THURSTON COUNTY PLANNING COMMISSION

Minutes April 4, 2012

1. **6:30 P.M. CALL TO ORDER**
   Commissioner Nelson called the April 4, 2012 meeting of the Thurston County Planning Commission to order at 6:30 p.m. Commissioners provided self-introductions.

   **Attendance:** Commissioners Scott Nelson, Kathleen O’Connor, Bill Jackson, Christine Spaulding, Christopher Earle, Edward Fleisher, Jennifer Davis & Liz Kohlenberg

   **Absent:** Chair Chris Lane,

   **Staff:** Andrew Deffobis, Cynthia Wilson, Scott Clark, Jeremy Davis & Robert Smith, Resource Stewardship Department

2. **6:30 P.M. APPROVAL OF AGENDA**

   **MOTION:** Commissioner O’Connor moved to approve the agenda. Commissioner Fleisher seconded. Motion carried.

3. **6:30 P.M. APPROVAL OF MINUTES**

   Commissioner O’Connor moved to approve the November 9, 2011 minutes and accept the audio as the official record. Commissioner Fleisher seconded. Motion carried as amended.

   Page 17, line 45; the word wet was changed to red.

4. **6:32 P.M. STAFF UPDATES**

   Mr. Clark provided the following staff updates:

   - A special Planning Commission (PC) meeting has been called for April 11, 2012 to continue to drive through the CAO.
   - The Habitat Conservation Plan between Thurston County and State US Fish and Wildlife will begin very soon and pick up speed over the next couple of months. The State has sent the final statement of work to the County. This will start with what activities will be covered under the habitat conservation plan.
   - The Planning Department is going to be hiring a new Associate Planner. Members from the PC will be asked to volunteer (two or three) to be on the interview panel. The citizens panel will potentially be the first week in May 2012.
   - The BOCC has decided to switch to the Olympian as the official paper.
   - The CARA Chapter will be coming back to the PC very soon but staff asked the PC to bring any questions or concerns this coming week.
In 1996 the ordinance underwent revision (Ordinance No. 11200) after staff identified a number of technical and narrow substantive amendments that were subsequently adopted in order to increase efficiency and better serve the goals and purposes of the CAO. Some amendments pertained to prairie and Oregon white oak habitat. The definition of “Native outwash prairies” was expanded and made reference to mounded topography as potential prairie habitat (i.e. Mima mounds). The expanded definition listed several plant species that may be present on prairie habitat. It also stated that non-native species could be present on prairies, but do not dominate the community. Incidentally, the preamble of the ordinance states that best available science indicates that Western gray squirrels are not present in the County’s urban growth areas.

In recent years, renewed efforts have been undertaken to address prairie and Oregon white oak habitat protection. In 2009, the Board of County Commissioners adopted Interim Ordinance No. 14260, which strengthened protections for prairie and Oregon white oak habitat in consideration of best available science\(^1\). Data indicates that only approximately 10% of original prairie habitat in Western Washington remains, and only 2-3% of the original habitat extent is still dominated by native prairie vegetation. The County worked with the U.S. Fish & Wildlife Service and Washington Department of Fish and Wildlife to include an up-to-date definition of prairie habitat and to delineate soils where prairie habitat is likely to occur. The interim ordinance also introduced lists of both diagnostic wet and dry prairie plants.

Ordinance No. 14260 replaced the definition of prairie habitat, and included new definitions for both wet and dry prairies. The definitions were developed based on new information published in the Washington Department of Fish and Wildlife’s Priority Habitats and Species List (2008). A minimum of three diagnostic plant species is required to determine the presence of prairie habitat. The interim ordinance reduced the minimum size of prairie habitat from five acres to one acre, or smaller if functionally connected to larger habitat areas within approximately one-half mile. This consideration was made based on consultation with state and federal wildlife experts. The ordinance determined that prairie areas dominated by non-native species could be considered recoverable as prairie if there were native species present in the understory, consistent with guidance published by Washington Department Fish and Wildlife.

Ordinance No. 14260 also replaced the definition of “oak woodlands” and included new definitions for “oak habitat” and “oak savanna”. The size of regulated oak habitat was reduced from five to one acre in the interim ordinance. Individual oak trees and oak habitat smaller than one acre could also be considered as valuable habitat in certain circumstances, such as those areas particularly valuable to fish and wildlife or areas in close proximity to oak habitat equal to or larger than one acre in size.

There are several common comments addressing CAO requirements that predated the interim ordinance. The Mazama pocket gopher has been protected under the County’s CAO since 1994, and the interim prairie ordinance does not amend protections for the pocket gopher. If the interim ordinance were to expire, the County’s management

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\(^1\) Best available science for prairie habitats and species was previously distributed to the Planning Commission on September 21, 2011.
• Landowners are better stewards than government regulators
• Regulation has unintended consequences
• Ordinance reduces value of land, but taxes must still be paid
• Property owners should be financially compensated for loss of land use
• Property rights must be preserved
• No sensitive species are present to justify taking of property/property rights
• Use of precautionary principle in absence of scientific consensus sets a bad precedent
• People living in rural areas do not want development, they live in rural areas for a reason
• Prairies are not a naturally-occurring environment
• Ordinance creates perverse incentives for protection prairie and oak habitats
• US Forest Service has protocols for eradicating pocket gophers that destroy planted tree seedlings
• Prairie ordinance prevents expansion of local agriculture movement
• Compliance with land use regulations raises the cost of homes

Staff has attempted to respond to concerns regarding the prairie ordinance through published material on the Planning Department website and during presentations to the public and the Board of County Commissioners.

Administrative Procedures

As with most other types of critical areas, prairie habitat is delineated at the time of land use application. County staff uses the presence of prairie soils, diagnostic prairie plants, and known point locations of sensitive prairie species to determine whether prairie habitat may be present on a given site. Staff then visits the site to see what habitat conditions can be observed. Depending on the size of the parcel, character of surrounding properties, and the level of degradation observed on the subject parcel, staff may be able to determine that prairie habitat is not present. If they cannot make this determination (e.g. they are unsure whether habitat is present), the applicant is required to hire a biologist to survey the property.

Using the list of diagnostic prairie plants outlined in the Critical Areas Ordinance, the biologist determines the extent of any prairie habitat on the property. If prairie habitat is indeed found, a HMP is drawn up which specifies how development can occur with minimal impact to the prairie habitat, and what, if any conditions will be placed on the application. These typically include fencing and the requirement to mow prairie habitat on a semi-annual basis.

Mitigation for impacts to prairie habitat (e.g. replanting native species) may also be required. A similar process of staff visits followed potentially by biologist survey is also undertaken when Mazama pocket gophers or other prairie species may be present. In the case of the pocket gopher, only those consultants who have been trained in the pocket gopher management recommendations developed by Washington Department of Fish and Wildlife are able to complete gopher surveys and HMP development.
Staff Recommendations

1. Draft language in the Special Reports chapter that details the process of determining impacts to fish and wildlife habitat conservation areas (i.e. staff visit, survey, habitat management plan/critical area report sequence)

2. The draft does not include standards for “habitat management plans” per se, but does address critical area report requirements for fish and wildlife habitat conservation areas. Staff is working on syncing the term “habitat management plan” with the appropriate sections on critical area report requirements.

Under the current CAO when you have a fish and wildlife habitat area/important habitat and species the report that is required and generated is a habitat management plan which identifies the habitat, it identifies the impacts and how you are going to mitigate any impacts. Under the proposal, the words habitat management plan appear in the text in various places but when you get to the actual chapter that talks about reporting all the language says special report fish and wildlife habitat conservation areas. Essentially it’s the same thing in it outlines what kinds of thing staff wants from the applicant but we want to make sure we are not calling it one thing here and another in another area. The range for the cost on smaller properties that staff has heard is between $1,700 and $1,800. If the property is larger for subdivision around 40 units or greater it could range starting at $10,000.

Mr. Robert Smith, Senior Planner with the Resource Stewardship Department then discussed the permit process and costs associated with such process. The initial review takes place, the planner takes a look at the application including looking at the online information staff has about the property i.e. mapping, aerial photos and fish and wildlife point location to see if the property has a hit or something that sparks staff attention. If anything is brought up then the planner will go out to the site to do a site visit to look and see what type of concerns are on the property and where the purpose use is associated with the areas of concern. If the area is important habitat in staff’s judgment or is treed, gravel, lawn the topography that is the end right there. If the property is open grass land and staff has questions they then can require additional review. Certain staff has on hands training in plant identification and those folks will go out during the appropriate window in the year and look for evidence of plants. If staff can make a call that those particular plants are not present at the time of year they would grow then the review would actually end there. If there are evidence of plants or the staff person is unsure that is the point when the applicant is required to hire a professional biologist to do a more thorough review or survey. If at that point the plant or evidence is found then the Habitat Management Plan is required. It is believed that for a single family review the beginning fee starts at $330. The initial fee includes calculated time that a review should take however if that time is exceeded then additional fee’s on an hourly basis are then charged.

About four years ago the Board of County Commissioners (BOCC) gave staff the direction to go through a cost recovery study. A consultant was hired to come do a study of how much time it took to do a review of each application, what was necessary during the process and then they developed the cost recovery plan. An applicant can come in for
reasonable use exception. The proposed 5,000 square foot buildable area would be limited to the minimum extent necessary to construct the home, and must be outside of a critical area and outside of a significant portion of the critical area buffer. Development of existing Lots – frequently flooded areas subjection has similar section for channel migration hazard areas. New structures and related utilities and appurtenances may only be constructed outside of the 100-year channel migration hazard area, consistent with Chapter 24.20 TCC, Chapter 24.25 TCC and Chapter 24.30 TCC. If the lot has less than 5,000 square feet of buildable area outside of the 1-year channel migration hazard area to accommodate the primary structure, ordinary appurtenances, landscaping and accessory structures, the approval authority may allow development to occupy the 100-year channel migration hazard area to the minimum extent necessary to provide a building site totaling no more than 5,000 square feet. Many provisions (1-10) apply. When you are greater than 5,000 square feet outside a critical area or buffer, you may encroach on the outer 25-50% of the buffer providing that one; there is no adverse impact on a species of concern two; the footprint inside cannot be expanded in the future and three; there is a minimum native tree removal and the property owner must revegetate. The 25-50% of buffering is based on Ecology’s request.

Section 24.50.065 – Development of Existing Lots – frequently flooded areas subjection (E) has a similar section for channel migration hazard areas that reads as follows:

New structures and related utilities and appurtenances may only be constructed outside of the 100-year channel migration hazard area, consistent with Chapter 24.20 TCC, Chapter 24.25 TCC and Chapter 24.30 TCC. If the lot has less than 5,000 square feet of buildable area outside of the 100-year channel migration hazard area to accommodate the primary structure, ordinary appurtenances, landscaping and accessory structures, the approval authority may allow development to occupy the 100-year channel migration hazard area to the minimum extent necessary to provide a building site totaling no more than 5,000 square feet.

A discussion was had about taking section E out the policy due to the County liability. If this section is removed because the 100-year flood area is just where the staff has speculated it will be at a property owner can still apply for a structure under a reasonable use exception application. The PC would like to remove the entire section E due to liability.

**MOTION:** Commissioner Jackson moved to remove section E of Memorandum dated April 4, 2012 concerning the Critical Areas Ordinance Update, Chapter 24.50. Commissioner Kohlenberg seconded. Motion carried. One Commissioner opposed.

Comment number 79 indicated that the above encroachment is not supported by science. They are correct. The 5,000 square feet is a policy decision. They believe that 3,500 square feet is more appropriate as it provides adequate area for green building and low impact development.

The other Comment was number 34-A in support of the 5,000 square feet. They also said more alternatives and more flexible approaches should be included in the CAO but it is headed in the right direction.
evolved around allowing 5,000 square feet buildable area within natural resource buffers, wetlands, steep slopes and riparian areas. It centers around whether allowing that to occur may violate some of the functions of the habitat; considering it could go to an RUE process but that process is expensive so is there a way to allow this to happen without going through an RUE process but conditioning it so we are still protecting the habitat. Staff will be looking at cumulative impacts, reducing and defining development or clearly what building means and also finding out what the mitigation is.

**MOTION:** Commissioner Kohlenberg moved to approve the staff recommendation in going down to 3,500 feet for the site development area. Commissioner O’Connor seconded.

Commissioner Kohlenberg withdrew the motion.

7. **8:43 P.M. CALENDAR**

April 11, 2012 – All Commissioners will be in attendance.

8. **8:43 PM ADJOURN**

With there being no further business, Commissioner Nelson adjourned the meeting at 8:43 p.m.

[Signature]
Scott Nelson, Commissioner

Prepared by Carrie Toebbe, Recording Secretary