THURSTON COUNTY PLANNING COMMISSION

Minutes
September 27, 2005

1. Call to Order

Chair Kohlenberg convened the continuation of the public hearing on proposed amendments to the Thurston County Critical Area regulations, Chapter 17.15 of the Thurston County Code and related amendments to Titles 20, 21, and 23 of the Thurston County Code, at 6:33 p.m. at the Worthington Center, St. Martin’s University, 5300 Pacific Avenue SE, Lacey, Washington.

   a. Attendance

   Members Present: Commissioners Liz Kohlenberg, George Darkenwald, Chris Lane, Liz Lyman, Bob Musser, Craig Ottavelli, Joyce Roper, and Rhenda Strub.

   Members Absent: Commissioner Tom Cole

   Staff Present: Michael Welter, Cami Petersen, Carrie Toebbe, Mark Swartout, Alan Carlson, Galen Hemman, Cynthia Wilson, Alan Miller, and Recording Secretary Cheri Lindgren, Puget Sound Meeting Services.

Chair Kohlenberg reported the draft regulations have been under development for several years. Public hearings were held on August 24 and 25, 2005. Written comments will be accepted until 5:00 p.m. on September 30, 2005. Commissioners provided self-introductions. Chair Kohlenberg explained that after all public comments have been assembled; the Planning Commission will hold open worksessions where the public is welcome to attend and observe the Commission’s deliberations. The Planning Commission will forward a revised draft ordinance to the Thurston County Board of Commissioners (Board) who will also hold a public hearing. A revised document will not be released for several months. Chair Kohlenberg reviewed the public hearing procedures and protocol. The Chair asked those that testified during the August hearings to wait until the end of the meeting to speak to afford an opportunity to citizens who have not previously testified. Citizens will have three minutes to speak. Citizens who have signed up to testify can defer their time to another speaker.
Carl Thietje, 815 N. Stadium Way, Tacoma, said he would like to use a specific example to illustrate how the riparian boundaries will affect a specific property. Mr. Thietje presented a map of the 200 block of Fir Street and said the County sewer plant is underutilized. The “red” lines outline the stream buffers. The proposed Critical Areas Ordinance (CAO) will remove approximately 200 building lots within the urban growth area (UGA) where sewer and water is available. This is a severe burden to the taxpayers as the sewer plant is underutilized to the point the public will have to subsidize it, as the bonds will no longer be able to. The zoning is 3-6 units an acre, but development above 5 units an acre require a density transfer. Mr. Thietje presented a preliminary plat map of Prairie Meadows that was approved June 20, 2005. The approved 100-foot buffer is shown in “green.” It was 60 feet if the stream is dry for a period of 60 days out of the year. When he spoke with the Department of Fish & Wildlife (WDFW), he was told he would need 50 years of experience to show that it was dry. He pointed to a “black” line outlining a 200-foot buffer if the waterway is classified as a Type F stream less than 20 feet. He asked if the 20-foot reference applies to the length of the stream, or is adjacent to his property, or whether the stream can never exceed 20 feet in one spot. He asked who makes the determination, as the information is not included in the draft ordinance. He asked whether WDFW makes the decision. In addition to the 100-foot buffer, there is a riparian management zone of 50 feet. Thurston County staff has said the management zone won’t affect most projects. It takes two or three lots out of his project. The ordinance requires a 15-foot setback from any permitted structure from another buffer. This totals 350 feet from a stream that is dry with a mobile home park next to it. It is very simple if he had a 100 or 200-foot buffer. First, there is a 20-foot riparian stream. If the buffer is 200 feet and he doesn’t have 100 feet between the stream and heavy vegetation, he may have to add another 50 feet. That’s his neighbor’s property. He said he has to consult with WDFW and he asked at what standard. He’s now up to about 360 feet of buffer. He said he is already vested and asked what it means to the Planning Commission when it drafted the ordinance. The wetland provisions state staff will have to take a previously agreed upon buffer and accept it. However, that’s not the case in the riparian zones. He referred to Table 8.3 that states all new residences on newly created lots must obtain a reasonable use permit and said he has spent $20,000 in planning and engineering costs and now he has to go back and get a reasonable use permit. The reasonable use permit requires a critical area assessment, studies, hearing examiner process, and a variance request. The house cannot exceed 1,500 square feet on the base floor including the garage. No one is building that type of house in the County. He said he asked staff how many houses are being built in rural Thurston County of less than 1,500 square feet. People buying houses are the ones with money not looking for “steps” but looking for their last home. Staff is saying the CAO is not retroactive. It is, as he will be required to get a reasonable use exception for 8-10 of his lots that will take at least a year, and cost $15,000. It is impossible for the average citizen to secure a surety bond. A potential homeowner cannot spend $10,000-$15,000 without a loan for construction. The County is asking him to give up $400,000-$500,000. Northwest Homes is interested in buying the project to build 24 units under the Rural Economic Development Program where citizens from Thurston County, who have 50-80% median income, spend nine months building their own homes. It will not happen with the proposed regulations.

Gary Alexander, 20th District Representative, 7915 Lorna Drive SE, Olympia, said he would
like to emphasize three points. He was employed in the Governor’s Office of Financial Management when the Growth Management Act (GMA) was debated and passed. Thurston County was one of the first counties in the state to meet the growth management plans. At that time, many felt the plan was far reaching, but both developers and environmentalists supported it. They found a way to come together and realize it was an approved plan that will guide the County into the future for many years to come. The proposed CAO changes are significant for what he believes is still a valid growth management plan that can guide Thurston County. People will be forced to make difficult decisions. He asked if the Commission knows why. Mr. Alexander said he is a strong supporter of best available science (BAS). He worked with the fish and forest act to insure BAS was part of the act. When the proposed draft ordinance speaks to BAS, it is referring to King County. Why King County? There is an important reason why the plans are not one size fits all. The Planning Commission should think about Thurston County and not King County. Many citizens are concerned how the Growth Management Hearings Board will interpret the regulations. The hearings board should not be a judge and jury making decisions on its own. As the Planning Commission deliberates, he asked that members think about these three important issues. Ideally, the County has a good plan as it exists now.

Terry Anderson, 7324 Boston Harbor Road NE, Olympia, said he is chair of the Built Green Committee for Thurston County, is a card-carrying member of the Audubon Society, and a member of the Nature Conservancy. He said he believes in environmental stewardship and donates his time and money to the causes. He is speaking against the proposed CAOs. He owns property on Boston Harbor in unincorporated Thurston County with a Type NS stream. It was a Type 5 stream and is basically a natural spring running through his property. It is 6-12 inches wide and has water in it year-round that drains into a man-made drainage ditch that drains directly into Puget Sound. The proposed ordinance would render his property unbuildable. What does that mean to him? He has a piece of property that is unbuildable. He’s one casualty of war as the new ordinance goes. However, he thought about the economic impact. His property is worth $225,000 to $250,000. He asked about the worth of his property in an unbuildable state and suggested it was approximately $30,000, which indicates to him that he’s leaving $220,000 on the table. He said he should count his lucky stars because his house is built and he doesn’t have anything to worry about. Mr. Anderson made two points: what happened to a moderate and measured increase from 100-250 feet? Why not 100-125 feet? The Planning Commission is operating on the theory that more must be better. He’s one person with one piece of property. The onus lies upon Thurston County to define for all County residents what the true economic impact is and to inform the property owners.

Jack Culpepper, 12811 Old Highway 99, Tenino, said he owns property between Denmark, Huntington, and Highway 12. He has 64 acres that flooded in 1997. He thought the County would address the flooding issue on Highway 12. Much of it is under the floodplain. The County and state created the floodplain because there are no ditches along Highway 12 between Huntington and Denmark. The only person living on Highway 12 has four flat blacktop driveways on his property with no ditches. The Outback RV Park has a terraced ditch and the culverts from the RV Park flows onto his property. Scatter Creek runs about 400 feet along Highway 12. There is a low area on Huntington where the water drains across the road and down. Over the last 10 years, nothing has been done to provide ditches. When improvements
are constructed for Highway 12 that would be the time for the property owners to also upgrade. He has been fair in his lifetime and when he looks in the mirror he doesn’t see a crook, but sees someone he’s proud of. He hopes something can be done to solve the problem for the community, himself, and everyone else.

Cyrilla Cook, 1117 Capitol Way, Olympia, spoke on behalf of People for Puget Sound, a nonprofit citizen’s organization whose mission is to protect and restore Puget Sound in the northwest states. Ms. Cook commended the Planning Commission for its work on the draft ordinance. The issues are complex and misinformation has been circulated. The Puget Sound region accounts for 80% of the state’s tourism revenues and 75% of tourism jobs. Washington leads the nation in the production of bio-engineered farmed fish. As Thurston County continues to grow, the health of Puget Sound hangs in the balance. Poorly planned development has destroyed salmon habitat and degraded water quality resulting in the closure of shellfish beds. The environment is important to the economy and health and safety, as residents rely on clean drinking water and properties that are not flooded. People for Puget Sound think the ordinance provides a fair and reasonable approach that will allow local jobs and housing growth to continue while protecting Puget Sound water quality and shellfish beds. The ordinance will help ensure salmon, Orcas, and clean sandy beaches are here for the children to enjoy. Ms. Cook asked that as the Planning Commission deliberates to also consider that growth will continue. People will continue to live in Thurston County. Some will want to move here for its natural beauty, some for its unique communities, some to be close to family, and for other reasons. The decision before the Planning Commission is how that growth will occur. Ms. Cook asked whether future growth will occur irresponsibly. The County’s natural beauty and bountiful resources could slowly be destroyed to the point it no longer has shellfish, tourism, jobs, and will have to import its drinking water from California. She asked whether people will want to live and play here. She asked whether future growth happens responsibly with each person developing their land and building dream homes and businesses with care and love for the natural resources that make Thurston County home and for future generations to live and tourists to visit. The protections provide a great opportunity to save the County’s resources for future generations. She stated that she hopes the Planning Commission continues to work with the public so it can better understand the purpose of the ordinance and what is allowed and to ensure the text is clear so there is no ambiguity.

Kate Jackson, 1617 Boylston Avenue #200, Seattle, representing Futurewise, said stewardship of the land and property rights are important priorities. Futurewise is a non-profit group working to protect family farms, forests, and shorelines from poorly planned development while helping cities make livable communities. Futurewise views the CAO as a set of safeguards to protect public health and safety, clean drinking water, and taxpayers from the undue burden of providing services to areas that are not appropriate for development such as steeps slopes and geologic hazard areas. The ordinance also helps to protect things that make people want to live and conduct business in Thurston County. There is confusion about where the CAO does and doesn’t apply in terms of people having reasonable use of their land and being allowed to build a home. The CAO provides that flexibility which is essential and important. Economic values include protecting the quality of life and rural areas, wetlands, making sure the drinking water aquifers are recharged to provide clean water, and keeping Thurston County a
place people want to call home. The CAO outlines places where development should not occur due to steep slopes, flooding, or landslides. There is anger and outrage due to the circulation of misinformation. Futurewise would have opposed many of the things included within the misinformation. Futurewise advocates allowing more farming in the floodplains.

Sandy Mackie, Perkins Coie LLP, 111 Market Street, Olympia, presented *A Best Available Science Critique* slide show and asked the Planning Commission to review the information. Attached to the written document is a paper related to finding BAS by James Buell. Protecting the environment is a shared value. Mr. Mackie said he is not questioning the value of protecting the environment but is questioning how it can be accomplished in Thurston County. The BAS proposed by the County presumes the existence of fully developed and functioning natural buffers. As Dr. Buell has testified - if that is the objective throughout Thurston County, the right science has been chosen. If not, then the science is inappropriate and inapplicable to the circumstances. The section on conserving fish and wildlife habitat is in the same chapter as preserving open space and recreation. In the environment, the word is to protect, not restore. The County has a design to restore habitat that do not exist today, and in many cases never did. If it did exist it would be better habitat than the County has today. That’s not BAS, but it is good science when appropriately applied. The GMA requirement is to protect critical areas. In 1990, the GMA precluded development in critical areas. In 1991, the legislature directed the protection of function and value of critical areas. The Growth Board has said not all of them have to be protected in one place. It doesn’t work in an urbanizing or agricultural environment. He asked whether the County’s rules are appropriate. The state legislature, in response to an Everett case, said shorelines of the state shall not be considered critical areas under the chapter except to the extent that the County specifies they are. He has cited the rules that address eelgrass, shellfish, and smelt spawning areas. Because it is defined as a shoreline under 90.58 does not necessarily make it a critical area. The County is proposing that all marine shorelines are critical areas. The Department of Ecology (DOE) indicates all marine shorelines aren’t critical areas, but all marine shorelines have fish and therefore it must be a critical area. The legislature has indicated the intent was not encompassing. Fish and wildlife habitat conservation means creating suitable habitat in natural geographic distribution so isolated subpopulations are not created. With the County’s assertion that all marine waters are critical areas, there is no identification of the critical functions served by the shoreline. It is not reasonably related to the lawful purpose and is clearly unduly harsh.

Mr. Mackie presented a slide showing the end of Steamboat Island. All of the houses on the right are within 100 feet of the shoreline. All would be rendered non-conforming. There is no critical area habitat defined. Water quality could be handled by ways other than asking the property owners to replant their front yards with native vegetation. There is no science that says building 600 feet in the back of the house opposed to 500 feet will solve water quality issues. Five hundred square feet is not science but rather people with a scientific point of view are saying that it is acceptable. They are expressing a policy and regulatory issue. BAS are not rules, they are guideposts. Mr. Mackie asked why they apply to the marine area. The recreational area is a water dependent use. The County proposes to permit water dependent uses, which means one can mitigate for the impacted habitat associated with the water dependent use; however, for a house, the County will not permit. He asked what scientist informed the Planning Commission about the significance of the locale of impact.
Commission that there is meaningful distinction between the ability to mitigate for water-dependent uses but not for water-oriented uses. No scientist that engages in the field has indicated universally that it’s not possible to mitigate for water-oriented uses.

Mr. Mackie presented a slide of the tip of Cooper Point. The entire property at the tip is now a critical area habitat with a nonconforming use. The County will allow the property owner to build a 500 square foot addition on the back. There are no large creatures dependent on the riparian habitat. He said he doubts anyone has found frogs, snails, salamanders, etc., that are at risk of being an isolated population in the property owner’s front yard. It is not a habitat buffer. He said he is not aware of anyone who has identified a stormwater runoff problem. If there was it could be handled by a stormwater treatment program rather than requiring a 100-foot buffer and rendering the home nonconforming. Staff has said the regulations are not retroactive. He suggested telling that to the people on the balance of Cooper Point, Tamoshan, Beverly Beach, Athens Beach, and Boston Harbor whose homes are on waterfront within 100 feet of the water. Mr. Mackie said there are no commercial shellfish or kelp beds, sand land, or smelt spawning areas that are appropriate to protect. The County may decide on an appropriate buffer. However, the goal to protect the entire marine shoreline when the Planning Commission can’t identify where the designations are indicates that the County has not done its homework.

The homes on Johnson Point are nonconforming uses that cannot be expanded. He challenged the Planning Commission to have a scientist indicate that a property owner could not add a larger square foot addition to the back of the house, deal with water quality issues in the front yard, and achieve significantly better results than an ordinance that creates a non-conforming use. In some cases, nonconforming uses cannot be insured and an owner is not able to secure financing. It freezes people. People will not change or obtain permits, but will continue to live in their homes without the upgrades necessary to address water quality. Better science is needed not just blind use of buffer science.

Single-family homes are a priority use as outlined in the Shoreline Management Act where shorelines are permitted for development. Most homes become non-conforming uses. Natural buffers and habitat do not exist. Mr. Mackie asked why a buffer includes the “built environment.” The Department of Natural Resources (DNR) footnotes indicate that the buffer recommendations are based on fully functioning and fully developed environments commonly found in Washington forests. Where that condition is not present, the buffers may not be applicable. He asked why the County chose old growth buffer science and native condition buffers that are routinely applied without critique of homes that have no such buffers. Mr. Mackie said lakes over 20 acres support game fish. Here again the County applies a boilerplate buffer. John Houghton, the author of one of the best fish recovery programs for an estuary in the City of Everett and who also undertook some BAS work for Snohomish County, has indicated lakes function very differently than streams. The food/habitat and forage regimes are different and the locations are different. They are different depending on whether they have anadromous or merely native fish. The County can’t take general science applicable to anadromous fish on rivers and apply it to lakes because it doesn’t apply.

Mr. Mackie presented a slide of Summit Lake, a captive lake with no anadromous fish run. Most
residents draw water from the lake. Water quality is important to the residents. Restoring a 100-foot old growth native forest on the edges of Summit Lake will likely not occur in the foreseeable future. He asked whether it is the best way to deal with water quality and submitted that it is not the best way to improve water quality. Neither is there an endangered species at risk of being an isolated population between the house and the front yard and the lake. The County applies buffer science, which indicates if it’s all old growth forest it is the best condition. He asked whether the County has informed property owners that they have nonconforming uses and that insurance and financing will be a challenge as well as no expansion of existing homes beyond 500 square feet. It’s understandable when people indicate they are surprised about the limitations. Other lakes in Thurston County include Offut, Sunwood, Pattison, and Long Lake. There are hundreds of homes packed very densely in urban areas and most are served by sewer and water. There is no riparian habitat to protect. The County is projecting forest and wilderness riparian rules on an urban habitat and that is why property owners are concerned. The County is applying river science to lakes. Big buffers are not the best way.

Streams require a 250-foot riparian buffer. This is anadromous science. In the OCD model, the buffers are recommended based on fully functioning natural buffer conditions. Blackberries are not natural and create dreadful water quality. Because there is nothing under the blackberries, mud develops creating more runoff than a lawn. Mr. Mackie cautioned against adopting a rule allowing the growth of blackberry and tansy. He presented an overhead slide showing streams, lakes and ponds in the Deschutes River within the mid-county area. The area is full of stream Types 3, 4, and 5. Some are fish-bearing, very small, and intermittent streams. The County is imposing a 250-foot fish buffer on both sides of the larger streams, 200-feet on both sides of the small stream, and 100-feet on both sides of an intermittent stream. He asked what an owner is protecting if the owner has swales running through the property with 100-foot buffers on both sides. He asked whether the buffer is the best way to protect water quality in the swale and suggested - not necessarily. If it re-establishes old growth forest it is. However, it’s not the best science to consider in an urbanized area. The Planning Commission should look at the areas and find better ways to use management zones rather than just buffers.

Mr. Mackie presented a slide, “Stream riparian area, wetlands and critical habitat” of the same mid-County area. A property owner building in the area must first demonstrate it is not feasible or avoidable. An owner could build a road off 93rd Avenue into most of the properties if the owner zigs and zags, is very careful, and bridges all the rivers. He asked whether that is what the County desires. There are thousands of acres basically blocked off. After removal of all Type 4 and 5 streams, it looks like a human capillary system. The County’s program is inappropriate because there are better ways to protect water quality. The issue is why the Planning Commission chose an old growth buffer system where 100,000 people may locate over the next 20 years.

Mr. Mackie presented a Deschutes River basin slide. A 250-foot setback is required off 93rd Avenue on Old Highway 99. There is no buffer between one of the properties and the river. There are probably water quality issues that should be dealt with. However, waiting for the owner to establish old growth forest is not the best way to deal with it. The County’s science says because a property owner doesn’t have an adequate buffer it should be increased by 50
percent, which takes it all the way to Old Highway 99. It will not protect water quality. Scientists say there are a lot of things the County can do.

Mr. Mackie referred to a slide of rural Snohomish County showing a Type 3 salmon-bearing stream. There has never been forest on either side of the stream. The County will require a 200-foot buffer on either side that is devastating to agriculture. He suggested not preserving wetlands in place. It is often better to cluster them, particularly where they have been impacted along roads. If there are a series of Type 4 wetlands in a Wal-Mart parking lot, he suggested not saving the wetlands in the parking lot but locate the wetlands next to a stream where it can protect headwaters and do well. There is much better science than what the County is using.

Referring to buffers and the built environment, buffers don’t cross the road. Mr. Mackie said he heard experts from DOE say it’s silly. The County is saying one has to prove there’s no use, but if a bird flies from one side to another, there’s use. Mr. Mackie referred to a slide showing Oak Savannah forest habitat within the Marvin Road UGA. The question is where the edge is. There is no way to define it.

The 200-300 foot riparian buffers are designed to replicate the “old growth” forest condition. Such buffers are commonly appropriate for use only where the intended purpose is to replicate or reproduce old growth conditions. Such replication is not likely in developed areas and is not the best science if the goal is to protect water quality, water quantity, or habitat. The limitation of added building areas of 500 square feet to the non-water side of houses on marine shorelines, lakes, and rivers has no correlation to the protection of water quality, water quantity, or habitat in areas of existing development where the homes and yards are already present. Better science is to address stormwater treatment prior to discharge to the water to protect water quality unless addressing a specific identified habitat need. The perpetuation of small, generally isolated wetlands already affected by development along road rights-of-way or other development is often not BAS. Better science is to look at the larger network and provide mitigation in the same affected area, but at a location (often consolidated) where achieving optimum water quality and habitat benefits. Dr. Lynden Lee facilitated a stream relocation project in Grays Harbor with habitat consolidation. The farmer has been able to maintain the stream with significant improvement over what could be achieved by the county’s rules. The location of species and plants protected as species and habitats of local concern are so widespread throughout Thurston County as to make it impossible to accurately delineate where the contemplated buffers might be located. An example is the Douglas Tree Squirrel found to inhabit Douglas fir. The habitat is where the squirrel is found, where it moves through and where it might go. By that definition, all properties north of the UGB of the cities of Olympia and Lacey inside of or within the Douglas fir general area are within the County’s defined critical area.

Mr. Mackie referred to “alteration” and “impact.” If the habitat is affected, the County can require an owner to stop an activity. Shore birds are affected by human activity within 100 meters. That’s BAS. Mr. Mackie said he just came out of a three-month trial on the issue. Dogs moving forward to people moving forward to the shoreline can affect a bird. Affecting a bird under BAS means it moves its head. He asked whether that is sufficient to require a delineation of the activity, or does it require the bird to fly and exert and expend energy it doesn’t have. The County’s ordinance says if there is an adverse impact on the habitat the activity can be stopped.
The activity of playing in the yard creating noise or having any activity within 100 meters of a shoreline with shore birds is an activity that adversely affects the habitat. The County’s ordinance is fatally void on those circumstances. Mr. Mackie said the PowerPoint presentation is the result of 10 years of talking about the subject. He asked the Planning Commission to take it seriously. He said he is prepared to talk about better science. He said he believes in science and protection.

Dan Fazio, 6729 Westhill Court SW, Olympia, staff member of the Farm Bureau and an attorney, said he is speaking for himself. He has experience working on legislation and regulations. In some cases, the implementation of the regulations is very different from the ideas of the policy makers. He said he is concerned there are many retroactive applications that will severely impact residential areas. On page 5-8, yard waste composting requires County review and approval. On page 5-10, gas powered portable generators require County review and approval subject to the applicable requirements of 17.15.530. There are five pages of applicable requirements. Page 7.9, table 7-1, gardening for personal consumption is “permitted subject to applicable standards.” This means the new standards apply to his existing gardens. Maintenance of lawns, land, and landscaping in channel migration areas, floodways, 100-year floodplains, and high groundwater hazards is “permitted subject to applicable standards.” Page 7-23, repair or replacement of a nonconforming structure is limited to no more than 50 percent of the structure’s value before reconstruction or repair is started. He asked what happens if a house burns down and it is nonconforming. On page 8.4, riparian habitat widths are increased from the current 25-100 feet to the new range of 100-250 feet. Page 8-22, the general requirements that apply as applicable to all uses and activities listed in Table 3 states, “uses and activities carried out pursuant to this section to result in equivalent or greater habitat functions and that all actions and uses shall be designed and constructed to avoid or where not possible minimize all adverse impacts to the important habitat areas.” He asked whether tilling the ground or allowing dogs to bark will impact the habitat and associated buffers. The requirements are not species specific and require avoidance for impacting the habitat. On page 8-54, the County can require that landowners to fence wildlife habitat and dictate: “the fence type and height. Signs identifying the important habitat area shall be attached to such fencing.” The sign must be permanent and “consist of an enamel coated metal face attached to a metal post or another non-treated material.” The County can require the landowner to fence out livestock and people.

Chair Kohlenberg clarified the draft ordinance includes both the existing and proposed new language. Some of the sections many speakers are referencing are from the current ordinance and not the proposed ordinance.

Dan Wood, Washington Farm Bureau, 1011 10th Avenue SE, Olympia, said he is representing 1,800 household members of the Thurston County Farm Bureau and 35,000 household members of the Washington Farm Bureau. The Farm Bureau has concerns about the impact on existing and ongoing agriculture, new agriculture, and statements made by proponents of the ordinance including Mr. Sonnen from Thurston County. Specifically, whether or not the ordinance is retroactive and has impacts identified by the Thurston County Farm Bureau. He indicated he will review some of the proposed regulations and provide facts based on what is in the document. Both he and Mr. Fazio work in the legislative arena and are very familiar with
underline and strikeout methods used to show new language, stricken language, and retention of
language. If the ordinance is adopted as proposed, there will be no new agriculture in Thurston
County, which is both ironic and unfortunate not only for the sake of having agriculture and the
environmental benefits it provides, but also in light of the Growth Management Hearings Board
ruling that the County has not done enough to protect agriculture. The ordinance will be
detrimental to existing and ongoing agriculture. If it is the intent of the proposed ordinance not
to apply the standards to existing and ongoing agriculture, the proposed ordinance language is
inadequate in clearly defining that intent.

The definition of existing and ongoing agriculture has changed, as well as, removing operation
and maintenance of ditches and removing changes between agricultural activities and other
elements from the definition on page 2-2. A channel migration zone is defined as an area where
the channel might be in the near term, which could extend beyond 140 years. That is important
as it is a long period of time for the channel to shift and vary widely either way. Buffers are then
transposed over the channel.

The County defines development as any human-made change to improved or unimproved real
estate including but not limited to buildings and other structures, filling, grading, clearing,
storage of equipment or materials, or any other activity that results in the removal of vegetation
or an alteration of the natural site characteristics. That is a fairly succinct description of
agriculture. The County defines agriculture as development, which is quite surprising. A fill
means a deposit or redistribution of any earth, vegetation within a 100-year floodplain, or
important habitat, pond, stream, or wetland and its associated buffers. Redistribution of earth or
vegetation is also an apt description of agriculture. Page 2-19 states structural mitigation plans
will require a licensed engineer, which is very costly. On page 3-1, under general provisions, the
language indicates no action subject to the provisions of this chapter shall be undertaken by any
person, which results in alteration of a critical area or buffer. All uses and activities on sites
containing critical areas or associated buffers shall avoid or minimize all adverse impacts to the
critical area and associated buffers. The County shall not authorize impacts to critical areas or
buffers. On page 3-2, uses and activities shall result in equivalent or greater critical area
functions as determined by the approval authority. Approval authority is also very broad. The
approval authority may require that permitted uses and mitigation be reviewed at appropriate
intervals up to 10 years at the landowner’s expense.

Under general access, on page 3-3, access to critical areas, associated buffers, and riparian and
marine shoreline management zones shall be allowed unless the approval authority determines
the sensitive conditions or wildlife warrant access limitations. Mr. Wood asked what is meant
by general access. The following paragraph states the landowner must guarantee access to the
private property. He asked to whom access should be granted and whether it is referring to the
County. One would think the landowner need not guarantee access for himself. If it’s not for the
landowner and it’s not for the County, does general access mean the general public? It is very
unclear and discerning. Applications for development (which again describes agriculture) shall
establish one or more conservation easements as necessary to contain all critical areas and
associated buffers. The critical area conservation easements shall be dedicated to a public or
nonprofit entity, e.g., land trust. Not only is the County guaranteeing its own access to the
private property as a condition of development (again describes agriculture), but now there must be a conservation easement for a land trust. Deed restrictions shall be recorded on the title of all critical area tracts and lots containing a critical area easement. Page 3-5 states a bond has to be secured for 125 percent of the cost of the compliance order from the County. The County cannot refund the bond any sooner than two years and can hold it up to five years while it watches the trees and shrubs grow. If any of the trees and shrubs should die, which occurs naturally in nature, they will be replaced at the landowner’s expense (page 4-1). The County may require a fee for a presubmission conference and may call upon experts at the applicant’s expense to determine map boundaries (page 3-5). Any person may request a critical area determination and the County may require a fee for a critical area determination (page 4-2). An application for new agriculture or any development could require a public notice, hearing, and appeal periods (pages 4-7 and 4-8). The County may require a restoration plan prepared by a qualified professional at the landowner’s expense. If it can’t tell how it can be restored, the County can make up its own goals (pages 4-11 and 4-12). The County can totally shut down a farm, residential activities, or other activities regardless of the degree of the violation and regardless of responsibility for the violation (page 4-13). In table 5-1, new agriculture, existing agriculture, and application of manure on fields all require County review and approval. Dairies, stables, horse boarding, training, auction facilities, feedlots, poultry, and others require County review and approval (page 5-7). Commercial greenhouses and wholesale nurseries (page 5-7), yard waste composting (page 5-8), portable gas powered generators, and kennels with more than ten animals all require County review and approval (page 5-10).

The handling, storing or generation of hazardous materials regardless of the quantity involved shall only be allowed when the approving authority determines it does not post a risk (page 5-12). Some residents have containers of Weed Be Gone and ant killer. That’s hazardous material according to the definitions. For any quantity, the County may subjectively review and apply the regulations. Gasoline powered back-up generators are not permitted unless the generator is placed in a secondary containment device, or on a site where the generator has a full time residential person to monitor its operation (page 5-27). Seismic hazard areas, which are difficult to determine, and existing and ongoing agriculture are allowed subject to the applicable standards. Mr. Wood asked whether that is retroactive and whether it is subject to the applicable standards in the proposed ordinance as it is written if there is no County review and enforcement. The County does not choose to review and enforce on its own. A third party lawsuit from a group will force the County to review and enforce the regulations if not initiated by the County. New agricultural activities within geologic hazard areas or associated buffers shall submit a farm management plan for County approval. In table 7-1 on page 79, existing and ongoing agriculture is permitted subject to applicable standards in 100-year floodplains. Again, enforcement and review will be forced upon the County if it does not initiate it and the language is retained in the ordinance.

Gardening for personal consumption is permitted subject to applicable standards. Table 8-3 says existing and ongoing agriculture is permitted subject to applicable standards in riparian habitat areas. It also says all actions and uses shall be designed and constructed to avoid or minimize all adverse impacts to the important habitat area and associated buffers (page 8-22). Mr. Wood asked how that can be accomplished with a garden, a
farm, or kennel if it is not reviewed and applied. The approval authority may require that the perimeter of the important habitat area be fenced and identification signage installed (page 8-23). Intensive uses as described in section 17.15.870 are also regulated if they occur or are proposed to occur. This very clearly is retroactive. Intensive uses may include residential development at densities greater than one dwelling unit per acre. Feedlots, commercial poultry, farms, stock yards, stables, horse boarding, dairies, turf farms, nurseries, greenhouses, and tilling fields at intervals more frequent than once very five years are agriculture. If someone tills more than once every five years it is an intensive use and additional development requirements apply. Applicants for new intensive uses, which is new agriculture, shall identify risks including whether “noise or glare would be harmful to aquatic life, birds, or wildlife” (page 8-56).

Potential probable impacts to important habitat areas from agriculture uses shall be mitigated through the use of best management practices (BMPs) (page 8-24). Potential and probable are not defined anywhere in the proposed ordinance. It is entirely subjective by the approval authority the County assigns to deal with the matter. A landowner is required to hire an arborist. A tree cut down has to be left on site as well as the limbs if cut down. The landowner has to leave snags. A landowner can take down a hazard tree only if it diseased and may impact another tree (page 8-47). In timber country, the snags are called “widow makers.” Mr. Wood suggested the County replace the word “snags” with “widow maker” and to treat trees with the respect and awe they deserve because they can kill someone. There should be a concern for human life and health and safety as a reason for removing hazard trees. If someone needs to remove a tree from their property, the County should allow it.

On page 9-7, 100-300 foot buffers are established for wetlands. Existing and ongoing agriculture is permitted subject to applicable standards. The County may require fencing to keep out pedestrians (page 9-19). The existing and ongoing agricultural activities established prior to the effective date of the ordinance may continue within wetlands and associated buffers subject to potential probable impacts. Potential and probable are not defined. Potential probable impacts to important habitat areas from agricultural uses shall be mitigated with the use of BMPs (page 9-21). Using herbicide to maintain a drainage ditch is prohibited (page 9-22). Conversion to an intensive agriculture use is prohibited (page 9-22). Agriculture access roads are permitted within buffers of some wetlands but must be no wider than 15 feet. Mr. Wood said his neighbor is harvesting corn with an 18-foot wide piece of equipment. If the roads are limited to 15 feet, it creates a three-foot problem (page 9-26). New agricultural buildings are okay as long as “the structure will not be used to house animals or store hazardous materials” (page 9-37). Hand tools shall be used for plant removal for noxious weeds and invasive plants unless the approval authority determines the scale of the project warrants use of small-scale equipment, like a lawnmower (page 9-45).

Mechanized well drilling is allowed in wetland areas, as long as “the disturbed area shall be restored upon the completion of the activity.” The activity is well drilling. Restoration would be filling in the well when done drilling it (page 9-49). New and existing intensive uses on site containing Category I or II wetlands or associated buffers shall comply with the applicable requirements in sections gg 1-4 (page 9-50). The intensive uses are kennels, horse boarding, and dairies, etc. Applicants for new intensive uses shall identify risks including whether “noise or glare would be harmful to aquatic life, birds, or wildlife (page 9-50). The County may require
BMPs, IMP, vegetative filter strips, installation of fencing and other measures (page 9-51). The
County may require expert review at the applicant’s expense to evaluate information submitted
by the applicant. The County may require monitoring at the applicant’s expense (page 9-51).
This clearly is retroactive. It applies to new and existing intensive uses and then refers to
requirements of applicants (pages 9-50 and 9-51). Mr. Wood said these are just some of the
things the Farm Bureau has marked. When residents read in The Olympian or hear from
advocates that the Farm Bureau is creating hysteria and spouting lies, he suggested putting down
The Olympian and letters and pick up the CAO and read it again. It is documented and the Farm
Bureau is telling the County it has a problem.

Jon McAninch, 5222 25th Lane NW, Olympia, speaking on behalf of those yielding time to
him (Margaret McAninch, Leo Roberts, and Frank Farr) said for the record that they are against
any additional regulations as laid out in the proposed CAO. He said he understands Planning
Commission members are volunteers. Everyone seems to be appreciative of its services, but
actually, he’s not that appreciative of its services. No one has the right to mandate such
regulations upon property owners. He said he supports reducing or eliminating some of the
existing CAOs as written to date, but is not interested in increasing the encumbrances against
personal property or lives. Critical area ordinances already devalue private property without
compensation to the landowner. It is no different than a government taking, which is
unconstitutional. Any such regulations should only be applied to the properties where the
landowner wishes to voluntarily accept or donate its land for such encumbrances. It shouldn’t be
forced on everyone. There is a federal program called the WRP, Wetlands Reserve Program. It
is a volunteer program where the Department of Agriculture will pay market price for suitable
property to landowners who wish to enter the conservation program and voluntarily stop farming
their property. The owner volunteers to give up his farming and development rights and is
compensated for it. It is an ongoing program and the landowner owns the property and pay
taxes. Access could be restricted, but the conservation board would have a permitted easement
to repair and enhance wetlands and riparian areas. There is a federal program where people can
volunteer their property for the wetlands reserve. The proposal requiring property owners to
obtain a historic river channel review prior to development is redundant with the wetland review
already required. The wetlands review already costs the property owner over $3,000 with no
guarantee of permit approval. Mr. McAninch said he assumes a historic river channel review
would cost as much. He said - so much for affordable housing! Existing government mandates,
regulations, permits fees, taxes, etc., has already increased the cost of an 8-foot 2x4 from 15
cents to $2.87.

Mr. McAninch asked whether the County has completed a cost analysis of how much more the
proposed regulations will cost house-buying citizens. He asked if the County has analyzed how
much more property will be taken out of production or how many more persons it will have to
hire to implement the proposed ordinance on the private sector at the private sector taxpayer’s
expense, as civil servants don’t actually pay taxes. They just return some of the money the
private sector is giving them. He asked whether the regulations will stop population expansion.
He said he doesn’t believe it will. It will make the American dream of owning a home more
costly. It won’t stop it, but will slow it down and make it more costly for everyone. He asked if
any of the Planning Commissioners have a good understanding of how the regulations will
impact farming, land development, construction, and the increased costs. Fellow Americans have a right to act as their own stewards on their own property. He said he trusts in the fact that the vast majority of the citizens are not out to poison the rest of society, but are in fact good stewards. The person’s intent of mandating such regulations on others suffers from the big heart, small brain syndrome. If it feels good, do it - heck with logic, reason, and fact. He indicated that he protests the fact the County scheduled two public land use hearings on the same night making it difficult for everyone to attend. Scheduling multiple hearings at the same time and setting unrealistic deadlines to respond to the proposed ordinance is a dishonest means of forcing the regulations upon property owners. The Planning Commission is not really interested in open discussion or in his opinion has already made up its minds and that it really is not up for debate. He noted that in his 35 years of doing business in the State of Washington and within Thurston County and dealing with bureaucrats regulating everyone’s lives, he has found that some are just as dishonest as they think the rest of society is. That is why the Planning Commission does not trust property owners to do what is right. Mr. McAninch said he has documentation to show the Planning Commission that a number of cases where County bureaucrats were not honest, forthwith, or forthcoming.

**Hans Cregg, 12405 Bronson Street SE, Tenino**, said he is concerned for his property rights. He said he has ten acres. If the regulations were in place today, he would have no property left to use. That’s an economic hardship and there are some problems. The Planning Commission should use some common sense to reevaluate the proposal and come up with solutions that are more realistic. With the proposed buffer zones, he indicated he has nothing left. He asked at what point in time the County will reimburse him for that. He asked how the County measures the economic impact of the proposed ordinance. He said he would like to see a public notice in the newspaper outlining the pros and cons, what’s going to happen to the average property owner, what can and cannot be done, and how the property owner feels about it. The meeting is held at 6:30 p.m. on a weeknight. He asked why the meeting couldn’t be held at 2:00 p.m. on a Saturday so more people could attend. He asked why there were two meetings held at the same time.

**John Oetken, 10910 Cowlitz Drive, Olympia**, said he owns 60 acres of industrial property on the northeast corner of Maytown Road and I-5 diagonally from Ritchie Brothers. He said he intended to submit written comments but found it too cumbersome. *The Olympian* was right when it said emotion and misinformation should not dominate the meeting. He questioned what the correct information is. He indicated he could tell the writer of the editorial in *The Olympian* had not read the draft ordinance. Mr. Oetken said he went to a website address called *Wikipedia* and summarized the following. A property right, which is ownership and possession, belongs to legal individuals. The exception is public domain to which access is limited. Private rights are found in the oldest written laws. Property rights encourage economic development and utilization of property. The expectation is the right to use or profit. Ownership is a right protected by local sovereignty, which has exclusive rights to exercise supreme authority - the owner has control of property, benefit, transfer or selling property, and excluding others from the property. The laws define and enforce such rights. Socialism takes this away by saying the cost of defending property is higher that the return for private property ownership. It must coincide with the benefit of other people or society at large. This is based on superior utility of results.
Communism argues that collective ownership will ensure minimization of unequal or unjust outcomes. Imminent domain is the power of the state to appropriate private property for its own use without the owner’s consent. Condemnation by eminent domain indicates the government is taking the property. The thing remaining to be decided is the amount of just compensation. There is nothing in the draft ordinance about just compensation. Appropriation is when no compensation is made for confiscation. An example is Cuba in 1960. The U.S. Constitution 5th amendment requires just compensation be paid when eminent domain is used and requires that public use of the property be demonstrated. An exception was a 2005 case before the Supreme Court that occurred for commercial economic use of private property. The founding fathers fought for property rights. Thomas Jefferson and Alexander Hamilton never got along on anything, but did agree on property rights. Mr. Oetken said he was glad to see Gary Alexander attend the meeting and asked where the other elected officials are. County Planning Commissioners are appointed individuals who listen and respond to County planning staff. He asked about the biographies of the Planning Commissioners and whether the Commissioners are pushing for economic development or environmental issues and if Commissioners already have their properties and want to keep people out. He asked about the individuals serving on the Growth Management Hearing Board and noted they are not elected. He asked if elected officials are willing to defend GMA board decisions and suggested that if they can’t Tim Eyman should be contacted.

Mark Emrich, 16125 Case Road SW, Rochester, said he recently bought his property and was looking forward to moving into the community and building a farm. He chose Thurston County because he heard it was a relatively farm friendly county. A couple of his neighbors have told him recently that he needs to do more research. He said he came from New York and was governed by the Andrionich Park Association. He indicated he is used to dealing with large bureaucracies and was surprised to see it here. He thanked the Planning Commission for listening to all of the comments.

Mr. Emrich said he has attended all three hearings and it has been gracious. He asked the Planning Commission to please think about the approaches it is taking because it will affect a tremendous number of people’s lives, their dreams, and to temper what it is looking at to regulate what doesn’t already exist. The scope of the regulations and a number of regulatory agencies intertwined together are making a very large net that is scaring the devil out of a lot of people. If the regulations can be simplified so the general purpose is shown, then people can understand it. It’s not a broad shotgun looking to hit everyone. These are specific things the County is trying to legislate so there aren’t problems down the road. Trying to legislate particular points for the common good is fairly acceptable to almost everyone in the room; however, trying to legislate everybody off their property, their ability to farm, and ability to enjoy their property is not acceptable to anyone sitting in the room.

James Zahn, 3323 Yelm Highway SE, Olympia, said he leases property to Spooners Farm on Yelm Highway. He said he is concerned about the BAS document. Words such as almost, likely, unlikely, possibly, may, maybe, might, probably, recommend, suggest, should, should be, is not science. In school we learned science is really law, maybe theory proven over and over again that have become laws of nature. The document is discussion and not theory. Much of it
is plagiarized and borrowed from one writer to the next. Much of the information and quotes are repeated over and over. He can sum up the entire three days of reading into one sentence: “urban development has an impact on wildlife habitat.” The reason there are no bear, elk, or cougar downtown is because humans have displaced them. As long as man continues to subdue the earth some things will disappear. There’s no getting around it. He indicated he didn’t find in the document any study or the smallest consideration for the livelihood or economic concern for man’s place in the critical areas, except for a small reference located deep in the draft ordinance for recreational purposes like trails and such. He said he also didn’t find the freedoms and plans he had for his property from the time he took it over from his father in 1972. Long-range planning is necessary for many property owners. He indicated he has long-term leases, a life expectancy, and an economic timeline. Changes of drastic proportions have continued to exasperate the plans, not just the ordinance but pages and pages of ordinances that individually have their own economic and environmental agenda. He said he is completely surrounded by housing development. Some of the houses abut to the wetlands on his property. There are buffers or setbacks of 25 to 50 feet. He asked how he is supposed to relate to the neighbors. He asked whether he must give up his buffers and wetlands to them for their back yards.

Mr. Zahn said John Sonnen made a statement that the ordinance is not going to be especially detrimental to property owners or at least not highly impacting. With 100-foot buffers to critical areas, it is taking a minimum of the possibility of 5,000 to 10,000 square foot lots from his property that is zoned 7-13 units an acre. He said he pays taxes as a residential development on what is actually an 80-acre farm. The lots sell for $100,000 and more. That equates to $1.5 million using 200-foot setbacks or 30 lots at $30 million. Assuming a 300-foot setback it totals $4.5 million.

Jay Roach, 7305 Fairview Road SW, Tumwater, stated he lives in the Black Lake area. Lidar is the laser application used to determine elevations. The data used by the County is five years old. It doesn’t detect water and can have an error margin of up to 12 feet. FEMA uses it for floodplain control and channel migration. He questioned the land set information used, which are the pictures that are color-coded. They are overlaid with the Lidar information, which creates a colored chart. He asked who determined which application to use, the data that were used as there are several suppliers of the information. Some can detect a wet spot as being a wetland, etc., and there are several to choose from. He asked the Commission about how the controls and sensitivity as well as the time of year for the flyover were selected. He questioned whether it occurred in the summer. Land set information will pick up scotch broom as water. The DOE developed the buffers. He questioned whether the cities will follow suit. He said he understands they will, as it will make management easier. He said he is quite concerned about the proposed buffers. Currently, he said he will lose one-half of the value of his property, which is approximately $1 million. Another problem is that citizens have not been involved in all the processes. The watershed management groups could have been involved with the County’s work. Only two citizens out of 16 showed up at the last Chehalis basin watershed meeting.

Noreen Cregg, 12405 Bronson Street SE, Tenino, stated she has a property 330 feet wide with
a creek. There are no dreams left for people like her. She said she has to scrape money together to pay taxes and insurance. She asked for what! She said she is just renting the land from Thurston County because she doesn’t have any rights to it. Her daughter and husband had difficulty getting the permits to build their house. A County employee came out of the brush and said she was looking for the wetland before the County would give them the permit. They’re on a hillside. There was no wetland but it was listed as wetlands. She asked who is responsible for the ordinance. She suggested citizens are supposed to live in a country that’s free and it appears citizens no longer own anything. Under the regulations she has no rights and is losing more and more. Property owners need to start standing up to this stuff. The silliness of the draft has been presented to the Planning Commission. It is not fair to the landowners. The dreams are dwindling. She’s not rich enough to have all of the studies and permits. The Planning Commission needs to know that.

Rich Davis, 11846 Deer Trail Court, Olympia, said he has owned his four-acre parcel since the house was built in 1994. The property is 5.7 miles off the main road and 80 feet from Waddell Creek adjacent to Capital Forest. A glacier went through the property a few thousand years ago. There are elevation changes. He has a spring that originates on the hillside and it drains into Waddell Creek. It also merges with a winter stream that comes off of his neighbor’s land. The ordinance will render the lower part of his land with the house a nonconforming use. It prevents further construction in the lower area. His dream was to build a barn in the long-term future. However, he’s trying to build it now. The ordinance is accelerating construction and he will pursue it aggressively in the next few months to beat the ordinance. What’s happening is extremely unfair to property owners. He indicated he can get by as a nonconforming use, but his children will suffer greatly. The regulations will remove land out of development and make property more expensive for his children and it will make Thurston County a more expensive place to live. He indicated he and his wife have worked very hard the last 10 years to achieve their lifestyle. It is impossible to replicate it at the price they paid. The ordinance change is sad. Mr. Davis said he is not against the critters and believes in protecting them. However, his chicken yard, garden, woodsheds, and pump house will be nonconforming under the new regulations. It will be unlawful to service his drain field with a surface truck because you have to cross a winter stream. The footpaths served by bridges will be illegal. The proposed CAO has substantial effects on his property and he is not happy about it. He asked the Planning Commission to work and tailor the ordinance. If buffer widths are increased, he requested exceptions. The County is getting an awful lot of land by increasing the buffer areas along the riparian zones so greatly. Allow the property owners a percentage of construction if they mitigate harm. Make some changes so that the property owners can support the Planning Commission and vice versa. Everyone should be working together.

Paul Meury, 2238 Gravelly Beach Loop, NW, Olympia, said the regulatory effort is a very important and complex one. He asked how long the rural lifestyle will be different from the urban one and the length of time water from wells will remain potable. He asked how long seafood from Eld and Totten Inlets will be safe for consumption and how long will he be able to share his oysters with friends and family. Mr. Meury said he hopes well developed regulations will work not only for him but also for his children and grandchildren, and that the regulations will respect the value of the investment by protecting the rural and rustic lifestyle he’s been
paying for all these years. He thanked the Planning Commission for its hard work.

Dave Lewis, Miles Sand and Gravel, P.O. Box 130, Auburn, said Miles Sand and Gravel has three surface mines in Thurston County. Two excavate below the water table. Miles Sand and Gravel has a total of 38 surface mines in western Washington operating in eight counties. During the last 60 years, Mr. Lewis said he has not detected any pollution of groundwater. He said he did not know where the Planning Commission obtained its information. Even DOE does not show pollution to the groundwater. It is likely there wouldn’t be any surface mines in Thurston County under the proposed regulations because the ordinance claims mines pollute. Mr. Lewis said the County doesn’t have any history or documentation and is not sure why it’s included in the ordinance. Mr. Lewis recommended the Planning Commission stop the bleeding that it hears is going on. The Planning Commission has the power to stop, send the ordinance back to staff, ask that they form a stakeholders committee to review the ordinance, and provide the Planning Commission with something that doesn’t upset citizens. BAS is like beauty; it’s in the eyes of the beholder.

Toby Jewitt, 5011 Pleasant Glade Road NE, Olympia, said he’s a young farmer in Thurston County. He asked why the County wants to stop him from farming. There’s no reason behind it. He said he understands protecting the environment. Farmers deal with the environment every day. It is his job to maintain the environment and if he doesn’t, he loses money. It’s not in the farmer’s best interest to cause problems and make waves. Not a person in the room wants to do that. He asked why the County wants to put him out of business.

Ron Nelson, 3624 Waldrick Road SE, Olympia, stated his family lives on a fifth generation farm. If the ordinance passes, it will be the last generation. Mr. Nelson defended the Farm Bureau, as the Bureau received much flack at the last meeting about misleading people about the right to plow. On page 8-25 of the CAO, it states a property owner cannot till land that was not tilled the year before. From a practical standpoint, the Farm Bureau is right; the ordinance prohibits plowing. Mr. Nelson said his biggest objection to the ordinance is the idea that it does not affect existing farms. Existing farms cannot grow or change. If farms cannot change they cannot survive. Every successful business has to grow, be flexible, and change with the times. If the business cannot keep up with the current times it stagnates. The ordinance dramatically affects existing farms. By virtue of the ordinance it will make farming a nonconforming use in approximately 50 percent of the County. It may not be the intent, but in the long-term it will drive farms out of the County. When farms leave they are replaced by housing developments, septic tanks, and asphalt. Mr. Nelson cited the example of a farm on Scatter Creek that had about a dozen cows. The farm was sold and the cattle are gone. Now there are 50 houses with 50 septic tanks, with who knows how many dogs chasing wildlife. There are 50 more kids in the school district and probably 50 more daily commutes on the highways. In retrospect, the dozen cows were a pretty good deal. The BAS used in the ordinance is slanted based on its source. None of the references listed can be considered independent or neutral. The most grievous of them is a listing of wildlife species based on information from WDFW and the Washington State Department of Transportation (WSDOT). WDFW is not neutral. WSDOT has many highly qualified engineers but they don’t have any wetland biologists or zoologists. To use an e-mail from WSDOT as a source of BAS is to make a mockery out of the term. An excellent source of
BAS is the Thurston County Conservancy District. The district has information on soils and water quality that dates back to the depression era. Mr. Nelson said he does not see any of the district’s scientific information anywhere in the proposed CAO. The best salmon habitat is a well-managed farm. That was validated in *The Olympian* yesterday when it said the only way for salmon recovery to be successful is to engage the farmer. The proposed ordinance does not engage anyone who owns land along the river. The document is flawed and he suggested the Planning Commission send it back to staff.

**Bob James, 8935 Mullen Road SE, Olympia,** said if the CAO revision goes through, rural property owners losing more than 10 percent use of their property should be given a choice:

- The County will buy the property which would be better for the environment or the revised CAO should contain a new definition of a reasonable use exemption and allow landowners use in accordance therewith.
- Under the proposed revision to the CAO, has the County determined how much loss of buildable land would occur and how much buildable land will be left in private ownership? What is the long-term economic impact of the loss of buildable lands?
- Will the proposed revisions include a provision the County will notify each and every property owner when the County determines that private real estate parcels contain critical areas? In a nearly secret County wetland inventory mapping project, two of his properties were classified as having wetlands and therefore included buffers. The wetland designations were erroneous and have since been removed from the wetlands inventory map. County staff did not check its “map” against anyone’s definition of what it took to make a wetland. It took him 23 months to get the map revised and his properties removed. The devaluing of private property without notification should be criminalized.
- If the public is truly being served by the tightening of the CAO regulations and restrictions, why is the urban public not required to share the burden? Until the true cost of the proposed modification to standing regulations is determined and spread equally to all those who will benefit, the proposal should be held in abatement.
- Prior to the Planning Commission’s previous public hearing on the proposed revisions, he drafted a four-page letter to the Commission. In the letter, he posted 19 specific questions and concerns. To date he has not received a response. For that reason alone he cannot and will not support the County’s efforts to revise the CAO.

Mr. James thanked the Planning Commission for its time and Mr. Don Wood for educating him about some of the points in the proposed ordinance. He said he is embarrassed for the Planning Commission. He served on the Commission in the 1990s and has to believe the members have not read the proposal. Some of it is to onerous and ridiculous. Mr. Wood said he is a fifth generation Thurston County resident and has lived on a farm most of his life. The Planning Commission doesn’t understand what the farmers are coping with.

**Darrell MacDonald, 7048 Libby Road NE,** stated he took over a farm that was established in 1937. At one point, he was milking 23 cows and worked hard to clear the land. He has no plans
to resume the dairy but intends to keep the land in the family and pass it on. He wants the ability and right to raise cattle in his late retirement. He asked the Planning Commission to step back and look at how the ordinance will affect farming in Thurston County. He said he realizes the County is changing. The ordinance will take farmland out of production and he will lose one-third of his hay production. There are young people who want to make their living farming. He requested the Planning Commission take its time and read about the impact the ordinance will have on Thurston County’s farms and perhaps reconsider and modify the regulations. Mr. MacDonald said he understands what the County is trying to do, but things have gone way too far. The Planning Commission needs to listen to the testimony that’s been provided.

Abe Boling, representing Future Farmers of America, said everyone has to realize what the Planning Commission is proposing will impact the rest of the state and not just Thurston County. He cited the community’s reaction to Seattle’s CAO amendments passed last year. Last year at the state level, he placed in the top 12 with a CAO speech. He interviewed several legislators and they were both literally pulling their hair out because there were things in the CAO amendments that no one realized could be interpreted differently. An auction house owner paid between $4,000 and $6,000 because his property is a foot lower than the road. Water ran off the road onto his property. The way the ordinance was worded, he had to pay for rainwater that fell on his property. In Washington State, that can get expensive. There are those still interested in farming and he said he wants to make sure they’re protected. They don’t want mistakes in one county to be modeled for in other counties creating a domino effect. He asked the Planning Commission to look over the proposed ordinance very carefully, consider all of the testimony, and think about the future of agriculture.

Richard Nelson, 3624 Waldrick Road, Olympia, stated he is less than pleased with the proceedings. There has been criticism over the proposed ordinance and there are justifiable reasons. The County has taken no input from agriculture. He has not talked with anyone who was asked what their opinion was or to any other stakeholder group before the ordinance was drafted. The Planning Commission has not considered any landowner input. He has not talked with any landowner stakeholder group that was polled to see how the ordinance would affect them. The buffers are proposed to increase from 100 to 250 feet. He indicated that if he changes his farming operation from pasturing to mowing hay, he will probably have to have a vegetation permit to do so. A function of agriculture is to manage vegetation. When he’s asked to provide a 250-foot buffer, there will be no vegetation management within the buffer. He doesn’t see how that’s an improvement. Mr. Nelson said he’s read the document, which is rather encyclopedic, and does not understand it. He said if he doesn’t understand it and has a college education, he’s certain most will not understand it and County staff will not understand it. Mr. Nelson questioned the accuracy of the maps. He said he owns property on Old Highway 99. The map shows a creek flowing across Old Highway 99. His family has owned the property for 150 years and no one has ever accounted for a creek. He pointed it out to the County 10 years ago but it’s still on the map. The future of agriculture in Thurston County is very much in peril with the proposed ordinance.

Sherry Buckner, 3522B 81st Avenue SW, Olympia, said she lives in an area where many residents have between 2.5 acres and 25-acre lots. She lives on high groundwater and wetlands
run through the area. The Salmon Creek basin is nearby. She and her neighbors are careful where they place structures because of high groundwater flooding and wetlands. A few years ago, Black Hills High School was built on pasture land approximately 250 acres from her home. The high school site flooded the surrounding properties including three homes, a wooded lot, and some farmland. Lawsuits were filed and many were won. The school was required to implement three separate water drainage systems. It had to run an underground water system approximately two miles to a nearby wetland at its own cost. She’s not sure why the problem was not anticipated as the wetlands were identified on the geodata sites. There was a combination of high groundwater, flood years, and wetlands. It is a pasture. Sometimes it’s not possible to ascertain if it is a pasture or a wetland. Those living around the pasture would love it to stay the same. They would love it to be farmed from here to eternity. However, residential development is likely. The surrounding property owners are depending on good critical area buffers. Half of her property is wetland and half of her neighbor’s property is wetland. They are aware of it. They depend on critical area buffers because no one else is going to stand up for them unless they want 1,400 homes out there. She said she’s pretty much supports farmers but that’s not the whole story. The issue is developers that look at pasture and think it’s good to go because there’s grass growing on it. If you walk on it you’d better be wearing your rubber boots. She asked the Planning Commission to err on the side of caution. Ms. Buckner said she doesn’t know how to resolve the complex issues, but the County should be aware these are real concerns for real people.

Lisa Remlinger, 2428 Olympia Avenue NE, Olympia, said she knows she’s in the minority but what she has to say is important nonetheless. She often times listens to those speaking about the CAOs. She hears about the freedom to build and develop land in Thurston County. Just as important we must value our freedom from worrying about the quality of the open spaces and the cleanliness of our water. The areas are deemed critical for a reason. They are critical to the future of our environment and the quality of our lives. When her family decided to buy a home in Thurston County, they based the decision on the quality of life, the generosity of the people, and the shared sense of community. The extent of the future depends on the quality of the environment. She asked the Planning Commission to adopt the amendments.

Mary Benedict, 19223 Denmark Street SW, Rochester, said she wants to share how the ordinance will affect her. She said she lives on eight acres and is in the process of removing blackberry vines and other species of brush. Her neighbor does not like what she’s doing. A problem with some of the ordinance provisions is that it allows her neighbor to go to the County and make a complaint about her actions on her property. Even though it may not apply, the County will come out and say it needs to check it out. She will have to go to the County if she wants to install a fence. She has a cow, a calf, and a horse. She doesn’t expect too many more, but cows do have calves. Ms. Benedict said she doesn’t think her neighbor really appreciates that. The proposed ordinance allows the party to say, “Well, I don’t like what you’re doing so I’m going to call the County on you.”

Krag Unsoeld, 2211 Walnut Road NW, Olympia, said Mr. Mackie talked about the difficulty of putting old growth Douglas fir forests on buffers onto existing urban streams. Mr. Mackie
said it wasn’t efficient and it would be better to do stormwater treatment as the water quality protection. The difference is between end of pipe treatment and source control. It has been demonstrated over the years that source control is the least expensive way to control stormwater. Mr. Unsoeld referenced an American forest study published in 2002 and said he could provide a copy to the Planning Commission at a later date. The study looked at nine urban areas in the lower Columbia and Willamette River watersheds where the trees alone collect rainwater and saved $50 billion in capital expense and $250 million in operating costs to collect and treat the stormwater. These are the hard to quantify services provided by trees, wetlands, and riparian zones, which are so hard to account for. There is some real difficulty with representing the basic infrastructure upon which all life depends: air, water, and land. Simply put, the property does not exist in isolation. What happens on any one property will affect the air that moves across it and the water, which moves across, under, and through it as well as the critters. There have to be restrictions on what individuals do on their property. Ideally, individuals will take it upon themselves to do the proper thing. But unfortunately as Thomas Hobbs has pointed out, we need impersonal arbiters of the human interactions to avoid life from being short. That’s what the Planning Commission is doing and he trusts it will be able to incorporate some of the specific comments raised.

Howard Glastetter, 11110 Kuhlman Road SE, Olympia, thanked the Planning Commission for volunteering to do a very difficult job. Some say there isn’t tough enough rural zoning in Thurston County according to the GMA. The Nisqually Valley is currently set aside pastoral lands to conform to the state GMA. In the 1980s, people with less than five acres were not allowed to subdivide. Later, large farmers were paid a stipend of $2.3 million for development rights. The goal was to preserve the pastoral character of the valley. Thirteen years later, the valley gravel pit has nearly doubled its original footprint and will soon receive a new asphalt plant. It may even get to reprocess/recycle asphalt, which was prohibited in the 1992 plan. There have been efforts to further expand the pit on Reservation Road by 500 acres. The next decade may show a 1,000-acre pit in a 14,000-acre preserve set aside for the future. The gun factory in the valley has been allowed to place thousands of yards of fill on flooded property. No other property owners have been allowed to do that. The City of Lacey is clamoring to rezone the Nisqually critical area hillside for dense development of the bluff. The Nisqually River behind the railroad tracks is used as a secondary garbage dump. Thurston County is mineral rich and targeted by interstate and intrastate gravel companies. The companies want Thurston County rural areas preserved too. Their intention is not pastoral preservation but open pit mining. Keeping reasonable balance in the coming years will require careful thought and special interest needs scrutiny whether industry or ecology.

Tom Cook, 652 Sandra Lee Court SE, Olympia, thanked the Planning Commission and County staff for the considerable efforts put forth in drafting the proposed CAO. The CAO is vital to the preservation of the natural and economic environment in Thurston County. He said he has concerns regarding the Nisqually hillside overlay. On behalf of 70 of his concerned neighbors and others, Mr. Cook presented a petition requesting the Planning Commission reject the proposal to remove the Nisqually hillside overlay district from the CAO. The reasons for opposing the removal are based on science. The GMA requires that in designating and protecting critical areas, the County include BAS in developing policy and regulations to protect
the functions and values of the critical areas under RCW 36.70A.172. The state has adopted detailed rules to ensure BAS is considered. The County has followed the requirements through the BAS important habitat and species study dated July 20, 2005. Removing the overlay district from the CAO will remove it from the requirement to use BAS. It would also deprive it from the protections afforded by the CAO and the hierarchy of land use regulations. The results will weaken the protection of the neighbors from landslide hazards and ultimately jeopardize the planning gains over the last decade. It represents an attempt to circumvent the protections of the CAO by simply defining away the critical area. The approach should be rejected. Violation of the GMA’s RCW 36.70A.030, defines critical areas to mainly include the Nisqually bluff and the hillside overlay. Removing the areas from the GMA violates the requirements to designate and protect CAOs, and to protect the neighborhood located from landslide hazard areas. The current overlay district and standards are the result of a long effort involving the County, the Nisqually Subarea Planning Committee including members of the farming community and scientists, and local residents. One of the key results of the effort was the placement of hillside protection in the CAO. To now abandon that repudiates the cooperative efforts of the citizens over the years to plan the land uses in the area. For all these reasons, he asked that the Nisqually hillside overlay district and its standards remain in the CAO.

Warren Brasher, 18325 Citrus Street SW, Rochester, said he understands this is a touchy subject. He remembers going through the GMA process in the 1990s. The GMA was sold to citizens as the ticket to control some things and it was the fix-all. Now citizens are being told it wasn’t enough. He said he understands things change. We make more babies everyday and the babies have to have a place to live. The Planning Commission will make decisions or suggestions. He asked that the Commission not blanket property owners with “gray” area definitions. It is really serious because when it turns to a gray area, it’s up to whomever. He has nothing to argue with because the County will change the definition of whatever he’s dealing with. He thanked the Planning Commission. He lives across from a pheasant release site. People hunt birds. There’s quite an impact there. He doesn’t hunt birds but bought his property knowing this goes on. He asked the Planning Commission to use their heads and hearts and not cave in to the environmental lawyers and attorneys, because that happens. Let’s stick to our guns and do the right things. He’s a steward of his properties. He takes care of it like the farmers and he agrees with them. We can steward our own properties. He’s not out to ruin anything or his neighbors.

Cheryl Mantlik, 4437 Shincke Road, Olympia, co-owner of Weeping Willow Ranch, said originally, the property was a 100-year old dairy farm. Betty Jo Watkins has operated her boarding business with 50 horses for the last 35 years. She’s probably taught most of the children in the area how to ride. They have taken good care of the land. She has a master’s degree in outdoor education, is a former member of the Sierra Club, has worked on the outward bound programs, was a member of the Audubon, and is in favor of keeping open spaces against development. At the same time, she is a business owner and her property is her retirement. The value of the land is her money for retirement. She doesn’t work for any of the major companies or the state and does not have a pension plan. She didn’t buy stock in Starbuck’s. This is it. Now the County is saying she has to regulate her manure pile, she has restrictions on where the horses can go, and she’s in the shellfish protection area. For the past five years, The Olympian
has said the number one cause of shellfish pollution in the Henderson/Woodard Bay area is horse manure. Actually, someone finally did a DNA study and found it is human and dog waste, and not horse manure. Right now, the County is turning the screws on them for their manure pile. She’s not supposed to till and has to pull weeds by hand. She works 24/7 and so does Betty Jo. They’d like to get out. The property is up for sale. If Audubon or Futurewise would like to buy it for open space, they should come forward and pay the money. She’d like to move someplace else that is more supportive of agriculture. She invited the Planning Commission to come. If they’d like to clean stalls and work on the farm, she’d like a vacation and would like to be able to retire. She asked what monies will be used for enforcement. That’s a big issue. The County has an air quality act passed by DOE that says no one can burn construction waste. Her neighbor burns construction waste on the weekends and after 5:00 p.m. on weekdays. There’s only one agent that handles air quality control. She can call and call and call. It’s her word against his that he’s burning construction waste. No one comes out and investigates. If the County doesn’t have the money to enforce the ordinance, don’t put the rules in place.

Greg Schoenbachler, 13911 Military Road SE, Tenino, representing the Silver Springs Cattle Company LLC and Silver Springs Cattle Ranch LLC, said they own over 1,115 acres in south Thurston County. They own about three miles of riverfront property. The requirement for 100-foot buffers for three miles equates to 36 acres. Three hundred foot buffers equal 109 acres. That’s just river frontage that will be lost to production. After adding in the flood hazard areas, wetlands, and critical aquifer recharge areas it’s over 500 acres of property that will be encumbered. It equates to less than one-half of the total property, but over 80% of the production. By including important habitat and species, the County has encumbered 100 percent of the property and 100 percent of the production. He is a full-time agriculturist, which is rare in the County. The proposed CAO will have a major impact. He farms because he wants to, not because he has to. It’s not a lucrative business. It’s tough and additional regulations make it tougher. It’s supposed to be a fun business and he enjoys it. The additional encumbrances make it less appealing. He’s 30 years old, has a family, and would like to pass the land on to them. As things progress with further regulations, he wonders if it’s what he wants to do. He has offers from developers all the time. He has set aside two square miles of the property for wildlife habitat on his own with his own production standards and has done well with it. He asked the Planning Commission to keep in mind that farmers are stewards of the land and are doing things right. Doing the wrong thing costs them money. It’s simple economics. If people want to voluntarily encumber their land and decrease production that’s fine. He asked the Planning Commission to consider how the proposed CAO will affect people like him and how rare full-time agriculturists are in Thurston County.

Sandra Romero, 1925 North Berry Street, Olympia, said she was on the Olympia City Council when it first began implementing the GMA and had to work on the critical areas at that point. In the legislature she was chair of the local government committee where most of the land use issues would come to the committee. She knows how tough it is for elected officials to make the hard decisions. In concept, she said she supports the CAO. Ms. Romero said she is a Futurewise Boardmember. The Futurewise planner reviewed the ordinance and says it is a very balanced ordinance. She and her husband own some land in the County and hope to enjoy it in the future. The quality of life is what their investment is in. Thurston County is a great place
and is in serious risk of over development. That makes protecting the critical places more important than ever. She said she is glad the County is attempting to take precautions and to learn from previous land use mistakes and is taking measures to help protect the future quality of life. We’re always learning more as new science comes out. It was just a few years ago when we learned culverts were important for fish spawning. Fish passages now have been saved. The knowledge does not stop us from farming and living in rural areas. It does ensure that in the future our quality of life is protected.

Brent Dille, 7504 Cooper Point Road NW, Olympia, who had to leave, relayed to a member of the audience that he agreed with Mr. Mackie’s comments.

Nat Jackson, 6335 Pacific Avenue SE, Olympia, said the job before the Planning Commission is a difficult one. The County doesn’t have a great deal of time to deal with it. It has long-range implications and he empathizes with what the County has to accomplish. Mr. Jackson said he lives approximately six blocks from St. Martin’s University and owns 8.5 acres. He moved to the County because he didn’t want to be regulated any more than possible or told what to do by government. Yet he knew there were laws and rules on the books and he was willing to comply with them. He said the process is very unfair. This is going to happen in a bulldozer or train style regardless of what he thinks. The County has not looked at the economic impact of depriving people of their homes, their investments, and their hard earned livelihood. He recommended the Planning Commission slow the train and take a look at broadening the spectrum by forming a stakeholder citizen group to gain a broader balance of input from those impacted by the CAO. The Planning Commission will have a better perspective since they are not farmers, ranchers, or large landowners with wetlands and lakes. It would provide the members with a much broader perspective and realm of reference in carrying out the job. It is not a do or die situation. There is time to narrow the point of controversy, discontent, displeasure, and anger that citizens are voicing. He said he is one person who is very upset about the process. The concept of two hearings in one night is arrogant on the part of government. The amount of time the citizens have had to review, digest, and consider the impact on those that own affected properties borders on the lack of adequate consideration. He asked the Planning Commission to go back and take a look and organize a broader citizen group.

A member of the audience commented the Chair has said there may be another hearing and that some of the public has left.

Donna Altman, 3912 Oyster Bay Road, said she doesn’t mean to minimize anything that’s been said. Her opinion is that “we” need to leave “these people” alone. She wants to know when are the “we” going to address the bottom line, which is the waste and destruction through the County sanctioning of unnecessary over-development by professional developers right here in the name of greed.

Mary Brandon, 8633 SR 507 SE, Tenino, stated the supposed reason for the proposed ordinance is that the state has indicated Thurston County must comply with the lawsuit. The
lawsuit addressed primarily that the urban growth areas are too large and that the County allows 1-4 units an acre instead of 1-5 units an acre. That has been dropped because of the moratorium on building. The only thing the state said about the critical areas was that the County hasn’t completed its revisions and didn’t mention specific RCWs, which is required. That could have been done by bookkeeping. If the County didn’t change anything, it only needed to justify why. The original BAS was completed in 1994. Ms. Brandon said she looked at the list on the chart on page 8 that states there were 23 citations but only two of them since 1994. Further down the list there are 31 citations, three are since 1994. On page 11, there are 27, three of them since 1994. On page 17, under wildlife habitat, there were 63 citations and only one since 1994. She asked what is new, what has changed, and why change what the County already has unless something has happened. The County is allowing shellfish to be taken from an inlet. Things have improved in some ways. The Planning Commission should justify the drastic changes when she doesn’t see any new BAS as the basis. People have spoken this evening saying there’s something newer. She referred to page 46 and the size of the buffer and that it should be changed depending on whether it’s farmland or forestland. It’s been stated the proposed ordinance does not affect hobby farming. A hobby farm is not defined in the ordinance. She asked whether 4-H kids raising steer is considered commercial. The County should be more careful and things have to be defined very carefully. If they are not, the lawyers and the judges will do it for the County.

**Kitty Vall, 2615 Sherm Loop NW, Olympia,** said she is more confused and compassionate about many of the issues. She supports farming and is a member of Living Farmers Market. Until now she had no idea the CAO would impact so many farms. Olympia has been home for the last 54 years and she has seen changes and rapid development. There are large housing developments and major roadways in the vicinity of Henderson Boulevard and Yelm Highway. She said she does not dispute that growth and change is inevitable and is thankful the County has educated staff dedicated to responsible development. The proposed boundary setbacks on critical lands are necessary to preserve the small amount of undeveloped lands remaining in Thurston County. She said she lives on Sanderson Cove. John Dodge, who writes environmental articles for *The Olympian,* highlighted several years ago that the cove is home to numerous plants and animals, including river otters, ravines, blue herons, eagles, and salmon. There are several ravines that empty into the cove with juvenile salmon returning every year. In the rainy season, the ravines dump sediment from land that is already eroding sending large flows of sediment to Eld Inlet and turning the water dirty brown for miles along the coastline. Adjacent to her property is a special place owned by Aloha Logging Company, a company without local ties or responsibility. It is outrageous that the company could potentially clear the land and provide minimal setbacks. Ms. Vall said stricter guidelines are the only way to preserve the character and nature of special places. People live here for the rich natural beauty and can balance the need for resources with the needs of the greater ecosystem. When special places are cleared and developed there will be no chance to reconsider. Ms. Vall said she supports the proposed changes to protect the heritage and the County’s special places. The changes will allow the community to preserve and protect lands and sustain the quality of life and so much more.
Charlene Haslam, 4101 Clearwater Drive, Lacey, said she lives in a subdivision governed by Lacey rules. She said she must undertake a process to cut trees on her lot and she understands the need. She indicated her parents asked her for help to learn what’s going on with the County’s CAO. She doesn’t have a lot of time to gather the information. She’s learned more from the meeting than she has anywhere else. She said her concern is with having to obtain a permit for anything. Her parents are tree farmers. She would hate to get to the point where they won’t be able to cut a tree down. That’s how they’ve been able to pay off mortgages, send their children to college, and take care of the family’s needs. It’s a trust for the family. If her parents ever have to go into a convalescence home they might have to log again. The family is always planting and if they’re going to have to go through a permit process it’ll take forever. Her family received a letter saying it needed to pull tansy weed. They go out and pull the tansy weed. But then she sees it all over the County - fields of it. But her family feels threatened if they don’t pull the weeds. That’s totally wrong. One of the County handouts talks about sediments. The 4th Avenue bridge sediment was dumped on her neighbor’s property. All of the silt travels through the hillside and into the Salmon Creek floodplain. She said she’s really frustrated right now. She’s heard others say there hasn’t been much notice of the proposed CAO. She lives in the County and didn’t hear much. She lives on a tight budget and doesn’t get the newspaper. She does listen to the radio. Her parents live in Pierce County and received a postcard. The website address led them to the Farm Bureau. She hasn’t been able to find the time to get on the County’s website but plans to read the ordinance. She asked how she can comment on something she hasn’t read. She and her parents have concerns. Fencing off property isn’t going to let the wildlife grow. The wildlife will get tangled up in the fencing. The family’s property is next door to Millersylvania State Park. The wildlife comes onto their property. The neighbors have purchased land and have cleared it for a housing development. We’re losing the precious lands we’re trying to preserve. There are farmlands all around us and they’re not able to use it. The farmers have to sell out to developers who will build another Wal-Mart. They take the floodplains, dig it up with big culvers to hold the water, and place pits so the frogs can live in it, and then they call it preserving. It doesn’t work. That’s why Olympia High School had a problem. Things are not being thought through. Taking the floodplains and building houses on it is totally wrong. Give it to the farmers to develop, plant, and feed the community.

David Lindeblom, 4403 22nd Avenue SE, Lacey, said he has a science background, has lived in Lacey for 38 years, and owns acreage in Thurston County. He’s a tree farmer and his neighbors raise livestock. He’s lived in the County for 60 years and is not a dummy when it comes to planning, science, government, and land ownership issues. At the first hearing, he signed an attendance sheet that indicated he could request a copy of the materials and be kept informed of the meetings. He said he hasn’t received anything. He went to the courthouse and picked up a copy of the CAO materials. The copy is missing at least three major sections. Others in attendance haven’t received their copy either. Everything should be tabled until the County can provide copies to all of those who have requested it as well as affording time to review. Many have objected to various ordinance provisions. Basic American government ideals were based on a Judean-Christian ethic that was to allow any activity not specifically prohibited because it fosters creativity and a joy in living. Totalitarian governments allow only that which is specifically stated and forbids all else. The County’s document is totalitarian in nature and explains why many screaming individuals are trying to interpret their constitutional declaration.
of independence rights. The whole thrust of allowed uses is contrary to our ethic. It’s both a
civil and religious difference between the drafters of the law and various groups of citizens when
you spell out you can do only what’s here and nothing else, instead of saying “thou shalt not do
this and this and this, but can do anything else.” That’s the preferred way. In reply to the 100-
year events, the County isn’t even 200 years old. He asked how many 100-year events have
occurred and what the basis for the regulation is. BAS is based on assumptions that are totally
different from the assumptions of others. He said he doesn’t think its BAS and that it’s flawed.
He asked the Planning Commission extend the time period because of the difficulty of getting
through the document. Mr. Lindeblom said the Planning Commission doesn’t know what a tree
farm is. In the same paragraph it states a tree farm is covered but forestry is not. Every tree that
ever grew in a forest or harvest is on a tree farm. A tree farm is growing trees in a forest. The
Planning Commission doesn’t know what the difference is.

David Thompson, 20625 Michigan Hill Road SW, said the whole process is flawed just like
the meeting. He said he understands the Planning Commission’s position. He sat on the
Planning Commission in the early ’80s. He did not take staff’s word as gospel. His experience
is most people on the Commission listen to staff and believe they know what they’re talking
about. The staff has an agenda and the Planning Commission has to figure out what the agenda
is and use some sense in its deliberations. The Planning Commission cannot take staff’s word as
gospel. Staff’s agenda is to control citizens as much as they can. Right now, the County is
playing with his retirement. He lives on Michigan Hill; not Michigan swamp, not Michigan
wetlands, or Michigan flatlands. Yet, there is less than three acres of buildable land out of his
80-acre hill property according to the County’s wetlands map. He’s 64 years old and has owned
his land since 1974. He lives on it and plans to retire eventually and his land is his retirement.
He doesn’t have a 401K, savings account, or retirement accounts of any kind. The County’s
restrictions will eventually take his retirement away. He asked when he can retire. If the County
takes away his rights, he has no retirement and he doesn’t want to work forever.

David Ward, P.O. Box 1086, Vancouver, said he has submitted written materials before. He
would like the record to reflect the written materials and his previous testimony. There has been
testimony on the record that this is something the Planning Commission is required to do. The
GMA requires the County to evaluate the ordinance and, if necessary, update it. In that update
the County is required to consider BAS. The first question is whether the CAO already protects
critical areas. If not, the County is required to update the CAO. An issue that has come up is
about the requirements for balancing all GMA goals. All of the Planning Commission’s actions
taken under the GMA require the Commission to balance the goals. Critical areas are no
exception. Mr. Cook read into the record the RCW that requires the County include BAS. The
court in the HEAL case expanded on that and spoke to the requirements. The issues in the
HEAL case were whether BAS was only included in the process or actually a substantive
requirement. In other words, was consideration of BAS necessary or was it just sufficient to
include reports. The third issue in play is whether BAS really dictated the ultimate result of the
CAO. Mr. Ward read what the court addressed. GMA requires balancing more than a dozen
goals and several specific directives in implementing the goals. The legislature passed RCW
36.70A.172 (1) five years after the GMA was adopted. There are other factors that neither made
BAS the sole factor, the factor above all factors, nor made it purely procedural. Instead, the
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The legislature left the cities and counties with the authority and obligation to take scientific evidence and to balance that evidence among the many goals and factors to fashion appropriate regulations based on the evidence - not speculation and surmise. Ultimately, the requirement for BAS is that it is included, but then taking it and balancing it with all the GMA goals. This is the common sense review that the gentlemen who spoke earlier tonight talked about. Unfortunately, that's not what has happened. It's probably because Fedeman was sold a bill of goods by state regulators and staff continues to tell the Planning Commission it doesn't have to balance the GMA goals, it just needs to look at the BAS science, and that BAS is the only thing that drives the ordinance. In the HEAL court decision it clearly said that's not the case. A few general problems include large sand and gravel miners in the County. Mining is really a prohibited use throughout the ordinance. He said he does have additional process concerns and has submitted a public document request to look at all the subcommittee notes, which he has not received. However, he is aware staff is working to supply him with the materials.

**Chris Wright, Radake Associates, 5711 NE 63rd Street, Seattle**, said he is a wetland scientist with over 15 years of experience working in western Washington dealing with critical areas, wetland and buffer issues, and streams. He has reviewed the BAS document provided with the CAO draft. The BAS document does not support the buffer widths provided within the CAO document. The DOE did its BAS document in 2003. The DOE’s document talks about the nonlinear relationship between buffer width and the functions the buffers are intended to provide. There is a lack of evidence on the long-term effectiveness of buffers in providing the protections they’re intended to perform. In general, the literature states 100-foot buffers are adequate to provide the protections to the sensitive areas they’re intended to protect. The 100-foot wide buffers will provide adequate protection from pollution, sediment, runoff, and many other things. The document states there is no bright line, however. It says 100 feet is enough and 50 feet isn’t enough, and that the County needs to look at each individual sensitive area on a case-by-case basis and determine what protections that particular sensitive area needs. The proposed CAO is inconsistent and is inconsistent with the literature provided within the BAS. The protections provided vastly exceed what would be required to protect what the County is trying to protect. The BAS prepared for the County states in several places there are many factors that influence the ability of buffers to remove pollutants, trapped sediments, and control water velocity and volume. These things are all dependent on the slope of the ground, vegetation type within the buffer, vegetation density, the structure of the soil, and the timing, frequency, and force of rainfall events that occur on the buffer. The width of a buffer is not as important as the physical characteristics of the buffer in order for it to perform the functions it is intended to provide. Within the County’s BAS document, it states attempts to craft singular, generic standards for buffer widths are inappropriate since they are based on an over simplification of complex physical processes. Under the proposed CAO, wetland buffers are based on the habitat scores a wetland receives. It could be as narrow as 100 feet or as wide as 300 feet. The buffer widths are not determined on the characteristics of the buffer, but on the characteristics of the wetland without any consideration of what’s going on within the buffer of the wetland. It doesn’t follow the BAS that’s out there. The functions of buffers as wildlife habitat have also been widely discussed. The County’s BAS reports that buffer widths to support a wide variety of wildlife would generally range from 200 to 328 feet in width. However, within the draft CAO it states while narrower buffers are not sufficient to support large animals such as elk, bear and
cougar, these species may not be desirable within the UGA. Putting a 300-foot buffer on something to try to provide habitat for a species that’s not likely occurring within the urban area nor want in an urban area, seems to be an over-regulation of buffer width. The BAS also states 100-foot wide buffers are sufficient to support small mammals, reptiles, amphibians, water fowl nesting, and the bird species that are typically found in urbanizing areas. Other studies reported in the County’s BAS have shown that while buffers narrower than 50 feet have a negative effect on wildlife use, there is no difference in the number of bird species that use 100-foot buffers or buffers greater than 100 feet. Providing the additional buffer width does not provide the County with any additional habitat for the species expected to occur within the urbanizing parts of the County. The proposed CAO has a new sensitive area - riparian habitat areas, which are defined as being a set distance away from the ordinary high water mark of the stream. Again, it’s defined as a sensitive area but it is a sensitive area not predicated on any specific habitat functions but merely based on an arbitrary width away from stream. The BAS indicates that the buffer widths reported in the BAS are much narrower than the buffer widths proposed in the CAO. Radake Associates recommends flexibility in determining the appropriate buffer widths based on site-specific studies, where the physical characteristics of buffers are adequate to provide the protections that buffers are intended to provide. Radake Associates recommends the appropriate buffer widths supported by the BAS be applied in situations where the physical characteristics of the buffer would not be adequate to protect the sensitive area. Larger buffers should be applied on a case-by-case basis based on recommendations of staff.

Mark Hancock, P.O. Box 88028, Tukwila, said “we” are major landowners in Thurston County. He addressed the issue of species and habitat of local importance. The list is for animals, plants and their habitat that is are listed for protection by the federal and state governments. The County is proposing to add protections and tie up land for species that are not considered endangered or threatened. Some of the species proposed in the current CAO are even quite common ranging throughout the County and the state. The addition of protections for species not listed by the federal or state government is optional by the County provided for in the RCWs. If the species do not qualify for federal and state protections it is important to ask why the County should tie up private property for them. Since they are not listed by the federal or state government, it is a political decision more than an environmental one and involves the taking of land from one party for the enjoyment of another who happens to like a particular species that is not rare. Some jurisdictions chose not to have a list of local species but instead rely on the federal and state protected lists. If the County does have a list it should be taken very seriously in terms of the species listed and why. The list should be saved for the most special of situations. The list as proposed in the current CAO is too broadly based with some very common species and will impact all property in the entire County. He added it is unknown what other animals will be quietly added to the list in the future. The local species list provides the perfect vehicle for “not in my backyard NIMBYs” to tie up much of the County and literally bring growth to a halt. It should not be allowed to get out of control. If there is to be a local species list there should be a thorough study of the species and a very public process for adoption. The process must be as fair and open as possible. This is not the case with the current CAO process and language. Factors to consider include specific criteria, how and who can propose a species in the County, a study of the proposed species including why it needs protection, its range in the County and region, the science for the species, and the impacts to the
County and landowners if added to the list. The public and decision-makers should be told prior to adoption how the science will be interpreted and what restrictions would be put in place. There should be a broadly-based stakeholders committee formed to review the findings and make recommendations to the Planning Commission followed by public hearings with good informational notices. An example of how this can go wrong occurred in a nearby county where staff recently required that an empty Red Tail Hawk nest be left alone for five years with a 300-foot radius buffer before 6.5 acres of land that was tied up could be touched. This was in spite of the fact that (1) it’s the most common raptor in the United States, (2) they are very adaptable and move around on their own, and (3) there were 17 acres of protected trees adjacent to the nest. This is a very serious thing the County is considering and it needs lots of work.

The Planning Commissioners engaged in a brief discussion about the hearing process.

2. **Adjournment**

Chair Kohlenberg closed the public hearing and adjourned the meeting at 10:16 p.m.

Liz Kohlenberg, Chair
Tom Cole, Vice Chair

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services