1. **7:00:47 PM CALL TO ORDER**
Chair Roper called the January 17, 2007 regular meeting of the Thurston County Planning Commission to order at 7:00 p.m. Commissioners provided self-introductions.

**Attendance:** Chair Joyce Roper, Commissioners Tom Cole, Liz Kohlenberg, Chris Lane, Liz Lyman, Bob Musser, Scott Nelson, Craig Ottavelli, and Rhenda Strub.

**Staff:** John Sonnen, Jeff Fancher, Celinda Adair, Cinde Donoghue, Gina Suomi, and Recording Secretary Cheri Lindgren.

**7:01:06 PM APPROVAL OF AGENDA**
MOTION: Commissioner Kohlenberg moved to approve an amended January 17, 2007 agenda. Commissioner Musser seconded. Commissioners will take up the Rural Rezoning agenda topic prior to Critical Areas.

Commissioner Lyman requested discussing a preferred approach for tackling the Critical Areas Ordinance.

**7:02:51 PM Agenda approved as modified.**

2. **7:02:59 PM PUBLIC COMMUNICATIONS (Not associated with topics for which public hearings have been held.)**
There were no public communications.

3. **7:03:08 PM APPROVAL OF MINUTES**
MOTION: Commissioner Kohlenberg moved to approve the November 15, 2006, December 20, 2006 and January 3, 2007 minutes and accept the audio as the official recordings. Commissioner Lyman seconded.

**DISCUSSION:** Commissioner Kohlenberg noted she did not follow up with staff on an issue reflected in the November 15, 2006 minutes. She recommended approving the minutes as submitted.

*Commissioner Ottavelli arrived at 7:04 p.m.*

**HANDOUT:**
- Draft language clarifying the categories Commissioners discussed within the fourth paragraph on page 4 of the December 20, 2006 minutes concerning “impervious surface coverage limits for new development”

*Commissioner Nelson arrived 7:06 p.m.*
Mr. Sonnen reviewed the proposed language change and explained the distinctions. The Commission modified item “d” to read, “For all other subdivisions, short plats, large lot subdivisions, and new construction – sixty percent (60%).

The following change was requested to the January 3, 2007 minutes: on page 3 at 8:11:15 PM, add the words “because she was feeling ill.”

The Commission asked staff to place the issue of “resource notification” as discussed at the November 15, 2006 meeting as a parking lot item.

Motion carried to approve the November 15, 2006, December 20, 2006, and January 3, 2007 minutes as modified.

4. 7:14:41 PM  W: RURAL REZONING – ADDRESS LOOSE ENDS AND PREPARE FOR BOARD BRIEFING

Staff: John Sonnen, Celinda Adair and Jeff Fancher, Deputy Prosecuting Attorney

ITEM: The Planning Commission and staff identified and resolved “loose ends” pertaining to the rural rezoning project.

HANDOUTS:
- Proposed New Rural Protection (1/10) District
- Answer to the Comprehensive Plan Legal Inquiry – Legal’s Recommended Language/Text Change

DISCUSSION: Mr. Sonnen and Mr. Fancher reviewed the proposed language change to the Proposed New Rural Protection (RP) 1/10 District on research pertaining to forestry, the environment, or natural resources. Mr. Fancher suggested an additional revision to the proposed text to read, “Research pertaining to the environment and/or natural resources consistent with the purposes of this section that does not have direct or indirect offsite impacts; and”. Discussion followed about including terms such as non-invasive and non-contaminating, indirect on or off-site impacts, incorporating a temporal limit, and deleting research as a primary use. If the Commission is concerned about research, the Commission could eliminate it from the primary use provisions.

The Commission agreed to eliminate the research activity from the primary use section in the proposed new RP District.

7:22:20 PM Commissioners and staff discussed Chair Roper’s e-mail about farm legislation. Mr. Fancher said he reviewed the Revised Code of Washington (RCW) language provided in the e-mail. Current law is sufficient and no modification is necessary. The statute provides an opportunity for the County to recover attorney fees and costs from complainants arising from nuisance claims against uses in place prior to landowners buying nearby agricultural properties. State law does not require the County
to adopt or enact special language to utilize the provision. Discussion ensued about revisiting Agriculture Committee language recommendations, considering research notification, and a notice to prospective buyers about nearby existing agricultural practices. Mr. Sonnen said the topic could be included as a work item for the 2007 Comprehensive Plan docket.

7:31:51 PM Ms. Adair presented a proposed text change affecting the 1/20 and 1/10 “Locational Guidelines.” The Commission agreed to amend the language to read, “This designation may include lands within the Salmon Creek Basin, the Black River Corridor, the Nisqually Bluff, or other areas which have soil limitations, critical areas, and/or other physical constraints to development.”

7:36:07 PM The Commission addressed the following:

- Include the wording, “the more restrictive shall apply” where applicable within the proposed comprehensive plan amendments. Staff was asked to follow up with Chair Roper.
- The ability to remove animal bone black rendering and similar activities within residential areas in the Special Uses Table. Mr. Sonnen said there are some inconsistencies in the table and the Commission might want to include it with the 2007 Comprehensive Plan docketing process. Mr. Fancher indicated it was not problematic to eliminate rendering plants as an authorized special use in the Rural Residential (RR) 1/5 zone.
- Why expansion only versus establishing new wholesale greenhouses in long-term agriculture is allowed within the Special Uses Table. Mr. Sonnen said staff will follow up.
- Adding the RCW definition for “rural character.”
- Commissioners reviewed the language drafted by staff to define the “purpose” section for Option 3 and the 1/20 district.
- Commissioners reviewed a revised definition for “passive recreation.”

7:47:41 PM Discussion ensued on the BoCC briefing packet including the Commission’s transmittal letter and staff’s approach to present the information to the Board. Mr. Sonnen requested Commissioners attend the Board briefing scheduled for January 24, 2007 at 2:00 p.m. to respond to questions and/or elaborate on the options. Staff will e-mail Commissioners a copy of the staff report on January 18, 2007.

7:53:56 PM Conversation followed about the status of the Court of Appeals decision, the moratorium, and issues identified by the Western Washington Growth Management Hearings Board (WWGMHB) that are already litigated and settled.
5. **8:02:30 PM W: CRITICAL AREAS – OVERARCHING ISSUES**  
*Staff: John Sonnen, Celinda Adair, Cinde Donoghue and Jeff Fancher, Deputy Prosecuting Attorney*

ITEM: Staff reviewed with the Planning Commission “overarching issues” raised by the public regarding the July 2005 draft of the proposed critical area regulations and staff responses to those issues.

DISCUSSION: Mr. Sonnen briefed Commissioners on the status of the Critical Areas Ordinance (CAO). Overarching issues will affect all future work. He suggested the Commission review overarching legal issues identified on the “Overarching Critical Area Issues” matrix dated January 10, 2007, and the responses. Staff will introduce the topics identified in the left-hand column of the matrix. The Commission and staff discussed the following issues:

- **The draft regulations do not meet the requirement to balance all Growth Management Act (GMA).** Mr. Fancher said the County is required to balance GMA goals when considering GMA amendments. Best available science (BAS) must be in the record and considered substantively when balancing the goals. Mitigation must also be based on BAS.
- **GMA and the Surface Mining Act.** Public comments and subcommittee input was taken into consideration when developing CAO recommendations. Natural resources can’t trump everything else in the critical areas regulations. Other factors can be taken into consideration when balancing goals. The ability to deviate from BAS when appropriate is provided for in the Washington Administrative Code (WAC) Section 365-195-915.
- **The draft critical area regulations infringe on property rights resulting in takings; and the Substantive Due Process Doctrine.** The state requires the County to adopt critical area regulations using BAS. It could result in takings. The County is protected when including a reasonable use exception. As long as the County is using BAS and taking a reasonable approach, takings problems shouldn’t be an issue. The County could get sued and a court could find it liable for a taking. Following state law, using BAS, balancing goals, and giving property owners reasonable use of their property is the most the County can do.
- **County has not met the burden of considering the need and impact of proposed regulations – CAO violates the GMA by not protecting existing uses.** Mr. Fancher said the County is required to follow the *Clallam County v. Hearings Bd.* decision until changed. He explained the difference between existing uses and “retroactive application.” Discussion about what constitutes a different use followed.
- **Regulations duplicate and/or attempt to supersede state and/or federal programs or regulations.** Mr. Sonnen reviewed research requests and responses from the Thurston Conservation District and legal staff. Mr. Fancher said he doesn’t believe the County can develop additional regulations but could require written information from an owner verifying that use of the pesticides at levels on a subject property is
allowable according to both state and federal agencies. Discussion ensued about the County obtaining verification if the state or federal agencies are not, under what circumstances an owner is required to have a pesticide applicator’s license, how the topic relates to pesticide application in aquifer recharge areas, pesticides versus fertilizers, and the Thurston Conservation District’s response that additional regulations about pesticide use should be that unlabeled products of any kind should be prohibited. Commissioners expressed interest in looking at the state regulations and purposes for all growers. Mr. Sonnen said staff will follow up on the state regulations and labeling matter.

- **Distinguish between designated and other agricultural lands.** Mr. Fancher reviewed the research request and response. The GMA does not provide a distinction between long term agriculture and other agriculture. Mr. Sonnen said staff will do its best to put together information about the County’s agriculture uses, where they’re located, potential impacts, and how they’re positioned against critical areas so the Commission can draft regulations tailored to agriculture. Mr. Fancher quoted text from the WEAN court of appeals case.

- **Local governments cannot regulate shorelines as critical areas under the GMA pursuant to RCW 36.70A.480.** Mr. Sonnen and Ms. Donoghue reviewed the research request and conclusions. Mr. Fancher emphasized during the period of time between the effective date of ESHB 1933 and a local government’s update of the Shoreline Master Program (SMP), the local government’s GMA critical areas regulations continue to apply to designated critical areas throughout the jurisdiction. It is problematic should the County treat critical areas within a shoreline differently than outside a shoreline. Staff is working on an approach to marry the two issues. Chair Roper asked if ESHB 1933 contains an exemption for agriculture.

- **Regulations are unlawfully vague.** Mr. Sonnen noted the comments will be considered during legal review of the next draft CAO.

- **Did not comply with BAS requirement.** Mr. Sonnen reported that staff documented BAS used to draft the CAO. Dialogue followed about whether the BAS used is the most recent. Commissioners expressed interest in obtaining BAS focusing on agricultural uses from Washington State University (WSU).

- **GMA does not require buffers.** Mr. Sonnen and Ms. Donoghue responded to the two research requests identified in the matrix. Ms. Donoghue noted a large and robust collection of scientific studies and reports support retention of undisturbed buffer zones around critical areas. Buffers that are maintained in native vegetation and undisturbed soils intercept runoff, trap pollutants, and reduce input to water bodies. The GMA does not require buffers, but does require protecting critical areas using BAS. Mr. Sonnen said staff would follow up on the reduced buffer issue.

- **There is no scientific justification for the “buffer buffers,” or setbacks from buffers, increase the total buffer footage.** Commissioner Lyman stated a riparian habitat is just that, and there is a function within the riparian habitat. It is of itself a critical area. Riparian habitat should not be referred to as a buffer.

9:23:49 PM Ms. Donoghue briefed Commissioners on an approach to update the CAO and SMP using a parallel process. Wetlands and other critical areas could be classified
dependent upon their function within a landscape context resulting in aquatic lands critical areas. Mr. Sonnen said the County is required to conduct a detailed watershed-by-watershed analysis that looks at a subset of critical areas that fall under the SMP. The analysis will enable staff to refine the critical area regulations. Chair Roper conveyed the Commission should decide whether it wants to engage in such a process. Concerns expressed included the amount of time involved and that the analysis is complicated. Commissioners asked to revisit the matter at the next meeting. Staff was asked to provide Commissioners with information to inform a decision about a different process, and a projected timeline.

6. 9:39:03 PM CALENDAR (TENTATIVE) AND ATTENDANCE
   • February 7, 2007:  W: Critical Areas - Commissioner Nelson unable to attend

7. 9:39:14 PM STAFF UPDATES
   Staff: John Sonnen
   • A reminder that the BoCC briefing about rural rezoning is scheduled for January 24, 2007.
   • Mr. Sonnen briefed the Commission on the recent moratorium hearing. Significant changes are not anticipated.

   Commissioner Lyman pointed out some errors within the “Thurston County – Proposed, Thurston County – Existing” attachment.

   Chair Roper reminded Commissioners that comments about the Commission’s letter to the BoCC regarding the rural rezoning project are due by January 18, 2007.

8. 9:41:04 PM ADJOURNMENT

   There being no further business, Chair Roper adjourned the meeting at 9:41 p.m.

   Joyce Roper, Chair

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services
## Thurston County Planning Commission

### REQUEST FOR INFORMATION SUMMARY SHEET

<table>
<thead>
<tr>
<th>DATE OF REQUEST</th>
<th>ISSUE/REQUEST</th>
<th>AUTHOR</th>
<th>STAFF</th>
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</thead>
<tbody>
<tr>
<td>1/26/05</td>
<td>Field Trip when begin working on Development Code Docket or at least comprehensive maps</td>
<td>Chair Kohlenberg</td>
<td>Advanced Planning Staff/N. Pritchett</td>
</tr>
<tr>
<td>1/26/05</td>
<td>Commissioner Cole has concerns for citizens and how they can find out if there are impediments as to what can be done with a piece of property</td>
<td>Commissioner Cole</td>
<td>J. Sonnen (1/3/07)</td>
</tr>
<tr>
<td>2/16/05</td>
<td>TCPC participate in the CFP process or comments</td>
<td>Commissioner Lyman</td>
<td>John Sonnen/Mark Swartout</td>
</tr>
<tr>
<td>6/22/05</td>
<td>A request was made to identify “certain geologists and geologic engineers” who refuse to work in Edgewood because they claimed their liability insurance carrier would not allow them to issue a letter or report without the hold harmless clause.</td>
<td>Commissioner Lyman</td>
<td>N. Pritchett</td>
</tr>
<tr>
<td>6/22/05</td>
<td>Third Party Review report should include questions that should be addressed, such as how much additional stormwater will be introduced into the slopes by the proposed development. Chair Kohlenberg agreed to work with staff and draft some questions to include as part of the report requirements.</td>
<td>Chair Kohlenberg</td>
<td>N. Pritchett</td>
</tr>
<tr>
<td>6/22/05</td>
<td>Obtain a more definitive answer about whether gravel resources are used from the mine in recycling operations.</td>
<td>Commission</td>
<td>J. Hayes</td>
</tr>
<tr>
<td>6/22/05</td>
<td>Prepare a Countywide map to include all draft</td>
<td>J. Hayes</td>
<td>J. Hayes</td>
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layers from the critical areas regulations in addition to other criteria to assist the Commission in its discussion.

7/6/05 Commissioner Cole referred to the Request for Information Summary Sheet attached to the minutes and noted his request on January 26, 2005 about concerns for citizen and how they can find out if there are impediments as to what can be done with a piece of property has not been addressed by staff nor has staff been identified who will address the question.

7/13/05 Discussion of an appropriate buffer width necessary to protect adjacent properties from fire management practices on prairies and air quality followed. Staff will investigate whether it’s unlawful to burn, and if there are specific things that could be taken into consideration to help establish an appropriate distance. Commissioners suggested staff could confer with the Fire District or U.S. Forest Service.

7/13/05 The Commission requested staff investigate how to allow fish hatcheries without impacting the natural resources the County is attempting to protect.

8/31/05 Mr. Sonnen said there were many comments from the public about justifiability of the document (CAO). Staff has received several suggestions about how to respond to the complaints. He noted each chapter includes a summary that pertains to existing uses that some individuals found helpful. Staff could adapt the information and post it on the County’s website.

8/31/05 Mr. Sonnen offered a suggestion of a test with staff and with frequent users of the CAO document by providing an explanation of how the document is organized and then test the response to see if the person can work through and understand the document. The
exercise will be in a form of a survey to seek some objectivity about the readability of the document.

8/31/05 Commissioner Strub requested inclusion of a definition list of all acronyms used in the document for easy reference by the reader. Mr. Sonnen acknowledged the request and suggested including a glossary of acronyms.  

9/21/05 Commissioners asked Commissioner Lyman to draft a letter to the County Board of Commissioners requesting the Board intercede on behalf of the Planning Commission to receive additional legal support.

10/12/05 Staff asked Commissioners to consider an option of forming task forces to focus on key topics such as agriculture, mineral extractions, etc. The task force could consist of two or three Planning Commissioners and those with technical expertise to help address issues raised by the public. Additionally, consider examining how other jurisdictions have addressed similar issues. The task forces could make recommendations to the Planning Commission.

12/7/05 Commitment to the BoCC to provide a companion piece in addition to the proposed draft (CAO) to help the Board to determine the range of science and options.

2/22/06 Commissioner Kohlenberg requested knowing how local species are defined and selected.

2/22/06 Staff to research public testimony regarding what is the BAS for expanding a list of rare and endangered species as outlined in the amendment.

2/22/06 Requested staff analysis of the impacts of gravel mining in riparian and management zones concerning important habitats.

2/22/06 Research with legal staff what the distinction
is of agriculture occurring on designated agriculture resource lands and agriculture on other lands

2/22/06 Provide comparative data for habitat about the impacts of mining similar to data on impacts to wetlands caused by mining

2/22/06 Ascertain pros and cons for removing beaver ponds versus prohibiting the removal of beaver ponds.

2/22/06 Discuss clarification of terms related to estuary and estuarine wetlands

3/1/06 Commissioners requested a review of frequently asked questions (FAQs) prior to posting online

4/5/06 Staff was asked to e-mail the April 19, 2006 meeting packet Chair Roper, as she will be out-of-town. Commissioners expressed interest in receiving the meeting packet as much in advance of the April 19, 2006 meeting as possible.