respects whether mining is being regulated as an intensive use or as a separate mineral extraction use, or some combination thereof. He recommended the Commission take a look at the definitions of minerals and actually create a definition for intensive uses, which is not currently defined. There’s a staff comment that says what those things are and he encouraged the Commission to develop that a little bit further. Probably the biggest concern is on the important habitats and species of local concern. They have three habitats: birds, several amphibians, and the Douglas Squirrel listed on the local important list. The problem here is that there is no BAS that supports the listing of the animals. They were listed as a result of conversations with state regulators at advisory committee meetings and consultants with NatureServe.org, which is a nonprofit organization, based in Arlington, Virginia, which has absolutely no basis in Thurston County to decide if there’s some locally important reason. He encouraged the Planning Commission to abandon the designation at this time, run them through the process that has been established which requires public comment. It’s a very open process as far as BAS will allow you to list the species if they actually are of local concern. The Planning Commission formed seven separate advisory committees to advise them on each individual area of the ordinance. The advisory committees consisted of Planning Commission members, County staff, and state regulators. There were no stakeholders from the developer or agricultural groups, and certainly not the mining community. Those are the board cited what science was going to apply. It’s no surprise that the science that the County now has is saying the BAS is the most extreme science that would support the most extreme regulations that I’ve seen.

S. R. Louis, _____ Street, Yelm, applauded the Commission and staff for being patient and reasonably fair. He asked if there is any way the Commission can publish or include on the internet the reasons for the decisions the Commission recommends. He cited an example, the recommendations concerning generators and wetlands. He asked the Commission to explain how it reached the conclusions so he can have the opportunity to agree or disagree without getting upset about it. It is really unfortunate that everyone is so angry. The newspaper would probably even print it or on the web or something about how the Commission reached its recommendations.

Kelly Carnes, 7440 Normandy Street, Olympia, representing her family said that given well over 200 pages of proposed regulations to digest, it is difficult to be able to identify all the concerns that arise from the proposed ordinance. The most obvious pressing concern is the overwhelming burden the regulations place on property owners and their ability to enjoy the use and economic value of their property. The increased buffers in and around critical areas, which in many cases are doubled, is going to greatly devalue properties around the County and limit landowners with options for present and future use of their property. Private property rights are one of the most sacred things in the country, yet they continue to be eroded. Not only are buffers being increased it appears the types of critical areas themselves are also increasing with areas identified to protect numerous habitats and species of local importance. The list of birds, reptiles, and plants goes well beyond what would receive federal protection. One can imagine the landowner applying to subdivide or otherwise using their property only to discover they will not be able to because of some plant they have never heard of existing on their property being protected by a large buffer. The landowner and many others will then wonder who made the
decision that a plant is so much more important than the landowner’s private property rights. Another concern is the open-ended nature of the terms and regulations that will lead to uncertainty and possibly give too much discretion to administrative staff. By way of example the definition of development is all encompassing. The meaning of alteration has led one group to question whether mowing their lawn will be subject to County approval. With regard to agricultural uses, it appears the County’s requirements are duplicative of the federal and state regulations already in place. She asked whether it is necessary to have additional regulations and do personnel have enough time to do this on top of everything else they have to do. The proposed regulations do have some positives with respect to the high groundwater and flooding hazard areas. The proposed regulations are definitely better than existing with respect to certain provisions that didn’t have any basis in science and now there is an ability to provide a way to correct the maps. However, she suggested that there should be a provision to allow landowners to engineer solutions to high groundwater flooding areas. Previously, the County has informed her and private engineers that this is possible and a provision to allow property owners to have a review and approval should be part of the ordinance. When making decisions on the ordinance, she asked for consideration of the impacts of the proposed changes on clustering as well as the comprehensive plan changes that will have to come with respect to the moratorium that’s in place. When the cluster ordinance and comprehensive plan are considered, there should be consideration for compensation to landowners in some way for what they lose through regulations. The County needs to balance private property rights, provide housing opportunities, promote the economy, and protect the environment. But the proposed ordinance appears only focused on the latter factor with protection of the environment. She asked the Commission to listen to the people carefully and that the Commission’s decision should follow and fairly balance the values of all constituents.

Fred Colvin, 16816 Old Highway 99 SE, Tenino, said as members of the Thurston County agricultural community, they are very concerned about the proposed amendments to the CAO. The proposals will discourage agriculture production and encourage commercial land for other uses. Agriculture in Thurston County is a $115 million a year business. Farmers buy our goods and services and pay taxes and we have an annual payroll of $37 million. Agriculture provides open space, provides habitat for wildlife, and farmers provide local food production for the community. With the importance of agriculture to the community, it is unimaginable that the proposal has gone forward. The proposal increased buffer widths, in some cases doubled, and includes areas that have not been included in the past. It goes beyond the Endangered Species Act and would even require permits for having gas for your tractor. Permits are needed for any alteration that a landowner would undertake. An alteration is defined very broadly. In some areas the County is going beyond its authority such as trying to regulate the use of pesticides. Only the federal and state governments have authority to control the use of pesticides. Some provisions don’t make sense. For example, the idea of reduced nutrients such as reduced application rates to reduce nitrates to groundwater is illogical. Agronomic rates by definition result in no leaching of nitrates into the groundwater. He asked how it is possible to achieve less than zero. The inclusion of any alteration in a critical area can mean just about any activity such as fencing or tilling could need a permit. Permits would be required if the farmer wants to change the farm operation because of changing markets or new opportunities. County staff is charged with numerous reviews and approvals of activities, BMPs and studies. The County does
not have the staff or expertise to pass judgment on agricultural activities or BMPs. Many of the others that signed the letter are farmers on farms that have been in their family for many generations. Their hope is that the next generation has opportunities to become involved on the farm. But the proposed rules are so onerous that they fear the next generation will not have the opportunities. They urged the Commission to change its approach to agriculture in the proposed regulations.

Ron and Kay Nelson, 3624 Waldrick Road SE, Olympia, said the amendments are devastating to him and his family. They farm on the Deschutes River. The BAS used to develop the ordinance and buffers is flawed. Douglas firs are not the predominant trees in the floodplains and wetlands associated with the Deschutes River. Fir trees are in adjoining uplands, not in the floodplain. Douglas firs located in the adjoining upland are not 200 feet tall as suggested in the ordinance. The correct information from the Conservation District is that the average height of the Douglas firs is between 95 to 125 feet. We have to trust that the information from the Conservation District is from BAS. This is important because buffers are based on the height of Douglas fir trees. There is no scientific evidence for expanding a list of rare and endangered species as outlined in the amendments. There is no scientific evidence to support expanding buffers in wetlands. There’s a whole library full of books downtown. Not one has any scientific proof that expanding buffers will make a difference. The proposed amendment takes the authority for providing improvements to farm plans and conservation districts and giving it to the planning staff. Farm plans should be written by experts from the conservation district. Planning does not have the staff, expertise, or the budget to review farm plans. Don’t take the authority of farm plans away from the Conservation District. It reminds him of someone a few years ago who oversaw the County fair food booths. She admitted she didn’t know how to cook but she was out there telling people how to run a food booth. Alteration by your definition means any human activity resulting in an adverse impact upon the existing condition. Does this mean no mowing of hay, no grazing of land, no plowing? Is plowing okay? We know (?) is not. So surely plowing is not. One of the biggest impacts of existing farmlands is that there will be no expansion or changes to what you do. There can be none. His father cut with a five-foot cutter bar. He and his brother expanded to a seven-foot cutter bar. His son mows with a 12-foot cutter bar. You need to expand and accommodate larger and more efficient machinery. Successful enterprises expand. They do not stay stagnant. Also, a successful business needs to be flexible to change when economic markets change. The proposed amendments eradicate that flexibility. He and his brother are fourth generation farmers, his son and daughter are the fifth generation. They farm on the Deschutes River in the 100-year floodplain in the summer. When the rains move in during fall they move to the upland prairie and stay out of the river bottom during the wet season. They consider themselves good stewards of the land. He asked the Planning Commission to send the entire document back to staff and direct them to rewrite it. He suggested obtaining input from the farm community, the Conservation District, natural resources conservation, County Commissioners, and the technical advisory committee. Maybe the second time around the Commission will use the best science available. Thurston County’s code Section 17.15.415 states any property owner can apply for a reasonable use exemption to carry out any use, activity, etc. Farming is a reasonable use and you should not restrict or prohibit it.
3. **Adjournment**

Chair Kohlenberg recessed the hearing at 10:08 p.m. until August 25, 2005 at 6:00 p.m.

Liz Kohlenberg, Chair  
Tom Cole, Vice Chair

Prepared by Cheri Lindgren, Recording Secretary, Amended October 19, 2005  
Puget Sound Meeting Services