Date: April 27, 2010

Public Hearing Date: Tentative Date: July 10, 2010

Prepared by: Scott Longanecker,
Associate Planner

Proponent/Applicant: Thurston County

Action Requested: Amend Title 18 adding an exemption for unbuildable lots created for the purpose of habitat and critical area preservation.

☐ Map Changes  ☑ Text Changes  ☐ Both  ☐ Affects Comprehensive Plans/documents
☐ Affected Jurisdictions

ISSUE:
Under the current platting and subdivision ordinance (Title 18), there is no exemption through the existing short subdivision or large lot subdivision process to create an unbuildable lot for the purpose of habitat and critical area preservation. The cost and time involved in the standard subdivision process may be a barrier to the creation of such lots.

BACKGROUND:
Title 18 of Thurston County Code is the Platting and Subdivision Ordinance, which establishes the standards and process of reviewing and approving plats, short plats and large lot subdivisions.

This is a proposal to amend Thurston County Code Title 18, Chapter 18.28 – Large Lot Subdivisions and Chapter 18.32 – Short Plats. Currently Title 18 provides for certain exemptions from the platting and subdivision process for cemeteries, testamentary divisions, condominiums, boundary line adjustments and others.

This Title would be amended to allow an exemption to permit a lot to be created for the purpose of critical area protection and habitat conservation. Through this process, a lot
could be created to be sold or otherwise transferred in fee simple interest\(^1\) to a registered non-profit conservation land trust or public agency.

**DEPARTMENT ANALYSIS:**
This proposed change would allow a property owner to create a lot to sell or donate strictly for preserving lands in perpetuity for the purposes of habitat, wildlife, critical areas and natural area conservation. Lots created under this exemption would then be required to be sold or donated to a public agency, or registered non-profit conservation land trust for perpetual management and protection. The purpose of this amendment is to provide a simplified process for creating an unbuildable lot strictly for habitat and critical area protection. As an incentive for creating such critical area and habitat preservation lots staff suggest that the property owner be allowed to retain the original residential density allowed under the zoning and critical areas regulations in place at the time the unbuildable habitat conservation lot is created.

Under the proposed amendments to Chapters 18.28 and 18.32, the created conservation lot would be unbuildable. However, in some cases the remainder lot created through the proposed exemption process may still be considered a building site as defined by TCC 18.08.080 \(^2\). One possible requirement of the proposed short plat exemption is that the remainder parcel not be made to be inaccessible, non-conforming or unbuildable through this process.

Under a second option, the remainder lot could in fact result in a non-conforming lot. Through this alternative, the original residential density based upon the Thurston County Codes in effect at the time the short plat or large lot exemption is recorded, could be transferred to the remainder lot. This density transfer would remain effective so long as a complete short plat or large lot application is submitted within five years of approval and recording of the short plat or large lot subdivision exemption. Allowing the remainder lot to retain its original residential density would create a substantial incentive to preserve habitat and critical areas in Thurston County. Under this alternative a land owner could reduce their tax burden and preserve critical areas and habitat by transferring property to a registered land trust or public agency, which concurrently retaining their development rights. If the property owner then decided to subdivide the remainder lot within five years of recording the short plat or large lot exemption, the resulting lot or lots would likely be non-conforming in terms of size.

Staff believes that creating a lot through this proposed method would result in a separate and legal lot consistent with TCC 18.04.045(K) [see below].

18.04.045 “K. Lots created after June 9, 1937 through the methods set out in the Thurston County Platting and Subdivision Ordinance (TCC Title 18), as amended.”

\(^1\) Ownership of all rights, title, and interest in a property.

\(^2\) TCC 18.08.080 - "Building site" means a parcel of land occupied or possible to be occupied by one main building and its accessory buildings, in a way that meets the requirements for setbacks and open space in the Thurston County Zoning Ordinance, and meets the requirements of the Thurston County Sanitary Code, and, if applicable, meets the setback and lot coverage requirements of the shoreline master program for the Thurston region.
OPTIONS:

Option 1) Amend Chapters TCC 18.28 and 18.32 to add an exemption for lots created for the purposes of habitat and critical area preservation, with no additional incentive. The purpose of the subdivision exemption would be to preserve natural areas, habitat and critical areas by offering a shorter and less expensive review process compared to a full subdivision review. Residential density of the remainder lot would be based only on its remaining size after the exemption is approved and recorded.

Option 2) Amend Chapters TCC 18.28 and 18.32 to add an exemption for lots created for the purposes of habitat and critical area preservation, with an additional incentive. The purpose of the subdivision exemption would be to expedite and streamline the review process for such lots which adhere to the proposed standards for preservation of natural areas, habitat and critical areas. Additionally, create an incentive to preserve habitat and critical areas by allowing the remainder lot to retain the residential density of the original lot for a period of five years after the short plat or large lot exemption is approved and recorded. This alternative may result in the creation of non-conforming lots in terms of lot size.

Option 3) Make no change to TCC 18.28 and 18.32.

SEPA:
A SEPA determination has not been made at this time.

NOTIFICATION:
Written notice of the public hearing will be published in The Olympian at least twenty (20) days prior to the public hearing.

DEPARTMENT RECOMMENDATION:
Amending TCC 18.28 and 18.32 as suggested would be consistent with other Thurston County Development Codes and the Thurston County Comprehensive Plan. This amendment is also consistent with the Thurston County Critical Areas Ordinance, TCC 17.15.

The Resource Stewardship Department recommends the Planning Commission forward Development Code Docket item A-4, Creation of unbuidable lots for purposes of critical area or habitat conservation (Title 18) with a recommendation of approval to the Board of County Commissioners as follows:

Title 18 Zoning would be amended as follows:

Deleted Text: Strikethrough Proposed Changes: Underlined
Staff Comments: Italic Unaffected Omitted Text: (...)
Proposed new language:

Option 1)

Chapter 18.28 – Large Lot Subdivisions

18.28.010 – Applicability

Every division of contiguous land, for purposes of sale or lease, into two or more lots, all of which are five acres or one-one hundred twenty-eighth of a section of land or larger, and any one of which is smaller than forty acres or one-sixteenth of a section, shall proceed in compliance with this chapter and Chapters 18.04, 18.08, 18.10, 18.20, 18.24, 18.42, 18.44, 18.46 and 18.48. Large lot subdivisions may be redivided pursuant to this chapter (Large Lot Subdivisions), Chapter 18.32 (Short Plats) or Chapter 18.12 (Preliminary Plat).


18.28.020 – Exemptions.

The provisions of this title shall not apply to:

A. Conservation lots. Unbuildable lots created for purposes of habitat conservation or critical area preservation to be owned in perpetuity and in fee simple interest by a registered, non-profit conservation land trust or government agency. Such lots may not be created so as to make the remaining lot unbuildable or nonconforming with the underlying zoning or zoning standards. For the purposes of this chapter, an unbuildable lot shall be defined as a lot which is unable to be developed without a variance or reasonable use exception. Surveys and/or deeds recorded for the purpose of creating such conservation lots shall:

1. Be annotated with language that prohibits human habitation, conversion of native vegetation to another use, or construction of buildings and other structures.

2. Contain a note explaining the purposes of the exempt lot, such as the protection of a particular species, habitat conservation, critical area preservation or open space and listing the entity responsible for management of the exempt parcel.

3. Be reviewed and approved through a minor administrative review process by Thurston County Resource Stewardship prior to recording with the Thurston County Auditor’s Office.

Chapter 18.32 – Short Plats

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18.32.020 – Exemptions.
The provisions of this title shall not apply to:

A. Division of land due to condemnation or sale under threat thereof, by an agency or division of government vested with the power of condemnation;

B. Any division of land for use solely for the installation of electric power, telephone, water supply, sewer service or other utility facilities of a similar or related nature; provided, however, that any remaining lot or lots are consistent with applicable zoning and land use plans;

C. Any division where no permanent street may be constructed and where restrictive covenants or lease provisions prohibit construction of buildings of a type that permit human occupancy, overnight camping or other human habitation.

D. Conservation lots. Unbuildable lots created for purposes of habitat conservation or critical area preservation to be owned in perpetuity and in fee simple interest by a registered, non-profit conservation land trust or government agency. Such lots may not be created so as to make the remaining lot unbuildable or nonconforming with the underlying zoning or zoning standards. For the purposes of this chapter, an unbuildable lot shall be defined as a lot which is unable to be developed without a variance or reasonable use exception. Surveys and/or deeds recorded for the purpose of creating such conservation lots shall:

1. Be annotated with language that prohibits human habitation, conversion of native vegetation to another use, or construction of buildings and other structures.

2. Contain a note explaining the purposes of the exempt lot, such as the protection of a particular species, habitat conservation, critical area preservation or open space and listing the entity responsible for management of the exempt parcel.

3. Be reviewed and approved through a minor administrative review process by Thurston County Resource Stewardship prior to recording with the Thurston County Auditor’s Office.

(Ord. 11398 § 10 (part) 1997: Ord. 6629 § 41, 1980: Ord. 4748 § 1 Ch. 8(2), 1974

...

Option 2)

Chapter 18.28 – Large Lot Subdivisions

18.28.010 – Applicability

Every division of contiguous land, for purposes of sale or lease, into two or more lots, all of which are five acres or one-one hundred twenty-eighth of a section of land or larger, and any one of which is smaller than forty acres or one-sixteenth of a section, shall proceed in compliance with this chapter and Chapters 18.04, 18.08, 18.10, 18.20, 18.24, 18.42, 18.44, 18.46 and 18.48. Large lot subdivisions may be redivided pursuant
to this chapter (Large Lot Subdivisions), Chapter 18.32 (Short Plats) or Chapter 18.12 (Preliminary Plat).


18.28.020 — Exemptions.

The provisions of this title shall not apply to:

A. Conservation lots. Unbuildable lots created for purposes of habitat conservation or critical area preservation to be owned in perpetuity and in fee simple interest by a registered, non-profit conservation land trust or government agency. Such lots may not be created so as to make the remaining lot unbuildable. For the purposes of this chapter, an unbuildable lot shall be defined as a lot which is unable to be developed without a variance or reasonable use exception. The residential density of the original lot may be transferred to the remainder lot, based upon the Thurston County Codes in effect at the time the subdivision exemption is recorded, provided that all critical areas have been identified and delineated pursuant to TCC 17.15 prior to approval and recording of the subdivision exemption and a complete subdivision application for the remainder lot is submitted within five years of recording the subdivision exemption. Surveys and/or deeds recorded for the purpose of creating such conservation lots shall:

1. Be annotated with language that prohibits human habitation, conversion of native vegetation to another use, or construction of buildings and other structures.

2. Contain a note explaining the purposes of the exempt lot, such as the protection of a particular species, habitat conservation, critical area preservation or open space and listing the entity responsible for management of the exempt parcel.

3. Be reviewed and approved through a minor administrative review process by Thurston County Resource Stewardship prior to recording with the Thurston County Auditor's Office.

Chapter 18.32 — Short Plats

18.32.020 — Exemptions.

The provisions of this title shall not apply to:

A. Division of land due to condemnation or sale under threat thereof, by an agency or division of government vested with the power of condemnation;

B. Any division of land for use solely for the installation of electric power, telephone, water supply, sewer service or other utility facilities of a similar or related nature; provided, however, that any remaining lot or lots are consistent with applicable zoning and land use plans;
C. Any division where no permanent street may be constructed and where restrictive
covenants or lease provisions prohibit construction of buildings of a type that permit
human occupancy, overnight camping or other human habitation.
D. Conservation lots. Unbuildable lots created for purposes of habitat conservation or
critical area preservation to be owned in perpetuity and in fee simple interest by a
registered, non-profit conservation land trust or government agency. Such lots may not
be created so as to make the remaining lot unbuildable. For the purposes of this
chapter, an unbuildable lot shall be defined as a lot which is unable to be developed
without a variance or reasonable use exception. The residential density of the original
lot may be transferred to the remainder lot, based upon the Thurston County Codes in
effect at the time the subdivision exemption is recorded, provided that all critical areas
have been identified and delineated pursuant to TCC 17.15 prior to approval and
recording of the subdivision exemption and a complete subdivision application for the
remainder lot is submitted within five years of recording the subdivision exemption.
Surveys and/or deeds recorded for the purpose of creating such conservation lots shall:

1. Be annotated with language that prohibits human habitation, conversion of
native vegetation to another use, or construction of buildings and other
structures.

2. Contain a note explaining the purposes of the exempt lot, such as the
protection of a particular species, habitat conservation, critical area
preservation or open space and listing the entity responsible for management
of the exempt parcel.

3. Be reviewed and approved through a minor administrative review process by
Thurston County Resource Stewardship prior to recording with the Thurston
County Auditor’s Office.

(Ord. 11398 § 10 (part) 1997: Ord. 6629 § 41, 1980: Ord. 4748 § 1 Ch. 8(2), 1974

ATTACHMENTS

A: TCC 18.32.020 - Exemptions
ATTACHMENT A:

18.32.020 – Exemptions.

The provisions of this chapter shall not apply to:

A. Division of land due to condemnation or sale under threat thereof, by an agency or division of government vested with the power of condemnation;
B. Any division of land for use solely for the installation of electric power, telephone, water supply, sewer service or other utility facilities of a similar or related nature; provided, however, that any remaining lot or lots are consistent with applicable zoning and land use plans;
C. Any division where no permanent street may be constructed and where restrictive covenants or lease provisions prohibit construction of buildings of a type that permit human occupancy, overnight camping or other human habitation.

(Ord. 11398 § 10 (part) 1997: Ord. 6629 § 41, 1980: Ord. 4748 § 1 Ch. 8(2), 1974)